



# Offshore Electricity Infrastructure Amendment Regulations 2024

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I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated                    05 December 2024

Sam Mostyn AC  
Governor-General

By Her Excellency's Command

Chris Bowen  
Minister for Climate Change and Energy

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## 1 Name

This instrument is the *Offshore Electricity Infrastructure Amendment Regulations 2024*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	12 December 2024
2. Schedule 1, Part 1	The day after this instrument is registered.	12 December 2024
3. Schedule 1, Part 2	Immediately after the commencement of the provisions covered by table item 2.	12 December 2024
4. Schedule 2	Immediately after the commencement of the provisions covered by table item 2.	12 December 2024

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the following:

- (a) the *Offshore Electricity Infrastructure Act 2021*;
- (b) the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## **Schedule 1—General amendments**

### **Part 1—Renumbering**

#### *Offshore Electricity Infrastructure Regulations 2022*

**1 Section 4 (definition of *commercially confidential information*)**

Omit “section 48G”, substitute “section 157”.

**2 Section 4 (definition of *general licence application information*)**

Omit “section 48A”, substitute “section 151”.

**3 Part 3**

Renumber as Part 10.

**4 Section 45**

Renumber as section 146.

**5 Section 46**

Renumber as section 147.

**6 Section 46**

Omit “section 45”, substitute “section 146”.

**7 Part 4**

Renumber as Part 11.

**8 Section 47**

Renumber as section 149.

**9 Section 48**

Renumber as section 150.

**10 Part 4A**

Renumber as Part 12.

**11 Section 48A**

Renumber as section 151.

**12 Section 48B**

Renumber as section 152.

**13 Section 48B**

Omit “section 48A”, substitute “section 151”.

**14 Section 48C**

Renumber as section 153.

**15 Section 48C**

Omit “section 48A”, substitute “section 151”.

**16 Section 48D**

Renumber as section 154.

**17 Section 48D**

Omit “section 48A”, substitute “section 151”.

**18 Section 48E**

Renumber as section 155.

**19 Section 48E**

Omit “section 48A”, substitute “section 151”.

**20 Section 48F**

Renumber as section 156.

**21 Section 48F**

Omit “section 48A” (wherever occurring), substitute “section 151”.

**22 Subsection 48F(4) (note)**

Omit “section 48G”, substitute “section 157”.

**23 Section 48G**

Renumber as section 157.

**24 Section 48H**

Renumber as section 158.

**25 Part 5**

Renumber as Part 13.

**26 Section 49**

Renumber as section 159.

**27 Section 50**

Renumber as section 160.

**28 Part 6**

Renumber as Part 14.

**29 Section 51**

Renumber as section 164.

***Offshore Electricity Infrastructure (Regulatory Levies)  
Regulations 2022***

**30 Section 9 (note)**

Omit “section 48”, substitute “section 150”.



## Part 2—Main amendments

### *Offshore Electricity Infrastructure Regulations 2022*

#### 31 Section 4

Insert:

***activities subject to consultation***: see section 63.

***design notification***: see sections 96 and 97.

***eligible safety zone infrastructure*** has the meaning given by subsection 136(1) of the Act.

***initial plan approval application***: see section 47.

***licence activity***, in relation to a licence or a proposed commercial licence, means an offshore infrastructure activity or other activity carried out, or to be carried out, in the licence area under the licence or the proposed commercial licence.

***periodic revision day***, for a relevant licence, has the meaning given by subsection 56(2), subject to sections 58 and 59.

***plan revision approval application***: see section 50.

***proposed commercial licence*** means a commercial licence:

- (a) that:
  - (i) the holder of a feasibility licence has applied for, where the application has not been granted or refused; or
  - (ii) the holder of a feasibility licence proposes to apply for; and
- (b) that is proposed to have a licence area that consists of, or is entirely within, the licence area of the feasibility licence.

***protection zone application***: see section 130.

***protection zone determination***: see section 126.

***relevant licence*** means a licence or a proposed commercial licence, and:

- (a) in relation to a management plan—means the licence (including a proposed commercial licence) that the management plan is approved for; and
- (b) in relation to an initial plan approval application for the Regulator to approve a plan as the management plan for a licence (including a proposed commercial licence)—means that licence; and
- (c) in relation to a plan revision approval application for the Regulator to approve a revised management plan as the management plan for a licence (including a proposed commercial licence)—means that licence.

***relevant structures, equipment and property***, in relation to a relevant licence: see subsection 87(1).

Note: The ***relevant structures, equipment and property*** in relation to a relevant licence must be listed in the management plan for the licence under section 87. However, a structure, equipment or other property mentioned in subsection 87(1) is a relevant structure, equipment or property whether or not it is listed in the plan.

***safety zone application***: see section 117.

*safety zone determination*: see section 113.

### **32 Part 2 (heading)**

Repeal the heading, substitute:

## **Part 2—Licensing scheme: licences**

### **33 Section 5**

Repeal the section, substitute:

### **5 Operation of this Part**

For the purposes of section 29 of the Act, this Part prescribes the licensing scheme in relation to:

- (a) applications for licences; and
- (b) the offering and granting of licences; and
- (c) transfers of licences; and
- (d) changes in control of licence holders; and
- (e) other matters.

### **34 Paragraph 9(3)(b)**

Omit “day on or before”, substitute “time before”.

### **35 Paragraph 10(2)(b)**

Omit “on or before the day”, substitute “before the time”.

### **36 At the end of subsection 10(2)**

Add:

Note: For application fees, see section 146. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

### **37 Subsection 10(3)**

Omit “the day specified in the invitation under paragraph 9(3)(b)”, substitute “the day on which the time specified in the invitation under paragraph 9(3)(b) falls”.

### **38 Subsection 12(4)**

Omit “day specified in the invitation under paragraph 9(3)(b) were a reference to the day”, substitute “time specified in the invitation under paragraph 9(3)(b) were a reference to the end of the day”.

### **39 At the end of subsection 17(2)**

Add:

Note: For application fees, see section 146. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

### **40 At the end of subsection 18(2)**

Add:

Note: For application fees, see section 146. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

**41 At the end of subsection 21(2)**

Add:

Note: For application fees, see section 146. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

**42 Paragraph 27(3)(f)**

Omit “amounts”, substitute “the amount”.

**43 At the end of Subdivision C of Division 4 of Part 2**

Add:

**28A Commercial licences—Minister may only grant licence if financial security requirement complied with**

- (1) This section applies if:
- (a) an eligible person has applied for a commercial licence; and
  - (b) the commercial licence has not been granted, and the application has not been refused; and
  - (c) subject to section 103 of this instrument, section 117 of the Act would, if the commercial licence were granted, require the eligible person to have provided the Commonwealth with an amount of financial security at the time the commercial licence comes into force.
- (2) For the purposes of paragraph 42(1)(j) of the Act, the Minister may only grant the commercial licence if the eligible person has provided the Commonwealth with that amount of financial security.

**44 At the end of subsection 30(2)**

Add:

Note: For application fees, see section 146. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

**45 At the end of subsection 31(1)**

Add:

Note: For application fees, see section 146. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

**46 Paragraph 33(4)(d)**

Repeal the paragraph, substitute:

- (d) a description of how the offshore infrastructure project carried out, or to be carried out, under the licence (including, in the case of a feasibility licence, any proposed commercial licence that the licence holder has applied for, or proposes to apply for, on the basis of the feasibility licence) is contributing, or will contribute, to the Australian economy and local communities, including in relation to:
- (i) regional development; and
  - (ii) job creation; and
  - (iii) Australian industries; and
  - (iv) the use of Australian goods and services;

- (e) any other information or documents that a condition of the licence (other than the condition in this section) requires the annual report to include.

#### **47 At the end of Division 6 of Part 2**

Add:

#### **33A Feasibility licences—Australian supply chain and workforce analysis report**

- (1) A feasibility licence is subject to the condition that the licence holder must give the Registrar a report under this section before the end of 2 years after the day the licence came into force (or such further period as allowed by the Registrar).

Note: For feasibility licences in force when this section commences, see subsection (8).

- (2) The report must:
  - (a) describe the proposed commercial offshore infrastructure project; and
  - (b) describe the proposed supply chain and workforce needs of the project; and
  - (c) describe the opportunities for Australian businesses and workers that may arise from the project; and
  - (d) describe the consultation that the licence holder has carried out, in respect of economic opportunities directly arising from the project, with:
    - (i) Australian businesses, including businesses owned or operated by Aboriginal or Torres Strait Islander people; and
    - (ii) local governments of areas adjacent to, or near, the project; and
    - (iii) workers and their representatives; and
    - (iv) any forums or committees representing business owners and workers located in areas adjacent to, or near, the project; and
  - (e) describe how the project will maximise its contributions to the Australian economy and Australian communities.

##### *Revision of report*

- (3) The Registrar may, by notice in writing, direct the licence holder to review and update the report, and give the updated report to the Registrar, before the end of a period specified in the direction.
- (4) The licence is subject to the condition that:
  - (a) the licence holder must comply with any direction given to the licence holder under subsection (3); and
  - (b) any updated report that the licence holder gives to the Registrar in accordance with such a direction must be in accordance with subsection (2).

##### *Registrar must consider report for publication*

- (5) If the licence holder gives the Registrar a report (including a revised report) under this section (including under subparagraph (b)(ii) of this subsection), the Registrar must, before the end of 60 days after the licence holder gave the report:
  - (a) decide whether the report is in accordance with subsection (2); and
  - (b) either:
    - (i) if the Registrar is satisfied that the report is in accordance with subsection (2)—give the licence holder a notice stating that the

- licence holder must publish the report in accordance with subsection (6); or
- (ii) otherwise—give the licence holder a notice requiring the licence holder to revise and resubmit the report, and setting out the information that must be included in the report.
- (6) If the Registrar gives the licence holder a notice under subparagraph (5)(b)(i), the licence holder must:
- (a) publish the report on the licence holder’s website within 30 days after receiving the notice; and
- (b) keep the report on the licence holder’s website for as long as the feasibility licence remains in force.
- (7) Before publishing the report under subsection (6), the licence holder must remove from the report any information that the licence holder reasonably considers to be:
- (a) a trade secret; or
- (b) information the disclosure of which would, or could reasonably be expected to, adversely affect any person’s business, commercial or financial affairs.

*Licences in effect when this section commences*

- (8) If a feasibility licence is in effect when this section commences, the licence holder must give the Registrar the first report under this section in relation to the licence before the end of 2 years after the day this section commences, instead of before the time mentioned in subsection (1).

**48 Subsection 35(1) (note)**

Repeal the note, substitute:

- Note 1: The application must be made to the Registrar: see section 69 of the Act.
- Note 2: For application fees, see section 146 of this instrument. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

**49 At the end of subsection 39(1)**

Add:

- Note 4: For application fees, see section 146 of this instrument. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

**50 After Division 8 of Part 2**

Insert:

**Division 8A—Surrendering licences**

**39A Application for consent to surrender licence, and notice of surrender**

*Application for consent to surrender*

- (1) An application under subsection 74(1) of the Act for the Minister to consent to the surrender of a licence in respect of an area:

## Schedule 1 General amendments

### Part 2 Main amendments

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- (a) must be made in the manner and form that is:
  - (i) approved by the Registrar; and
  - (ii) published on the Registrar's website; and
- (b) must be accompanied by any information or documents required by the form.

Note 1: The application must specify or set out the matters required by subsection 74(2) of the Act.

Note 2: For application fees, see section 146. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

#### *Notice of surrender*

- (2) A notice under subsection 74(4) of the Act surrendering a licence in respect of an area:
  - (a) must be in the manner and form that is:
    - (i) approved by the Registrar; and
    - (ii) published on the Registrar's website; and
  - (b) must be accompanied by any information or documents required by the form.

Note: The notice must also be accompanied by the notice of the Minister's consent to the surrender of the licence in respect of the area (see subsection 74(4) of the Act).

## **51 At the end of section 41**

Add:

- (6) To avoid doubt, the Registrar:
  - (a) may make more than one request under this section; and
  - (b) may make further requests if the Registrar or the Minister is not satisfied with the information provided in response to a request.

## **52 After Part 2**

Insert:

# **Part 3—Licensing scheme: management of infrastructure**

## **Division 1—Operation of this Part**

### **45 Operation of this Part**

For the purposes of section 29 of the Act, this Part prescribes the licensing scheme in relation to:

- (a) management plans; and
- (b) other matters.

## **Division 2—Licence activities must comply with management plan**

### **46 Licence activities must comply with management plan**

- (1) A licence holder commits an offence of strict liability if:
  - (a) there is a management plan for the licence; and

- (b) the licence holder carries out licence activities in a way that is contrary to the management plan.

Penalty: 50 penalty units.

*Continuing offences*

- (2) A person who commits an offence against subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the offence continues.
- (3) The maximum penalty for each day that an offence under subsection (1) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

### **Division 3—Application for approval of plans (including revised plans)**

#### **Subdivision A—Initial plan approval applications**

##### **47 Making an initial plan approval application**

- (1) The holder of a feasibility licence, a research and demonstration licence or a transmission and infrastructure licence may apply to the Regulator, in accordance with this Subdivision, for the Regulator to approve a plan as the management plan for the licence.
- (2) If the holder of a feasibility licence has applied for, or proposes to apply for, a commercial licence on the basis of the feasibility licence, the licence holder may apply to the Regulator, in accordance with this Subdivision, for the Regulator to approve a plan as the management plan for the proposed commercial licence.

Note: The relevant licence for an application under subsection (2) is the proposed commercial licence (see the definition of *relevant licence* in section 4).

- (3) For the purposes of this instrument, an application under this section is an *initial plan approval application*.
- (4) This section does not apply if there is already a management plan for the relevant licence.

Note: If there is already a management plan for the relevant licence, the licence holder may make a plan revision approval application instead (see section 50).

##### **48 Requirements for application**

- (1) An initial plan approval application:
- (a) must be made in the manner and form that is:
    - (i) approved by the Regulator; and
    - (ii) published on the Regulator’s website; and
  - (b) must be accompanied by the plan; and
  - (c) must be accompanied by any other information or documents required by the form.
- (2) Before making an initial plan approval application, a licence holder must carry out consultation under Subdivision D.

Note 1: For application fees, see section 146. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

Note 2: The licence holder may be required to give the Regulator a design notification before making the initial plan approval application (see section 96).

#### 49 Application taken to be withdrawn if further application made

If:

- (a) a licence holder makes an initial plan approval application (the *first application*) in relation to a licence; and
  - (b) while the Regulator is dealing with the first application, the licence holder makes a further initial plan approval application in relation to the licence;
- the first application is taken to be withdrawn when the further application is made.

### Subdivision B—Plan revision approval applications

#### 50 Making a plan revision approval application

(1) This section applies to the holder of a licence for which there is a management plan.

(2) This section also applies to the holder of a feasibility licence if:

- (a) the licence holder has applied, or proposes to apply, for the Minister to grant a commercial licence on the basis of the feasibility licence; and
- (b) the Regulator has approved a management plan for the proposed commercial licence.

Note: If subsection (2) applies, the relevant licence for an application under paragraph (3)(b) is the proposed commercial licence (see the definition of *relevant licence* in section 4).

(3) The licence holder may:

- (a) prepare a revised management plan; and
- (b) apply to the Regulator, in accordance with this Subdivision, for the Regulator to approve the revised management plan as the management plan for the relevant licence.

(4) For the purposes of this instrument, an application under paragraph (3)(b) is a *plan revision approval application*.

#### 51 Requirements for plan revision approval application

A plan revision approval application:

- (a) must be made in the manner and form that is:
  - (i) approved by the Regulator; and
  - (ii) published on the Regulator's website; and
- (b) must be accompanied by the revised plan; and
- (c) must be accompanied by any information or documents required by the form.

Note 1: For application fees, see section 146. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

Note 2: If the relevant licence is a transmission and infrastructure licence, the licence holder may be required to give the Regulator a design notification before making the plan revision approval application (see subsection 96(3)).



## **52 Application taken to be withdrawn if further application made**

If:

- (a) a licence holder makes a plan revision approval application (the *first application*) in relation to a licence; and
- (b) while the Regulator is dealing with the first application, the licence holder makes a further plan revision approval application in relation to the licence; the first application is taken to be withdrawn when the further application is made.

## **Subdivision C—Requirements to revise management plan and apply for approval**

### **53 Regulator may direct licence holder to revise management plan**

- (1) The Regulator may, at any time when an approval of a management plan for a relevant licence is in effect, direct the licence holder to:
  - (a) revise the management plan; and
  - (b) make a plan revision approval application for the Regulator to approve the revised plan as the management plan for the relevant licence.

Note: Before giving a direction under this subsection, the Regulator must give the licence holder a written notice of the proposed direction inviting the licence holder to make a submission about the proposed direction (see section 55).

- (2) The direction must:
  - (a) be in writing; and
  - (b) set out the matters in respect of which the management plan must be revised; and
  - (c) set out the reasons for the revision; and
  - (d) specify the day on or before which the plan revision approval application must be made.
- (3) The direction:
  - (a) may include a requirement for the licence holder to carry out consultation under Subdivision D before making the plan revision approval application; and
  - (b) if the direction includes such a requirement:
    - (i) may state that the consultation must relate to specified licence activities carried out, or to be carried out, under the relevant licence; and
    - (ii) may state that only specified persons, organisations, communities or groups of kinds mentioned in subsection 64(1) need to be consulted.

*Time limit for complying with direction*

- (4) The day specified for the purposes of paragraph (2)(d) must be reasonable.
- (5) The licence holder may, in writing, ask the Regulator to vary the day specified for the purposes of paragraph (2)(d) to a later day.
- (6) If the licence holder makes a request under subsection (5), the Regulator may, by written notice to the licence holder:

- (a) grant the request and vary the day specified for the purposes of paragraph (2)(d) to a later day; or
- (b) refuse the request.

*Licence holder must comply with direction*

- (7) The licence holder must comply with the direction on or before the day specified in the direction for the purposes of paragraph (2)(d).

## **54 Failure to comply with direction to revise management plan**

*Strict liability offence*

- (1) A person commits an offence of strict liability if:
  - (a) the Regulator gives the person a direction under subsection 53(1); and
  - (b) the person does not comply with the direction on or before the day specified in the direction for the purposes of paragraph 53(2)(d).

Penalty: 40 penalty units.

*Civil penalty provision*

- (2) A person is liable to a civil penalty if:
  - (a) the Regulator gives the person a direction under subsection 53(1); and
  - (b) the person does not comply with the direction on or before the day specified in the direction for the purposes of paragraph 53(2)(d).

Civil penalty: 40 penalty units.

*Continuing contraventions*

- (3) A person who commits an offence against subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the offence continues.
- (4) The maximum penalty for each day that an offence under subsection (1) continues is 10% of the maximum penalty that can be imposed in respect of that offence.
- (5) A person who contravenes subsection (2) commits a separate contravention in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.
- (6) The maximum civil penalty for each day that a contravention of subsection (2) continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

## **55 Proposed decision to give direction**

- (1) Before giving a direction under subsection 53(1) to a licence holder, the Regulator must give the licence holder written notice of the proposed direction.
- (2) The notice must:
  - (a) set out the proposed direction; and
  - (b) set out the Regulator's reasons for giving the proposed direction; and

- (c) invite the licence holder to make a written submission about the proposed direction; and
  - (d) specify the day on or before which the submission must be made.
- (3) The day specified for the purposes of paragraph (2)(d) must be reasonable.
- (4) If the licence holder makes a submission on or before the day specified for the purposes of paragraph (2)(d):
- (a) the Regulator must take the submission into account in deciding whether or not to give the direction; and
  - (b) if the Regulator decides not to give the direction—may give the licence holder a different direction under subsection 53(1) instead, and need not comply with this section in relation to the different direction.

## 56 Periodic plan revision approval applications

- (1) If an approval of a management plan for a relevant licence is in effect, the licence holder must, on or before the periodic revision day worked out under subsection (2):
- (a) prepare a revised management plan; and
  - (b) make a plan revision approval application for the Regulator to approve the revised management plan as the management plan for the licence;
- unless an exemption is in effect under section 57 in relation to the licence.
- (2) Subject to sections 58 (deferral) and 59 (different day determined by Regulator), the **periodic revision day** for a relevant licence is the day 5 years after the most recent of any of the following:
- (a) the day an approval of the management plan, or a revised management plan, for the relevant licence took effect as a result of a plan revision approval application made under paragraph (1)(b) of this section;
  - (b) if the Regulator gives the licence holder a direction under subsection 53(1) in relation to the licence—the day specified in the direction under paragraph 53(2)(d);
  - (c) the day an exemption under section 57 in relation to the licence ceased to have effect;
  - (d) the day a deferral under section 58 in relation to the licence ceased to have effect;
  - (e) the day a determination under section 59 in relation to the licence ceased to have effect.

Note: For when an approval of a plan takes effect, and the previous plan ceases to be the management plan for the licence, see section 71.

