

REPLACEMENT EXPLANATORY STATEMENT

Issued by the authority of the Minister for Resources

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023

Purpose and Operation

The purpose of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023* (the Environment Regulations) is to remake the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the 2009 Environment Regulations) in substantially the same form, with minor amendments to provide consistency with current drafting practices, simplify language and restructure provisions for ease of navigation. The 2009 Environment Regulations are due to sunset on 1 April 2024.

The Department of Industry, Science and Resources (the department), in consultation with the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), reviewed the effectiveness and efficiency of the operation of the 2009 Environment Regulations. The department found that the 2009 Environment Regulations are still required and fit for purpose, and that they should be remade without substantive change.

Details of the Environment Regulations are set out in Attachment A.

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

The provisions of the 2009 Environment Regulations have been renumbered in the Environment Regulations. A table setting out the equivalent provision for each provision of the 2009 Environment Regulations is at Attachment B.

Background

The Environment Regulations provide for the regulation of environmental management of petroleum and greenhouse gas activities in offshore areas. The Environment Regulations ensure activities are carried out in a manner that is consistent with ecologically sustainable development and by which the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable and an acceptable level.

Under the Environment Regulations, persons who want to conduct a petroleum or greenhouse gas activity are required to prepare and implement an environment plan for the activity. The environment plan sets out the risks and impacts of the activity and the titleholder's proposed

measures to reduce the risks and impacts to as low as reasonably practicable and an acceptable level. The regulator, NOPSEMA, is required to assess the environment plan and decide whether to accept it. An accepted environment plan is required to be in place prior to commencement and for the duration of the activity.

The 2009 Environment Regulations are central to the assessment and authorisation process endorsed by the then Minister for the Environment in February 2014 for the purpose of streamlining offshore environmental approvals. This arrangement streamlines approvals given under the 2009 Environment Regulations with the necessary approval required under the *Environment Protection and Biodiversity Conservation Act 1999*, in essence creating a single environmental regulator for offshore petroleum activities. The arrangement would continue under the Environment Regulations.

The Environment Regulations commence six months after the instrument is registered on the Federal Register of Legislation. The delayed commencement provides time for NOPSEMA and the offshore petroleum and greenhouse gas storage industries to update processes and guidance material in line with the Environment Regulations, prior to commencement of the Environment Regulations.

The 2009 Environment Regulations are repealed by the *Offshore Petroleum and Greenhouse Gas Storage Legislation (Repeal and Consequential Amendments) Regulations 2023*.

Authority

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

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

Subsection 782(1) provides that the regulations may make provision for securing, regulating, controlling, or restricting specific matters. This includes petroleum exploration and recovery, and greenhouse gas exploration, injection, and storage, and the carrying on of operations and works for those purposes.

The Environment Regulations provide for the regulation of environmental management of petroleum and greenhouse gas activities in offshore areas.

Consultation

In July-August 2018, the department released a consultation paper on the proposal to remake the 2009 Environment Regulations without substantive change. One submission was received that largely dealt with matters unrelated to the remake of the 2009 Environment Regulations.

The department consulted with the then Department of Agriculture, Water and the Environment (DAWE) on a draft of the Environment Regulations in June 2020 regarding consistency with streamlined offshore environmental approvals arrangements. DAWE advised that the Environment Regulations do not significantly increase the risk that actions will not be able to be undertaken in accordance with the streamlined environmental approval.

An exposure draft of the Environment Regulations was released for public consultation in December 2021, with comments sought by March 2022. One submission was received regarding the revised drafting of the definition of “activity” in the Environment Regulations, and the department responded clarifying that it consolidated two provisions of the 2009 Environment Regulations, rather than reflecting a change in policy.

Regulatory Impact

The Office of Impact Analysis (OIA) has confirmed that a Regulatory Impact Statement is not required for the Environment Regulations. The OIA reference is ID 23967.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at [Attachment C](#).

Details of the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023*

Part 1—Preliminary

Section 1 – Name

This section provides that the name of this instrument is the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023* (the Environment Regulations).

Section 2 – Commencement

This section provides that the Environment Regulations commence six months after the instrument is registered on the Federal Register of Legislation. The delayed commencement provides time for NOPSEMA and the offshore petroleum and greenhouse gas storage industries to update processes and guidance material in line with the Environment Regulations, including updated language and section numbers, prior to commencement.

Section 3 – Authority

This section provides that the Environment Regulations are made under the OPGGS Act.

Section 4 – Object

This section sets out the object of the Environment Regulations.

An object of the Environment Regulations is that any petroleum or greenhouse gas activity carried out in an offshore area is carried out in a manner that is consistent with the principles of ecologically sustainable development. In the context of streamlined environmental assessment and authorisation arrangements under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act), the ‘principles of ecologically sustainable development’ are defined by reference to section 3A of the EPBC Act.

An object of the Environment Regulations is also that any petroleum or greenhouse gas activity carried out in an offshore area is carried out in a manner by which the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable and will be of an acceptable level. These concepts are fundamental to the Environment Regulations and at the core of objective-based regulation of the environmental impacts and risks of offshore petroleum and greenhouse gas activities. Acceptance of an environment plan for an activity by NOPSEMA relies on a demonstration in the plan that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable, and be of an acceptable level. It is therefore appropriate that these concepts are included up-front as the object of the Environment Regulations.

Section 5 – Definitions

This section provides for the definitions of terms used in the Environment Regulations. For further context, additional explanation is provided on the following definitions.

“Activity”

The definition of **activity** includes, where the context permits, a reference to a proposed activity or any stage of an activity. The words ‘where the context permits’ are key and clarify that it is not intended that all references to ‘activity’ are to be read in that way. For example, where an environment plan that is in force provides only for a stage of an activity, references in section 18 of the Environment Regulations to undertaking an activity in a way that is contrary to an environment plan can be read as undertaking the stage of an activity in a way that is contrary to the environment plan.

The previous *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the 2009 Environment Regulations) included a separate regulation to provide that the definition of **activity** included, where the context permits, a reference to a proposed activity or any stage of an activity. That provision has been combined with the definition of **activity** in the Environment Regulations for clarity and to improve readability.

“Environmental performance outcome”

The definition of **environmental performance outcome** intends to ensure it is clear that outcomes are specific to the particular activity and environment in which the activity is to be undertaken. Outcomes are required to be set so titleholders can demonstrate their environmental performance meets or betters the acceptable level of impacts or risks for the activity. Titleholders are required to set specific, measurable benchmarks for their environmental performance that can be monitored and can enable a determination as to whether those outcomes are being met.

“Greenhouse gas activity” and “petroleum activity”

Under the definitions of **greenhouse gas activity** and **petroleum activity**, only operations or works carried out in an offshore area (Commonwealth waters) would be an ‘activity’ for the purposes of the Environment Regulations. Such operations or works are a greenhouse gas activity or a petroleum activity if they are carried out for the purpose of:

- exercising a right conferred on a greenhouse gas titleholder or a petroleum titleholder under the OPGGS Act by a greenhouse gas title or a petroleum title; or
- discharging an obligation imposed on a greenhouse gas titleholder or a petroleum titleholder by the OPGGS Act or a legislative instrument under the OPGGS Act.

The OPGGS Act specifies the rights conferred on a greenhouse gas titleholder by a greenhouse gas title or on a petroleum titleholder by a petroleum title. For example, section 98 of the OPGGS Act sets out the rights conferred by a petroleum exploration permit on a permittee, including to explore for petroleum in the permit area, to recover petroleum on an appraisal basis in the permit area, and to carry on such operations and execute such works

in the permit area as are necessary for those purposes. Therefore, for example, a seismic survey carried out under a petroleum exploration permit would be a petroleum activity as it is an operation carried out in an offshore area for the purpose of exploration for petroleum.

As another example, section 161 sets out rights conferred by a petroleum production licence on a licensee, including to recover petroleum in the licence area, and to carry out such operations and execute such works in the licence area as are necessary for the purpose of the rights conferred by the licence. Therefore, construction and operation of a production facility would be petroleum activities as they are operations or works carried out in an offshore area for the purpose of recovery of petroleum.

Where a right conferred by a title includes the right to explore in the title area for petroleum, or for a potential greenhouse gas storage formation or potential greenhouse gas injection site, the extended meaning of ‘explore’ in section 19 of the OPGGS Act should be taken into account in determining whether particular operations or works are, or are not, a greenhouse gas activity or a petroleum activity.

The reference to obligations imposed on a greenhouse gas titleholder or a petroleum titleholder by the OPGGS Act or a legislative instrument under the OPGGS Act includes directions given to a titleholder by NOPSEMA or the responsible Commonwealth Minister under the OPGGS Act. For example, NOPSEMA may give a direction to a petroleum titleholder under section 586 of the OPGGS Act requiring the titleholder to remove property brought into the title area. The titleholder is required to develop and submit an environment plan for acceptance by NOPSEMA prior to taking action to remove the property in accordance with the direction.

Despite the reference to obligations in the definition of **greenhouse gas activity** and **petroleum activity**, the OPGGS Act specifies that certain directions (such as a direction given under section 574 or 576B) have effect, and must be complied with, despite anything in the regulations. Therefore if such a direction were given and required to be complied with within a short timeframe, such as an urgent direction given in the event of a significant incident, the titleholder would not be expected to have an environment plan in force prior to undertaking the required action.

The reference to obligations in paragraph (b) of the definition of **greenhouse gas activity** and **petroleum activity** does not include work program commitments or retention lease conditions. The OPGGS Act does not contain any provision specifically stating that a titleholder must comply with a condition of a title. The incentive to comply with title conditions lies in administrative powers such as the ability of the Joint Authority (petroleum) or responsible Commonwealth Minister (greenhouse gas) to start the cancellation process or to refuse a renewal of a title on the ground of non-compliance with a condition of the title.

This is not to suggest, however, that any operations or works carried out in an offshore area that are undertaken as a work program commitment, such as a seismic survey or drilling of a well, are not greenhouse gas activities or petroleum activities. These are greenhouse gas activities or petroleum activities because they are carried out in an offshore area in exercise of a right conferred by a greenhouse gas title or a petroleum title (fulfilling paragraph (a) of the definition of **greenhouse gas activity** or **petroleum activity**). In each case, the titleholder needs to consider what they are actually required to do by the condition, and whether that

would be a greenhouse gas activity or a petroleum activity in accordance with the definition. An activity that does not take place in an offshore area, such as reprocessing seismic data, is not a greenhouse gas activity or a petroleum activity just because it is undertaken to satisfy a work program condition.

“Offshore Project”

The definition of **offshore project** refers to ‘activities’ undertaken for a particular purpose. An ‘activity’ includes a ‘petroleum activity’, which is also defined in section 5. An activity is only a ‘petroleum activity’ if it is operations or works undertaken in an offshore area. Therefore, the activities that are, or are part of, an offshore project are also only operations or works undertaken in an offshore area. Any component of a development that is undertaken in State or Territory coastal waters or onshore is not part of an offshore project, unless the relevant State or Territory also confers environmental management functions on NOPSEMA under its legislation.