- (3) To avoid doubt, an approval of a management plan for a relevant licence does not cease to be in effect merely because of a failure to comply with subsection (1).

### *Offence*

- (4) A person commits an offence of strict liability if:
- (a) the person holds a licence for which there is a management plan; and
  - (b) no exemption is in effect under section 57 in relation to the licence; and
  - (c) the periodic revision day for the licence passes; and

- (d) the person does not prepare a revised management plan and make a plan revision approval application for the Regulator to approve the revised management plan as the management plan for the licence.

Penalty: 40 penalty units.

*Continuing offences*

- (5) A person who commits an offence against subsection (4) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the offence continues.
- (6) The maximum penalty for each day that an offence under subsection (4) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

### **57 Exemption from periodic plan revision requirement**

- (1) If an approval of a management plan for a relevant licence is in effect, the licence holder may apply to the Regulator, in writing, for an exemption from the requirements in subsection 56(1) in relation to the licence.
- (2) The Regulator may, by written notice to the licence holder, grant the exemption if the Regulator is satisfied that:
  - (a) no licence activities are occurring under the management plan; and
  - (b) there is no licence infrastructure in the licence area.

Note: If an exemption under this section is in effect in relation to a relevant licence, the periodic revision obligation in subsection 56(1) does not apply (see that subsection and paragraph 56(4)(b)). However, sections 53 (Regulator may direct licence holder to revise management plan) and 60 (other circumstances in which licence holder must make a plan revision approval application) continue to apply.

*Revocation of exemption*

- (3) An exemption under this section is taken to be revoked if the Regulator gives the licence holder a direction under section 53 in relation to the relevant licence.

Note: See also subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*.

### **58 Deferral of periodic plan revision requirement**

- (1) If an approval of a management plan for a relevant licence is in effect, the licence holder may apply to the Regulator for a deferral of the periodic revision day for the relevant licence.
- (2) The application must:
  - (a) be in writing; and
  - (b) set out the reasons for the deferral, including an explanation of why the deferral is necessary and appropriate; and
  - (c) propose a deferred periodic revision day for the relevant licence.
- (3) The Regulator may, by written notice to the licence holder, grant a deferral of the periodic revision day for the relevant licence if the Regulator is satisfied that:
  - (a) the licence holder is reasonably likely to comply with the management plan for the period of the deferral; and

- (b) the deferral is reasonably necessary for the reasons described in the application under paragraph (2)(b).
- (4) A notice under subsection (3) must specify the deferred periodic revision day for the relevant licence.
- (5) If a deferral under this section is in effect in relation to a relevant licence, the periodic revision day for the relevant licence is the day specified for the purposes of subsection (4).

Note: A deferral under this section defers the periodic revision obligation under section 56. However, sections 53 (Regulator may direct licence holder to revise management plan) and 60 (other circumstances in which licence holder must make a plan revision approval application) continue to apply.

#### *Revocation of deferral*

- (6) A deferral under this section is taken to be revoked:
  - (a) at the end of the day specified for the purposes of subsection (4); or
  - (b) if the Regulator gives the licence holder a direction under section 53 in relation to the relevant licence.

Note: See also subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*.

### **59 Regulator may determine different periodic revision day**

- (1) This section applies if the Regulator grants a plan revision approval application under section 71 in relation to a relevant licence.
- (2) When the Regulator grants the application, the Regulator may determine that the periodic revision day for the relevant licence is a particular day.
- (3) If the Regulator makes a determination under subsection (2):
  - (a) the Regulator must give the licence holder written notice of the determination; and
  - (b) for the purposes of section 56, the periodic revision day for the relevant licence is the day determined by the Regulator.

#### *Revocation of determination*

- (4) A determination under this section is taken to be revoked:
  - (a) at the end of the day determined for the purposes of subsection (2); or
  - (b) if the Regulator gives the licence holder a direction under section 53 in relation to the relevant licence.

### **60 Other circumstances in which licence holder must make a plan revision approval application**

- (1) If an approval of a management plan for a relevant licence is in effect, the licence holder must, in any of the circumstances set out in subsection (2):
  - (a) prepare a revised management plan; and
  - (b) make a plan revision approval application for the Regulator to approve the revised management plan as the management plan for the licence.
- (2) For the purposes of subsection (1), the circumstances are the following:
  - (a) the licence activities are to change significantly;

- (b) the list of relevant structures, equipment and property included in the plan in accordance with section 87, or the details included under subsection 87(3), is significantly incorrect;
  - (c) the licence holder identifies a new or significantly increased hazard, impact or risk of a kind referred to in paragraph 83(2)(a);
  - (d) the licence holder identifies a kind of emergency that could reasonably foreseeably arise in relation to the licence activities, and that is not already identified in the management plan under paragraph 91(2)(a);
  - (e) a significant change is made to the emergency response plan required to be described under paragraph 91(2)(c);
  - (f) an obligation of a kind mentioned in section 85 (obligations under the *Environment Protection and Biodiversity Conservation Act 1999*) begins to apply to the licence holder in relation to the licence activities, or there is a material change in such an obligation that already applies to the licence holder in relation to the licence activities;
  - (g) there has been a change in control of the licence holder that has changed, or is likely to change, the manner in which licence activities are carried out;
  - (h) the relevant licence has been transferred under Division 2 of Part 2 of Chapter 3 of the Act, and the transfer has changed, or is likely to change, the manner in which licence activities are carried out;
  - (i) a requirement included in the management plan under paragraph 73(d) (requirement to revise plan when it becomes possible for the plan to fully address a matter) applies;
  - (j) the Minister makes a determination under section 102 (requirement for financial security to be in a particular form) in relation to the relevant licence;
  - (k) a condition is imposed on the relevant licence, or a condition that applies to the relevant licence is varied, and the condition:
    - (i) relates to the licence activities; or
    - (ii) requires a matter to be addressed in the plan;
  - (l) if:
    - (i) the plan (the **first plan**) provides for a matter by applying, adopting or incorporating any matter contained in the management plan for another licence as in force from time to time; and
    - (ii) the Regulator approves a revised plan as the management plan for the other licence;the revision of the management plan for the other licence is likely to have a significant effect on the meaning or operation of the first plan.
- (3) The licence holder must comply with subsection (1) as soon as reasonably practicable after the licence holder becomes aware that a circumstance set out in subsection (2) applies.
- (4) However, subsection (1) does not apply to a particular circumstance set out in subsection (2) if:
- (a) the management plan already makes provision for the circumstance; and
  - (b) the circumstance does not, and is not likely to, result in the licence holder failing to comply with the management plan.

## **61 Offences of failing to make a plan revision approval application in certain circumstances**

- (1) A person commits an offence of strict liability if:
  - (a) the person holds a licence for which there is a management plan; and
  - (b) the person reasonably ought to know that a circumstance in subsection 60(2) applies in relation to the licence; and
  - (c) the circumstance results, or is likely to result, in the person failing to comply with the management plan; and
  - (d) the person does not, as soon as reasonably practicable after paragraph (b) applies, prepare a revised management plan and make a plan revision approval application for the Regulator to approve the revised management plan as the management plan for the licence.

Penalty: 40 penalty units.

### *Continuing offences*

- (2) A person who commits an offence against subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the offence continues.
- (3) The maximum penalty for each day that an offence under subsection (1) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

## **Subdivision D—Consultation**

### **62 Operation of this Subdivision**

This Subdivision sets out how a licence holder is to comply with the following:

- (a) subsection 48(2) (requirement to consult before making initial plan approval application) in relation to an initial plan approval application;
- (b) a requirement under subsection 53(3) (Regulator may require consultation before a plan revision approval application is made) in relation to a direction to make a plan revision approval application.

Note 1: The management plan for the relevant licence must include information about consultation carried out in accordance with this Subdivision (see section 81).

Note 2: Conditions on the relevant licence may also require consultation to be carried out. Depending on the nature of the requirement, it may be possible to carry out consultation required by the conditions alongside consultation carried out under this Subdivision.

### **63 Consultation—activities subject to consultation**

- (1) The ***activities subject to consultation*** for consultation that relates to a proposed initial plan approval application are the licence activities that the proposed plan would authorise if:
  - (a) the application were made; and
  - (b) the Regulator granted the application and approved the proposed plan.
- (2) To avoid doubt, a licence activity that is mentioned in the proposed plan, but that the proposed plan would not authorise, is not an ***activity subject to consultation*** under subsection (1).

Note: For example, an activity that is mentioned in the timetable of licence activities mentioned in paragraph 80(2)(a), but that the plan will not authorise without a further revision, is not an *activity subject to consultation*.

- (3) If:
- (a) consultation is required to be carried out as a result of a direction under subsection 53(1); and
  - (b) the direction includes a statement, under subparagraph 53(3)(b)(i), that the consultation must relate to specified licence activities;
- then, despite subsections (1) and (2) of this section, the *activities subject to consultation* for the consultation are the licence activities specified in the direction.

## 64 Consultation—who is to be consulted

- (1) The licence holder must make reasonable efforts to identify and consult the following:
- (a) each Department of State, agency or authority of the Commonwealth, a State or a Territory that has functions that relate to the activities subject to consultation;
  - (b) Aboriginal or Torres Strait Islander people or groups that the licence holder reasonably considers may have native title rights and interests (within the meaning of the *Native Title Act 1993*) in relation to:
    - (i) the licence area; or
    - (ii) areas of land or water that are adjacent to the licence area;
  - (c) Aboriginal or Torres Strait Islander organisations that are established under a law of the Commonwealth, a State or a Territory and that the licence holder reasonably considers to have functions related to managing, for the benefit of Aboriginal or Torres Strait Islander people:
    - (i) land or water in the licence area; or
    - (ii) areas of land or water that are adjacent to the licence area;
  - (d) Aboriginal or Torres Strait Islander organisations or groups that the licence holder reasonably considers to be parties to agreements related to land and water rights for Aboriginal or Torres Strait Islander people under the *Native Title Act 1993* or any law of a State or Territory, where the land or water rights relate to:
    - (i) land or water in the licence area; or
    - (ii) areas of land or water that are adjacent to the licence area;
  - (e) the holder of any other licence granted under the Act where:
    - (i) the licence area of the other licence covers wholly or partly the same area as the licence area of the relevant licence; or
    - (ii) there is licence infrastructure in relation to the other licence in or near the licence area of the relevant licence;
  - (f) people or organisations that the licence holder reasonably considers may, in or near the licence area of the relevant licence, carry out activities:
    - (i) for a commercial purpose; and
    - (ii) under a licence or permit (however described) issued under a law of the Commonwealth or a State or Territory; and
    - (iii) in a way that may directly interact with the activities subject to consultation;
  - (g) communities:



- (i) that are located adjacent to the licence area; and
- (ii) that the licence holder reasonably considers may be directly affected by the activities subject to consultation;
- (h) any organisation representing recreational fishers whose activities the licence holder reasonably considers may be directly affected by the activities subject to consultation.

Note: For consultation requirements relating to the health and safety of workers, see item 9 of Schedule 1 (which modifies the *Work Health and Safety Regulations 2011*, as those Regulations apply for the purposes of Part 1 of Chapter 6 of the Act).

- (2) However, if:
  - (a) the consultation is being carried out as a result of a direction under subsection 53(1); and
  - (b) the direction includes a statement, under subparagraph 53(3)(b)(ii), that only specified persons, organisations, communities or groups need to be consulted;

then subsection (1) of this section does not apply to the consultation, and the licence holder must make reasonable efforts to consult the specified persons, organisations, communities or groups.

- (3) Subsection (1) does not require the licence holder to consult a person, organisation, community or group (the ***first person, organisation, community or group***) if the licence holder has consulted another person, organisation, community or group that could reasonably be regarded as representing the interests of the first person, organisation, community or group.

## 65 Consultation—manner of consultation

- (1) For the purpose of the consultation, the licence holder must give each person, organisation, community or group being consulted sufficient information to allow an informed assessment of any reasonably foreseeable effects that the activities subject to consultation may have on:
  - (a) for a Department, agency or authority mentioned in paragraph 64(1)(a)—the functions mentioned in that paragraph; or
  - (b) for people and groups mentioned in paragraph 64(1)(b)—the native title rights and interests (within the meaning of the *Native Title Act 1993*) mentioned in that paragraph; or
  - (c) for organisations mentioned in paragraph 64(1)(c)—the functions mentioned in that paragraph; or
  - (d) for organisations or groups mentioned in paragraph 64(1)(d)—the rights mentioned in that paragraph; or
  - (e) for the holder of a licence (other than the relevant licence) mentioned in paragraph 64(1)(e)—the licence activities in relation to that licence; or
  - (f) for a person or organisation mentioned in paragraph 64(1)(f)—the activities mentioned in that paragraph; or
  - (g) for a community mentioned in paragraph 64(1)(g)—the community; or
  - (h) for an organisation mentioned in paragraph 64(1)(h)—the activities mentioned in that paragraph.
- (2) However, subsection (1) does not require the licence holder to disclose information that could reasonably be expected to substantially prejudice the commercial interests of:

- (a) the licence holder; or
  - (b) any other person.
- (3) The licence holder must allow a person, organisation, community or group a reasonable period for the consultation.

## Division 4—Dealing with applications

### Subdivision A—Operation of this Division

#### 66 Operation of this Division

- (1) This Division applies if a licence holder makes an initial plan approval application for the Regulator to approve a plan as the management plan for a relevant licence.
- Note: See section 47 (making an initial plan approval application).
- (2) This Division also applies if a licence holder makes a plan revision approval application for the Regulator to approve a revised plan as the management plan for a relevant licence.
- Note: See section 50 (making a plan revision approval application).

### Subdivision B—Consideration of application

#### 67 Time for making decision on application

- (1) The Regulator must make a decision on the application before the end of the period (the *decision period*) of 60 days after the day the application is made.
- Extensions of decision period*
- (2) The Regulator may, by written notice to the licence holder, extend the decision period by a period specified in the notice.
- (3) The notice must set out the reasons for the extension.
- Note: For example, the Regulator may extend the decision period if the Regulator gives the licence holder a notice under subsection 68(1) (requiring further information), subsection 69(1) (requiring the licence holder to amend and resubmit the plan) or subsection 75(2) (proposing to refuse to grant the application), or for other reasons.
- (4) To avoid doubt, the Regulator may extend the decision period more than once.
- Failure to make decision within decision period does not affect validity*
- (5) A failure by the Regulator to comply with subsection (1) does not affect the validity of any decision made on the application or anything done by the Regulator in dealing with the application.

#### 68 Regulator may require further information

- (1) If, at any time while considering the application, the Regulator is not satisfied that the application or the plan contains sufficient information for the Regulator to grant the application, the Regulator may, by written notice, require the licence holder to give further information.

- (2) The notice must:
- (a) specify the information required; and
  - (b) specify the day on or before which the information must be given; and
  - (c) specify the manner in which the information must be given.

Note: If the licence holder does not comply with the notice on or before the day specified for the purposes of paragraph (b), the Regulator may refuse to grant the application (see section 74).

*Time limit for complying with notice*

- (3) The day specified for the purposes of paragraph (2)(b) must be reasonable.
- (4) The licence holder may, in writing, ask the Regulator to vary the day specified for the purposes of paragraph (2)(b) to a later day.
- (5) If the licence holder makes a request under subsection (4), the Regulator may, by written notice to the licence holder:
- (a) grant the request and vary the day specified for the purposes of paragraph (2)(b) to a later day; or
  - (b) refuse the request.

*Further information becomes part of plan*

- (6) If the licence holder gives information to the Regulator in accordance with the notice:
- (a) the information becomes part of the plan as if it had been included in the plan when the application was given to the Regulator; and
  - (b) the Regulator must have regard to the information as if it had been so included.

*Regulator may give multiple notices*

- (7) To avoid doubt, the Regulator:
- (a) may give more than one notice under this section; and
  - (b) may give further notices if the Regulator is not satisfied with the information provided in response to a notice.

## **69 Regulator may require licence holder to amend and resubmit plan**

- (1) The Regulator may, by written notice, require the licence holder to amend the plan and resubmit the plan to the Regulator if, at any time while the Regulator is considering the application, the Regulator:
- (a) is not satisfied that the plan can be approved as the management plan for the relevant licence; and
  - (b) considers that the plan could be amended in a way that may make it able to be approved as the management plan for the relevant licence.
- (2) The notice must:
- (a) set out the matters in relation to which the Regulator considers that the plan could be amended; and
  - (b) specify the day on or before which the amended plan must be resubmitted.

## Schedule 1 General amendments

### Part 2 Main amendments

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Note: If the licence holder does not comply with the notice on or before the day specified for the purposes of paragraph (b), the Regulator may refuse to approve the plan (see section 74).

#### *Time limit for complying with notice*

- (3) The day specified for the purposes of paragraph (2)(b) must be reasonable.
- (4) The licence holder may, in writing, ask the Regulator to vary the day specified for the purposes of paragraph (2)(b) to a later day.
- (5) If the licence holder makes a request under subsection (4), the Regulator may, by written notice to the licence holder:
  - (a) grant the request and vary the day specified for the purposes of paragraph (2)(b) to a later day; or
  - (b) refuse the request.

#### *Regulator may give multiple notices*

- (6) To avoid doubt, the Regulator:
  - (a) may give more than one notice under this section; and
  - (b) may give further notices if the Regulator is not satisfied with the amendments made in response to a notice.

## 70 Licence holder may withdraw application

A licence holder who has made an initial plan approval application or a plan revision approval application may, by written notice to the Regulator, withdraw the application if the Regulator has not granted the application or refused to grant the application.

## Subdivision C—Decision on application

### 71 Decision to approve or refuse to approve management plan

- (1) The Regulator may, by written notice to a licence holder who has made an initial plan approval application or a plan revision approval application:
  - (a) grant the application and approve the plan, or the revised plan, as the management plan for the relevant licence; or
  - (b) refuse to grant the application and refuse to approve the plan or revised plan as the management plan for the relevant licence.

Note 1: The Regulator may only grant the application in accordance with section 72.

Note 2: The Regulator may only refuse to grant the application in accordance with section 74, and must give the licence holder the opportunity to make a submission on the proposed refusal under section 75.

Note 3: If the Regulator refuses to grant a plan revision approval application, the management plan for the relevant licence continues in effect without the revision (subject to later successful plan revision approval applications).

- (2) An approval under paragraph (1)(a) takes effect:
  - (a) if the notice under subsection (1) specifies a day for the purposes of this paragraph—on that day; or
  - (b) otherwise—when the notice is given.
- (3) When an approval under paragraph (1)(a) takes effect:

- (a) the plan, or the revised plan, approved under that paragraph becomes the management plan for the relevant licence; and
  - (b) if the application was a plan revision approval application—the management plan for the licence immediately before the approval took effect ceases to be the management plan for the licence.
- (4) If the Regulator refuses to grant the application, the notice under subsection (1) must set out the reasons for the refusal.

## **72 Requirements for grant of application and approval of management plan**

- (1) The Regulator may only grant the application if the Regulator is satisfied:
- (a) that the plan addresses the matters mentioned in section 115 of the Act (including the matters prescribed in this instrument for the purposes of paragraph 115(1)(h) of the Act, and any matters required by the Regulator under subsection 115(3) of the Act); and
  - (b) that approving the plan would be consistent with:
    - (i) the Act (including this instrument); and
    - (ii) any conditions of a declaration that apply to the relevant licence (or, if the relevant licence is a proposed commercial licence, will apply to the relevant licence) under section 20 of the Act; and
    - (iii) any direction given to the licence holder, and any determination or requirement that applies to the licence holder, under the Act (including this instrument); and
  - (c) that the applicant has:
    - (i) carried out the consultation required by subsection 48(2); and
    - (ii) complied with any requirements to carry out consultation imposed by the Regulator under subsection 53(3); and
  - (d) if section 96 requires the applicant to give the Regulator a design notification:
    - (i) that the applicant has complied with the requirement; and
    - (ii) that the Regulator has given feedback on the design notification under section 99; and
  - (e) if the relevant licence is in force, and the application is an initial plan approval application—that the licence holder has provided, in accordance with the plan, any financial security required by section 117 of the Act in relation to the licence activities (subject to section 103 of this instrument); and
  - (f) if the relevant licence is in force, and the application is a plan revision approval application—that the licence holder has provided, in accordance with the plan as proposed to be revised, any financial security required by section 117 of the Act in relation to the licence activities (subject to section 103 of this instrument); and
  - (g) if the relevant licence has been granted (whether or not the relevant licence is in force)—that approving the plan would be consistent with any conditions on the relevant licence; and
  - (h) of the other matters that provisions of Division 5 of this Part require the Regulator to be satisfied of in order to approve the plan.

Note: Division 5 of this Part prescribes matters that a plan for a relevant licence must address, and also includes other provisions relating to the Regulator's consideration of whether to approve the plan (including particular matters that the Regulator must be satisfied of in order to approve the plan).