An offshore project is a project consisting of activities undertaken for the recovery of petroleum other than on an appraisal basis, including any conveyance of recovered petroleum by pipeline. Specifically, an offshore project could include one or more of the following: drilling; construction of facilities or pipelines; operation of facilities or pipelines; and other petroleum activities undertaken for the purpose of recovery of petroleum other than on an appraisal basis. An offshore project does not include drilling for exploration or appraisal purposes, or other petroleum exploration activities such as seismic surveys. Greenhouse gas activities are not included in the definition of **offshore project**. Decommissioning activities do not themselves fall within the definition of an offshore project, but require consideration in an offshore project proposal.

“Seismic or exploratory drilling activity” and “seismic or exploratory drilling environment plan”

The definitions of **seismic or exploratory drilling activity** and **seismic or exploratory drilling environment plan** provide for the environment plans to which a period of public comment applies under section 30 of the Environment Regulations prior to assessment by NOPSEMA.

If an environment plan is for one or more seismic or exploratory drilling activities, the plan is subject to public comment. This is the case even if the plan includes one or more other activities (e.g. a development activity).

The definition of **seismic or exploratory drilling activity** captures seismic surveys, exploration drilling and drilling on an appraisal basis. The type of title the activity is carried out under is not relevant (e.g. exploration activities carried out under a petroleum production licence are captured).

Referencing these specific activities ensures that lower risk exploration activities, such as geotechnical surveys, and geophysical surveys undertaken only for the purpose of facility or infrastructure placement (which are not intended to be captured by the term ‘seismic survey’), are excluded from the requirement for public comment, while activities which attract public interest are included.

The definition of **seismic or exploratory drilling environment plan** does not include a revised environment plan submitted in accordance with subsection 39(2) of the

Environment Regulations, even if the activity or activities to which the revised environment plan relates are seismic or exploratory drilling activities. Subsection 39(2) relates to revisions of an environment plan in relation to significant new or significant increases in environmental impact or risk. It applies when an activity has already commenced and the titleholder identifies an unforeseen impact or risk, or unforeseen increase in an identified impact or risk.

Under subsection 19(1) of the Environment Regulations, a titleholder commits an offence if they undertook an activity after the occurrence of any significant new or significant increase in an environmental impact or risk, if that new or increased impact or risk is not provided for in the environment plan in force for the activity. However, under subsection 19(2), subsection 19(1) does not apply in relation to an activity if the titleholder submits a revised environment plan in accordance with subsection 39(2), and NOPSEMA has not refused to accept the revision. As long as the titleholder has submitted a revised environment plan, the titleholder can continue the activity unless and until NOPSEMA refuses to accept the revision.

Exploration activities, particularly seismic surveys, may be short-term. If a revised environment plan were submitted in accordance with subsection 39(2), and the revised environment plan was subject to a public comment period followed by a period of assessment by NOPSEMA, the seismic or exploratory drilling activity could be finished before either the public comment period or NOPSEMA's subsequent assessment is completed. It would be unhelpful to undertake a public comment period, followed by assessment by NOPSEMA, as an activity may be finished while either public comment or assessment is required to continue.

A revised environment plan submitted in accordance with subsection 39(2) is still required to be published under section 28 prior to assessment by NOPSEMA. Further, the relevant activity or stage of the activity would have already been subject to a public comment period following the submission of the initial environment plan for the activity. Any changes to impacts or risks that may affect relevant persons should be addressed through requirements for ongoing consultation between the titleholder and relevant persons.

Paragraph 33(2)(a) also does not apply to a revised environment plan submitted in accordance with subsection 39(2). This means that NOPSEMA's assessment of the revised environment plan commences in accordance with paragraph 33(2)(b); that is, on the day NOPSEMA publishes the revised environment plan under section 28.

Revisions of an environment plan including an increase or change to the temporal or spatial extent of an activity are not covered by subsection 39(2). Rather, subsection 39(1) (which requires submission of a revised environment plan before the commencement of any significant modification or new stage of an activity) applies to such revised environment plans. Therefore, for example, a revised environment plan for a seismic survey to cover a large geographical area, or to be undertaken for a longer time and/or at a different time, requires submission in accordance with subsection 39(1). Subsection 39(2) only covers a new impact or risk arising out of the activity as described in the environment plan. Revisions of seismic or exploratory drilling environment plans submitted in accordance with subsection 39(1) are required to be subject to a period of public comment under sections 30 and 31.

“Sensitive information” and “sensitive information part”

Definitions of **sensitive information** and **sensitive information part** are included to specify the information that is not to be published as part of an environment plan.

The definition of **sensitive information** captures personal information (within the meaning of the *Privacy Act 1988*) about an individual that is contained in information given by:

- a) a relevant person in consultation under section 25 of the Environment Regulations during development of an environment plan; or
- b) any person during public comment on a seismic or exploratory drilling environment plan.

Personal information includes names, addresses, email addresses and telephone numbers of individuals.

The definition also captures information given by a relevant person during consultation in the course of preparing an environment plan, or by a person during the public comment period, which the giver has requested not to be published. It is envisaged that the type of information a person may request not to be published includes sensitive or confidential matters relating to the functions, interests or activities of the relevant person or person who has provided a public comment, such as commercially sensitive fishing data (e.g. specific location and amounts of fish catch) or culturally sensitive information about a particular location).

It is important to note that not every person or entity consulted during the development of an environment plan is a ‘relevant person’ for the purposes of section 25 of the Environment Regulations. Section 25 includes a definition of a ‘relevant person’, including Commonwealth and state/Northern Territory departments to which the activities to be carried out under the plan may be relevant, and a person or organisation whose functions, interests or activities may be affected by the activities to be carried out. Relevant persons do not include a related body corporate of a titleholder, or a person who will carry out operations in connection with the exercise of the titleholder’s rights or obligations under a contract, arrangement or understanding with the titleholder. Such persons may provide details relating to the activity to be undertaken, impacts and risks of the activity, and/or environmental management of the activity, including information used to demonstrate that impacts and risks are being managed to as low as reasonably practicable and to an acceptable level, but are not relevant persons for the purposes of section 25. The policy intent is to ensure all such information is published.

The Environment Regulations require the titleholder to tell each relevant person that the titleholder consults under section 25 during development of an environment plan, that the relevant person may request that particular information the person provides in the consultation not be published (see subsection 25(4)). Similarly, when NOPSEMA publishes an invitation for any person to provide comments on a seismic or exploratory drilling environment plan, NOPSEMA is required to state that the person may request that particular information in the comments not be published (see paragraph 30(1)(b)).

The Environment Regulations provide for sensitive information, and the full extent of any response by a relevant person to consultation under section 25 in the course of preparation of

an environment plan, to be included in the sensitive information part of the plan, which is excluded from publication (see subsection 26(8), and paragraphs 28(1)(a) and 30(5)(a)).

The definition of *sensitive information* also applies in relation to statements by NOPSEMA as to how NOPSEMA took public comments into account in deciding to accept an environment plan for a seismic or exploratory drilling activity (see subsection 35(5)), and statements by the titleholder as to how they responded to public comments (see subsection 30(4)). Such statements will be published and therefore must not include sensitive information.

Part 2 – Offshore project proposals

Section 6 – Submission of offshore project proposal

This section sets out the requirements for a person to submit an offshore project proposal before commencing an offshore project. A fee is payable for NOPSEMA’s consideration of the proposal (see section 57).

Part 2 of the Environment Regulations requires submission of, public consultation on, and assessment and acceptance of an offshore project proposal, prior to submission and assessment of an environment plan for petroleum activities that are, or are part of, an offshore project. ‘Offshore project’ and ‘offshore project proposal’ are defined in section 5.

The purpose of Part 2, which intends to deliver the same environmental outcomes as the process for environmental assessments under the EPBC Act, is to achieve the following:

- provide an environmental assessment process to capture large-scale petroleum developments that are likely to have a significant impact on matters protected under Part 3 of the EPBC Act;
- provide the public an opportunity to review and provide input during the development of proposed offshore petroleum development projects;
- allow NOPSEMA to make whole-of-project assessments of the acceptability of proposed offshore projects;
- provide certainty to industry, through NOPSEMA’s decision on the acceptability of an offshore project, to inform and facilitate industry’s investment decisions.

The provisions in Part 2 facilitate the streamlining of offshore petroleum and greenhouse gas storage environment approvals. They allow for the ongoing operation of the class approval issued by the then Minister for the Environment on 27 February 2014 for petroleum and greenhouse gas activities as actions or classes of actions such that proponents have deemed approval under Part 9 of the EPBC Act for these activities. In accordance with the Minister for the Environment’s approval, proponents do not need to consider referral or seek approval for projects on a case-by-case basis as long as proponents meet the requirements under the Environment Regulations.

Section 26 of the Environment Regulations supports the requirements of Part 2 by ensuring that an environment plan or revised environment plan that includes one or more new activities that are, or are part of, an offshore project may not be submitted, and must not be assessed by NOPSEMA, unless either:

- there is an accepted offshore project proposal that includes the activity (the accepted proposal may include only that activity, or other activities in addition to that activity); or
- the Environment Minister has approved the taking of an action that is equivalent to or includes the activity under Part 9 of the EPBC Act, or has made a decision that an action that is equivalent to or includes the activity is not a controlled action (including if undertaken in a particular manner).

Therefore, a person who proposes to undertake one or more activities that are, or are part of, an offshore project, and who does not have a relevant decision of the Environment Minister under the EPBC Act as described above, is required to first submit and receive acceptance for an offshore project proposal and then subsequently submit and receive acceptance of an environment plan before they commence the activity (noting it is an offence for a titleholder to undertake an activity without an environment plan in force for the activity – see section 17).

Due to long lead times associated with offshore projects, any person, rather than the titleholder for an activity that is or is part of an offshore project, can submit an offshore project proposal to NOPSEMA for assessment. If a person could not submit and consult on an offshore project proposal until a title is granted, this could cause lengthy delays and costs for offshore projects.

The person who submits the proposal (defined by section 5 as the ‘proponent’) may be an individual or company that is proposing to undertake an offshore project. It is generally anticipated that the person who would have submitted a referral under the EPBC Act is the person who submits an offshore project proposal to NOPSEMA.

As discussed above, an environment plan for an activity that is, or is part of, an offshore project can only be submitted if there is an accepted offshore project proposal, or a relevant decision of the Environment Minister. Therefore, if the Environment Minister has made a relevant decision, the proponent is not required to develop and submit an offshore project proposal. Subsection 6(2) makes this clear.

Under subsection 146D of the EPBC Act, an approval by the Environment Minister under section 146B of that Act (approval of an action taken in accordance with an endorsed policy, plan, or program) is taken to be an approval of the taking of that action under Part 9 of that Act.

However, subsection 6(3) of the Environment Regulations specifies that, for the purposes of paragraph 6(2)(c), an approval by the Environment Minister under section 146B of the EPBC Act is not taken to be an approval of the taking of an action under Part 9 of the Act. Classes of actions approved under section 146B of the EPBC Act do not exempt proposed actions under the Environment Regulations from preparing and submitting an offshore project proposal for assessment and acceptance. Activities that are, or are part of, an offshore project are themselves approved under section 146B of the EPBC Act if NOPSEMA accepts an offshore project proposal that includes the activity, and subsequently accepts an environment plan that relates to the activity, under the Environment Regulations.

Section 7 – Contents of offshore project proposal

This section sets out the content requirements for an offshore project proposal.

A number of the content requirements for an offshore project proposal mirror the content requirements for an environment plan; however, an offshore project proposal is prepared at an earlier stage than an environment plan. This means the level of detail required to be included in relation to certain aspects of an offshore project may be less than is required in an environment plan.

Subparagraph 7(2)(b)(v) requires a summary of the project to include a description of the actions proposed to be taken, following completion of the project, in relation to the facilities that are proposed to be used to undertake each activity that is part of the project. This includes, for example, proposed decommissioning activities in relation to those facilities. It should be noted that an offshore project proposal is not mandatory for decommissioning activities (although persons can elect to submit an offshore project proposal under section 15); therefore, an accepted proposal is not required for a titleholder to submit an environment plan for a decommissioning activity. However, it is expected that an offshore project proposal for activities that do require a proposal to be developed and accepted will include details of proposed decommissioning activities.

Subsection 7(3) specifies that the relevant values and sensitivities of the environment that may be affected by the project, which are required to be detailed in an offshore project proposal under paragraph 7(2)(d), may include one or more of the matters of national environmental significance listed in the subsection. If one or more of the listed matters may be affected by the project, the proposal is required to include relevant details. Potential impacts on the environment, including on matters of national environmental significance, and the environmental performance outcomes defined in the offshore project proposal in relation to those impacts, will be taken into account by NOPSEMA when deciding firstly whether a proposal is suitable for publication, and secondly whether to accept the offshore project proposal.

Section 8 – Further information

If a proponent submits an offshore project proposal to NOPSEMA, this section enables NOPSEMA to request further written information about any matter required by section 7 to be included in the proposal. This ensures that if a submitted proposal does not include relevant information, NOPSEMA may request the information, and consider the information as if it had been included in the submitted proposal, rather than being required under paragraph 9(1)(b) to decide that the proposal is not suitable for publication.

NOPSEMA can request further written information more than once prior to deciding that a proposal is or is not suitable for publication. Each request must be in writing, set out each matter for which information is requested, and specify a reasonable period within which the information is to be provided.

For the information to be considered by NOPSEMA, the proponent must provide the information within the period NOPSEMA specifies in the request, or a longer time agreed with NOPSEMA. If the proponent provides only some of the information requested by

NOPSEMA, the information that is provided is required to be given regard to as if it had been included in the submitted proposal.

Under subsection 9(2), NOPSEMA has 30 days after receiving an offshore project proposal to make a decision as to whether the proposal is or is not suitable for publication. The ability for NOPSEMA to request further information under section 8 does not change this 30-day timeframe. However, if NOPSEMA requests further information, and the time to receive and consider that information is longer than 30 days after NOPSEMA receives the proposal, NOPSEMA has the ability under subsection 9(2) to notify the proponent of a later day by which the decision will be made.

Section 9 – Suitability of offshore project proposal for publication

As a part of its regulatory function, NOPSEMA assesses the suitability of offshore project proposals for publication. This ensures that proposals properly inform the public about the nature of the project, the environment in which it is being conducted, and the steps a proponent would take to mitigate the impact of potential risks which may arise.

If NOPSEMA is reasonably satisfied that the proposal meets the criteria in subsection 9(4), subsection 9(1) requires NOPSEMA to decide that the proposal is suitable for publication. If NOPSEMA is not reasonably satisfied that the proposal meets the criteria, NOPSEMA must decide that the proposal is not suitable for publication.

Subsection 9(2) provides for the timeframe for NOPSEMA to decide if an offshore project proposal is suitable for publication. NOPSEMA has 30 days after an offshore project proposal is submitted to decide that the proposal is, or is not, suitable for publication. If NOPSEMA is unable to make a decision within 30 days, NOPSEMA can notify the proponent in writing of a later day by which a decision would be made. NOPSEMA must make the decision no later than the day specified in the notice.

Subsection 9(3) stipulates, however, that a decision by NOPSEMA that a proposal is or is not suitable for publication is not invalid only because NOPSEMA did not make the decision within the 30-day period, or within any alternative period specified in a notice to the proponent. This ensures that the validity of all decisions is maintained, and provides NOPSEMA with sufficient flexibility to make a thorough and informed decision in any circumstances.

The criteria in subsection 9(4) include that the proposal appropriately identifies and evaluates the environmental impacts and risks of the activity or activities that are part of the project, sets out relevant environmental performance outcomes that are consistent with the principles of ecologically sustainable development, and sufficiently addresses the matters required by section 7 of the Environment Regulations.

The criteria also includes that a proposal cannot be suitable for publication if the proposal involves an activity, or part of an activity, being undertaken in any part of a declared World Heritage property (defined in section 5 to have the same meaning as in the EPBC Act). The Australian Government has committed through international agreements that it will not allow mineral exploration or exploitation activities to be undertaken within the boundaries of a

declared World Heritage property. The prohibition applies even if NOPSEMA is reasonably satisfied that the plan meets the other criteria in subsection 9(4).

The prohibition does not apply in relation to activities to be carried out outside of, but proximate to, a declared World Heritage property. Proposals that include such activities are determined to be suitable for publication if NOPSEMA is reasonably satisfied that the proposal meets the criteria in subsection 9(4).

If NOPSEMA decides the proposal is suitable for publication, NOPSEMA is required, as soon as practicable after making the decision, to publish the proposal on its website, and publish a notice inviting the public to give NOPSEMA written comments on the proposal. Comments given will inform how the proponent finalises the proposal – see section 11.

The notice must specify a period of at least four weeks for the public to give comments. The period specified depends on various factors such as the complexity of the project, the sensitivity of the environment in which the project is proposed to be undertaken, and the amount of consultation the proponent has already undertaken during development of the offshore project proposal. No maximum period for public comment is specified by the Environment Regulations, to ensure the flexibility to determine an appropriate period on a case-by-case basis. However, the period for public comment is fixed at the outset of each public comment period, to ensure certainty for industry and stakeholders in relation to the length of that public comment period.

If NOPSEMA decides the proposal is not suitable for publication, NOPSEMA must notify the proponent of the decision as soon as practicable after making the decision. If the proponent still wishes to proceed with the project, the proponent must submit a new offshore project proposal under section 6, noting that the proponent cannot have an environment plan for an activity that is or is part of that offshore project assessed until NOPSEMA has accepted an offshore project proposal that includes that activity.

The Environment Regulations do not provide for merits review of a decision by NOPSEMA that an offshore project proposal is or is not suitable for publication. The final substantive decision whether to accept an offshore project proposal is made after the proposal's publication for comment. If NOPSEMA decides the proposal is unsuitable for publication, this does not disqualify the proponent from submitting another proposal for publication. This is a preliminary decision, so it does not have a substantive consequence on the proponent submitting the proposal. Therefore, it is unnecessary to require merits review in the circumstances, as a negative decision would not have an unduly detrimental impact on a proponent.

Furthermore, section 10 of the Environment Regulations requires NOPSEMA to provide a copy of public comments on the proposal to the proponent. This enables a proponent to amend the proposal, which may increase the possibility of acceptance after resubmission. Considering the role of the decision under this subsection in the decision-making process, reviewing preliminary decisions has the undesirable outcome of frustrating or delaying the making of substantive decisions.

Section 10 – NOPSEMA must give proponents copies of comments

This section requires NOPSEMA to give a copy of comments received during the period for public comment on an offshore project proposal under paragraph 9(5)(b) to the proponent of the proposal, as soon as practicable after receiving the comments. Requiring NOPSEMA to provide comments to the proponent as soon as practicable, rather than requiring provision of all the comments at the end of the public comment period, enables proponents to consider comments as they are received, increasing efficiency and minimising overall process timeframes.

Section 11 – Resubmission of offshore project proposal after period for public comment

This section sets out the proponent’s responsibilities after the period specified for public comment on an offshore project proposal under subparagraph 9(5)(b)(ii) has ended.

The proponent may elect to modify the proposal in response to feedback received during the period for public comment. Whether the proposal is modified or not, the proponent must resubmit the proposal (as modified, if relevant) to NOPSEMA. Requiring the proposal to be resubmitted to NOPSEMA, even if the proposal has not changed, ensures NOPSEMA is aware that the proponent is continuing with the proposal.

Along with resubmission of the proposal, the proponent is required to submit to NOPSEMA a summary of all comments received during the period of public comment, an assessment of the merits of each objection or claim about the project, and a statement of the proponent’s response or proposed response to each of those objections or claims. This may include a nil response with a supporting explanation, or a demonstration of any changes made to the proposal as a result of an objection or claim.

Section 11 requires the proponent to resubmit the proposal (modified or otherwise) to NOPSEMA, along with the additional information required by paragraph 11(c), ‘as soon as practicable’ after the end of the period of public comment. In this context, this means that the proponent may modify and resubmit the offshore project proposal to NOPSEMA as soon as the proponent is ready to do so.

Section 12 – Further information on resubmitted proposal

If a proponent resubmits an offshore project proposal under section 11, this section enables NOPSEMA to request further written information about any matter required by section 7 to be included in the proposal, or any matter required by paragraph 11(c) to be included with a copy of the proposal (i.e. the summary and assessment of public comments and proposed actions in response). This ensures that if a resubmitted proposal does not include relevant information, NOPSEMA may request the information and consider the information as if it had been included in or with (as applicable) the resubmitted proposal, rather than being required under paragraph 13(1)(b) to decide to refuse to accept the proposal.

There are no limits on NOPSEMA’s power to request information, other than that it relates to the matters identified in section 7 or paragraph 11(c). Therefore, NOPSEMA may request further written information more than once before deciding to accept or refuse to accept a

proposal. Each request must be in writing, set out each matter for which information is requested, and specify a reasonable period within which the information is to be provided.

For the information to be considered by NOPSEMA, the proponent must provide the information within the period specified by NOPSEMA in the request, or a longer time agreed with NOPSEMA. If the proponent provides only some of the information requested to be provided, the information that is provided must be given regard to as if it had been included in or with (as applicable) the resubmitted proposal.

Under subsection 13(2), NOPSEMA has 30 days after receiving a resubmitted offshore project proposal to make a decision in relation to the proposal. The ability for NOPSEMA to request further written information under section 12 does not change this 30-day timeframe. However, if NOPSEMA requests further information, and the time to receive and consider that information is longer than 30 days after NOPSEMA receives the resubmitted proposal, NOPSEMA has the ability under subsection 13(2) to notify the proponent of a later day by which a decision will be made.

Section 13 – Decision on resubmitted proposal

This section sets out NOPSEMA’s role after a proponent has resubmitted an offshore project proposal under section 11, after the period for public comment on the proposal.

Under subsection 13(2), NOPSEMA has 30 days after receiving the resubmitted proposal to make a decision in relation to the proposal. Alternatively, if NOPSEMA is unable to make a decision within 30 days, NOPSEMA can notify the proponent in writing of a later day by which the decision will be made. NOPSEMA must make the decision no later than the day specified in the notice.