- (2) In considering whether to grant the application, the Regulator must have regard to:
- (a) the purpose of the relevant licence; and
  - (b) the nature and scale of the licence activities; and
  - (c) the stage that the offshore infrastructure project to be carried out under the relevant licence is at; and
  - (d) if the relevant licence is not a commercial licence or a feasibility licence—how similar the offshore infrastructure project described in the plan is to the proposed project for the relevant licence as described in the application for the relevant licence; and
  - (e) if a design notification has been given in relation to the design of licence infrastructure for the relevant licence, and the Regulator has given feedback on the design notification—whether the licence holder has adequately addressed the feedback; and
  - (f) any other matters the Regulator considers relevant.

Note: For paragraph (a), the purposes of different kinds of licences are set out in the following provisions of the Act:

- (a) section 30 (purpose of a feasibility licence);
- (b) section 39 (purpose of a commercial licence);
- (c) section 49 (purpose of a research and demonstration licence);
- (d) section 58 (purpose of a transmission and infrastructure licence).

### **73 Matters that cannot be fully addressed because of stage of project**

If the plan cannot fully address a matter because of the stage that the offshore infrastructure project to be carried out under the relevant licence is at, the plan must:

- (a) identify the matter; and
- (b) explain why the plan cannot yet fully address the matter; and
- (c) explain how and when it will be possible for the plan to fully address the matter; and
- (d) include a requirement, for the purposes of paragraph 60(2)(i), for the licence holder to prepare a revised management plan and make a plan revision approval application when it is possible for the plan to fully address the matter; and
- (e) include a requirement that any licence activities directly related to the matter must not be carried out until the licence holder has prepared a revised management plan and made a plan revision approval application as mentioned in paragraph (d), and the Regulator has granted the application.

### **74 Refusal of application**

The Regulator may only refuse to grant the application if:

- (a) any of the following apply:
  - (i) the Regulator is not satisfied of the matters in subsection 72(1), having had regard to the matters in subsection 72(2);
  - (ii) the Regulator has given the licence holder a notice under subsection 68(1) (requirements for further information), and the licence holder does not comply with the notice on or before the day specified in the notice for the purposes of paragraph 68(2)(b);

- (iii) the Regulator has given the licence holder a notice under subsection 69(1) (requirements to amend and resubmit plan), and the licence holder does not comply with the notice on or before the day specified in the notice for the purposes of paragraph 69(2)(b); and
- (b) the Regulator has complied with section 75 and the day specified for the purposes of paragraph 75(3)(c) has passed (whether or not the licence holder has made a submission about the proposed decision).

## **75 Proposed decision to refuse application**

- (1) This section applies if the Regulator proposes to make a decision to refuse to grant the application.
- (2) The Regulator must give the licence holder written notice of the proposed decision.
- (3) The notice must:
  - (a) set out the Regulator’s reasons for the proposed decision; and
  - (b) invite the licence holder to make a written submission about the proposed decision; and
  - (c) specify the day on or before which the submission must be made.
- (4) The day specified for the purposes of paragraph (3)(c) must be reasonable.
- (5) If the licence holder makes a submission on or before the day specified for the purposes of paragraph (3)(c), the Regulator must take the submission into account in deciding whether to grant, or refuse to grant, the application.

## **Subdivision D—Summary of management plan**

### **76 Licence holder must provide summary of management plan**

- (1) If:
  - (a) the application is an initial plan approval application; and
  - (b) the Regulator grants the application and approves the plan as the management plan for the relevant licence;the licence holder must, before the end of 30 days after the day the approval takes effect, give the Regulator a summary of the management plan that includes the information set out in section 77.
- (2) If:
  - (a) the application is a plan revision approval application; and
  - (b) the Regulator grants the application and approves the revised plan as the management plan for the relevant licence; and
  - (c) the most recent summary of the management plan for the relevant licence given to the Regulator under this section does not accurately reflect the revised plan;the licence holder must, before the end of 30 days after the day the approval takes effect, give the Regulator a summary of the revised plan that includes the information set out in section 77.

Note: The Regulator may publish a summary given under subsection (1) or (2) on the Regulator’s website (see section 115A of the Act).

*Offence*

- (3) A person commits an offence of strict liability if:
- (a) the person is required to give the Regulator a summary under subsection (1) or (2) before the end of a period; and
  - (b) the person does not comply with that requirement before the end of the period.

Penalty: 50 penalty units.

*Continuing offences*

- (4) A person who commits an offence against subsection (3) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the offence continues.
- (5) The maximum penalty for each day that an offence under subsection (3) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

## **77 Requirements for summary of management plan**

- (1) A summary of a management plan given to the Regulator under section 76 must include a summary of the matters addressed in the management plan under the following provisions:
- (a) section 80 (description of activities and operations);
  - (b) section 81 (consultation);
  - (c) section 82 (stakeholder engagement);
  - (d) section 83 (management system);
  - (e) section 84 (conditions of licence);
  - (f) section 85 (obligations under the *Environment Protection and Biodiversity Conservation Act 1999*);
  - (g) section 88 (maintenance of relevant structures, equipment and property);
  - (h) section 89 (decommissioning of licence infrastructure);
  - (i) section 90 (removal of relevant structures, equipment and property, and remediation);
  - (j) section 91 (emergency management);
  - (k) section 94 (work health and safety).
- (2) Despite subsection (1), the summary is not required to include information that could reasonably be expected to substantially prejudice the commercial interests of:
- (a) the licence holder; or
  - (b) any other person.
- (3) A summary of a management plan given to the Regulator under section 76 must include:
- (a) contact details for the licence holder (which must include a telephone number and an email address); and
  - (b) the business address or addresses of any premises where records relating to any of the following are required to be kept, and can be inspected, under a provision of the management plan mentioned in paragraph 115(1)(f) of the Act:



- (i) work in the nature of offshore infrastructure activities carried out in the Commonwealth offshore area;
- (ii) any other work carried out, or purportedly carried out, in the Commonwealth offshore area under the relevant licence;
- (iii) any other work carried out, or purportedly carried out, in the Commonwealth offshore area in accordance with a requirement under the Act.

## **78 Regulator may direct revision and resubmission of summary**

- (1) If:
  - (a) a licence holder gives the Regulator a summary of a management plan under section 76; and
  - (b) the Regulator:
    - (i) is not satisfied that the summary includes the information required by section 77; or
    - (ii) is not satisfied that the summary is suitable for publication on the Regulator's website;the Regulator may direct the licence holder to revise the summary and resubmit the summary to the Regulator.
- (2) The direction must:
  - (a) be in writing; and
  - (b) describe the revisions that are required to be made; and
  - (c) specify the day on or before which the revised summary must be resubmitted.
- (3) The day specified for the purposes of paragraph (2)(c) must be reasonable.
- (4) To avoid doubt, the Regulator:
  - (a) may give more than one direction under subsection (1); and
  - (b) may give further directions if the Regulator is not satisfied with the revisions made in response to a direction.

### *Offence*

- (5) A person commits an offence of strict liability if:
  - (a) the Regulator gives the person a direction under subsection (1); and
  - (b) the person does not comply with the direction on or before the day specified in the direction for the purposes of paragraph (2)(c).

Penalty: 50 penalty units.

- (6) A person who commits an offence against subsection (5) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the offence continues.
- (7) The maximum penalty for each day that an offence under subsection (5) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

## Division 5—Matters that management plan must address

### 79 Purpose of this Division

- (1) This Division prescribes, for the purposes of paragraph 115(1)(h) of the Act, matters that a plan (including a revised plan) for a relevant licence must address in order to be approved as the management plan for the relevant licence.

Note 1: The requirements to address matters prescribed by this Division apply alongside the other requirements to address matters set out in subsection 115(1) of the Act, and a management plan may address these matters together. For example, a management plan may address the matters required by paragraph 115(1)(c) of the Act (environmental management) and the matters required by section 85 of this instrument (obligations under the *Environment Protection and Biodiversity Conservation Act 1999*) together.

Note 2: It is likely, although not certain, that a plan that complies with paragraph 115(1)(h) of the Act because it complies with this Division will also comply with the other paragraphs of subsection 115(1).

- (2) This Division also includes other provisions relating to the Regulator's consideration of whether to approve the plan as the management plan for the relevant licence.

### 80 Plan must describe activities and operations

- (1) The plan must:
  - (a) describe the environment, including the physical environment and the general operating conditions, for the licence activities; and
  - (b) specify the location or locations of the licence activities; and
  - (c) include details of the layout of all licence infrastructure; and
  - (d) include an outline of the operational details of the licence activities.
- (2) The plan must:
  - (a) include a timetable for the licence activities; and
  - (b) require the licence holder to notify the Regulator at least 30 days (or another period agreed between the Regulator and the licence holder) before a licence activity specified in the timetable is to commence; and
  - (c) require the licence holder to notify the Regulator no more than 30 days (or another period agreed between the Regulator and the licence holder) after a licence activity specified in the timetable has been completed.

### 81 Plan must address consultation carried out

- (1) The plan must include the material set out in this section for any consultation carried out in accordance with Subdivision D of Division 3 in relation to the relevant licence.
- (2) The plan must include the following:
  - (a) a description of the process that was used to identify persons, organisations, communities and groups to consult;
  - (b) a list of the persons, organisations, communities and groups consulted;
  - (c) a report on the outcomes of the consultation.

Note: The management plan may also address other consultation carried out in relation to the relevant licence, such as consultation required by a licence condition.

- (3) The report mentioned in paragraph (2)(c) must:

- (a) include a summary of any claims raised about any adverse effects that the licence activities might have on the persons, organisations, communities and groups consulted; and
  - (b) for each such claim—include an assessment of the merits of the claim, and a statement of whether the licence holder considers the claim to have reasonable merit; and
  - (c) for each such claim that the licence holder considers to have reasonable merit—include details of:
    - (i) the measures (if any) that the licence holder is to implement to address the claim; and
    - (ii) the measures (if any) that the licence holder is to implement to ensure that the measures mentioned in subparagraph (i) are effective, and are likely to remain effective.
- (4) If the plan includes details of any measures under paragraph (3)(c), the plan must require the licence holder to carry out the measures as described.
- (5) The Regulator may only approve the plan if the Regulator is satisfied that:
- (a) any assessments or statements included in the report under paragraph (3)(b) are reasonable; and
  - (b) for each claim mentioned in paragraph (3)(a) that the licence holder considers to have reasonable merit:
    - (i) any measures detailed in the plan under subparagraph (3)(c)(i) are reasonably appropriate and adapted to addressing the claim; and
    - (ii) any measures detailed in the plan under subparagraph (3)(c)(ii) are reasonably appropriate and adapted to ensuring that the measures detailed in the plan under subparagraph (3)(c)(i) are effective, and are likely to remain effective; and
    - (iii) if the plan does not detail measures under subparagraph (3)(c)(i)—it is reasonable in the circumstances for the licence holder not to implement measures under that subparagraph; and
    - (iv) if the plan does not detail measures under subparagraph (3)(c)(ii)—it is reasonable in the circumstances for the licence holder not to implement measures under that subparagraph.

## 82 Plan must describe stakeholder engagement strategy

- (1) The plan must describe a plan for stakeholder engagement (a ***stakeholder engagement strategy***) that the licence holder will implement to identify and consult the following persons, organisations, communities and groups (***stakeholders***) in relation to the licence activities:
- (a) each Department of State, agency or authority of the Commonwealth, a State or a Territory that has functions that relate to the licence activities;
  - (b) Aboriginal or Torres Strait Islander people or groups that the licence holder reasonably considers may have native title rights and interests (within the meaning of the *Native Title Act 1993*) in relation to:
    - (i) the licence area; or
    - (ii) areas of land or water that are adjacent to the licence area;
  - (c) Aboriginal or Torres Strait Islander organisations that are established under a law of a State or a Territory and that the licence holder reasonably considers to have functions related to managing, for the benefit of Aboriginal or Torres Strait Islander people:

- (i) land or water in the licence area; or
      - (ii) areas of land or water that are adjacent to the licence area;
    - (d) Aboriginal or Torres Strait Islander organisations or groups that the licence holder reasonably considers to be parties to agreements related to land and water rights for Aboriginal or Torres Strait Islander people under the *Native Title Act 1993* or any law of a State or Territory, where the land or water rights relate to:
      - (i) land or water in the licence area; or
      - (ii) areas of land or water that are adjacent to the licence area;
    - (e) the holder of any other licence granted under the Act where:
      - (i) the licence area of the other licence covers wholly or partly the same area as the licence area of the relevant licence; or
      - (ii) there is licence infrastructure in relation to the other licence in or near the licence area of the relevant licence;
    - (f) people or organisations that the licence holder reasonably considers may, in or near the licence area of the relevant licence, carry out activities:
      - (i) for a commercial purpose; and
      - (ii) under a licence or permit (however described) issued under a law of the Commonwealth or a State or Territory; and
      - (iii) in a way that may directly interact with the licence activities;
    - (g) communities:
      - (i) that are located adjacent to the licence area; and
      - (ii) that the licence holder reasonably considers may be directly affected by the licence activities;
    - (h) any organisation representing recreational fishers whose activities the licence holder reasonably considers may be directly affected by the licence activities.
- (2) Without limiting subsection (1), the plan must require the stakeholder engagement strategy to:
- (a) set out a list of stakeholders that the licence holder has identified; and
  - (b) describe the process that the licence holder used to identify those stakeholders, and the process that the licence holder will use to identify stakeholders in the future; and
  - (c) include a summary of any claims raised about any adverse effects that changes in the licence activities might have on the stakeholders consulted; and
  - (d) for each such claim—include an assessment of the merits of the claim, and a statement of whether the licence holder considers the claim to have reasonable merit; and
  - (e) for each such claim that the licence holder considers to have reasonable merit—include details of:
    - (i) the measures (if any) that the licence holder is to implement to address the claim; and
    - (ii) the measures (if any) that the licence holder is to implement to ensure that the measures mentioned in subparagraph (i) are effective, and are likely to remain effective; and
  - (f) describe the licence holder's process for continuing to engage with stakeholders and managing complaints from stakeholders; and

- (g) describe how the strategy will be updated and kept current (including by identifying any new stakeholders); and
  - (h) include any reports included in a management plan under paragraph 81(2)(c) (reports on the outcomes of consultation).
- (3) The Regulator may only approve the plan if the Regulator is satisfied that the stakeholder engagement strategy described in the plan would be reasonably likely to provide for ongoing engagement with stakeholders in relation to the licence activities.

*Publication requirement*

- (4) The plan must require the licence holder to:
- (a) publish the stakeholder engagement strategy on the licence holder's website before the end of 30 days after the management plan is first approved; and
  - (b) keep the stakeholder engagement strategy on the licence holder's website until the licence ceases to be in force, or the licence holder ceases to hold the licence; and
  - (c) ensure that any changes to the stakeholder engagement strategy are reflected in the published stakeholder engagement strategy.

### **83 Plan must include description of management system**

- (1) The plan must describe a management system to address the licence holder's compliance with all obligations (*relevant obligations*) that:
- (a) apply, or will apply, to the licence holder under any of the following:
    - (i) the Act or any instrument made under the Act;
    - (ii) the *Environment Protection and Biodiversity Conservation Act 1999*, or regulations under that Act;
    - (iii) the applied work health and safety provisions;
    - (iv) the conditions of the relevant licence;
    - (v) the management plan for the relevant licence; and
  - (b) relate to the licence activities for the relevant licence.
- (2) Without limiting subsection (1), the description of the management system in the plan must set out how the licence holder is to do each of the following:
- (a) implement an ongoing process to identify, assess and deal with any hazards, impacts or risks:
    - (i) that might arise in relation to the licence activities; and
    - (ii) that would, if they did arise, result in the licence holder failing to comply with a relevant obligation;
  - (b) use the results of the process to develop measures to ensure that the licence holder meets the relevant obligations;
  - (c) establish and implement processes for managing changes in circumstances over time;
  - (d) consult, communicate and cooperate with other persons and organisations involved in the licence activities to ensure that the relevant obligations are met;
  - (e) make reasonable efforts to inform any person or organisation involved in the licence activities of their obligations, where compliance or

non-compliance with those obligations might affect the licence holder's compliance with the relevant obligations;

- (f) identify the roles and responsibilities of the licence holder and any person or organisation involved in the licence activities, in relation to anything that might affect the licence holder's compliance with the relevant obligations;
  - (g) establish arrangements to coordinate the actions of the licence holder and any person or organisation involved in the licence activities, in relation to anything that might affect the licence holder's compliance with the relevant obligations;
  - (h) establish arrangements for communication between the licence holder and any person, organisation, infrastructure, vessel or aircraft that is involved in the licence activities;
  - (i) establish protocols to ensure that the licence holder is informed, in a timely manner, of any incident or circumstances that might lead to the licence holder failing to comply with the relevant obligations;
  - (j) ensure that any person involved in the licence activities has the qualifications, competencies and supervision necessary to ensure that the licence holder complies with the relevant obligations;
  - (k) implement an ongoing process to:
    - (i) monitor, audit and record the licence holder's compliance with the relevant obligations; and
    - (ii) identify and manage any non-compliance with the relevant obligations; and
    - (iii) identify and, where appropriate, implement opportunities to improve the licence holder's performance in relation to the relevant obligations.
- (3) The plan must require the licence holder to implement the management system described in the plan.
- (4) The Regulator may only approve the plan if the Regulator is satisfied that the management system described in the plan will be reasonably likely to ensure that the licence holder meets, and will continue meeting, the relevant obligations.

#### **84 Plan must address compliance with conditions of licence**

- (1) If a condition of the relevant licence relates to the licence activities, the plan must:
- (a) describe measures that the licence holder is to implement to ensure that the condition is complied with; and
  - (b) require the licence holder to implement those measures.
- (2) The Regulator may only approve the plan if the Regulator is satisfied that the measures are reasonably likely to ensure that the condition is complied with.

Note: This section applies to licence conditions that relate to licence activities. The plan must also comply with paragraph 115(1)(b) of the Act, which applies to licence conditions that require the plan to address particular matters.

### **85 Plan must refer to any obligations under the *Environment Protection and Biodiversity Conservation Act 1999***

- (1) This section applies if the licence holder has obligations under the *Environment Protection and Biodiversity Conservation Act 1999*, or under regulations under that Act, in relation to the licence activities (including any such obligations under conditions attached to an approval under that Act, or conditions of a permit issued under that Act).
- (2) The plan must:
  - (a) describe the obligations; and
  - (b) describe the measures that the licence holder is to implement to comply with the obligations.
- (3) The plan must require the licence holder to implement the measures described under paragraph (2)(b).

Note: Obligations under the *Environment Protection and Biodiversity Conservation Act 1999* are also enforced under that Act.

### **86 Plan must include information about design notification**

- (1) If the licence holder has given the Regulator a design notification in relation to the relevant licence, the plan must:
  - (a) set out any feedback provided by the Regulator on the design notification; and
  - (b) describe how the feedback has been addressed by the licence holder; and
  - (c) state whether or not the way the offshore infrastructure project is being carried out, or is to be carried out, under the relevant licence is broadly consistent with the design notification; and
  - (d) if the way the offshore infrastructure project is being carried out, or is to be carried out, under the relevant licence is not broadly consistent with the design notification—identify the extent of the inconsistencies and evaluate and describe how the inconsistencies have affected the offshore infrastructure project.
- (2) If the Regulator gave feedback on the design notification, the Regulator may only approve the plan if the Regulator is satisfied that the licence holder has adequately addressed the feedback.

### **87 Plan must include list of relevant structures, equipment and property**

- (1) This section applies to all structures, equipment and other property (***relevant structures, equipment and property***) in relation to the relevant licence):
  - (a) that:
    - (i) are in the licence area of the relevant licence; and
    - (ii) were brought into the licence area by, or with the authority of, the licence holder; and
    - (iii) are being, are to be or have been used in connection with activities authorised or required by or under the Act; or
  - (b) that:
    - (i) are to be brought into the licence area of the relevant licence by, or with the authority of, the licence holder; and

- (ii) are to be used in connection with activities authorised or required by or under the Act.
- (2) The plan must include a list of all relevant structures, equipment and property.
- (3) The list must include, for each item that is a relevant structure, equipment or property, the following details:
  - (a) a concise description of the item;
  - (b) the location or locations in the licence area where the item is being, will be or has been used;
  - (c) how the item is being, will be or has been used;
  - (d) if the item is being, or has been, decommissioned—how the item is being, or has been, decommissioned.
- (4) The list and details need not be updated for the purposes of a plan revision approval application unless the list or the details are significantly incorrect.

Note: If the list or details become significantly incorrect, the licence holder may need to revise the plan and make a plan revision approval application (see paragraph 60(2)(b)).