Subsection 13(3) makes it clear, however, that a decision by NOPSEMA to accept or refuse to accept a proposal is not invalid only because NOPSEMA did not make the decision within the 30-day period, or any alternative period specified in a notice to the proponent. This ensures the validity of all decisions is maintained, and provides NOPSEMA with the flexibility to make thorough and informed decisions in any circumstances.

If NOPSEMA is reasonably satisfied the proposal meets the criteria in subsection 13(4), NOPSEMA must accept the proposal. On the other hand, if NOPSEMA is not reasonably satisfied the proposal meets the criteria in subsection 13(4), NOPSEMA must refuse to accept the proposal.

The criteria for final acceptance of an offshore project proposal differs in some respects to the criteria in subsection 9(4) for deciding whether a proposal is suitable for publication. For example, the criteria for final acceptance includes that the proposal adequately addresses comments given during the period for public comment. The criteria also includes that the proposal is suitable for the nature and scale of the project, and demonstrates that the environmental impacts and risks of the project will be managed to an acceptable level. As with the criteria for deciding if a proposal is suitable for publication, a proposal cannot be accepted if it involves an activity, or part of an activity, being undertaken within any part of a declared World Heritage Property (defined in section 5 to have the same meaning as in the EPBC Act).

If NOPSEMA accepts the proposal, NOPSEMA is required to publish the accepted proposal on its website within 10 days after making the decision.

If NOPSEMA refuses to accept the proposal, NOPSEMA must notify the proponent of the decision and the reasons for the decision as soon as practicable after making the decision. NOPSEMA must also publish a notice on its website setting out that it has refused to accept the proposal, and the reasons for the decision, as soon as practicable after making the decision.

If the proponent still wishes to proceed with the offshore project, the proponent must submit a new offshore project proposal under section 6 and commence the process again, including public comment on the new proposal. The proponent cannot have an environment plan for an activity that is or is part of an offshore project assessed until NOPSEMA has accepted an offshore project proposal that includes that activity.

If the proponent had submitted a proposal for an activity or activities that do not fall within the definition of an offshore project, and the proponent still wishes to proceed with the activity or activities following refusal to accept the proposal, the proponent is not obliged to submit a new proposal under section 6, although it may do so. See further discussion in relation to section 15.

The Environment Regulations do not provide for merits review of a decision by NOPSEMA to accept, or refuse to accept, an offshore project proposal. A decision to accept, or refuse to accept, an offshore project proposal involves the evaluation of complex and competing facts and policies, following extensive inquiry including public consultation. If NOPSEMA refuses to accept an offshore project proposal, it must provide reasons, and the applicant would be able to submit a further proposal taking account of those reasons. It is consistent with the Administrative Review Council's guide, "What decisions should be subject to merits review?" available at <https://www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications/what-decisions-should-be-subject-merit-review-1999> that decisions involving this type of process and complexity would not be subject to merits review. In addition, a merits review tribunal would be required to possess an understanding of the environmental risks associated with offshore petroleum activities to be reasonably satisfied as to whether the proposal would or would not meet the criteria in subsection (4). The costs and difficulty of finding experts in areas of environmental regulation and offshore petroleum operations outweighs any impact a lack of merits review may have on the proponent.

Section 14 – Withdrawal of offshore project proposal

This section provides a specific ability for a proponent to withdraw an offshore project proposal it has submitted to NOPSEMA at any time before NOPSEMA has made a final decision under section 13 to accept or refuse to accept the proposal. This may be before or after the proposal has been published for public comment.

If the proponent withdraws the submitted proposal after the proposal has been published on NOPSEMA's website under subsection 9(5)(a), NOPSEMA must publish a notice that the proposal has been withdrawn on its website. It is not necessary to publish such a notice if a

proposal is withdrawn before it has been published, as at the time the public would not be aware that a proposal has been submitted.

If the proponent withdraws the submitted proposal, NOPSEMA will cease its consideration of the proposal, and no further amount will be added to the fee the proponent must pay under section 57.

Section 15 – Use of the offshore project proposal system for other activities

This section allows a person who is proposing to undertake an activity that is not, or is not part of, an offshore project to voluntarily submit a document that is equivalent to an offshore project proposal to NOPSEMA for the activity or activities. A person may voluntarily submit a proposal if they propose to undertake one or more activities for at least one of the purposes listed in subsection 15(1). For example, it enables the person to have NOPSEMA consider the proposed activity, and high-level details of the proposed environmental management of the activity, before making a final investment decision in relation to the activity. If NOPSEMA refuses to accept the voluntary proposal, this may indicate to the person who submitted the proposal that the activity should not proceed at all, or that changes are necessary for the proposed activity and/or the proposed environmental management of the activity. A person may also elect to submit a proposal voluntarily to use the formal process in subsection 9(5) for public comment on the proposal, particularly for activities that are proposed to be undertaken in relatively sensitive environments.

If a person voluntarily submits a proposal, subsection 6(4), sections 7 to 14, and section 57 apply to the proposal as if it were an offshore project proposal, and the activity or activities were an offshore project. This means a fee is payable for NOPSEMA's consideration of the proposal.

The activity or activities are not otherwise treated as offshore projects for the purposes of the Environment Regulations. A decision to accept or refuse to accept a voluntary proposal under this provision does not carry any direct consequence, in the sense that it does not authorise or prohibit an activity. For example, a decision to refuse to accept the proposal does not prevent the person submitting an environment plan for the activity, and having the plan assessed by NOPSEMA. The proponent may choose to either submit a new offshore project proposal, or proceed directly to submission of an environment plan. However, without changes to the proposed environmental management of the activity in the environment plan compared to the rejected proposal, it is unlikely that the plan would meet the acceptance criteria for an environment plan in section 34. The statement of reasons NOPSEMA provides when notifying a decision to refuse to accept a proposal (see paragraph 13(6)(a)) provides the information required for the proponent to determine the next course of action, if any.

Part 3 – Financial assurance

Section 16 – Demonstration of financial assurance prior condition for acceptance of environment plan

This section provides a mechanism for NOPSEMA to assess compliance by petroleum titleholders with their financial assurance obligations in section 571 of the OPGGS Act as a condition precedent to acceptance of an environment plan.

Subsection 571(2) provides that a petroleum titleholder must, at all times while the title is in force, maintain financial assurance sufficient to give the titleholder the capacity to meet costs, expenses and liabilities arising in connection with, or as a result of, the carrying out of a petroleum activity, the doing of any other thing for the purposes of the petroleum activity, or complying (or failing to comply) with a requirement under the OPGGS Act, or a legislative instrument under the OPGGS Act, in relation to the petroleum activity.

Subsection 571(4) provides that the forms of financial assurance for a title that may be maintained for the purposes of section 571 include (without limitation) any of the following, or any combination of the following: insurance; self-insurance (as defined in subsection 571(5)); a bond; the deposit of an amount as security with a financial institution; an indemnity or other surety; a letter of credit from a financial institution; a mortgage.

Subsection 571(3) provides that regulations may be made to require compliance with the financial assurance requirement, in a form acceptable to NOPSEMA, to be demonstrated as a prior condition of acceptance of an environment plan for a petroleum activity. Regulations may also be made to provide that a failure to maintain such compliance, in a form acceptable to NOPSEMA, is grounds for the withdrawal of acceptance of an environment plan for the activity.

Section 16 applies if an environment plan for a petroleum activity is submitted to NOPSEMA under section 26 of the Environment Regulations. This would include a revised environment plan (see section 38, 39, 40 or 41).

Section 33 of the Environment Regulations provides that NOPSEMA must accept an environment plan or revised environment plan if NOPSEMA is reasonably satisfied that the plan meets the criteria set out in section 34. However, section 33 is subject to section 16, which provides that NOPSEMA must not accept an environment plan for a petroleum activity unless NOPSEMA is reasonably satisfied that the titleholder is compliant with the financial assurance obligation in subsection 571(2) of the OPGGS Act in relation to the petroleum activity, in a form that is acceptable to NOPSEMA. As such, where an environment plan meets the acceptance criteria, but the financial assurance obligation is not met, the plan will not be accepted.

Section 17 of the Environment Regulations makes it an offence for a titleholder to undertake an activity without an accepted environment plan. Therefore, a titleholder is not legally able to undertake a proposed petroleum activity until NOPSEMA has accepted an environment plan for the activity.

Generally, an environment plan is required to be submitted to NOPSEMA under section 26 by a titleholder. However, with respect to certain titles (including a petroleum access authority, petroleum special prospecting authority, or pipeline licence), an applicant for the title can submit an environment plan for an activity under the title to NOPSEMA (see subsection 26(2)). The financial assurance obligation in section 571 of the OPGGS Act only applies to a titleholder. Therefore, if an environment plan is submitted by an applicant for a title, section 16 only applies if the title is granted prior to NOPSEMA making a decision in relation to the environment plan. Where the relevant title is granted after NOPSEMA accepts the environment plan, the titleholder then becomes subject to the ongoing financial assurance obligation in section 571.

In addition to the upfront compliance mechanism that is put in place by section 16, ongoing compliance with the requirements of section 571 of the OPGGS Act continues to be subject to inspection by NOPSEMA in accordance with its inspection policies and procedures. Should financial assurance held by a titleholder be found to be insufficient, or the form to be unsatisfactory to NOPSEMA, this would constitute a ground for withdrawal of acceptance of the environment plan (see paragraph 43(1)(e) of the Environment Regulations).

The Environment Regulations do not provide for merits review of a decision by NOPSEMA in relation to the sufficiency and form of financial assurance. A decision in relation to the sufficiency and form of financial assurance involves the evaluation of complex and competing facts and policies. A titleholder could seek reasons if NOPSEMA decides that it is not reasonably satisfied as to the sufficiency and/or form of financial assurance, and the titleholder would be able to revise its financial assurance arrangements taking account of those reasons. It is consistent with the Administrative Review Council's guide, "What decisions should be subject to merits review?" available at <https://www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications/what-decisions-should-be-subject-merit-review-1999> that decisions involving this type of process and complexity would not be subject to merits review. In addition, an external review body would be required to possess an understanding of environmental risks associated with offshore petroleum activities to be reasonably satisfied as to the sufficiency of financial assurance. The costs and difficulty of finding experts in areas of environmental regulation and offshore petroleum operations would outweigh any impact a lack of merits review may have on the titleholder.

NOPSEMA's refusal to accept an environment plan on the basis that a titleholder is not compliant with section 571 of the OPGGS Act, in a form acceptable to NOPSEMA, does not prevent the titleholder adjusting the form and/or amount of financial assurance held by the titleholder and again seeking acceptance of its environment plan. The titleholder retains its title rights in relation to the relevant area, and the title does not cease to be in force by reason of the decision not to accept an environment plan.

Part 4 – Environment Plans

Division 1 – Requirement for environment plan

Section 17 – Accepted environment plan required for activity

This section makes it an offence of strict liability for a titleholder to undertake an activity under the title without an environment plan in force for the activity. This ensures the titleholder is required to have plans in place ensuring the environmental impacts and risks of an activity are managed to a level that is as low as reasonably practicable and an acceptable level, to the reasonable satisfaction of NOPSEMA, prior to commencing the activity. It also ensures there are outcomes and standards against which NOPSEMA can undertake regulatory oversight of the environmental management of the activity.

The maximum penalty for a failure to comply with subsection 17(1) is 80 penalty units, or 400 penalty units for an offence committed by a body corporate due to the operation of subsection 4B of the *Crimes Act 1914* (the Crimes Act).

It is appropriate to apply strict liability to the offence to ensure that the section can be enforced more effectively. The intention of the application of strict liability is to improve compliance in the regulatory regime, particularly given the potentially severe environmental consequences that may result if a titleholder were to undertake an activity without an environment plan in force. This is consistent with the principles outlined in [*A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011*](#), which includes that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct. Given the remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements, it is extremely difficult to prove intent, and requiring that proof may make it impractical to enforce the regime.

It is also appropriate to apply a maximum penalty of 80 penalty units, noting this is higher than the preference stated in the Guide to Framing Offences for a maximum of 60 penalty units for offences of strict liability. Offshore resources activities, as a matter of course, require a very high level of expenditure. Therefore, by comparison a smaller penalty is an ineffective deterrent, especially considering the potential for severe risks or impact to the environment if a titleholder fails to comply with subsection 17(1).

Subsection 17(2) ensures it is clear that section 17 does not affect any other requirement, whether under the Environment Regulations or other regulations made under the OPGGS Act, for a consent to construct, install or use a facility. For example, section 17 does not affect the requirement for a safety case to be in force for a facility in order to construct, install or operate the facility or part of the facility under the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*.

Section 18 – Operations must comply with accepted environment plan

This section makes it an offence of strict liability for a titleholder to undertake an activity under a title in a way that is contrary to the environment plan in force for the activity, or any

limitation or condition to which acceptance of the plan was made subject under section 33. An environment plan sets out comprehensive measures and arrangements for managing the environmental impacts and risks of an activity to ensure that impacts and risks will be reduced to as low as reasonably practicable and will be of an acceptable level. A titleholder should therefore be subject to a penalty if they do not comply with the environment plan in force for the activity.

The maximum penalty for a failure to comply with subsection 18(1) is 80 penalty units, or 400 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

It is appropriate to apply strict liability to the offence provision. It is also appropriate to apply a penalty of 80 penalty units, noting this is higher than the preference stated in [*A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011*](#) for a maximum 60 penalty units for offences of strict liability. See the discussion in relation to section 17 on strict liability and the maximum penalties, which applies equally to the offence provision in subsection 18(1).

To allow some flexibility for titleholders to respond to a situation in a manner not covered by an environment plan, if necessary (e.g., if there is an emergency incident that was not foreseeable when the environment plan was developed), subsection 18(2) enables the titleholder to seek consent in writing from NOPSEMA if the titleholder proposes to undertake an activity otherwise than in accordance with an environment plan.

This process for obtaining NOPSEMA's consent to undertake an activity otherwise than in accordance with the environment plan is not intended to detract from the important principle that the environment plan is the sole permissioning document for environmental management of petroleum and greenhouse gas activities. NOPSEMA is not under any obligation to allow the titleholder to utilise this fast-track process and can refuse consent in any circumstance where it considers that a revision of the environment plan is more appropriate. The process is intended to be available to deal with the immediate aftermath of an emergency or for other circumstances where it is not practicable to revise the environment plan.

The offence provision in subsection 18(1) does not apply if the titleholder has the written consent of NOPSEMA to undertake an activity in a manner that is contrary to the environment plan or any limitation or condition to which acceptance of the plan was made subject. In accordance with subsection 13.3(3) of the *Criminal Code Act 1995* (the Criminal Code Act), a defendant who wishes to rely on any exception, exemption, excuse, qualification, or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The defendant therefore bears the evidential burden in relation to the question of whether NOPSEMA consented in writing to the defendant undertaking the activity in a specified manner. The titleholder bears an evidential burden, pursuant to subsection 13.3(3) of the Criminal Code Act, as is generally the case for defences. This means that the titleholder must provide evidence that NOPSEMA has given written consent to rely on the exception in subsection 18(2) to the offence in subsection 18(1). Provided that the titleholder provides that evidence, the burden of proof (including in relation to the exception) will remain with the prosecution. A prosecution is unlikely if NOPSEMA already knows that consent has been given.

Under subsection 18(3), NOPSEMA must not give consent unless there are reasonable grounds for believing that the way in which the activity is to be undertaken would not result in any significant new environmental impact or risk, or significantly increase an existing environmental impact or risk. If there would be a significant new impact or risk, or significant increase in an impact or risk, either the activity should not be undertaken in that manner at all, or a revised environment plan should be submitted to NOPSEMA, in accordance with section 39 of the Environment Regulations, to enable NOPSEMA to assess the titleholder's proposed measures to reduce the impacts and risks to a level that is as low as reasonably practicable and an acceptable level.

Section 19 – Operations must not continue if new or increased environmental risks are identified

This section makes it an offence of strict liability if a titleholder undertakes an activity under the title after the occurrence of any new significant environmental impact or risk arising from the activity, or any significant increase in an existing environmental impact or risk arising from the activity, and the new or increased impact or risk is not provided for in the environment plan in force for the activity. This ensures the titleholder must cease the activity until the titleholder has recognised the manner in which environmental impacts and risks of the activity are managed, in light of the new or increased impacts or risks, so that the impacts or risks will be reduced to as low as reasonably practicable and an acceptable level.

The maximum penalty for failing to comply with subsection 19(1) is 80 penalty units, or 400 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act.

It is appropriate to strictly apply strict liability to the offence provision. It is also appropriate to apply a penalty of 80 penalty units, noting this is higher than the preference stated in [A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011](#) for a maximum 60 penalty units for offences of strict liability. See discussion in relation to section 17 on strict liability and maximum penalties, which applies equally to the offence provision in subsection 19(1).

Subsection 19(2) provides that a titleholder does not commit an offence under subsection 19(1) if the titleholder has submitted a revised environment plan in accordance with subsection 39(2), and NOPSEMA has not refused to accept the revision. Under subsection 39(2), a titleholder must submit a revised environment plan before, or as soon as practicable after, the occurrence of a significant new, or significantly increased, environmental impact or risk of the activity.

In accordance with subsection 13.3(3) of the Criminal Code Act, a defendant who wishes to rely on any exception, exemption, excuse, qualification, or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The defendant therefore bears an evidential burden in relation to the question whether the defendant has submitted a revised environment plan and NOPSEMA has not refused to accept the revision. The titleholder bears an evidential burden, pursuant to subsection 13.3(3) of the Criminal Code Act, as is generally the case for defences. This means that the titleholder must provide evidence that it has submitted a revised environment plan for the activity to rely on the exception in subsection 19(2) to the offence in subsection 19(1). Provided that the

titleholder provides that evidence, the burden of proof (including in relation to the exception) will remain with the prosecution.

Division 2—Contents of environment plan

Section 20 – Purpose of this Division

This section sets out the purpose of Division 2 of Part 4 of the Environment Regulations. The purpose of the Division is to prescribe the required contents of an environment plan for an activity under a title.

Section 21 – Environmental assessment

This section prescribes the required contents of an environment plan. The content requirements for an environment plan ensure that NOPSEMA has relevant information to enable NOPSEMA to assess whether the plan is appropriate for the nature and scale of the activity, demonstrates that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable and an acceptable level, and provides for appropriate environmental performance outcomes and standards and measurement criteria to enable the titleholder and NOPSEMA to ensure that the titleholder is meeting its commitments as set out in the environment plan.

Subsection 21(1) requires a detailed description of the activity, including but not limited to the location or locations and proposed timetables for undertaking the activity.

Subsection 21(2) requires a description of the environment that may be affected by the activity. The term *environment* is defined in section 5 of the Environment Regulations, and includes social, economic, and cultural features. Subsection 21(3) makes it clear that, where an activity may affect one or more of the matters of national environmental significance listed in that subsection, the environment plan must include relevant details. Potential impacts on a matter of national environmental significance, and the measures detailed in the environment plan to reduce those impacts to as low as reasonably practicable and an acceptable level, will be taken into account by NOPSEMA when deciding whether to accept an environment plan.

Subsection 21(4) requires the environment plan to describe how the requirements, including legislative requirements, that apply to and are relevant to the environmental management of the activity will be met. This is of particular importance in the context of streamlining of environmental approvals under the EPBC Act and the OPGGS Act, as the Environment Regulations must provide for NOPSEMA to be able to assess that the titleholder has made adequate arrangements to ensure all of its environmental obligations will be met.

Subsection 21(5) requires details of the environmental impacts and risks of the activity and an evaluation of all of those impacts and risks. Paragraph 21(5)(b) makes clear that the evaluation of all impacts and risks for the activity should be appropriate to the nature and scale of each impact or risk. It is not intended that, for relatively minor impacts and risks, substantially detailed evaluation is required to be provided. The level of detail should be appropriate to the type, severity, and likelihood of the risk. If a number of the impacts and risks identified in the plan are relatively minor, it is intended that these can be evaluated in a consolidated manner. Paragraph 21(5)(c) requires details of control measures that will be

used to reduce the impacts and risks of the activity to as low as reasonably practicable and an acceptable level.

Subsection 21(6) clarifies that the evaluation of environmental impacts and risks must evaluate all impacts and risks, whether arising directly or indirectly, from operations of the activity, as well as any potential emergency conditions.

Paragraph 21(7)(a) requires environmental performance standards to be set for each of the control measures identified under paragraph 21(5)(c). Paragraph 21(7)(b) requires the environment plan to set out environmental performance outcomes against which the performance of the titleholder in protecting the environment is to be measured. The terms *control measure*, *environmental performance outcome* and *environmental performance standard* are defined in section 5 of the Environment Regulations. Paragraph 21(7)(c) ensures there is a clear link between measurement criteria and monitoring of environmental performance outcomes and standards, and clarifies that measurement criteria should be provided to ensure each outcome and standard will be met while undertaking the activity.

Section 22 – Implementation strategy for environment plan

This section sets out the requirement for an environment plan for an activity under a title to include an implementation strategy for the activity, and the required content of the implementation strategy.

The implementation strategy is an operational document that is used throughout the course of undertaking the activity to ensure that titleholders continually reassess the impacts and risks of the activity and strive towards continual improvement to ensure impacts and risks continue to be reduced to as low as reasonably practicable and an acceptable level. The implementation strategy provides a systematic approach to ensure the environmental performance outcomes and environmental performance standards set out in the environment plan are met and monitored on an ongoing basis.

The implementation strategy also includes an oil pollution emergency plan to describe the arrangements and capability that will be in place to respond to and monitor impacts of oil pollution emergencies, and provide for testing of the response arrangements in the oil pollution emergency plan.

Subsection 22(2) requires a description of the environmental management system for the activity. The term *environmental management system* is defined in section 5 of the Environment Regulations.

Subsections 22(3) and (4) set out responsibilities of employees and contractors, including the establishment of a clear chain of command, and measures to ensure that each employee or contractor is aware of their responsibilities in relation to the environment plan and has appropriate competencies and training.