## **88 Plan must describe maintenance of relevant structures, equipment and property**

- (1) The plan must describe measures for maintaining, in good condition and repair, relevant structures, equipment and property in relation to the relevant licence.
- (2) Without limiting subsection (1), the plan must:
  - (a) describe measures for providing assurance that the relevant structures, equipment and property are fit for their function or use in normal operating conditions; and
  - (b) describe measures for providing assurance that any of the relevant structures, equipment and property that are intended to function or be used in an emergency are fit for their function or use in emergency conditions; and
  - (c) describe reasonable and appropriate measures for monitoring, maintaining and providing assurance of:
    - (i) the ability of the relevant structures, equipment and property to perform their intended purpose; and
    - (ii) the structural soundness, strength and stability of the relevant structures, equipment and property; and
    - (iii) the mechanical integrity and systems integrity (including the integrity of electrical, hydraulic and other systems) of the relevant structures, equipment and property; and
  - (d) set out arrangements and schedules for the inspection, testing, maintenance and repair of the relevant structures, equipment and property; and
  - (e) identify any standards that are, or are to be, applied in relation to the operation, performance and infrastructure integrity of the relevant structures, equipment and property; and
  - (f) describe measures for determining whether the standards (if any) mentioned in paragraph (e) are being met.

Note: The standards identified under paragraph (e) may be applied as in force or existing from time to time (see section 95).

- (3) The plan must require the licence holder to:
-



- (a) implement the measures described in the plan under this section; and
  - (b) carry out inspections, testing, maintenance and repair of the relevant structures, equipment and property in accordance with the arrangements and schedules mentioned in paragraph (2)(d).
- (4) The Regulator may only approve the plan if the Regulator is satisfied that the matters included in the plan under this section are reasonably likely to result in the relevant structures, equipment and property being maintained in good condition and repair.

Note: A significant change in the relevant structures, equipment or property may result in the plan needing to be revised (see paragraph 60(2)(b)).

## **89 Plan must describe decommissioning of licence infrastructure**

- (1) The plan must describe how the licence holder intends to decommission licence infrastructure.
- (2) The plan must describe how the licence area is to be remediated in relation to the decommissioning of licence infrastructure.
- (3) The plan must require the licence holder to give effect to provisions included in the plan under subsections (1) and (2).
- (4) This section does not limit section 90.

Note: The plan must also describe how decommissioned licence infrastructure is to be removed from the licence area in the circumstances described in subsection 90(1), subject to any arrangements mentioned in subsection 90(2).

## **90 Plan must address removal of relevant structures, equipment and property, and remediation**

- (1) The plan must describe how relevant structures, equipment and property in relation to the relevant licence are to be removed from the licence area if:
  - (a) they are neither used nor intended to be used in connection with the activities:
    - (i) in which the licence holder is or will be engaged; and
    - (ii) that are authorised or required by or under the Act; and
  - (b) section 116 of the Act (subject to subsection (6) of that section) requires them to be removed from the licence area.

Note: See also paragraph 74(3)(e) of the Act (about how equipment and other property is to be dealt with before a licence may be surrendered).

- (2) The plan must describe how the licence area is to be remediated in relation to the removal of relevant structures, equipment and property.
- (3) The plan must require the licence holder to give effect to:
  - (a) provisions included in the plan under subsection (1); and
  - (b) any arrangements set out in the plan under subsection (2).

Note 1: In considering whether to approve the plan, the Regulator must have regard to the stage that the offshore infrastructure project is at (see paragraph 72(2)(c)). This may result in the matters included in the plan under this section becoming more detailed as the project progresses.

Note 2: A significant change in the relevant structures, equipment or property may result in the plan needing to be revised (see paragraph 60(2)(b)), and the matters addressed in the plan under this section may need to be updated.

## 91 Plan must address emergency management

- (1) The plan must address emergency management in relation to all licence activities.
- (2) Without limiting subsection (1), the plan must do the following:
  - (a) identify, and include an analysis of, each kind of emergency that could reasonably foreseeably arise in relation to the licence activities;
  - (b) describe measures to reduce the likelihood of each kind of emergency identified under paragraph (a) occurring;
  - (c) describe a plan (an *emergency response plan*) for responding to each kind of emergency identified under paragraph (a);
  - (d) without limiting paragraph (c), require the emergency response plan to do the following for each kind of emergency identified under paragraph (a):
    - (i) describe the capabilities, roles and responsibilities of the licence holder and any other person or organisation in relation to that kind of emergency;
    - (ii) set out processes to quickly and effectively respond to that kind of emergency;
    - (iii) set out processes to ensure timely notification to, and effective communication with, workers, responders, emergency service providers and other persons and organisations in the event of that kind of emergency;
  - (e) require the licence holder to prepare, maintain and implement an emergency response plan that is consistent with the description included under paragraph (c) and complies with the requirements included in the plan under paragraph (d);
  - (f) describe measures for monitoring the effectiveness of the emergency response plan, including arrangements for testing the emergency response plan;
  - (g) describe how the licence holder will provide appropriate information, training and instruction, including a copy of the emergency response plan, to persons and organisations who could reasonably foreseeably be involved in an emergency in relation to the licence activities.
- (3) The testing arrangements described in the plan under paragraph (2)(f) must include a schedule of tests of the emergency response plan, which must require the response plan to be tested at least:
  - (a) when the emergency response plan is introduced; and
  - (b) when the emergency response plan is significantly modified; and
  - (c) in any case—at least once in any period of 12 months.
- (4) The testing arrangements must also:
  - (a) describe the objectives of the tests; and
  - (b) describe how the outcomes of the tests are to be measured; and
  - (c) describe how the licence holder is to use the results of tests to improve the emergency response plan.

- (5) The Regulator may only approve the plan if the Regulator is satisfied that the emergency response plan described in the plan will be reasonably likely to ensure that the licence holder is able to respond to emergencies that occur in relation to the licence activities.

## **92 Plan must address compliance with financial security requirements**

- (1) The plan must describe how the licence holder is complying, or is to comply, with section 117 of the Act.
- (2) Without limiting subsection (1), the plan must:
- (a) set out the method used to calculate the amount of financial security provided, or to be provided, to the Commonwealth for the purposes of subsection 117(1) of the Act, which must comply with subsection (3) of this section; and
  - (b) describe how the licence holder has verified that the method set out under paragraph (a) will calculate an amount of financial security that is sufficient to comply with subsection 117(1) of the Act and subsection (3) of this section; and
  - (c) state the amount of financial security (if any) that the licence holder has provided, and describe the form or forms in which it has been provided; and
  - (d) state any amounts of financial security that the licence holder is to provide, and describe the form or forms in which it is to be provided; and
  - (e) describe any determinations made by the Minister under section 102 (Minister may require financial security to be in a particular form), and describe how any such determinations are being, or are to be, complied with; and
  - (f) if financial security is to be provided at different times in relation to particular licence infrastructure—include the material mentioned in section 103.
- (3) Without limiting the matters that the method set out under paragraph (2)(a) may deal with, the method must identify and calculate the costs, expenses and liabilities that may arise in connection with, or as a result of, the following:
- (a) the decommissioning of licence infrastructure;
  - (b) removing relevant structures, equipment and property from the licence area;
  - (c) removing things from a vacated area that would be relevant structures, equipment or property if the vacated area was still part of the licence area of the relevant licence;
  - (d) the remediation of the licence area and vacated areas, and any other area affected by licence activities.

Note: For *relevant structures, equipment and property*, see section 87.

- (4) The method set out under paragraph (2)(a) must take into account any costs, expenses and liabilities that might arise from emergencies or unexpected circumstances in relation to anything mentioned in paragraph (3)(a), (b), (c) or (d).
- (5) The Regulator may only approve the plan if the Regulator is satisfied that:

- (a) the method set out in the plan under paragraph (2)(a) appropriately identifies and quantifies the costs, expenses and liabilities mentioned in subsection 117(1) of the Act; and
- (b) if the Minister has made a determination under section 102 about the form or forms of the financial security—the form or forms of financial security described under paragraph (2)(c) and (d) of this section are consistent with the determination; and
- (c) if financial security is to be required at different times in relation to particular licence infrastructure, in accordance with section 103—the material included in the plan for the purposes of section 103 is likely to ensure that financial security that relates to particular licence infrastructure is provided before that licence infrastructure is constructed or installed in the licence area.

### 93 Plan must address compliance with record-keeping requirements

- (1) The plan must address:
  - (a) how the licence holder is to comply with section 142 (requirements to keep accounts, records and other documents) in relation to the relevant licence; and
  - (b) how the licence holder is to comply with data management directions; and
  - (c) requirements to make records available for inspection under the applied work health and safety provisions.

Note: Division 2 of Part 7 of the *Work Health and Safety Act 2011*, as modified by section 237 of the *Offshore Electricity Infrastructure Act 2021*, provides for WHS entry permit holders to enter a workplace that is related onshore premises and inspect documents in certain circumstances.

- (2) The Regulator may only approve the plan if the Regulator is satisfied that the matters included in the plan under subsection (1) are reasonably likely to result in the licence holder complying with the requirements and directions mentioned in that subsection.

### 94 Plan must address work health and safety

- (1) The plan must:
  - (a) describe the obligations that apply to the licence holder under the applied work health and safety provisions; and
  - (b) describe how the licence holder is complying with, and will continue to comply with, the obligations mentioned in paragraph (a).
- (2) The Regulator may only approve the plan if the Regulator is satisfied that the matters included in the plan under paragraph (1)(b) are reasonably likely to result in the licence holder complying with the obligations mentioned in paragraph (1)(a).

## **Division 6—Management plans may apply, adopt or incorporate other instruments or writing**

### **95 Plan may apply, adopt or incorporate other instruments or writing as in force or existing from time to time**

- (1) For the purposes of subsection 114(3) of the Act, a management plan may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.
- (2) However, the management plan for a licence (the *first licence*) may only provide for a matter by applying, adopting or incorporating a matter contained in the management plan for another licence (the *other licence*) if:
  - (a) the first licence and the other licence are held by the same eligible person; and
  - (b) the other licence is not a proposed commercial licence.

## **Division 7—Design notifications**

### **96 Requirements to give design notifications**

- (1) For the purposes of paragraph 114(2)(d) of the Act, this section provides for requirements for licence holders to give the Regulator notifications (*design notifications*), in accordance with section 98 of this instrument, in relation to the design of licence infrastructure.

#### *Proposed commercial licence*

- (2) A licence holder that proposes to make an initial plan approval application for the Regulator to approve a plan as the management plan for a proposed commercial licence:
  - (a) must, before making the application, give the Regulator a design notification in relation to the design of licence infrastructure for the proposed commercial licence; and
  - (b) must not make the application until the Regulator has given feedback on the design notification under section 99.

#### *Transmission and infrastructure licences*

- (3) If:
  - (a) the holder of a transmission and infrastructure licence proposes to make an initial plan approval application or a plan revision approval application in relation to the licence; and
  - (b) if the application were granted, the management plan for the licence would authorise the licence holder to carry out an offshore infrastructure project for a purpose mentioned in paragraph 58(b) of the Act (storing, transmitting or conveying electricity or a renewable energy product); and
  - (c) in the case of a plan revision approval application—the existing management plan for the licence does not authorise the licence holder to carry out an offshore infrastructure project for such a purpose;the licence holder:

- (d) must, before making the application, give the Regulator a design notification in relation to the design of licence infrastructure for the licence (other than licence infrastructure that is only to be used for the purpose mentioned in paragraph 58(a) of the Act (assessing feasibility)); and
- (e) must not make the application until the Regulator has given feedback on the design notification under section 99.

## 97 Voluntary design notifications

The holder of a feasibility licence or a research and demonstration licence may give the Regulator a notification (a *design notification*), in accordance with section 98, in relation to the design of licence infrastructure for the licence.

## 98 Contents, manner and form of design notification

- (1) A design notification must:
  - (a) include a plan of the intended location, or locations, and layout of the licence infrastructure; and
  - (b) include descriptions of the following:
    - (i) the seabed and subsoil at the intended location or locations of the licence infrastructure;
    - (ii) the reasonably foreseeable meteorological and oceanographic conditions to which the licence infrastructure may be subject;
    - (iii) how the licence infrastructure will be constructed;
    - (iv) how the licence infrastructure will be operated and maintained;
    - (v) how the licence infrastructure will be decommissioned and removed;
    - (vi) any significant risks or hazards that may arise from the location or locations, design, construction, operation, maintenance, decommissioning or removal of the licence infrastructure;
    - (vii) proposed measures to deal with those risks and hazards; and
  - (c) explain the process used to select the design of the licence infrastructure, including by:
    - (i) outlining the criteria, design philosophy and standards (if any) that were used to guide the process; and
    - (ii) outlining how design considerations influenced decisions made in relation to any of the matters in paragraph (a) or (b); and
    - (iii) summarising any other design options that were considered, and the reasons why they were rejected.
- (2) A design notification:
  - (a) must be given in the manner and form that is:
    - (i) approved by the Regulator; and
    - (ii) published on the Regulator's website; and
  - (b) must be accompanied by any information or documents required by the form.

## 99 Regulator must give feedback on design notification

- (1) If a licence holder gives the Regulator a design notification under section 96 or 97, the Regulator:
  - (a) must consider the design notification; and

- (b) must give feedback to the licence holder on the design notification.
- (2) The Regulator must endeavour to give feedback on the design notification before the end of the period (the *feedback period*) of 60 days after the day the design notification is given, subject to subsection (3).

*Extension of feedback period*

- (3) If the Regulator makes a request for further information under subsection 100(1):
  - (a) the feedback period is extended by 30 days; and
  - (b) any days after the day the request is given do not count for the purposes of the feedback period, until the day the request is complied with.

**100 Regulator may request further information about design notification**

- (1) If, at any time while considering what feedback to give a licence holder on a design notification, the Regulator is not satisfied that the design notification contains sufficient information for the Regulator to give feedback, the Regulator may, by written notice, request further information from the licence holder.
- (2) The notice must:
  - (a) specify the information required; and
  - (b) specify the day on or before which the information must be provided; and
  - (c) specify the manner in which the information must be provided.
- (3) The day specified for the purposes of paragraph (2)(b) must be reasonable.
- (4) To avoid doubt, the Regulator:
  - (a) may make more than one request under this section; and
  - (b) may make further requests if the Regulator is not satisfied with the information provided in response to a request.

**Part 4—Financial security**

**Division 1—Operation of this Part**

**101 Operation of this Part**

This Part prescribes matters relating to the financial security that licence holders may be required to provide under section 117 of the Act.

**Division 2—Financial security**

**102 Minister may require financial security to be in a particular form**

- (1) For the purposes of paragraph 117(3)(a) of the Act:
  - (a) the Minister may determine that the financial security that is or will be required to be provided, for the purposes of subsection 117(1) of the Act, in relation to a particular licence (whether or not the licence is in force) must be in a particular form, which may be a combination of different forms of financial security; and
  - (b) if the Minister does so, the financial security must be in that form or those forms.

Note: The Minister may make a determination under this subsection whether or not the licence holder has already provided financial security. For cases where the licence holder has already provided financial security, see subsection (9).

- (2) A determination under subsection (1):
  - (a) must be in writing; and
  - (b) must specify the day on which the determination takes effect.
- (3) The day specified for the purposes of paragraph (2)(b) must be reasonable.

*Procedure for making determination*

- (4) Before making a determination under subsection (1), the Minister must give the licence holder written notice of the proposed determination.
- (5) The notice must:
  - (a) set out the Minister's reasons for the proposed determination; and
  - (b) invite the licence holder to make a written submission about the proposed determination; and
  - (c) specify the day on or before which the submission must be made.
- (6) The day specified for the purposes of paragraph (5)(c) must be reasonable.
- (7) If the licence holder makes a submission on or before the day specified for the purposes of paragraph (5)(c), the Minister must take the submission into account in deciding whether to make the determination.
- (8) The Minister must give written notice of a determination under subsection (1) to the licence holder.

*Determination may require existing financial security to be provided in a new form*

- (9) To avoid doubt:
  - (a) the Minister may determine under subsection (1) that financial security already provided by a licence holder in a particular form (the **first form**) must be provided in a different form (the **second form**); and
  - (b) if the Minister does so, then:
    - (i) any obligation that the licence holder has to provide the financial security in the first form continues until the end of the day before the day the determination takes effect; and
    - (ii) on and after the day the determination takes effect, the licence holder must provide financial security in the second form.

### **103 Financial security may be required at different times in relation to particular licence infrastructure**

For the purposes of paragraph 117(3)(b) of the Act, the financial security required by subsection 117(1) of the Act in relation to a licence may be provided at different times in relation to particular licence infrastructure if:

- (a) the management plan for the licence includes a timetable for the provision of financial security under subsection 117(1) of the Act that:
  - (i) sets out when the financial security that relates to particular licence infrastructure is to be provided; and



- (ii) requires the financial security that relates to particular licence infrastructure to be provided before that licence infrastructure is constructed or installed in the licence area; and
- (b) the financial security is provided in accordance with the timetable included under paragraph (a) of this section.

#### **104 Amount of financial security that is no longer required**

- (1) For the purposes of paragraph 117(3)(c) of the Act, the Minister may determine, in writing, that a licence holder is no longer required to provide a specified amount of financial security if:
  - (a) the Minister is satisfied that no further costs, expenses or liabilities are likely to arise in relation to the licence infrastructure, property or remediation activities to which the amount of financial security relates; and
  - (b) the Minister is satisfied that the determination would not result in the amount of financial security provided by the licence holder in relation to the licence being insufficient to pay the costs, expenses and liabilities mentioned in subsection 117(1) of the Act.
- (2) In considering whether to make a determination under subsection (1):
  - (a) the Minister must seek advice from the Regulator; and
  - (b) the Minister must have regard to that advice.
- (3) If the Minister makes a determination under subsection (1):
  - (a) the amount of financial security specified in the determination ceases to be required; and
  - (b) the Minister must give written notice of the determination to the licence holder.

#### **105 Reductions in amount of financial security**

- (1) For the purposes of paragraph 117(4)(d) of the Act, the Minister may determine, in writing, that the amount of financial security provided by a licence holder may be reduced by a particular amount if the Minister is satisfied that the reduction would not result in the total amount of financial security provided by the licence holder in relation to the licence being insufficient to pay the costs, expenses and liabilities mentioned in subsection 117(1) of the Act.
- (2) In considering whether to make a determination under subsection (1):
  - (a) the Minister must seek advice from the Regulator; and
  - (b) the Minister must have regard to that advice.
- (3) The Minister must give the licence holder a copy of a determination under subsection (1) within 30 days after making the determination.

#### **106 No other cessation or reduction of financial security obligations**

An amount of financial security provided by a licence holder in relation to a licence does not cease to be required and cannot be reduced, while the licence remains in force, otherwise than in accordance with a determination by the Minister under section 104 or 105.

### 107 Financial security for a transferred licence

- (1) This section applies if:
  - (a) the Minister has decided to transfer a licence, as mentioned in subparagraph 72(1)(c)(ii) of the Act; or
  - (b) a licence has been transferred, as mentioned in subparagraph 72(1)(c)(iii) of the Act.
- (2) For the purposes of subsections 72(2) and (3) of the Act, as long as the licence remains in force:
  - (a) all of the transferor's obligations in relation to the licence under sections 117 and 118 of the Act continue until, and unless, the obligations cease under paragraph (6)(a) of this section; and
  - (b) both the transferor and the transferee must comply with sections 117 and 118 of the Act in relation to the licence until the transferor's obligations cease under paragraph (6)(a) of this section.

Note: If the Minister makes a determination under subsection (5), the transferor's obligations cease, while the transferee's obligations continue.

- (3) The transferor may apply to the Minister for the Minister to make a determination under subsection (5).
- (4) The application:
  - (a) must be made in the manner and form that is:
    - (i) approved by the Minister; and
    - (ii) published on the Department's website; and
  - (b) must be accompanied by any other information or documents required by the form.

#### *Determination that transferor's financial security obligations are to cease*

- (5) The Minister may determine that the transferor's obligations in relation to the licence under sections 117 and 118 of the Act are to cease if the Minister is satisfied that the transferee has provided the Commonwealth with the financial security required by section 117 of the Act.
- (6) If the Minister makes a determination under subsection (5):
  - (a) the transferor's obligations in relation to the licence under sections 117 and 118 of the Act cease at the later of the following times:
    - (i) when the Minister makes the determination;
    - (ii) when the transfer of the licence takes effect; and
  - (b) the Minister must give written notice of the determination to the transferor and the transferee.

### 108 Regulator may direct licence holder to arrange verification of financial security

- (1) The Regulator may, by written notice, direct a licence holder to arrange an independent verification of any of the following:
  - (a) that the method used or to be used to calculate the amount of financial security, as set out for the purposes of paragraph 92(2)(a) in the management plan for the licence, will calculate an amount that is sufficient for the purposes of section 117 of the Act;

- (b) that the method to be used to calculate the amount of financial security, as set out for the purposes of paragraph 92(2)(a) in a plan that the Regulator is considering approving as the management plan for the relevant licence as a result of an initial plan approval application or a plan revision approval application, will calculate an amount that is sufficient for the purposes of section 117 of the Act;
  - (c) that an amount of financial security calculated by the licence holder in relation to a relevant licence is consistent with the method;
  - (d) any other matters that the Regulator considers need to be verified in relation to the financial security calculated by the licence holder in relation to a relevant licence.
- (2) The licence holder must engage an entity that is suitably qualified, competent and independent to:
- (a) carry out the verification; and
  - (b) provide a written report on the verification to the licence holder.
- (3) The licence holder must give a copy of the report to the Regulator.