Subsection 22(5) makes it clear that the arrangements for monitoring, recording, audit, management of non-conformance and review of the titleholder's environmental performance and the implementation strategy must be sufficient to enable NOPSEMA and the titleholder to determine that the titleholder's environmental performance is consistent with the environmental performance outcomes detailed in the environment plan, and to ensure that

environmental performance standards for control measures are being met. Subsection 22(6) has a similar requirement in relation to emissions and discharges. It is not the policy intent to include specific monitoring requirements in the Environment Regulations, given the objective-based nature of the Regulations. Monitoring arrangements should be appropriate to the impacts and risks of a particular activity.

Including a specific linkage to environmental performance outcomes and environmental performance standards in subsections 22(5) and (6) ensures that monitoring arrangements are commensurate with the level of risk and impact of an activity, as environmental performance outcomes and standards are identified in the context of the risks and impacts of the activity.

Subsection 22(7) requires the implementation strategy to provide for the timing of reports to NOPSEMA in relation to the titleholder's environmental performance for the activity. This requirement supports the requirement in section 51 of the Environment Regulations for a titleholder undertaking an activity to submit environmental performance reports to NOPSEMA at the times or intervals provided for in the environment plan. NOPSEMA can approve the proposed frequency of reporting through the environment plan assessment and acceptance process. The reporting frequency set out in the environment plan must be no less than annually.

In addition to requiring the implementation strategy to include an oil pollution emergency plan, subsection 22(8) requires the implementation strategy to provide for updating of the plan.

Subsection 22(9) requires an oil pollution emergency plan to contain *adequate* arrangements for responding to and monitoring oil pollution. The use of the word 'adequate' ensures that, in assessing an oil pollution emergency plan as part of an environment plan, it is clear that NOPSEMA can consider the adequacy of the arrangements proposed in the oil pollution emergency plan in deciding whether to accept or refuse to accept the overall environment plan.

In the event of an oil spill, environmental monitoring is important in order to inform necessary response activities. There are no prescriptive requirements in the Environment Regulations for how or what environmental monitoring should be undertaken during emergency conditions, given the range of potential emergency situations that may occur, and the varied level of impacts and risks of those situations. However, it is appropriate that titleholders detail proposed environmental monitoring arrangements in an oil pollution emergency plan, to enable NOPSEMA to assess the adequacy and appropriateness of the proposed arrangements with respect to the particular activities covered by the plan.

Subsection 22(10) requires the implementation strategy to provide for monitoring of impacts to the environment from oil pollution and activities undertaken in response to oil pollution, that must be appropriate to the nature and scale of the risk of environmental impacts of the activity. The arrangements for monitoring are also required to inform any remediation activities that will be required to be undertaken as a result of oil pollution. In the event of oil pollution, environmental monitoring is important in order to assess the impacts to the environment of the spill and the efficacy of response or remediation measures, and to inform remediation activities that will be required to be undertaken.

Subsection 22(11) requires the implementation strategy to include information demonstrating that the response arrangements in the oil pollution emergency plan are consistent with the national system for oil pollution preparedness and response.

Subsection 22(12) clarifies that the arrangements for testing of response arrangements in the oil pollution emergency plan, which are required to be set out in the implementation strategy, should be appropriate to the particular response arrangements, and to the nature and scale of the risk of oil pollution for the activity.

Subsection 22(13) clarifies the requirements for testing of the response arrangements in an oil pollution emergency plan. In addition to a proposed schedule of tests (in accordance with subsection 22(14)), subsection 22(13) requires the arrangements for testing of response arrangements to set out the objectives of testing, and include mechanisms to examine the effectiveness of response arrangements against those objectives and to address recommendations arising from the tests. This ensures that response capability is effectively tested and requires the titleholder to demonstrate they are adequately prepared to respond to a spill and mitigate the impacts of a spill.

Subsection 22(15) requires arrangements for ongoing consultation with relevant authorities, persons, and organisations to be included in the implementation strategy, in order to demonstrate that there is an effective two-way communication process in place between the titleholder and those relevant persons.

Subsection 22(16) ensures that an implementation strategy must comply with all relevant statutory requirements.

Section 23 – Details of titleholder and nominated liaison

This section requires an environment plan to include the name and contact details of the titleholder and a liaison person for the activity. If there is more than one registered holder of a single title, all of the registered holders collectively are the ‘titleholder’, and therefore the requirement to include contact details of the titleholder applies to all of them.

The liaison person is the person whose details will be published on NOPSEMA’s website on submission of an environment plan (see paragraph 28(1)(f) of the Environment Regulations), and in the environment plan summary (see subparagraph 35(7)(a)(ix) of the Environment Regulations). NOPSEMA may also contact this person in relation to the activity/environment plan.

Section 23 requires the name and business address to be provided, as well as the following details, *if any*:

- Telephone number
- Fax number
- Email address.

The words ‘if any’ are intended to mean that if a titleholder has a telephone number and email address, but does not have a fax number, details of the telephone number and email address *must* be included in the environment plan, but the titleholder would not fail to meet

the requirement because it did not provide a fax number. It is not intended that the words ‘if any’ would render the provision of those details voluntary (where they exist).

To ensure NOPSEMA has current details of the titleholder and the titleholder’s nominated liaison person, section 23 also requires the environment plan to include arrangements for notifying NOPSEMA of a change in the titleholder, a change in the titleholder’s nominated liaison person, or a change in the contact details for either the titleholder or the liaison person.

Section 24 – Other information in environment plan

This section prescribes additional information that is required to be included in an environment plan.

Paragraph 24(a) provides for the titleholder to set out its corporate policies in relation to environmental management and environmental performance. These corporate policies are relevant to provide context, contribute to the definition of an acceptable level of environmental impact or risk and influence the development of environmental performance outcomes of the activity. They may also be relevant in setting out the titleholder’s approach to consultation and stakeholder engagement.

Under paragraph 24(b), a titleholder is required to prepare a report on all consultations under section 25 of the Environment Regulations that summarises each response that has been received from a relevant person, assesses the merits of any objection or claim about adverse impacts and states the titleholder’s response or proposed response, if any, to each objection or claim. The report is also required to include a copy of the full text of each response that the titleholder has received from a relevant person.

Paragraph 24(c) requires the titleholder to identify in advance what are the reportable incidents in relation to an activity. The term *reportable incident* is defined in section 5 as an incident that has caused, or has the potential to cause, moderate to significant environmental damage. The type of incidents that are reportable incidents vary depending on the nature of the activity, the location and the particular values and sensitivities of the environment. If an incident identified in the environment plan as a “reportable incident” occurs, the titleholder is required to notify and report to NOPSEMA under sections 47 and 48 of the Environment Regulations.

Reportable incidents may also arise from unforeseen circumstances. The reporting arrangements in the environment plan should consider the need to report incidents that have not been specifically identified in the plan.

Division 3 – Consultation in preparing environment plan

Section 25 – Consultation with relevant authorities, persons and organisations etc

This section sets out the consultation required to be undertaken by a titleholder when preparing an environment plan.

The purpose of consultation under section 25 is to ensure that the titleholder has ascertained, understood, and addressed all the environmental impacts and risks that might arise from its proposed activity. Consultation under section 25 facilitates this outcome because it gives the

titleholder an opportunity to receive information that it might not otherwise have received from others who may be affected by its proposed activity. It ensures that authorities, persons, or organisations that are potentially affected by activities are consulted, and their input considered in the development of environment plans. It also enables the titleholder to consider whether to refine or change the measures it proposes to address impacts and risks by taking into account the information acquired through the consultations.

Section 25 requires consultation with relevant persons; however, it does not require consent for an activity to be given by any relevant person.

Paragraph 34(g) provides that the criteria for acceptance of an environment plan include that the plan demonstrates that the titleholder has carried out the consultations required by section 25, and the measures (if any) that the titleholder has adopted, or proposes to adopt, because of the consultations are appropriate.

Under paragraph 24(b), an environment plan is required to include a report on all consultations carried out under section 25 of any relevant person by the titleholder. To enable NOPSEMA to decide whether it is reasonably satisfied that the plan meets the acceptance criteria, the environment plan should set out the processes that have been applied to identify and determine who are relevant persons, as well as the processes undertaken for consultation.

Subsection 25(1) requires a titleholder to consult with a range of Commonwealth, State or Northern Territory departments and agencies to which the activities to be carried out under the environment plan, or revision of the environment plan, may be relevant. In addition, the titleholder is required to consult the Department of the responsible State Minister or the Department of the responsible Northern Territory Minister, as applicable.

The titleholder is also required to consult persons or organisations whose functions, interests or activities may be affected by the activities. In the context of the object of the Environment Regulations, and the definition of *environment* including aspects such as the social and cultural features of people and communities, the range of persons to be consulted is intended to be broadly understood. Consultation is critical to achieve outcomes that are consistent with the principles of ecologically sustainable development, and ensuring environmental impacts and risks of the activity are reduced to as low as reasonably practicable and acceptable levels.

However, a person required to be consulted under section 25 needs to be more than a member of the public who is generally concerned with or interested in the activity.

A relevant person also includes any other person or organisation that the titleholder considers relevant. This may include, for example, persons who do not otherwise fall within paragraphs 25(1)(a) to (d), but that the titleholder has identified as having a particular interest in the activity (such as a person identified through public comment on an offshore project proposal), or having knowledge that could assist with the consideration of management of environmental impacts and risks. It is at the discretion of the titleholder who they consider relevant for the purposes of paragraph 25(1)(e).

The titleholder is required to give each relevant person sufficient information to allow the person to make an informed assessment of the possible consequences of the activity on the functions, interests, or activities of the person (subsection 25(2)). The titleholder has some choice as to how the consultation is undertaken, including in identifying who to approach

within an organisation or group that is a relevant person, and how the information will be given to allow that relevant person to make an informed assessment. The nature of the person or organisation being consulted, and the function, interest or activity that may be affected, will inform the appropriate manner of consultation with each relevant person. Consultation should be undertaken in good faith between titleholders and relevant persons, with a free and open exchange of information to inform appropriate environmental impact assessment.

The titleholder is required to allow a relevant person a reasonable period for the consultation (subsection 25(3)). This ensures that consultation is genuine, in the sense that authorities, organisations or individuals who may be impacted by an activity are given a reasonable time to identify the effect of the proposed activity in their functions, interests or activities and to respond to the titleholder with any concerns. What is a reasonable period for consultation will need to be considered on a case-by-case basis. The nature, scale, and complexity of an activity, as well as the extent of potential impacts and risks on a relevant person's functions, interests, or activities, may inform what makes a reasonable period for consultation.

Section 25 places obligations on titleholders but does not place any obligations on relevant persons. If a relevant person does not respond to consultation, the titleholder is not required to wait indefinitely for a response. As long as the titleholder can demonstrate that it has provided sufficient information and a reasonable period for consultation in accordance with subsections 25(2) and (3), the titleholder will have met the consultation requirements.

Subsection 25(4) requires titleholders to advise each relevant person that they may request that particular information the person provides in the consultation not be published, and that such information will not be published under the Environment Regulations. This ensures that all relevant persons are aware of the restrictions around publication of sensitive information, and are given a specific opportunity to request that particular information not be published (e.g. commercially sensitive information about fishing).

The definition of "sensitive information" in section 5 includes information given by a relevant person in consultation under section 25 and that the person requested not be published. Consequently, it is only possible to include this type of information in the "sensitive information part" of an environment plan. The sensitive information part of an environment plan is required to be omitted in published versions of an environment plan. See discussion regarding the definitions of "sensitive information" and "sensitive information part" in section 5, and subsection 26(8).

Division 4—Submission and acceptance of environment plan

Section 26 – Submission of environment plan

This section sets out the requirements for submission of an environment plan to NOPSEMA.

Subsection 26(1)

Subsection 26(1) requires a titleholder to submit an environment plan for an activity under a title before the commencement of the activity. A titleholder commits an offence if they undertake an activity and there is no environment plan in force for the activity (see subsection 17(1)).

Division 1 of Part 9.6A of the OPGGS Act (eligible voluntary action by multiple titleholders) applies to submission of an environment plan under subsection 26(1), as submission of an environment plan to NOPSEMA under the Environment Regulations is an ‘eligible voluntary action’ for the purposes of that Division. This means that, under subsection 775B(5) (for a petroleum title), subsection 775C(5) (for a greenhouse gas title), or subsection 775CA(5) (for a cross-boundary greenhouse gas title), if there are two or more registered holders of the title under which the proposed activity is to be undertaken, those holders of the title are not entitled to submit the environment plan unless either:

- (a) they have provided a joint written notice to the National Offshore Petroleum Titles Administrator (the Titles Administrator) nominating one of them as being the person who is authorised to take eligible voluntary actions on behalf of the registered holders, and the nominated person submits the plan and expresses the submission to be made on behalf of all of the registered holders of the title, or
- (b) all registered holders of the title jointly make the submission.

An environment plan submitted under subsection 26(1) can be for an activity undertaken under the authority of more than one title, as the Environment Regulations are activity-based, rather than title-based. For example, if a seismic survey were to be undertaken across several exploration permits, under the authority of those permits (rather than under the authority of a petroleum access authority as discussed below), one environment plan can be submitted for the survey even if different titleholders hold the permits. In practice, the survey operator would prepare the environment plan, and it would be submitted by each titleholder. The plan will be treated by NOPSEMA as the environment plan for each of the titleholders; therefore correspondence, notices, etc., will be sent to all titleholders under whose title the activity will be undertaken.

If an environment plan is submitted for an activity that is undertaken under the authority of more than one title, environment plan levy is imposed on all the titleholders jointly and severally – see paragraph 10F(3)(b) of the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Levies Act).

Alternatively, activities such as a multi-client seismic survey can be undertaken under a petroleum special prospecting authority, possibly together with a petroleum access authority where title areas are already covered by titles. In this case, the holder of the authority who will undertake the survey is themselves the titleholder, and therefore responsible for submission of the environment plan and for compliance with the Environment Regulations, as those authorities are ‘titles’ for the purposes of the Environment Regulations. The authority holder would submit one environment plan to cover the seismic survey/s to be undertaken and does not need to submit a separate plan in relation to each specific title.

Subsection 26(2)

Subsection 26(2) enables (but does not require) applicants for certain types of title to submit an environment plan to NOPSEMA and obtain acceptance of the plan, prior to the grant of the title. The provisions in Division 2 (contents of environment plan), Division 3 (consultation in preparing environment plan) and Division 4 (submission and acceptance of environment plan) of the Environment Regulations then apply to the title applicant as if they were a titleholder.

If NOPSEMA accepts the environment plan before the title is granted, this does not give the applicant the authority to commence the activity to which the plan relates. The applicant does not have the authority to commence the activity unless and until the title is granted. However, obtaining acceptance of the plan prior to grant of the title allows the applicant to start the activity as soon as the title is granted, rather than being required to submit the environment plan after the title has been granted.

Specifically, subsection 26(2) enables an applicant for a petroleum access authority, petroleum special prospecting authority, greenhouse gas search authority or greenhouse gas special authority to submit an environment plan to NOPSEMA. Given the generally short-term nature of these titles, it is beneficial to enable applicants for an authority to obtain acceptance of an environment plan prior to the grant of the title, so the activity can commence as soon as the title is granted.

Subsection 26(2) also enables an applicant for a pipeline licence to submit an environment plan to NOPSEMA. A pipeline licence is required by the OPGGS Act to contain specific details like the route of the pipeline and if it must be buried, which are also matters of an environmentally-relevant nature. A licence might state, for example, that a pipeline does not need to be buried, and then it could emerge in the environment plan consultation process that a pipeline laid on the seabed would impede fishing activities.

Enabling an applicant for a pipeline licence to submit an environment plan to NOPSEMA enables environmental matters to be considered prior to the grant of a title so that matters can be specified in the title with full knowledge of relevant environmental issues. There is provision for a pipeline licence to be varied; however, this may cause an increase in regulatory burden compared to having environmental acceptance of a pipeline proposal before finalising the grant of the pipeline licence. In any case, enabling an applicant for a pipeline licence to submit an environment plan enables the applicant to themselves determine if they prefer to submit the plan before or after the grant of title.

An applicant for a petroleum scientific investigation consent or greenhouse gas research consent does not have the ability to submit an environment plan to NOPSEMA until after the consent is granted. Unlike an authority granted under the OPGGS Act, which does not authorise making a well, there is nothing to prevent a consent holder being granted the ability to make a well. Therefore, as for other types of title that permit the drilling of a well, an applicant for a consent cannot submit an environment plan until the consent has been granted.

The multiple titleholder provisions in Part 9.6A of the OPGGS Act do not apply to environment plans submitted by applicants for a title listed in subsection 26(2). It is expected that if there is more than one applicant for a single title, each would sign the application for acceptance of the environment plan submitted to NOPSEMA.

Subsections 26(3), (4) and (5)

Under subsection 26(3), an environment plan may only be submitted for an activity that is, or is part of, an offshore project (as defined in section 5) if any one of the following applies:

- NOPSEMA must have previously accepted an offshore project proposal that includes the activity;
- the Environment Minister must have approved the taking of an action that is equivalent to or includes the activity under Part 9 of the EPBC Act; or
- the Environment Minister must have made a decision that an action that is equivalent to or includes the activity is not a controlled action (section 75 of the EPBC Act) or is not a controlled action if undertaken in a particular manner (section 77A of the EPBC Act).

The effect of subsection 26(4) is that an environment plan for an activity submitted in contravention of subsection 26(3) is taken not to have been submitted. Therefore, the plan will not be considered by NOPSEMA, and the assessment and acceptance process in sections 27 to 35 does not apply.

As the plan is taken not to have been submitted, the environment plan levy is not imposed.

It is an offence for a titleholder to undertake an activity without an environment plan in force for the activity (subsection 17(1)). Therefore, if the titleholder wishes to undertake the activity that is, or is part of, an offshore project, it needs to develop, submit, publicly consult on, and obtain NOPSEMA's acceptance of an offshore project proposal including that activity. It is intended that an offshore project proposal only needs to be developed for that particular activity. Therefore, if the activity is part of a broader development for which an offshore project proposal had been accepted, but the particular activity had not been included in the original proposal, the titleholder does not need to re-do the original proposal for all activities, just the new activity.

Subsections 26(3) and (4) do not apply to activities that are not, or are not part of, an offshore project, even if an offshore project proposal is voluntarily prepared and submitted by the proponent in relation to that activity – see section 15.

Under section 146D of the EPBC Act, an approval by the Environment Minister under section 146B of that Act (approval of an action taken in accordance with an endorsed policy, plan, or program) is taken to be an approval of the taking of that action under Part 9 of that Act.

However, subsection 26(5) specifies that, for the purposes of subparagraph 26(3)(b)(iii), an approval by the Environment Minister under section 146B of the EPBC Act is not taken to be an approval of the taking of an action under Part 9 of that Act. Classes of actions approved under section 146B of the EPBC Act do not exempt proponents of proposed actions under the Environment Regulations from preparing and submitting an offshore project proposal for assessment and acceptance. Activities that are, or are part of, an offshore project will themselves be approved under section 146B of the EPBC Act if NOPSEMA accepts an offshore project proposal that includes the activity, and subsequently accepts an environment plan relating to the activity, under the Environment Regulations.

Subsections 26(6) and (7)

Subsection 26(6) makes it clear that an environment plan must be in writing.

Subsection 26(7) provides for an environment plan to relate to more than one activity or stage of an activity, an activity in more than one location, or an activity or activities under two or more titles held by different titleholders, with the approval of NOPSEMA.

It is not intended that a formal process is required for approval. For example, the titleholder could agree with NOPSEMA whether a plan may relate to more than one activity, or to an activity or activities to be undertaken under two or more titles held by the same or different titleholders, prior to submitting the plan, or NOPSEMA could consider the matter when assessing the plan. This is a suitable topic for guidance issued by NOPSEMA.

Subsection 26(8)

Subsection 26(8) requires a titleholder to include all sensitive information, and the full text of any response by a relevant person to consultation under section 25 of the Environment Regulations (see subparagraph 24(b)(iv) of the Environment Regulations), in a separate part of an environment plan (referred to as the “sensitive information part”). The requirement facilitates publication of an environment plan by NOPSEMA with any sensitive information and full texts of responses omitted, to safeguard the privacy and commercial interests of relevant persons. The information is still taken into account by NOPSEMA during its assessment of the environment plan.

A definition of “sensitive information” is included in section 5 of the Environment Regulations.

Section 27 – Checking completeness of submitted environment plan

This section applies when an environment plan is submitted to NOPSEMA under section 26, resubmitted in response to an invitation under section 29, or resubmitted under subsection 31(2) (i.e. when a seismic or exploratory drilling environment plan is significantly modified). Within five business days, NOPSEMA must decide provisionally if the plan includes material apparently addressing all of the provisions of Division 2 of Part 4 of the Environment Regulations (which sets out the content requirements for an environment plan).

All environment plans submitted to NOPSEMA for assessment are published on NOPSEMA’s website. Further, environment plans for seismic or exploratory drilling activity are subject to a period of public comment prior to assessment by NOPSEMA. Before publishing an environment plan, it is therefore necessary for NOPSEMA to provisionally determine if the plan includes sufficient information to address each of the content requirements of the Environment Regulations. To support transparency, it is important that published environment plans, including environment plans subject to public comment, include content relating to all the content requirements for a plan.

NOPSEMA will not publish the environment plan unless NOPSEMA provisionally determines that the plan includes material apparently addressing each of the content requirements of the Environment Regulations – see section 28.

The initial completeness check is not intended to be an assessment of the appropriateness, quality, or adequacy of the environment plan, including the degree to which the plan meets the criteria for acceptance in section 34 of the Environment Regulations. NOPSEMA is only required to determine that there is some information included in the plan to address each of the content requirements. This is not a reviewable decision, as it is preliminary in nature.

As part of the completeness check, NOPSEMA will review the sensitive information part of the environment plan. The plan will not pass the completeness check if NOPSEMA considers it includes information that is not required to be included in the sensitive information part, e.g. information given by a person who is not either a relevant person or a person who has provided comment during the period for comment on a seismic or exploratory drilling environment plan.