### **109 Arrangements that may be treated as financial security**

- (1) For the purposes of paragraph 117(4)(a) of the Act, the following arrangements may be treated as financial security for the purposes of section 117 of the Act:
- (a) an amount received by the Commonwealth as mentioned in paragraph 119(3)(a) of the Act and retained in accordance with paragraph 119(4)(d) of the Act;
  - (b) a cash deposit held by a financial institution;
  - (c) a credit facility with a financial institution;
  - (d) a guarantee from a financial institution;
  - (e) an insurance policy with a general insurer (within the meaning of the *Insurance Act 1973*).

Note 1: Subsection (1) does not limit the kinds of arrangements that may be treated as financial security for the purposes of section 117 of the Act.

Note 2: The Minister may determine that the financial security that is required to be provided in relation to a particular licence must be provided in a particular form, which may be (but is not required to be) a form mentioned in subsection (1) (see section 102).

- (2) This section has effect subject to section 110.
- (3) In this section:

***financial institution*** means a corporation that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

### **110 Arrangements that are not to be treated as financial security**

- (1) For the purposes of paragraph 117(4)(b) of the Act, the following kinds of arrangements are not to be treated as financial security in relation to a licence for the purposes of section 117 of the Act:
- (a) an arrangement involving self-insurance;
  - (b) an arrangement under which the Commonwealth is a beneficiary of a trust;
  - (c) a guarantee provided by a related body corporate (within the meaning of the *Corporations Act 2001*) of the licence holder.

- (2) For the purposes of paragraph 117(4)(b) of the Act, an arrangement is not to be treated as financial security for the purposes of section 117 of the Act if any of the following applies to the arrangement:
- (a) the arrangement does not limit the ability of persons other than the Commonwealth to recover amounts from financial security provided under the arrangement;
  - (b) it is not highly certain that the Commonwealth would be able to recover amounts under the arrangement when required;
  - (c) the terms of the arrangement are unclear.

## 111 Recovery of debts from financial security

### *Debts arising due to non-compliance*

- (1) For the purposes of subsection 119(1) of the Act, if:
- (a) a licence holder owes a debt to the Commonwealth or the Regulator under the Act (other than under section 189 or 190 of the Act) in relation to the licence; and
  - (b) the licence holder has provided financial security in relation to the licence; and
  - (c) the Minister is satisfied that:
    - (i) the debt has not been recovered by the Commonwealth or the Regulator; and
    - (ii) the debt is unlikely to be paid within a reasonable time; and
    - (iii) recovering the debt from the financial security is likely to be more economical than recovering the debt through other means;
- the Commonwealth may recover the debt from the financial security.

### *Debts arising due to unpaid fees, levy or late payment penalty*

- (2) For the purposes of subsection 119(1) of the Act, if:
- (a) a licence holder owes a debt to the Commonwealth or the Regulator under section 189 (fees) or 190 (offshore electricity infrastructure levy) of the Act in relation to the licence; and
  - (b) the licence holder has provided financial security in relation to the licence; and
  - (c) the Minister is satisfied that:
    - (i) the debt is unlikely to be paid within a reasonable time; and
    - (ii) recovering the debt from the financial security is likely to be more economical than recovering the debt through other means;
- the Commonwealth may recover the debt from the financial security.

### *Debts only to be recovered from financial security under this section*

- (3) The Commonwealth may only recover a debt from a financial security in accordance with this section.

Note 1: As the Registrar is part of the Commonwealth, this section may apply to debts owed to the Registrar.

Note 2: This section does not limit the means through which a debt may be recovered otherwise than from financial security.

## 112 Recovery of costs, expenses and liabilities from financial security

- (1) For the purposes of subsection 119(1) of the Act, if:
- (a) the Commonwealth or the Regulator reasonably incurs a cost, expense or liability in relation to a licence as a result of an act or omission of the licence holder; and
  - (b) the cost, expense or liability is of a kind set out in the table in subsection (2) of this section; and
  - (c) the cost, expense or liability is not a debt that:
    - (i) is owed by the licence holder to the Commonwealth or the Regulator; and
    - (ii) could be recovered by the Commonwealth under section 111 of this instrument if the conditions in paragraph 111(1)(c) or (2)(c) were satisfied; and
  - (d) the licence holder has provided financial security in relation to the licence; and
  - (e) the Minister is satisfied that:
    - (i) the cost, expense or liability has not been recovered by the Commonwealth or the Regulator; and
    - (ii) recovering the cost, expense or liability from the financial security is likely to be more economical than recovering the cost, expense or liability through other means;

the Commonwealth may recover the cost, expense or liability from the financial security.

Note 1: As the Registrar is part of the Commonwealth, this section may apply to costs, expenses or liabilities incurred by the Registrar.

Note 2: This section does not limit the means through which costs, expenses and liabilities may be recovered otherwise than from financial security.

- (2) For the purposes of paragraph (1)(b), the following table sets out kinds of costs, expenses and liabilities that may be recovered under this section.

<b>Costs, expenses and liabilities that may be recovered from financial security</b>		
	<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>General description</b>	<b>Cost, expense or liability</b>
1	Decommissioning of licence infrastructure	A cost, expense or liability incurred as a result of a failure by the licence holder to adequately decommission licence infrastructure as mentioned in paragraph 117(1)(a) of the Act, including: <ul style="list-style-type: none"> <li>(a) costs, expenses or liabilities incurred in carrying out, or engaging another person to carry out, any of the activities set out in subsection (3) of this section for the purpose of decommissioning licence infrastructure; and</li> <li>(b) any compliance costs, legal costs or other direct or indirect costs, expenses or liabilities arising from actions taken by, or on behalf of, the Commonwealth or the Regulator that can be reasonably considered as being taken for the purpose of decommissioning licence infrastructure.</li> </ul>
2	Removing structures, equipment and other	A cost, expense or liability incurred as a result of a failure by the licence holder to adequately comply with

**Schedule 1** General amendments  
**Part 2** Main amendments

<b>Costs, expenses and liabilities that may be recovered from financial security</b>		
<b>Item</b>	<b>Column 1 General description</b>	<b>Column 2 Cost, expense or liability</b>
	property from the licence area and vacated areas	subsection 116(2) of the Act, or to adequately remove structures, equipment and other property from the licence area or a vacated area as mentioned in paragraph 117(1)(b) of the Act, including: <ul style="list-style-type: none"> <li>(a) costs, expenses or liabilities incurred in carrying out, or engaging another person to carry out, any of the activities set out in subsection (3) of this section for the purpose of removing structures, equipment and other property from the licence area or a vacated area; and</li> <li>(b) any compliance costs, legal costs or other direct or indirect costs, expenses or liabilities arising from actions taken by, or on behalf of, the Commonwealth or the Regulator that can be reasonably considered as being taken for the purpose of removing structures, equipment and other property from the licence area or a vacated area.</li> </ul>
3	Remediation of the licence area and vacated areas and any other areas affected by activities carried out under the licence	A cost, expense or liability incurred as a result of a failure by the licence holder to adequately remediate the licence area and vacated areas, and any other area affected by activities carried out under the licence, as mentioned in paragraph 117(1)(c) of the Act, including: <ul style="list-style-type: none"> <li>(a) costs, expenses or liabilities incurred in carrying out, or engaging another person to carry out, any of the activities set out in subsection (3) of this section for the purpose of remediating the licence area or vacated areas or any other areas affected by activities carried out under the licence; and</li> <li>(b) any compliance costs, legal costs or other direct or indirect costs, expenses or liabilities arising from actions taken by, or on behalf of, the Commonwealth or the Regulator that can be reasonably considered as being taken for the purpose of remediating the licence area or vacated areas or any other areas affected by activities carried out under the licence.</li> </ul>
4	Maintenance and repair of structures, equipment and other property in the licence area and vacated areas	A cost, expense or liability incurred as a result of a failure by the licence holder to adequately comply with subsection 116(1) of the Act, including: <ul style="list-style-type: none"> <li>(a) costs, expenses or liabilities incurred in carrying out, or engaging another person to carry out, any of the activities set out in subsection (3) of this section for the purpose of maintaining or repairing structures, equipment and other property in the licence area or a vacated area; and</li> <li>(b) any compliance costs, legal costs or other direct or indirect costs, expenses or liabilities arising from actions taken by, or on behalf of, the Commonwealth or the Regulator that can be reasonably considered as being taken for the purpose of maintaining or repairing structures, equipment and other property in the licence area or a vacated area.</li> </ul>
5	Compliance with directions and notices	A cost, expense or liability incurred as a result of a failure by the licence holder to adequately comply with a direction or

**Costs, expenses and liabilities that may be recovered from financial security**

Item	Column 1 General description	Column 2 Cost, expense or liability
		<p>notice issued under any of the following provisions of the Act:</p> <p>(a) Part 2 of Chapter 4;</p> <p>(b) Part 4 of Chapter 5;</p> <p>(c) Part 1 of Chapter 7;</p> <p>including:</p> <p>(d) costs, expenses or liabilities incurred in carrying out, or engaging another person to carry out, any of the activities set out in subsection (3) of this section as a result of the failure; and</p> <p>(e) any compliance costs, legal costs or other direct or indirect costs, expenses or liabilities arising from actions taken by, or on behalf of, the Commonwealth or the Regulator that can be reasonably considered as being taken as a result of the failure.</p>
6	Emergencies and unplanned circumstances, arising in connection with the licence activities, that are not adequately responded to or resolved by the licence holder	<p>A cost, expense or liability incurred as a result of a failure by the licence holder to adequately respond to or resolve an emergency or unplanned circumstance that arises in connection with the licence activities, including:</p> <p>(a) costs, expenses or liabilities incurred in carrying out, or engaging another person to carry out, any of the activities set out in subsection (3) of this section as a result of the failure; and</p> <p>(b) any compliance costs, legal costs or other direct or indirect costs, expenses or liabilities arising from actions taken by, or on behalf of, the Commonwealth or the Regulator that can be reasonably considered as being taken as a result of the failure.</p>
7	Act or omission that could result in cancellation of licence	<p>A cost, expense or liability incurred as a result of an act or omission by the licence holder that may result in the Minister having the power to cancel the licence under paragraph 73(1)(a), (b), (d) or (f) of the Act, including:</p> <p>(a) costs, expenses or liabilities incurred in carrying out, or engaging another person to carry out, any of the activities set out in subsection (3) of this section as a result of the act or omission; and</p> <p>(b) any compliance costs, legal costs or other direct or indirect costs, expenses or liabilities arising from actions taken by, or on behalf of, the Commonwealth or the Regulator that can be reasonably considered as being taken as a result of the act or omission.</p>

- (3) For the purposes of subsection (2), the activities are the following:
- (a) evaluation, inspection, monitoring and surveillance;
  - (b) mobilisation, operation and demobilisation of vessels, aircraft or other plant and equipment;
  - (c) pollution and waste management and disposal;
  - (d) salvage or towage;

- (e) protecting, remediating, restoring or reinstating any physical or biological features of the environment;
- (f) repairing, replacing, relocating, removing or making safe any structures, plant, equipment or property;
- (g) planning, engineering and design;
- (h) engaging workers, including specialist technical advisors and contractors;
- (i) site hire, communications and utilities;
- (j) personal safety and medical requirements.

## Part 5—Safety zone determinations

### Division 1—Purpose of this Part

#### 113 Purpose of this Part

This Part prescribes matters relating to determinations under subsection 136(2) of the Act (*safety zone determinations*).

Note: A safety zone determination is a notifiable instrument (see subsection 136(2) of the Act).

### Division 2—General provisions about safety zone determinations

#### 114 Information that a safety zone determination must include

For the purposes of subsection 136(4) of the Act, a safety zone determination must:

- (a) specify the eligible safety zone infrastructure to which the determination relates; and
- (b) include the time when the determination takes effect under subsection 138(1) of the Act (subject to subsection 138(2) of the Act); and
- (c) if infrastructure to which the determination relates is licence infrastructure in relation to a licence—include sufficient information to identify the licence.

Note: A safety zone determination must also specify the area of the safety zone (see subsection 136(2) of the Act) and state which vessels it applies to (see subsection 136(3) of the Act).

#### 115 When safety zone determination continues in effect

- (1) Subject to subsection (3), a safety zone determination continues in effect until it is revoked.

Note: For revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) A safety zone determination may provide that it ceases to have effect at a time specified in the determination, or in circumstances specified in the determination.
- (3) If a safety zone determination includes a provision mentioned in subsection (2), the determination ceases to have effect in accordance with the provision.
- (4) To avoid doubt, a safety zone determination may continue in effect even if the eligible safety zone infrastructure in the safety zone has ceased to operate.



## **Division 3—Procedures for safety zone applications**

### **116 Operation of this Division**

For the purposes of subsection 137(2) of the Act, this Division prescribes procedures relating to safety zone determinations.

Note: The Regulator may make, vary or revoke a safety zone determination on application, or on the Regulator's own initiative (see subsection 137(1) of the Act and subsection 33(3) of the *Acts Interpretation Act 1901*).

### **117 Making a safety zone application**

*Application for the Regulator to make a safety zone determination*

- (1) A person may apply to the Regulator, in accordance with this Division, for the Regulator to make a safety zone determination for the purpose of protecting eligible safety zone infrastructure.

*Application for the Regulator to vary or revoke a safety zone determination*

- (2) If a safety zone determination is in force as a result of an application under subsection (1), the following people may apply to the Regulator, in accordance with this Division, for the Regulator to vary or revoke the determination:
  - (a) the person who made the application;
  - (b) the holder of any licence whose licence area includes any part of the safety zone.

Note: The Regulator's power to make a safety zone determination includes a power to vary or revoke a safety zone determination (see subsection 33(3) of the *Acts Interpretation Act 1901*).

*Safety zone application*

- (3) For the purposes of this instrument, an application under subsection (1) or (2) is a **safety zone application**.

### **118 Requirements for safety zone application—application for the Regulator to make a safety zone determination**

A safety zone application under subsection 117(1):

- (a) must be made in the manner and form that is:
  - (i) approved by the Regulator; and
  - (ii) published on the Regulator's website; and
- (b) must be accompanied by any information or documents required by the form.

Note: For application fees, see section 146. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

### **119 Requirements for safety zone application—application for the Regulator to vary or revoke a safety zone determination**

A safety zone application under subsection 117(2):

- (a) must either:

- (i) state that the application is for the Regulator to revoke a safety zone determination specified in the application; or
  - (ii) state that the application is for the Regulator to vary a safety zone determination specified in the application, and describe the proposed variation; and
- (b) must be made in the manner and form that is:
- (i) approved by the Regulator; and
  - (ii) published on the Regulator’s website; and
- (c) must be accompanied by any information or documents required by the form.

Note: For application fees, see section 146. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

## 120 Notification of certain safety zone applications

- (1) If:
- (a) a person (the *applicant*) makes a safety zone application; and
  - (b) there is licence infrastructure in relation to a licence (the *affected licence*) in:
    - (i) for a safety zone application under subsection 117(1)—the area that the applicant proposes to be specified as a safety zone; or
    - (ii) for a safety zone application under subsection 117(2)—the area (if any) that would be specified as a safety zone if the application was granted, and the area (if any) that would cease to be specified as a safety zone if the application was granted; and
  - (c) the applicant is not the holder of the affected licence;
- the Regulator must, by written notice, inform the holder of the affected licence that the application has been made.
- (2) The notice must:
- (a) include the name of the applicant; and
  - (b) include contact details for the applicant; and
  - (c) include:
    - (i) for a safety zone application under subsection 117(1)—details of the safety zone that is proposed by the application; or
    - (ii) for a safety zone application under subsection 117(2)—details of the variation or revocation that is proposed by the application; and
  - (d) invite the holder of the affected licence to make a written submission about the application; and
  - (e) specify the day on or before which the submission must be made.
- (3) The day specified for the purposes of paragraph (2)(e) must be reasonable.

## 121 Regulator may request further information

- (1) If, at any time while considering a safety zone application, the Regulator is not satisfied that the application contains sufficient information for the Regulator to decide whether or not to grant the application, the Regulator may, by written notice, request further information from the applicant.
- (2) The notice must:

- (a) specify the information required; and
  - (b) specify the day on or before which the information must be provided; and
  - (c) specify the manner in which the information must be provided.
- (3) The day specified for the purposes of paragraph (2)(b) must be reasonable.
- (4) If the applicant provides further information in accordance with the notice, the Regulator must take the information into account in deciding whether to grant, or refuse to grant, the application.
- (5) To avoid doubt, the Regulator:
- (a) may make more than one request under this section; and
  - (b) may make further requests if the Regulator is not satisfied with the information provided in response to a request.

## **122 Time for making decision on safety zone application**

- (1) The Regulator must make a decision on a safety zone application before the end of the period (the *decision period*) of 60 days after the day the application is made.

### *Extensions of decision period*

- (2) The Regulator may, by written notice to the applicant, extend the decision period by a period specified in the notice.
- (3) The notice must set out the reasons for the extension.

Note: For example, the Regulator may extend the decision period if the Regulator gives a notice under subsection 120(1) (notification of certain safety zone applications), subsection 121(1) (requesting further information) or subsection 124(1) (proposing to refuse the application), or for other reasons.

- (4) To avoid doubt, the Regulator may extend the decision period more than once.

### *Failure to make decision within decision period does not affect validity*

- (5) A failure by the Regulator to comply with subsection (1) does not affect the validity of any decision made on the safety zone application or anything done by the Regulator in dealing with the application.

## **123 Applicant may withdraw safety zone application**

A person who has made a safety zone application may, at any time before the Regulator makes a decision on the application, withdraw the application by written notice to the Regulator.

## **124 Proposed decision to refuse safety zone application**

- (1) If the Regulator proposes to refuse to grant a safety zone application, the Regulator must give the applicant written notice of the proposed decision.
- (2) The notice must:
- (a) set out the Regulator's reasons for the proposed decision; and
  - (b) invite the applicant to make a written submission about the proposed decision; and

- (c) specify the day on or before which the submission must be made.
- (3) The day specified for the purposes of paragraph (2)(c) must be reasonable.
- (4) If the applicant makes a submission on or before the day specified for the purposes of paragraph (2)(c), the Regulator must take the submission into account in deciding whether to grant, or refuse to grant, the application.

## 125 Decision on safety zone application

### *Decision to grant safety zone application*

- (1) If the Regulator decides to grant a safety zone application:
  - (a) the Regulator must give written notice of the decision to:
    - (i) the applicant; and
    - (ii) any licence holder that was required to be given notice under subsection 120(1) in relation to the application; and
  - (b) the Regulator must give effect to the decision by making a safety zone determination, or varying or revoking a safety zone determination, in relation to the application before the end of 30 days after the Regulator makes the decision.

### *Decision not to grant safety zone application*

- (2) If the Regulator decides not to grant a safety zone application, the Regulator must give written notice of the decision to:
  - (a) the applicant; and
  - (b) any licence holder that was required to be given notice under subsection 120(1) in relation to the application.

## Part 6—Protection zone determinations

### Division 1—Purpose of this Part

#### 126 Purpose of this Part

This Part prescribes matters relating to determinations under subsection 142(1) of the Act (*protection zone determinations*).

Note: A protection zone determination is a legislative instrument (see subsection 142(1) of the Act).

### Division 2—General provisions about protection zone determinations

#### 127 Determination of area of protection zone

- (1) For the purposes of paragraph 142(3)(a) of the Act, this section provides for how the area covered by a protection zone specified in a protection zone determination is to be determined.
- (2) The area of the protection zone must extend no further than 1,852 metres from the infrastructure or proposed infrastructure to which the protection zone relates, measured from each point on the outer edge of the infrastructure or proposed infrastructure.

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## 128 Information that a protection zone determination must include

For the purposes of paragraph 142(3)(b) of the Act, a protection zone determination must:

- (a) specify the offshore renewable energy infrastructure or offshore electricity transmission infrastructure to which the determination relates; and
- (b) include the time when the determination takes effect under subsection 146(1) of the Act (subject to subsection 146(2) of the Act).

Note: A protection zone determination:

- (a) must also specify the licence under which the infrastructure is, or is proposed to be, installed (see subsection 142(1) of the Act); and
- (b) must identify the area of the protection zone (see paragraph 142(3)(a) of the Act); and
- (c) may set out activities that are prohibited in the protection zone and restrictions that apply to specified activities in the protection zone (see subsection 142(4) of the Act).

## Division 3—Procedures for protection zone applications

### 129 Operation of this Division

For the purposes of subsection 143(2) of the Act, this Division prescribes procedures relating to protection zone determinations.

Note: The Regulator may make, vary or revoke a protection zone determination on application, or on the Regulator's own initiative (see subsection 143(1) of the Act and subsection 33(3) of the *Acts Interpretation Act 1901*).

### 130 Making a protection zone application

#### *Application for the Regulator to make a protection zone determination*

- (1) A person may apply to the Regulator, in accordance with this Division, for the Regulator to make a protection zone determination in relation to offshore renewable energy infrastructure or offshore electricity transmission infrastructure that has been, or is proposed to be, installed in the Commonwealth offshore area under a licence.

#### *Application for the Regulator to vary or revoke a protection zone determination*

- (2) If a protection zone determination is in force as a result of an application under subsection (1), the person who made that application may apply to the Regulator, in accordance with this Division, for the Regulator to vary or revoke the determination.

Note: The Regulator's power to make a protection zone determination includes a power to vary or revoke a protection zone determination (see subsection 33(3) of the *Acts Interpretation Act 1901*).

#### *Protection zone application*

- (3) For the purposes of this instrument, an application under subsection (1) or (2) is a **protection zone application**.

### 131 Requirements for protection zone application—application for the Regulator to make a protection zone determination

A protection zone application under subsection 130(1):

- (a) must be made in the manner and form that is:
  - (i) approved by the Regulator; and
  - (ii) published on the Regulator’s website; and
- (b) must be accompanied by any information or documents required by the form.

Note: For application fees, see section 146. An application is taken to have been made only if the fee for dealing with the application has been paid (see section 147).

### 132 Requirements for protection zone application—application for the Regulator to vary or revoke a protection zone determination

A protection zone application under subsection 130(2):

- (a) must either:
  - (i) state that the application is for the Regulator to revoke a protection zone determination specified in the application; or
  - (ii) state that the application is for the Regulator to vary a protection zone determination specified in the application, and describe the proposed variation; and
- (b) must be made in the manner and form that is:
  - (i) approved by the Regulator; and
  - (ii) published on the Regulator’s website; and
- (c) must be accompanied by any information or documents required by the form.

### 133 Notification of certain protection zone applications

(1) If:

- (a) a person (the *applicant*) makes a protection zone application; and
- (b) there is licence infrastructure in relation to a licence (the *affected licence*) in:
  - (i) for a protection zone application under subsection 130(1)—the area that the applicant proposes to be specified as a protection zone; or
  - (ii) for a protection zone application under subsection 130(2)—the area (if any) that would be specified as a protection zone if the application was granted, and the area (if any) that would cease to be specified as a protection zone if the application was granted; and
- (c) the applicant is not the holder of the affected licence;

the Regulator must, by written notice, inform the holder of the affected licence that the application has been made.

(2) The notice must:

- (a) include the name of the applicant; and
- (b) include contact details for the applicant; and
- (c) include:
  - (i) for a protection zone application under subsection 130(1)—details of the protection zone that is proposed by the application; or

- (ii) for a protection zone application under subsection 130(2)—details of the variation or revocation that is proposed by the application; and
  - (d) invite the holder of the affected licence to make a written submission about the application; and
  - (e) specify the day on or before which the submission must be made.
- (3) The day specified for the purposes of paragraph (2)(e) must be reasonable.

### **134 Regulator must invite submissions from the public on protection zone application**

- (1) If a protection zone application is made under subsection 130(1), the Regulator must publish a notice under this section on the Regulator’s website.
- (2) The notice must:
- (a) describe the offshore renewable energy infrastructure or offshore electricity transmission infrastructure that the protection zone is proposed to relate to; and
  - (b) describe the proposed area of the protection zone; and
  - (c) describe the activities that are proposed to be prohibited or subject to restrictions in the protection zone; and
  - (d) invite submissions from the public on the proposed protection zone; and
  - (e) specify how submissions may be made to the Regulator; and
  - (f) specify the day on or before which submissions may be made.
- (3) The notice may include any other information the Regulator considers appropriate in relation to the application or the proposed protection zone.
- (4) The Regulator must take any submissions made in accordance with the notice into account in deciding whether to grant, or refuse to grant, the application.

### **135 Time for making decision on protection zone application**

- (1) The Regulator must make a decision on a protection zone application before the end of the period (the *decision period*) of 60 days after the day the application is made.

#### *Extension of decision period by consultation period*

- (2) The decision period is extended by the period:
- (a) beginning on the day the Regulator publishes a notice under section 134 in relation to the application; and
  - (b) ending on the day specified in the notice under paragraph 134(2)(f).

#### *Other extensions of decision period*

- (3) The Regulator may, by written notice to the applicant, extend the decision period by a period specified in the notice.
- (4) The notice must set out the reasons for the extension.

Note: For example, the Regulator may extend the decision period if the Regulator gives a notice under subsection 133(1) (notification of certain protection zone applications), subsection 136(1) (requesting further information) or subsection 138(1) (proposing to refuse the application), or for other reasons.

- (5) To avoid doubt, the Regulator may extend the decision period more than once.

*Failure to make decision within decision period does not affect validity*

- (6) A failure by the Regulator to comply with subsection (1) does not affect the validity of any decision made on the application or anything done by the Regulator in dealing with the application.

### **136 Regulator may request further information**

- (1) If, at any time while considering a protection zone application, the Regulator is not satisfied that the application contains sufficient information for the Regulator to decide whether or not to grant the application, the Regulator may, by written notice, request further information from the applicant.
- (2) The notice must:
- (a) specify the information required; and
  - (b) specify the day on or before which the information must be provided; and
  - (c) specify the manner in which the information must be provided.
- (3) The day specified for the purposes of paragraph (2)(b) must be reasonable.
- (4) If the applicant provides further information in accordance with the notice, the Regulator must take the information into account in deciding whether to grant, or refuse to grant, the application.
- (5) To avoid doubt, the Regulator:
- (a) may make more than one request under this section; and
  - (b) may make further requests if the Regulator is not satisfied with the information provided in response to a request.

### **137 Applicant may withdraw protection zone application**

A person who has made a protection zone application may, at any time before the Regulator makes a decision on the application, withdraw the application by written notice to the Regulator.

### **138 Proposed decision to refuse protection zone application**

- (1) If the Regulator proposes to refuse to grant a protection zone application, the Regulator must give the applicant written notice of the proposed decision.
- (2) The notice must:
- (a) set out the Regulator's reasons for the proposed decision; and
  - (b) invite the applicant to make a written submission about the proposed decision; and
  - (c) specify the day on or before which the submission must be made.
- (3) The day specified for the purposes of paragraph (2)(c) must be reasonable.
- (4) If the applicant makes a submission on or before the day specified for the purposes of paragraph (2)(c), the Regulator must take the submission into account in deciding whether to grant, or refuse to grant, the application.



## **139 Decision on protection zone application**

### *Decision to grant protection zone application*

- (1) If the Regulator decides to grant a protection zone application:
  - (a) the Regulator must give written notice of the decision to:
    - (i) the applicant; and
    - (ii) any licence holder that was required to be given notice under subsection 133(1) in relation to the application; and
  - (b) the Regulator must give effect to the application by making a protection zone determination, or varying or revoking a protection zone determination, in relation to the application before the end of 30 days after the Regulator makes the decision.

### *Decision not to grant protection zone application*

- (2) If the Regulator decides not to grant a protection zone application, the Regulator must give written notice of the decision to:
  - (a) the applicant; and
  - (b) any licence holder that was required to be given notice under subsection 133(1) in relation to the application.

## **Part 7—Work health and safety**

### **140 Purposes of this Part**

This Part has effect for the purposes of subsection 243(2) of the Act.

### **141 *Work Health and Safety Regulations 2011* apply with modifications**

The provisions of the *Work Health and Safety Regulations 2011* apply, with the modifications set out in Schedule 1 to this instrument, for the purposes of the Work Health and Safety Act as applied by Part 1 of Chapter 6 of the *Offshore Electricity Infrastructure Act 2021*.

## **Part 8—Information relating to offshore infrastructure**

### **142 Requirements to keep accounts, records and other documents**

#### *Accounts, records and other documents that must be kept*

- (1) For the purposes of paragraph 268(1)(a) of the Act, a licence holder must keep the following:
  - (a) any written reports of audits or inspections of licence infrastructure in relation to the licence;
  - (b) any written reports of audits or inspections of licence activities (whether conducted by the licence holder or another person);
  - (c) any accounts, records or other documents relating to the licence holder's obligations under the applied work health and safety provisions;

- (d) any other records relevant to whether the licence holder has complied with the Act, this instrument or the management plan (if any) for the licence.
- (2) For the purposes of paragraph 268(1)(b) of the Act, a licence holder must keep any accounts, records or other documents that provide evidence in support of any statements included by the licence holder in an annual report under paragraph 33(4)(b), or a final report under paragraph 33(8)(b), of this instrument.

Note 1: The requirements in subsections (1) and (2) are in addition to any requirements imposed by data management directions under sections 263 and 264 of the Act (see subsection 268(2) of the Act).

Note 2: The management plan for a licence must address compliance with record-keeping requirements (see section 93), and may require a licence holder to keep documents additional to the documents mentioned in this section.

*Manner of storing accounts, records and other documents*

- (3) An account, record or other document required to be kept under subsection (1) or (2), or under a data management direction:
- (a) must be stored in a place in Australia; and
  - (b) must, to the extent that it is reasonably possible to do so, be stored in a place where the licence holder makes decisions that:
    - (i) are made in the capacity of a person conducting a business or undertaking (within the meaning of the Work Health and Safety Act) at that place; and
    - (ii) are about matters that directly affect the health or safety of people who are relevant workers (within the meaning of section 237 of the *Offshore Electricity Infrastructure Act 2021*); and
  - (c) must be stored in a manner that allows the account, record or other document to be easily retrievable in a timely manner; and
  - (d) must be stored securely; and
  - (e) must be stored for a period of at least 7 years after the account, record or document is generated.

*Accounts, records and other documents that are modified*

- (4) If an account, record or other document required to be kept under this section, or under a data management direction, is modified:
- (a) subsection (3) applies separately to the unmodified account, record or document and to any modified versions of the account, record or document; and
  - (b) each modified version must be stored for a period of at least 7 years after it is modified.

*Effect of licence ceasing to be in force*

- (5) If a person held a licence that has ceased to be in force:
- (a) the person must continue to comply with subsections (3) and (4) (except paragraph (3)(b)) in relation to all accounts, records and other documents that the person was required to keep under this section or under a data management direction before the licence ceased to be in force; and
  - (b) the obligation in paragraph (a) of this subsection continues to apply to the person until the periods in paragraphs (3)(e) and (4)(b) have passed for all

accounts, records and other documents that the person was required to keep.

*Effect of licence transfer*

- (6) If a licence is transferred under Division 2 of Part 2 of Chapter 3 of the Act:
- (a) the transferor (within the meaning of section 70 of the Act) must continue to comply with subsections (3) and (4) (except paragraph (3)(b)) in relation to all accounts, records and other documents that the transferor was required to keep under this section or under a data management direction before the transfer took effect; and
  - (b) the obligation in paragraph (a) of this subsection continues to apply to the transferor until the periods in paragraphs (3)(e) and (4)(b) have passed for all accounts, records and other documents that the transferor was required to keep; and
  - (c) the transferee (within the meaning of section 70 of the Act) is not required to comply with subsection (3) in relation to any accounts, records or other documents that the transferor is keeping in accordance with this subsection.

**143 Requirements to keep accounts, records and other documents—offence and civil penalty provisions**

*Strict liability offence*

- (1) A person commits an offence of strict liability if:
- (a) section 142 requires the person to keep an account, record or document; and
  - (b) the person does not keep the account, record or document in accordance with section 142.

Penalty: 40 penalty units.

*Civil penalty provision*

- (2) A person is liable to a civil penalty if:
- (a) section 142 requires the person to keep an account, record or document; and
  - (b) the person does not keep the account, record or document in accordance with section 142.

Civil penalty: 40 penalty units.

*Continuing offences and continuing contraventions of civil penalty provisions*

- (3) A person who commits an offence against subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the offence continues.
- (4) The maximum penalty for each day that an offence under subsection (1) continues is 10% of the maximum penalty that can be imposed in respect of that offence.
- (5) A person who contravenes subsection (2) commits a separate contravention in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.

- (6) The maximum civil penalty for each day that a contravention of subsection (2) continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

## Part 9—Compliance and enforcement

### 144 Civil penalty provisions

- (1) This section is made for the purposes of paragraphs 308(1)(b), (c) and (d) of the Act.

#### *Enforceable civil penalty provisions*

- (2) Each civil penalty provision of this instrument is enforceable under Part 4 of the Regulatory Powers Act.

Note: 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.

#### *Authorised applicant*

- (3) For the purposes of Part 4 of the Regulatory Powers Act:
- (a) the CEO is an authorised applicant in relation to the following provisions of this instrument:
    - (i) subsection 54(2);
    - (ii) subsection 143(2); and
  - (b) the Registrar is an authorised applicant in relation to subsection 143(2) of this instrument.

#### *Relevant court*

- (4) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this instrument:
- (a) the Federal Court;
  - (b) the Federal Circuit and Family Court of Australia (Division 2);
  - (c) the Supreme Court of a State or Territory.

### 145 Infringement notices

- (1) This section is made for the purposes of paragraphs 308(1)(e), (f) and (g) of the Act.

#### *Provisions subject to an infringement notice*

- (2) The following provisions of this instrument are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) subsection 46(1);
  - (b) subsections 54(1) and (2);
  - (c) subsection 56(4);
  - (d) subsection 61(1);
  - (e) subsection 76(3);

- (f) subsection 78(5);
- (g) subsections 143(1) and (2);
- (h) subsection 162(3);
- (i) subsection 163(4).

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

*Infringement officer*

- (3) For the purposes of Part 5 of the Regulatory Powers Act:
- (a) an OEI inspector is an infringement officer in relation to the following provisions of this instrument:
    - (i) subsection 46(1);
    - (ii) subsections 54(1) and (2);
    - (iii) subsection 56(4);
    - (iv) subsection 61(1);
    - (v) subsection 76(3);
    - (vi) subsection 78(5);
    - (vii) subsections 143(1) and (2);
    - (viii) subsection 162(3);
    - (ix) subsection 163(4); and
  - (b) the Registrar is an infringement officer in relation to subsections 143(1) and (2) of this instrument.

*Relevant chief executive*

- (4) For the purposes of Part 5 of the Regulatory Powers Act, the relevant chief executive in relation to the provisions mentioned in subsection (2) is:
- (a) if an OEI inspector is the infringement officer under subsection (3) for the provision—the CEO; or
  - (b) if the Registrar is the infringement officer under subsection (3) for the provision—the Secretary of the Registrar’s Department.

**53 Section 146**

Repeal the section, substitute:

**146 Application fees**

For the purposes of subsection 189(2) of the Act, the following table sets out amounts of fees for dealing with certain applications.

<b>Application fees</b>		
	<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Kind of application</b>	<b>Amount</b>
1	Application for a feasibility licence (see section 10)	\$300,000
2	Application for a commercial licence (see section 17)	\$350,000
3	Application for a research and demonstration licence (see section 18)	\$300,000
4	Application for a transmission and infrastructure licence (see section 21)	\$300,000

## Schedule 1 General amendments

### Part 2 Main amendments

<b>Application fees</b>		
	<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Kind of application</b>	<b>Amount</b>
5	Application to extend the term of a licence (see section 30)	\$36,500
6	Application to vary a licence (see section 31)	\$36,500
7	Application to transfer a licence (see section 35)	\$35,500
8	Application for approval of change in control of licence holder (see section 39)	\$35,500
9	Initial plan approval application (see section 47)	\$10,000
10	Plan revision approval application (see section 50)	\$10,000
11	Safety zone application (see section 117)	\$10,000
12	Protection zone application (see section 130)	\$10,000
13	Application to surrender a licence (see section 74 of the Act)	\$22,500

## 54 At the end of Part 10

Add:

### 148 Fees for the Regulator to perform or exercise functions or powers

- (1) For the purposes of subsection 189(2) of the Act, the following table sets out amounts of fees for the Regulator performing or exercising functions or powers under the Act.

<b>Fees for the Regulator performing or exercising functions or powers</b>		
	<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Function or power</b>	<b>Amount</b>
1	Assessing an initial plan approval application (see section 47)	Assessment fee
2	Assessing a plan revision approval application (see section 50)	Assessment fee
3	Assessing a design notification (see Division 7 of Part 3)	Assessment fee
4	Assessing a safety zone application (see section 117)	Assessment fee
5	Assessing a protection zone application (see section 130)	Assessment fee

- (2) The amount of a fee referred to in column 2 of an item in the table as an “assessment fee” is the total amount of the expenses incurred by the Regulator in performing or exercising the function or power mentioned in column 1.
- (3) An assessment fee is:
- due when the Regulator issues an invoice for the fee to the person who requested the performance or exercise of the function or power; and
  - payable in accordance with the requirements of the invoice.
- (4) The Regulator may remit the whole or a part of an amount of an assessment fee if the Regulator considers that there are good reasons for doing so.
- (5) Where an amount of an assessment fee is owed by a person under this section, the Minister, the Registrar or the Regulator may decline to perform the function or exercise the power to which the fee relates until the amount is paid.

## 55 At the end of Part 13

Add:

### 161 Licence holder must notify Regulator of certain events

- (1) A licence holder must notify the Regulator if the licence holder becomes aware that any of the following has occurred in relation to the licence:
- (a) a circumstance that significantly impaired, or has the potential to significantly impair, the operation or structural integrity of licence infrastructure;
  - (b) a notifiable incident, within the meaning of the Work Health and Safety Act as applied by Part 1 of Chapter 6 of the Act, that arises out of licence activities;
  - (c) a collision between a marine vessel and any licence infrastructure;
  - (d) a contravention, or apparent contravention, of a safety zone determination, or a protection zone determination, in effect in relation to licence infrastructure;
  - (e) if there is a management plan for the licence—an incident that caused, or should have caused, the licence holder to implement the emergency response plan mentioned in paragraph 91(2)(c);
  - (f) if there is a management plan for the licence—an incident that:
    - (i) arose in connection with licence activities carried out in the Commonwealth offshore area; and
    - (ii) resulted, or has the potential to result, in a contravention of the licence holder's obligations under the *Environment Protection and Biodiversity Conservation Act 1999*, or regulations under that Act, that are described in the management plan in accordance with paragraph 85(2)(a) of this instrument.

Note: For paragraph (b)—see clause 26 of Schedule 1 to this instrument for a modification that affects the meaning of **notifiable incident** in the Work Health and Safety Act as applied by Part 1 of Chapter 6 of the Act.

- (2) The notification under subsection (1) must be given to the Regulator as soon as practicable after the licence holder becomes aware that the event has occurred.
- (3) A notification under subsection (1):
- (a) must be made in the manner and form that is:
    - (i) approved by the Regulator; and
    - (ii) published on the Regulator's website; and
  - (b) must be accompanied by any other information or documents required by the form.

#### *Offence*

- (4) A person commits an offence if:
- (a) the person holds a licence; and
  - (b) the person ought reasonably to have known that an event mentioned in subsection (1) has occurred in relation to the licence; and
  - (c) the person does not give the Regulator a notification under subsection (1) as soon as practicable after becoming aware that the event occurred.

Penalty: 60 penalty units.

## 162 Licence holder must give report to the Regulator

- (1) If a licence holder gives the Regulator a notification of an event under subsection 161(1), the licence holder must, before the end of 48 hours after the notification was given, give the Regulator a report of the event including:
  - (a) further details of the event; and
  - (b) details of the licence holder's response to the event.
- (2) A report under subsection (1):
  - (a) must be given in the manner and form that is:
    - (i) approved by the Regulator; and
    - (ii) published on the Regulator's website; and
  - (b) must be accompanied by any other information or documents required by the form.

### *Offence*

- (3) A person commits an offence of strict liability if:
  - (a) the person holds a licence; and
  - (b) the person gives the Regulator a notification in accordance with subsection 161(1); and
  - (c) the person does not give the Regulator a report under subsection (1) of this section before the end of 48 hours after giving the notification.

Penalty: 50 penalty units.

## 163 Regulator may direct licence holder to give further reports

- (1) If a licence holder gives the Regulator a notification of an event under subsection 161(1), the Regulator may, by written notice, require the licence holder to submit one or more written reports of the event.
- (2) The notice must:
  - (a) describe the information to be included in a report or the matters to be addressed; and
  - (b) specify when the report must be given to Regulator by.
- (3) The day or time specified for giving the report by must give the licence holder a reasonable time to prepare the report.

### *Offence*

- (4) A person commits an offence of strict liability if:
  - (a) the person holds a licence; and
  - (b) the Regulator gives the person a notice under subsection (1) in relation to an event; and
  - (c) the person does not give the Regulator a written report of the event in accordance with the notice.

Penalty: 50 penalty units.



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## **Schedule 2—Amendments relating to Work Health and Safety**

### *Offshore Electricity Infrastructure Regulations 2022*

#### **1 At the end of the instrument**

Add:

### **Schedule 1—Modifications of the Work Health and Safety Regulations 2011**

Note 1: See section 141.

Note 2: This Schedule modifies the *Work Health and Safety Regulations 2011* as they apply for the purposes of Part 1 of Chapter 6 of the Act. This Schedule does not otherwise affect that instrument.

### *Work Health and Safety Regulations 2011*

#### **1 Regulation 5 (after the heading)**

Insert:

Note: A number of expressions included in these Regulations are defined in the Act, as it applies and is modified because of Part 1 of Chapter 6 of the *Offshore Electricity Infrastructure Act 2021*, including the following:

- (a) Commonwealth offshore area;
- (b) management plan;
- (c) regulated offshore activities;
- (d) regulator;
- (e) related onshore premises.

#### **2 Subregulation 5(1)**

Insert:

***accepted DSMS*** means a DSMS that is accepted by the regulator under regulation 168C or 168D.

Note: Acceptance of a DSMS ends after 5 years, if it is withdrawn by the regulator or if the regulator accepts a revised version of the DSMS: see regulation 168K.

***ADAS*** means the Australian Diver Accreditation Scheme administered by the Board of the Australian Diver Accreditation Scheme.

***approved diving project plan*** for a diving project means a diving project plan for the project that is approved under regulation 169B by the holder of the OEI licence the project is connected with.

Note: The holder of the OEI licence may withdraw the approval. Regulation 169D requires withdrawal in certain circumstances.

#### **3 Subregulation 5(1) (paragraph (b) of the definition of *competent person*)**

Repeal the paragraph.

#### **4 Subregulation 5(1)**

Insert:

**covers:** an accepted DSMS **covers** a diving project directly involving one or more persons conducting businesses or undertakings if:

- (a) one of those persons gave the DSMS to the regulator for acceptance; and
- (b) each of those persons is committed to complying with the DSMS, and the conditions (if any) on its acceptance, as the sole DSMS relevant to the project.

Note: Only one accepted DSMS can cover a diving project at any time.

**crewed submersible craft** means a craft that is designed to maintain its occupant, or some or all of its occupants, at or near atmospheric pressure while submerged (whether or not it is self-propelled, and whether or not it is supplied with breathing mixture by umbilical), including a craft in the form of a suit.

**directly involved** with a diving project, diving operation, or diving work included in a diving project, that is connected with an OEI licence: without limiting the persons conducting businesses or undertakings who are (apart from this definition) directly involved with the project, operation or work, the holder of the OEI licence is **directly involved** with the project, operation or work.

**diver** means a worker who carries out diving work.

**diving** has the meaning given by regulation 167A.

**diving operation** means one or more dives conducted as part of regulated offshore activities connected with a single OEI licence.

Note: Regulation 167B explains when a diving operation begins and ends.

**diving project** means an activity consisting of one or more diving operations connected with a single OEI licence.

**diving supervisor** means a person appointed under regulation 172A as a diving supervisor to supervise diving included in a diving operation.

**diving work** means work involving diving.

**DSMS** means a diving safety management system (whether revised or not).

## 5 Subregulation 5(1)

Repeal the following definitions:

- (a) definition of **fitness criteria**;
- (b) definition of **general diving work**;
- (c) definition of **high risk diving work**;
- (d) definition of **incidental diving work**;
- (e) definition of **limited diving**;
- (f) definition of **limited scientific diving work**.

## 6 Subregulation 5(1)

Insert:

**OEI licence** means a licence under the *Offshore Electricity Infrastructure Act 2021*.

**OEI licence holder**, in relation to an OEI licence, means the holder, within the meaning of the *Offshore Electricity Infrastructure Act 2021*, of the OEI licence.

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*personnel lifting equipment* includes any of the following:

- (a) an air stage;
- (b) a wet bell;
- (c) a closed bell;
- (d) a guide wire system.

## **7 Regulation 6B**

Repeal the regulation.

## **8 Regulation 11A**

Repeal the regulation, substitute:

### **11A Extraterritoriality**

- (1) These Regulations extend to acts, matters and things in the Commonwealth offshore area.
- (2) Regulations 59, 61, 64, 294 and 295 and Chapter 5 extend to acts, matters and things outside Australia relating to plant or structures that are, or are reasonably expected to be, used as or at a workplace in the Commonwealth offshore area where regulated offshore activities are, or are reasonably expected to be, carried out.
- (3) Subdivisions 1 and 2 of Division 2 of Part 7.1 extend to acts, matters and things outside Australia relating to substances, mixtures, articles and hazardous chemicals that are, or are reasonably expected to be, used at a workplace in the Commonwealth offshore area where regulated offshore activities are, or are reasonably expected to be, carried out.
- (4) Provisions of these Regulations that are not mentioned in subregulation (2) or (3) extend to acts, matters and things outside Australia so far as is necessary for the operation under one of those subregulations of a provision mentioned in that subregulation.
- (5) The subregulations of this regulation do not limit one another.

## **9 Before Division 1 of Part 2.1**

Insert:

### **Division 1A—Consultation**

#### **15A Consultation when preparing or revising a management plan under the *Offshore Electricity Infrastructure Act 2021***

- (1) Preparation of a management plan, so far as it might affect the health or safety of workers, is prescribed as an activity for the purposes of section 49 of the Act.
- (2) Revision of a management plan, so far as any changes made as a result of the revision might affect the health or safety of workers, is prescribed as an activity for the purposes of section 49 of the Act.

Note 1: The *Offshore Electricity Infrastructure Act 2021* provides for OEI licence holders to prepare and revise management plans.

Note 2: This regulation may apply to the preparation or revision of any provision of a management plan that might affect the health or safety of workers, including (but not limited to) provisions included in a management plan for the purposes of section 94 of the *Offshore Electricity Infrastructure Regulations 2022*.

### **15B Consultation with unions where there are no workers to consult**

If:

- (a) Division 2 of Part 5 of the Act requires a person to consult with workers in relation to an activity mentioned in regulation 15A; and
- (b) there are no such workers at the time the consultation is required to be carried out;

the person must, under Division 2 of Part 5 of the Act, consult each union that the person considers will be reasonably likely to represent the industrial interests of workers whose health or safety might be directly affected by the activity.

### **10 After paragraph 21(2)(b)**

Insert:

- ; and (c) any approval (however described) of the course by a corresponding regulator, or by an authority of the Commonwealth that has functions similar to those functions of the regulator that relate to work health and safety.

### **11 After paragraph 25(3)(b)**

Insert:

- ; and (c) any approval (however described) of the training by a corresponding regulator, or by an authority of the Commonwealth that has functions similar to those functions of the regulator that relate to work health and safety.

### **12 Subparagraph 28(b)(i)**

Repeal the subparagraph, substitute:

- (i) that the union is entitled to represent the industrial interests of a worker who works at a workplace (in the Commonwealth offshore area) where there are carried out regulated offshore activities in relation to which the workplace entered is related onshore premises, and who is a member, or eligible to be a member, of that union; and

### **13 Paragraph 30(a)**

Repeal the paragraph, substitute:

- (a) that the union is entitled to represent the industrial interests of a worker who works at a workplace (in the Commonwealth offshore area) where there are carried out regulated offshore activities in relation to which the workplace proposed to be entered is related onshore premises, and who is a member, or eligible to be a member, of that union; and

### **14 Paragraphs 89(2)(b) and (c)**

Repeal the paragraphs.

### **15 Paragraph 142(1)(a)**

Omit “, that is at least 6 metres in height”.

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**16 Subregulation 142(5)**

Repeal the subregulation.

**17 Part 4.8**

Repeal the Part, substitute:

**Part 4.8—Diving work****Division 1—Preliminary****167A Meaning of *diving***

- (1) For the purposes of these Regulations, a person is *diving* if the person:
  - (a) is in a chamber inside which the ambient pressure is equal to or higher than the hydrostatic pressure at a depth of 1 metre in seawater (whether or not the chamber is submerged in water or another liquid); or
  - (b) is submerged in water or another liquid and the person's lungs are subjected to a pressure greater than atmospheric pressure (whether or not the person is wearing a wetsuit or other protective clothing); or
  - (c) is in a crewed submersible craft that is submerged in water or another liquid.
- (2) For the purposes of these Regulations, *diving* also includes diving using a snorkel and diving without the use of any breathing apparatus.
- (3) For the purposes of these Regulations, *diving* does not include:
  - (a) diving using a snorkel for the purpose of conducting an environmental survey; or
  - (b) diving without the use of any breathing apparatus for that purpose.

**167B When a diving operation begins and ends**

- (1) For the purposes of these Regulations, a diving operation begins when the diver, or first diver, who takes part in the operation starts to prepare to dive.
- (2) A diving operation ends when the diver, or last diver, who takes part in the operation leaves the water or the chamber or environment in which the dive took place and has completed any necessary decompression procedures.
- (3) A diving operation includes the time taken for therapeutic recompression if that is necessary.

**Division 2—Diving safety management systems****168A No diving without accepted DSMS**

A person conducting a business or undertaking at a workplace must not direct or allow diving work included in a diving project to be carried out at the workplace unless there is an accepted DSMS that covers the project.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier D monetary penalty.

### 168B Contents of DSMS

- (1) A DSMS must meet the minimum standards set out in guidelines made by the regulator for this subregulation, as in force from time to time.
- (2) A DSMS must provide for:
  - (a) all activities connected with a diving project; and
  - (b) the preparation of a diving project plan, in accordance with Division 3, for a diving project (including consultation with workers in the preparation of the plan) and the revision of the plan as necessary; and
  - (c) the continual and systematic identification of hazards related to a diving project; and
  - (d) the continual and systematic assessment of:
    - (i) the likelihood of the occurrence, during normal or emergency situations, of injury or damage associated with those hazards; and
    - (ii) the likely nature of any injury or damage; and
  - (e) the elimination of risks to workers involved with a diving project and associated work including:
    - (i) risks arising during evacuation, escape and rescue in case of emergency; and
    - (ii) risks to workers arising from plant for diving; or the reduction of those risks to as low as reasonably practicable; and
  - (f) the inspection and maintenance of, and testing programs for, equipment and hardware that is integral to the control of those risks; and
  - (g) communications between persons involved with a diving project; and
  - (h) the performance standards that apply to the DSMS; and
  - (i) a program of continuous improvement.
- (3) A DSMS must:
  - (a) specify any standard or code of practice that is to be used in a diving project; and
  - (b) require the diving to be carried out in accordance with those standards or codes.
- (4) A DSMS must contain:
  - (a) any information that is reasonably necessary to demonstrate that the DSMS complies with these Regulations; and
  - (b) a system for the management of change.

### 168C Acceptance of new DSMS

- (1) A person conducting a business or undertaking may give a DSMS to the regulator for acceptance.
- (2) Within 60 days after receiving the DSMS, the regulator must accept or reject the DSMS. If the regulator accepts the DSMS, the regulator may place conditions on the acceptance.

Note 1: Regulation 168E affects acceptance or rejection by the regulator.

Note 2: A decision to reject a DSMS or place conditions on acceptance of a DSMS is a reviewable decision (see regulation 676).

- (3) As soon as practical after making a decision under subregulation (2), the regulator must notify the person of its decision.

### **168D Acceptance of revised DSMS**

- (1) If a person conducting a business or undertaking who gave the regulator a DSMS that the regulator accepted revises the DSMS, the person may give the revised DSMS to the regulator for acceptance.

Note: Regulations 168H and 168J require the person to revise the DSMS and give the revised DSMS to the regulator in certain circumstances.

- (2) The regulator must accept or reject the revised DSMS within:
- (a) 28 days after receiving it; or
  - (b) another period agreed between the regulator and the person.

If the regulator accepts the revised DSMS, the regulator may place conditions on the acceptance.

Note 1: Regulation 168E affects acceptance or rejection by the regulator.

Note 2: A decision to reject a DSMS or place conditions on acceptance of a DSMS is a reviewable decision (see regulation 676).

- (3) As soon as practical after making a decision under subregulation (2), the regulator must notify the person of its decision.

### **168E Grounds for rejecting DSMS**

The regulator must reject a DSMS if the regulator is not satisfied that:

- (a) the DSMS adequately complies with regulation 168B; or
- (b) consultation required by regulation 170A was carried out in developing or revising the DSMS.

### **168F Notice of reasons**

- (1) If the regulator decides to reject a DSMS, the regulator must set out, in writing, with the notice mentioned in subregulation 168C(3) or 168D(3), the reasons for rejecting the DSMS.
- (2) If the regulator decides to impose conditions on acceptance of a DSMS, the regulator must set out, in writing, with the notice mentioned in subregulation 168C(3) or 168D(3), the conditions and the reasons for imposing them.

### **168G Register of DSMSs**

- (1) The regulator must keep a register of each DSMS it receives, in a form that allows public access.
- (2) The register must record as many of the following details as apply to the DSMS:
- (a) the name of the person conducting a business or undertaking who gave the DSMS to the regulator;
  - (b) the date of acceptance;
  - (c) any conditions on acceptance;
  - (d) the date of rejection;
  - (e) the date that acceptance ended.

### 168H Revision of DSMS because of developments or changes

A person conducting a business or undertaking who gave the regulator a DSMS that the regulator accepted must revise the DSMS and give the revised DSMS to the regulator for acceptance:

- (a) if developments in scientific or technical knowledge, or in the assessment of hazards, relevant to diving projects make it appropriate to do so; or
- (b) if, as a result of changes to the guidelines mentioned in subregulation 168B(1), the DSMS does not meet the minimum standards set out in the changed guidelines; or
- (c) if a significant change is proposed to a matter that regulation 168B requires the DSMS to address.

Note: Under regulation 168K, the regulator may withdraw the acceptance of the DSMS if the person does not give the regulator a revised DSMS in circumstances required by this regulation.

### 168J Notice to revise DSMS

- (1) The regulator may give, to a person conducting a business or undertaking who gave the regulator a DSMS that the regulator accepted, notice (the **revision notice**) to revise the DSMS and give the revised DSMS to the regulator for acceptance.
- (2) The revision notice must be in writing and must set out:
  - (a) the matters to be revised; and
  - (b) the time within which the revised DSMS must be given to the regulator for acceptance; and
  - (c) the reasons why the revision is necessary.
- (3) The person may make a submission in writing to the regulator, within 21 days after receiving the revision notice or any longer period that the regulator allows in writing, setting out the person's reasons for any of the following:
  - (a) why the revision is not necessary;
  - (b) why the revision should be in different terms from those proposed;
  - (c) why the time within which the revised DSMS must be given to the regulator for acceptance should be extended.
- (4) If a person makes a submission under subregulation (3), the regulator must, within 28 days after receiving the submission:
  - (a) decide whether the regulator accepts the reasons in the submission; and
  - (b) give the person notice in writing affirming, varying or withdrawing the revision notice; and
  - (c) if the regulator decides not to accept the reasons or any part of them—set out in the notice under paragraph (b) the grounds for not accepting them.
- (5) The person must revise the DSMS, and give the regulator the revised DSMS for acceptance, in accordance with the revision notice as originally given or as varied under subregulation (4), unless the revision notice is withdrawn.

Note: Under regulation 168K, the regulator must withdraw the acceptance of the DSMS if the person does not give the revised DSMS to the regulator.



**168K End of acceptance of DSMS**

- (1) The acceptance of a DSMS by the regulator ends:
  - (a) 5 years after the acceptance; or
  - (b) if the regulator withdraws the acceptance under this regulation; or
  - (c) if the regulator accepts a revised version of the DSMS under regulation 168D.
- (2) The regulator may withdraw acceptance of a DSMS if the regulator is satisfied that a person has failed to give the regulator a revised version of the DSMS as required by regulation 168H.
 

Note: A decision to withdraw acceptance of a DSMS under this subregulation is a reviewable decision (see regulation 676).
- (3) The regulator must withdraw acceptance of a DSMS if a person fails to revise the DSMS and give the revised DSMS to the regulator as required by subregulation 168J(5).

**Division 3—Diving project plans****169A No diving without diving plan approved by OEI licence holder**

A person conducting a business or undertaking who is directly involved with a diving project must not direct or allow diving work included in the project to be carried out unless there is an approved diving project plan for the project.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier D monetary penalty.

**169B Approval of diving project plan by OEI licence holder**

- (1) The holder of an OEI licence may approve a diving project plan (as originally made or as revised) for a diving project connected with the licence, if the holder is satisfied that:
  - (a) the plan meets the requirements in regulation 169C; and
  - (b) consultation required by regulation 170A was carried out in developing or revising the plan.
- (2) The OEI licence holder must ensure that there is not more than one approved diving project plan for the diving project at any time.
- (3) On request by the regulator, the OEI licence holder must give the regulator a copy of a diving project plan approved by the OEI licence holder.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier H monetary penalty.

**169C Contents of diving project plan**

- (1) A diving project plan for a diving project must set out in detail the following matters:

- (a) a description of the work to be done;
  - (b) a description of:
    - (i) the plant for diving to be used in the project; and
    - (ii) the procedures to be followed in operating the plant to minimise the risks to the health and safety of workers;
  - (c) a list of the legislation (including these Regulations) that is reasonably likely to apply to the project;
  - (d) standards and codes of practice that will be applied in carrying out the project;
  - (e) a hazard identification;
  - (f) a risk assessment;
  - (g) a safety management plan;
  - (h) job hazard analyses for the diving operations included in the project;
  - (i) an emergency response plan;
  - (j) the provisions of:
    - (i) the accepted DSMS that covers the project; and
    - (ii) the management plan (for the OEI licence connected with the project);that are relevant to the project, particularly provisions of the DSMS and the management plan for simultaneous operations and emergency response;
  - (k) consultation with divers and other workers working on the project.
- (2) The diving project plan must describe each diving operation included in the diving project.
- (3) The diving project plan must not specify as a diving operation a task that is too complex, or too big, to be supervised safely by one diving supervisor.
- (4) The diving project plan must provide for adequate communications between a person who is directly involved with the diving project and each relevant:
- (a) person conducting a business or undertaking; or
  - (b) worker; or
  - (c) vessel; or
  - (d) aircraft; or
  - (e) onshore installation; or
  - (f) offshore installation.

### **169D Revision, or withdrawal of approval, of diving project plan**

- (1) An approved diving project plan for a diving project must be revised if:
- (a) a modification, or proposed modification, of the diving project significantly increases the overall risk, or a specific risk, of a diving operation included in the project; or
  - (b) the plan no longer meets the requirements of regulation 169C.

Note: An approved diving project plan for a diving project may cease to meet the requirements of paragraph 169C(1)(j) because of a change in the accepted DSMS that covers the project or in the management plan for the OEI licence connected with the project.

- (2) The OEI licence holder that has approved a diving project plan for a diving project must withdraw the approval as soon as reasonably practicable after

becoming aware that there has been a failure to revise the plan as required by subregulation (1).

**Note:** Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

**Penalty:** The tier D monetary penalty.

## **Division 4—Involvement of divers and other workers**

### **170A Involvement of divers and other workers in DSMS and diving project plan**

- (1) In developing or revising a DSMS, a person conducting a business or undertaking must ensure that there is effective consultation with, and participation of, divers and other workers of kinds the person reasonably considers are likely to work on a diving project for which the DSMS may be appropriate.
- (2) In developing or revising a diving project plan for a diving project, a person conducting a business or undertaking must ensure that there is effective consultation with, and participation of, divers and other workers the person reasonably considers are likely to work on the project.
- (3) When giving a DSMS to the regulator for acceptance, a person conducting a business or undertaking must set out in writing details of the consultation that has taken place, including:
  - (a) submissions or comments made during the consultation; and
  - (b) any changes that have been made to the DSMS as a result of the consultation.

## **Division 5—Safety responsibilities**

### **171A General safety responsibilities relating to diving work**

- (1) A person conducting a business or undertaking at a workplace must manage risks to health and safety associated with diving work, in accordance with Part 3.1.

**Note:** WHS Act—section 19 (see regulation 9).

- (2) A person conducting a business or undertaking who is directly involved with diving work included in a diving project must ensure that the work is carried out in a way that complies with:
  - (a) the accepted DSMS that covers the project; and
  - (b) the conditions (if any) on acceptance of the accepted DSMS; and
  - (c) the approved diving project plan for the project.

**Note:** Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

**Penalty:** The tier D monetary penalty.

### **171B Safety in the diving area**

- (1) At each place of diving, before the beginning of a diving operation included in a diving project, a person conducting a business or undertaking who is directly

involved with the operation must ensure that all divers and other workers who will be engaged in the diving operation are aware, and that there is a copy available to them, of the following:

- (a) the instrument by which the diving supervisor for the operation was appointed under regulation 172A;
- (b) the accepted DSMS that covers the diving project;
- (c) the conditions (if any) on the acceptance of the DSMS;
- (d) the approved diving project plan for the diving project.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier H monetary penalty.

- (2) At each place of diving, before a diving operation begins, a person conducting a business or undertaking who is directly involved with the operation must ensure that all divers and other workers who will be engaged in the diving operation are aware of the following for each dive included in the operation:
  - (a) the tasks and duties of each person involved with the dive;
  - (b) the diving equipment, breathing gases and procedures to be used in the dive;
  - (c) the dive time, bottom time and decompression profile for the dive.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier H monetary penalty.

- (3) A diver or other worker engaged in a diving operation must comply with:
  - (a) a direction under subregulation 172B(3) given to the diver or other worker by a diving supervisor for the diving operation; and
  - (b) an instruction under subregulation 172B(5) told to the diver or other worker by a diving supervisor for the diving operation.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier G monetary penalty.

## 171C Diving depths

- (1) A person conducting a business or undertaking who is directly involved with a surface-oriented diving operation involving the use of air or mixed gas as a breathing medium must not direct or allow the operation to be carried out at a depth of more than 50 metres.

Note 1: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Note 2: Section 10.3 of the *Criminal Code* provides a defence of sudden or extraordinary emergency.

Penalty: The tier D monetary penalty.

- (2) A person conducting a business or undertaking who is directly involved with a diving operation that is carried out at a depth of more than 50 metres must ensure that the diving operation involves the use of:

- (a) a closed diving bell and a suitable mixed gas breathing medium; or
- (b) a crewed submersible craft.

Note 1: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Note 2: Section 10.3 of the *Criminal Code* provides a defence of sudden or extraordinary emergency.

Penalty: The tier D monetary penalty.

## Division 6—Diving supervisors

### 172A Appointment of diving supervisors

- (1) A person conducting a business or undertaking who is directly involved with a diving operation must ensure that one or more diving supervisors are appointed, in writing, to supervise all diving included in the operation.

Note 1: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Note 2: Subregulation 169C(3) limits the scope of a diving operation that can be supervised by one diving supervisor.

Penalty: The tier G monetary penalty.

- (2) A person conducting a business or undertaking who is directly involved with a diving operation must ensure that a person is not appointed as a diving supervisor for a diving operation if the person is not both:

- (a) qualified as a supervisor under ADAS; and
- (b) a competent person to supervise the operation.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier G monetary penalty.

### 172B Duties of diving supervisors

- (1) The duties of a diving supervisor for a diving operation are:

- (a) to ensure that the operation is carried out:
  - (i) as far as reasonably practicable without risk to the health or safety of workers who are taking part in the operation or other persons who are or may be affected by it; and
  - (ii) in accordance with the law; and
  - (iii) in accordance with the accepted DSMS that covers the diving project that includes the operation; and
  - (iv) in accordance with the conditions (if any) on acceptance of the DSMS; and
  - (v) in accordance with the approved diving project plan for that project; and

- (b) to ensure that each diver returns from each dive included in the operation; and
- (c) to countersign entries about the operation in divers' log books; and
- (d) to report, as soon as reasonably practicable, the occurrence of any of the following in connection with the operation to each person conducting a business or undertaking who is directly involved with the operation:
  - (i) the death of, or serious personal injury to, a person;
  - (ii) the incapacitation of a person for work for at least 3 days;
  - (iii) an event that could reasonably have led to a consequence described in subparagraph (i) or (ii);
  - (iv) a decompression illness;
  - (v) a pulmonary barotrauma;
  - (vi) a case of omitted decompression;
  - (vii) an occurrence for which a standby diver is deployed for an emergency, except for the purposes of training, exercises or drills;
  - (viii) a failure of life support equipment or personnel lifting equipment.

- (2) A diving supervisor must not fail to discharge a duty under subregulation (1).

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier G monetary penalty.

- (3) When supervising a diving operation, a diving supervisor may give such reasonable directions to a worker taking part in the operation as are necessary to enable the diving supervisor to comply with subparagraph (1)(a)(i).

- (4) A diving supervisor must not dive while on duty as diving supervisor.

Note 1: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Note 2: Section 10.3 of the *Criminal Code* provides a defence of sudden or extraordinary emergency.

Penalty: The tier G monetary penalty.

- (5) A diving supervisor for a diving operation included in a diving project must tell each worker who takes part in the operation any instruction that is in the approved diving project plan for the diving project and applies to the worker.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier G monetary penalty.

## Division 7—Start-up notices

### 173A Start-up notice

- (1) The holder of an OEI licence must give the regulator a start-up notice for a diving project connected with the licence:
- (a) at least 28 days before the day when diving is to begin; or
  - (b) on another day agreed between the regulator and the OEI licence holder.

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Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier D monetary penalty.

- (2) A person conducting a business or undertaking must not direct or allow diving work included in a diving project to be carried out at a workplace unless a start-up notice for the project has been given to the regulator.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier D monetary penalty.

- (3) In this regulation:

**start-up notice** for a diving project connected with an OEI licence means a written notice, signed by or for the OEI licence holder, dated and containing the following information:

- (a) the name, address and telephone number of the OEI licence holder;
- (b) the name, address and telephone number of a person who is authorised to represent the OEI licence holder and who can be contacted by the regulator at any time during the project;
- (c) the date when diving is expected to begin;
- (d) the expected duration of the project;
- (e) the location of the project;
- (f) the depth to which divers will dive;
- (g) the purpose of the diving project;
- (h) the estimated number of workers to be engaged in the project;
- (i) the breathing mixture to be used;
- (j) details that allow the regulator to identify the approved diving project plan for the project.

## **Division 8—Diving operations**

### **174A Divers in diving operations**

- (1) A person conducting a business or undertaking who is directly involved with a diving operation, or a diving supervisor for a diving operation, must not direct or allow a worker to dive in the diving operation if the worker is not competent to carry out safely any activity that is reasonably likely to be necessary while the worker is taking part in the operation.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier D monetary penalty.

- (2) A person conducting a business or undertaking who is directly involved with a diving operation, or a diving supervisor for a diving operation, must not direct or allow a worker to dive in the diving operation if the worker does not have a current diving qualification under ADAS to carry out any activity that is reasonably likely to be necessary while the worker is taking part in the operation.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier D monetary penalty.

- (3) A person conducting a business or undertaking who is directly involved with a diving operation, or a diving supervisor for a diving operation, must not direct or allow a worker to dive in the diving operation unless:
- (a) the worker has a valid medical certificate; and
  - (b) the diving work to be done by the worker is consistent with the conditions (if any) to which the certificate is subject.

Note 1: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Note 2: For when a medical certificate is valid, see regulation 174B.

Penalty: The tier D monetary penalty.

- (4) Subregulations (2) and (3) do not apply if the worker:
- (a) is diving in a crewed submersible craft; or
  - (b) is diving to provide emergency medical care to an injured person in a chamber.

### 174B Medical certificates

- (1) A diver's medical certificate is valid if it satisfies subregulation (2) or (3).
- (2) A diver's medical certificate satisfies this subregulation if:
- (a) it certifies that, at the time it was given, the diver was fit to dive in accordance with the fitness requirements in AS/NZS 2299 as in force at the time the medical practitioner who gave the certificate examined the diver; and
  - (b) it is not more than 1 year old; and
  - (c) the medical practitioner who gave it:
    - (i) is accredited by the South Pacific Underwater Medicine Society, the Health and Safety Executive of the United Kingdom or the Undersea and Hyperbaric Medical Society; or
    - (ii) has completed an appropriate course of training conducted by the Royal Australian Navy or the Royal Adelaide Hospital; or
    - (iii) is a competent person to conduct medical examinations for occupational diving; and
  - (d) before giving it, the medical practitioner examined the diver in accordance with the Schedule of Minimum Examination Requirements in AS/NZS 2299 as in force at the time of the examination; and
  - (e) immediately after the examination, the medical practitioner entered the certificate in the diver's log book.
- (3) A diver's medical certificate satisfies this subregulation if it is valid for the United Kingdom under any law of the United Kingdom (as in force from time to time) relating to the medical fitness of persons employed as divers.

Note: At the time this subregulation commenced, the relevant law for the United Kingdom was regulation 15 of the Diving at Work Regulations 1997.



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## Division 9—Records

### 175A Keeping DSMS and diving project plan

- (1) This regulation applies if a person:
  - (a) is a person conducting a business or undertaking who gives the regulator a DSMS that the regulator accepts; or
  - (b) is the holder of an OEI licence who approves a diving project plan for a diving project.
- (2) The person must, if the person gave the DSMS, keep it until 7 years have passed since the end of the acceptance of the DSMS.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier I monetary penalty.

- (3) The person must, if the person approved the diving project plan for a diving project, keep the plan until 7 years have passed since the end of the project.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier I monetary penalty.

- (4) The person must ensure that, for the period for which the person must keep the DSMS or plan under this regulation, a copy can be made available, following a request, to any worker engaged to carry out the work to which the DSMS or plan relates.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier H monetary penalty.

- (5) The person must ensure that, for the period for which the person must keep the DSMS or plan under this regulation, a copy is available for inspection under the Act.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier I monetary penalty.

### 175B Diving operations record

- (1) A diving supervisor for a diving operation must ensure that a diving operations record for the operation is maintained in the form required by subregulations (2) and (3).

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier D monetary penalty.

- (2) A diving operations record:
- (a) must be kept in a hard-covered form bound in such a way that its pages cannot easily be removed; or
  - (b) if it is in a form that has multiple copies of each page, must be bound so that at least one copy of each page cannot easily be removed.
- (3) The pages of a diving operations record must be serially numbered.
- (4) A diving supervisor for a diving operation must ensure that an entry is made in the diving operations record for each day when diving for the operation takes place, with the following information about the diving operation on that day:
- (a) the date to which the entry relates;
  - (b) the name and address of each person conducting a business or undertaking who appointed any diving supervisor for the operation;
  - (c) the name of each diving supervisor who supervised the operation;
  - (d) the location of the diving operation (including, if the diving was done from a vessel or installation, its name);
  - (e) the name of each worker who took part in the operation (whether as a diver or as a member of a dive team);
  - (f) the purpose of the diving operation;
  - (g) for each diver—the breathing apparatus and breathing mixture used;
  - (h) for each diver—the times at which the diver left the surface, reached the bottom, left the bottom and arrived at the surface again, and bottom time;
  - (i) for each diver—the maximum depth reached;
  - (j) for each diver—verification that the diver returned from each of the diver's dives;
  - (k) the decompression schedule followed including, for each diver, details of the depths and the duration at each depth during decompression;
  - (l) details of any emergency or incident of special note that happened during the operation;
  - (m) details of any decompression illness and any treatment given;
  - (n) details of any significant defect or significant failure of plant for diving used in the operation;
  - (o) details of any environmental factors relevant to the operation;
  - (p) anything else that is likely to affect the health or safety of anybody who took part in the operation.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier H monetary penalty.

- (5) A diving supervisor for a diving operation must sign in the diving operations record for the operation:
- (a) either:
    - (i) if the record is in a form that has multiple copies of each page—the original of each page of each entry; or
    - (ii) in any other case—each page of each entry; or
  - (b) if there are 2 or more diving supervisors for the operation—those parts of the entry that relate to diving work that the diving supervisor supervised; and must print the diving supervisor's name below the signature.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier H monetary penalty.

- (6) As soon as practicable after the end of a diving operation connected with an OEI licence, each diving supervisor for the operation must ensure that the diving operations record maintained under this regulation is given to the OEI licence holder.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier I monetary penalty.

- (7) After receiving a diving operations record for a diving operation, the OEI licence holder must keep the record for 7 years.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier I monetary penalty.

### **175C Divers' log books**

- (1) A diver must:

- (a) have a log book in the form required by subregulation (2); and
- (b) for each time the diver dives:
  - (i) make an entry in the log book, in ink, as required by subregulation (3); and
  - (ii) sign the entry; and
  - (iii) have a diving supervisor for the diving operation countersign the entry; and
- (c) keep the log book for at least 7 years after the last entry in it.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier I monetary penalty.

- (2) The log book must:

- (a) have hard covers; and
- (b) be bound so that pages cannot easily be removed; and
- (c) have its pages serially numbered; and
- (d) show the diver's name; and
- (e) have a clear photograph of the diver's full face; and
- (f) have a specimen of the diver's signature.

- (3) An entry in the log book must contain the following information:

- (a) the date to which the entry relates;
- (b) the location of the dive (and, if the dive was from a vessel or installation, the name of the vessel or installation);
- (c) the maximum depth reached;

- (d) the times at which the diver left the surface, reached the bottom, left the bottom and arrived at the surface again, and bottom time;
- (e) the breathing apparatus and breathing mixture used;
- (f) the decompression schedule followed;
- (g) the work done and the plant for diving used;
- (h) any decompression illness, barotrauma, discomfort or injury and details of any treatment given;
- (i) details of any emergency or incident;
- (j) anything else relevant to the diver's health or safety.

## **18 Before regulation 228**

Insert:

### **227A Plant to which this Division applies**

This Division applies to plant that is:

- (a) a crane; or
- (b) a lift; or
- (c) a hoist; or
- (d) a work positioning system; or
- (e) a temporary work platform; or
- (f) a concrete placing boom.

## **19 Subregulation 237(1)**

Repeal the subregulation, substitute:

- (1) This regulation applies to plant that is:
  - (a) a crane; or
  - (b) a lift; or
  - (c) a hoist; or
  - (d) a work positioning system; or
  - (e) a temporary work platform; or
  - (f) a concrete placing boom.

## **20 At the end of Part 6.1**

Add:

### **293A Licence holder must identify principal contractor**

- (1) This regulation applies to an OEI licence holder if there are one or more construction projects in the Commonwealth offshore area for the purposes of the offshore electricity infrastructure project being carried out under the OEI licence.
- (2) For each such construction project, the OEI licence holder must publish the following on the OEI licence holder's website:
  - (a) the principal contractor's name and telephone contact numbers (including an after hours telephone number);
  - (b) a description of the construction project;
  - (c) details of the location or locations of the construction project.

Note: Section 12F of the Act provides that strict liability applies to each physical element of each offence under the Act, unless otherwise stated. The reference in section 12F of the Act includes these Regulations.

Penalty: The tier G monetary penalty.

**21 Regulation 308**

Repeal the regulation.

**22 Paragraph 497(2)(c)**

Repeal the paragraph.

**23 Regulation 530 (before the note)**

Insert:

This Chapter does not apply to:

- (a) a facility that is an aircraft; or
- (b) a facility that is a vessel and is not offshore renewable energy infrastructure (within the meaning of the *Offshore Electricity Infrastructure Act 2021*) or offshore electricity transmission infrastructure (within the meaning of that Act).

**24 Subregulation 676(1) (subheading before table item 8, column headed “Regulation under which reviewable decision is made”)**

Omit “Accreditation of assessors”, substitute “DSMS”.

**25 Subregulation 676(1) (table items 8 to 16)**

Repeal the items, substitute:

8	168C—Rejection of DSMS	Person conducting a business or undertaking who gave the DSMS to the regulator
9	168C—Placing conditions on acceptance of DSMS	Person conducting a business or undertaking who gave the DSMS to the regulator
10	168D—Rejection of revised DSMS	Person conducting a business or undertaking who gave the revised DSMS to the regulator
11	168D—Placing conditions on acceptance of revised DSMS	Person conducting a business or undertaking who gave the revised DSMS to the regulator
12	168K—Withdrawal of acceptance of a DSMS for failure to give the regulator a revised version of the DSMS as required by regulation 168H	Person conducting a business or undertaking who gave the DSMS to the regulator

**26 After regulation 699**

Insert:

**699A Incident notification—prescribed events that are dangerous incidents**

The following events are prescribed for the purposes of paragraph 37(1) of the Act:

- (a) an event that incapacitates a worker or other person for work for at least 3 days;
- (b) any of the following events relating to diving work:
  - (i) a decompression illness;
  - (ii) a pulmonary barotrauma;
  - (iii) a case of omitted decompression;
  - (iv) an event for which a standby diver is deployed for an emergency, except for the purposes of training, exercises or drills;
  - (v) a failure of life support equipment or personnel lifting equipment;
- (c) an event that a reasonable person would consider needs immediate investigation for its effects on work health and safety.

## 27 Regulations 700 and 702

Repeal the regulations.

## 28 At the end of Part 11.3

Add:

### 703 Approved codes of practice

For the purposes of subsection 274(1) of the Act, all codes of practice that are, from time to time, approved under section 274 of the Act (disregarding the modifications made by the *Offshore Electricity Infrastructure Act 2021* and regulations made under that Act) are prescribed.

Note: See section 240 of the *Offshore Electricity Infrastructure Act 2021* for a modification of section 274 of the Act.

## 29 Chapter 12

Repeal the Chapter, substitute:

# Chapter 12—Transitional provisions

## Part 12.1—Transitional arrangements for certain duties

### 719 Commencement day

In this Part:

*commencement day* means the day that item 1 of Schedule 2 to the *Offshore Electricity Infrastructure Amendment Regulations 2024* commences.

*registration duty day* means the day 4 years after the commencement day.

### 720 Transitional provision—additional duties relating to registered plant and plant designs

A duty in Part 5.2 applies on and after the registration duty day.

**721 Transitional provision—duty to register plant designs and items of plant**

- (1) A duty to register a design under Division 1 of Part 5.3 applies on and after the registration duty day (including in relation to a design that was completed at any time before the registration duty day).
- (2) A duty to register an item of plant under Division 2 of Part 5.3 applies on and after the registration duty day.

**722 Transitional provision—registration of plant designs and items of plant**

Divisions 3, 4, 5 and 6 of Part 5.3 apply on and after the day that is 3 years after the commencement day.

**30 Clause 1 of Schedule 2 (table item 1.1, column headed “Fee”)**

Omit “\$5,500”, substitute “\$5,500 (capped)”.

**31 Clause 1 of Schedule 2 (table item 1.1, column headed “When fee is to be paid”)**

Omit “On application for approval”, substitute “On invoice”.

**32 Clause 1 of Schedule 2 (table item 2.1, column headed “Fee”)**

Omit “\$550”, substitute “\$550 (capped)”.

**33 Clause 1 of Schedule 2 (table item 2.1, column headed “When fee is to be paid”)**

Omit “On application for approval”, substitute “On invoice”.

**34 Clause 1 of Schedule 2 (table item 2.1A, column headed “Fee”)**

Omit “\$65”, substitute “\$200 (fixed)”.

**35 Clause 1 of Schedule 2 (table item 2.1B, column headed “Fee”)**

Omit “\$30”, substitute “\$50 (fixed)”.

**36 Clause 1 of Schedule 2 (table item 2.1C, column headed “Fee”)**

Omit “\$30”, substitute “\$100 (fixed)”.

**37 Clause 1 of Schedule 2 (table items 2.2 to 2.4)**

Repeal the items, substitute:

2.2	Regulation 168C	Giving a DSMS to the regulator for acceptance	\$30,000 (capped)	On invoice
2.3	Regulation 168D	Giving a revised DSMS to the regulator for acceptance	\$15,000 (capped)	On invoice

**38 Clause 1 of Schedule 2 (table item 2.5, column headed “Fee”)**

Omit “\$30”, substitute “\$100 (fixed)”.

**39 Clause 1 of Schedule 2 (table item 2.6, column headed “Fee”)**

Omit “no fee”, substitute “\$5,500 (capped)”.

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**40 Clause 1 of Schedule 2 (table item 2.6, column headed “When fee is to be paid”)**

Omit “On application for licence”, substitute “On invoice”.

**41 Clause 1 of Schedule 2 (table item 2.7, column headed “Fee”)**

Omit “no fee”, substitute “\$50 (fixed)”.

**42 Clause 1 of Schedule 2 (table item 2.8, column headed “Fee”)**

Omit “no fee”, substitute “\$50 (fixed)”.

**43 Clause 1 of Schedule 2 (at the end of the table)**

Add:

2.9	Regulation 578	Application for major hazard facility licence	\$55,000 (capped)	On invoice
2.10	Regulation 596	Application for renewal of major hazard facility licence	\$55,000 (capped)	On invoice

**44 At the end of Schedule 2**

Add:

**2 Capped fees**

- (1) This clause applies in relation to a fee described as “(capped)” in an item of Table 2.1.

Note: This clause does not apply in relation to a fee described as “(fixed)” in an item of Table 2.1. The full amount of a fixed fee must be paid at the time specified in the table.

- (2) The amount of the fee is the lesser of:
- (a) the amount specified in the item; and
  - (b) the total amount of the expenses incurred by the regulator in performing or exercising the function or power, or dealing with the application, mentioned in the item.
- (3) The fee is:
- (a) due when the regulator issues an invoice for the fee to the person who requested the performance or exercise of the function or power, or made the application; and
  - (b) payable by that person; and
  - (c) payable in accordance with the requirements of the invoice.
- (4) Subclause (3) has effect despite any other provision of this instrument that requires the fee to be paid in a particular way.
- (5) Where an amount of the fee is owed by a person, the regulator may decline to perform the function or exercise the power to which the fee relates until the amount is paid.

**45 Schedule 5**

Repeal the Schedule.