NOPSEMA is required to make a provisional decision within five business days of the submission of the environment plan. The five-business day period is a maximum timeframe, i.e. NOPSEMA can make a decision at any time within the period. It is open to the person who is making the provisional decision to measure the days according to that person's location. For example, if the person making the decision is located in Western Australia, the person can make the decision within five Western Australian business days.

Section 28 – Publishing environment plan and associated information

This section applies if NOPSEMA makes a provisional decision under section 27 that an environment plan includes material apparently addressing each of the content requirements of the Environment Regulations. As soon as practicable, NOPSEMA is required to publish the environment plan with the sensitive information part removed – see discussion regarding the definitions of “sensitive information” and “sensitive information part” in section 5, and subsection 26(8).

NOPSEMA is also required to publish certain high-level information in relation to the titleholder and the activity or activities to which the plan relates.

The purpose of section 28 is to improve transparency in relation to proposed activities. Publishing the plan and other high-level information will inform the public about the activities, and the proposed environmental management of those activities, prior to the acceptance of the environment plan.

If the plan is for a seismic or exploratory drilling activity, NOPSEMA is also required to publish an invitation for public comment on the plan – see section 30.

Section 29 – Action on incomplete environment plan

This section applies if NOPSEMA makes a provisional decision under section 27 that an environment plan does not include material apparently addressing each of the content requirements of the Environment Regulations. NOPSEMA must inform the titleholder by written notice of the decision and the provisions of Division 2 of Part 4 of the Environment Regulations that appear not to be addressed by the plan. The notice is also required to invite the titleholder to modify the plan and resubmit it to NOPSEMA. When the

titleholder resubmits a modified plan, NOPSEMA has five business days to undertake a completeness check of the modified plan under section 27.

The titleholder can submit a modified plan any time after receiving a written notice from NOPSEMA. There is no limit to the number of times a titleholder may submit a plan for a particular activity for a completeness check by NOPSEMA; i.e. the titleholder can continue to submit modified plans until NOPSEMA has made a provisional decision that the plan includes material apparently addressing each of the content requirements of the Environment Regulations.

Under the Levies Act, an environmental plan levy is imposed on the submission of an environment plan to NOPSEMA under section 26 of the Environment Regulations. As a modified plan submitted in response to a written notice from NOPSEMA is submitted under section 29, the levy is not imposed on submission of the modified plan. The levy continues to only be imposed on the initial submission of an environment plan.

Section 30 – Public comments on seismic or exploratory drilling environment plan

This section provides for public comment on submitted seismic or exploratory drilling environment plans before assessment by NOPSEMA. See discussion in relation to the definition of “seismic or exploratory drilling environment plan” in section 5 of the Environment Regulations.

A public comment period for seismic or exploratory drilling environment plans increases transparency and provides members of the public with opportunities to comment on proposed environmental management arrangements for activities (seismic surveys and exploration drilling) that are the subject of increased public focus.

Inclusion of a public comment period is considered appropriate given that members of the general public are not otherwise required to be consulted on exploration activities. Titleholders are required to make reasonable efforts to consult with a range of different categories of relevant persons about the potential impacts and risks of an activity during the development of an environment plan under section 25 of the Environment Regulations. The purpose of this consultation is to inform management of the impacts and risks of the planned activity, as well as to ensure that those entities that may be involved in an emergency response are aware of the activity and prepared for performing their role.

It is not reasonable to expect that a titleholder can consult directly with any member of the public who may be interested in a particular activity. The public comment period therefore allows interested members of the public to provide their input on environmental management of seismic or exploratory drilling activities.

The public comment period for seismic or exploratory drilling activities does not replace or alter the requirement for consultation with relevant persons during the development of an environment plan under section 25 of the Environment Regulations. The requirement for consultation with relevant persons ensures that persons whose functions, interests or activities will or may be directly affected by an activity have the opportunity to comment on proposed environmental management arrangements for the activity, and the titleholder can take comments into account during development of the plan.

Environment plans for development activities are not subject to a public comment period, as the public would already have the opportunity to comment on offshore project proposals for development activities under Part 2 of the Environment Regulations.

Subsection 30(1) applies when NOPSEMA publishes a seismic or exploratory drilling environment plan under section 28, following satisfaction of an initial completeness check. At the same time, NOPSEMA is also required to publish an invitation for any person to give NOPSEMA written comments on the matters described in Division 2 of Part 4 of the Environment Regulations in relation to the plan. Division 2 sets out the content requirements for an environment plan. Comments are required to be provided within 30 days of publication of the invitation.

The invitation will also invite persons to request that particular information in the comments not be published. Information subject to such a request is included in the definition of “sensitive information”, and therefore is only able to be included in the “sensitive information part” of the environment plan. The sensitive information part of an environment plan is required to be omitted in published versions of an environment plan. See discussion regarding the definitions of “sensitive information” and “sensitive information part” in section 5, and subsection 26(8).

Further, “sensitive information” must not be included in a statement by the titleholder of how they have responded to comments (see paragraph 30(3)(c) and subsection 30(4)), or in a statement by NOPSEMA of how they have taken comments into account in making a decision (see paragraph 35(4)(c) and subsection 35(5)). Both of these statements are required to be published.

Subsection 30(2) requires NOPSEMA to give a copy of comments received during the 30-day period to the titleholder, as soon as practicable after receiving the comments. Requiring NOPSEMA to provide comments to the titleholder as soon as practicable, instead of requiring the provision of all comments at the end of the 30-day period, enables titleholders to consider comments as they are received, increasing efficiency and minimising overall process timeframes. Comments received during the public period will not be published.

Subsection 30(3) provides for what the titleholder must do at the end of the 30-day public comment period. After the end of the period, the titleholder may (at its discretion) modify the plan, and is required to resubmit the plan within 12 months, whether modified or not. It is not mandatory for the titleholder to modify the plan. The titleholder may not elect to make any changes, either because no comments were received during the public comment period, or because the titleholder does not wish to modify the plan in response to the comments. If the titleholder does decide to modify the plan, this could be as a result of the comments received and/or for any other reason.

Requiring resubmission of the plan, either as it has been modified or with no change, ensures that NOPSEMA has confirmation from the titleholder they consider the plan is ready to be assessed, and that NOPSEMA has the most up-to-date version of the plan. Resubmission of the plan, along with a statement required by paragraph 30(3)(c) if applicable, triggers the start of NOPSEMA’s environment plan assessment process – see subsection 33(1) and paragraph 33(2)(a).

Under the Levies Act, an environment plan levy is imposed on submission of an environment plan to NOPSEMA under section 26 of the Environment Regulations. As a plan resubmitted after the end of a public comment period is submitted under subsection 30(3), levy is not imposed on this submission of the plan. The levy continues to only be imposed on the initial submission of an environment plan.

New paragraph 30(3)(c) applies if a titleholder receives comments during the public comment period, and requires the titleholder, when resubmitting a plan, to also give NOPSEMA a written statement responding in general terms to the comments received. The statement must also include information about whether any modifications were made to the plan in response to the comments (subparagraph 30(3)(c)(ii)), to ensure it is clear whether the plan has been modified or not in response to comments. If the plan was modified in response to comments, the statement should refer to where those modifications have been made (subparagraph 30(3)(c)(iii)). The purpose of the statement, which will be published (see paragraph 30(5)(b)), is to enhance transparency, in particular for persons who provide comments during the public comment period.

The intention is that comments may be grouped based on common issues raised, and may include a reference to the section of the plan which has been modified to demonstrate the changes made. A detailed summary of the comments would not be required, as NOPSEMA also has a copy of the public comments that it can take into account during assessment of the environment plan.

As the statement will be published, subsection 30(4) prohibits the titleholder from including sensitive information in the statement – see discussion regarding the definition of “sensitive information” in section 5.

There is no requirement for a titleholder to engage directly or on an ongoing basis with a person who provides comments during the public comment period, either during or after the comment period. The titleholder has discretion as to whether to respond to commenters directly. However, if a new relevant person (as defined in section 25 of the Environment Regulations) is identified during the public comment period, the ongoing consultation requirements in relation to relevant persons apply.

Subsection 30(5) requires NOPSEMA, within five business days of receiving the environment plan (whether modified or not), to publish the plan on its website, with the sensitive information part removed – see discussion regarding the definitions of “sensitive information” and “sensitive information part” in section 5, and subsection 26(8). If NOPSEMA receives a statement of response to comments from the titleholder, NOPSEMA is also required to publish the statement on its website.

The five-business day period is a maximum timeframe, i.e. NOPSEMA can publish the plan and statement (if applicable) at any time within the period. It is open to the person who is publishing the documentation to measure the days according to that person’s location. For example, if the person publishing the documentation is located in Western Australia, the person could do so within five Western Australian business days.

Publishing both the environment plan and the titleholder’s response to comments ensures that the public is able to view both the response and any revisions made to the environment plan

as a result, providing greater clarity and transparency than may be provided if only the response were required to be published.

Subsection 30(6) provides that, in making a decision in relation to an environment plan under section 33 of the Environment Regulations (e.g. to accept the plan, reject the plan, or provide an opportunity to modify and resubmit the plan), NOPSEMA must consider the comments described in subsection 30(2). The comments described in subsection 30(2) are those that meet both of the following criteria:

- (a) the comment was received during the 30-day public comment period (i.e. the period mentioned in subsection 30(1));
- (b) the comment relates to the content of the plan as it relates to the content requirements in Division 2 of Part 4 of the Environment Regulations (i.e. comments described in subsection 30(1)).

NOPSEMA cannot consider any other comments, e.g. comments received outside the 30-day period, and/or comments that do not relate to the content of the plan as it relates to the content requirements of the Environment Regulations. The titleholder therefore only needs to consider these comments in deciding whether to modify its environment plan in response to comments.

It is possible that a range of comments can be received during the public comment period, potentially including comments that are not related to the environmental management of the particular activity. Restricting the comments to be taken into account to only include those received during the 30-day public comment period, and that are relevant to the content of the plan as it relates to the content requirements of the Environment Regulations, provides certainty for the titleholder when deciding whether to revise its environment plan, and NOPSEMA when assessing the plan.

Subsection 30(7) provides for the consequences if a titleholder does not resubmit a plan (whether modified or not) within 12 months after the end of the public comment period. The titleholder is taken to have withdrawn its environment plan under subsection 37(1) at the end of the 12-month period. NOPSEMA will not assess the plan, and if the titleholder still proposes to undertake the activity, they must submit a new environment plan under section 26 and commence the full process again, including a period of public comment for the new plan. In the case of a revised environment plan, the environment plan in force for the activity existing immediately before the revised environment plan was submitted would remain in force – see section 36.

The plan is taken to have been withdrawn after 12 months as, if there is a particularly lengthy timeframe between the public comment period and resubmission of an environment plan, circumstances may have changed and, to ensure transparency, stakeholders should have the opportunity to comment again on the environmental management matters set out in the plan.

As the plan is taken to have been withdrawn under subsection 37(1), the requirement in subsection 37(2) applies for NOPSEMA to publish notice of withdrawal of the plan on its website.

The plan is taken to be withdrawn for the purposes of both the Environment Regulations and the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2022* (Levies Regulations). The latter ensures that subsection 59E(2) or 59I(2) (as applicable) of the Levies Regulations applies so that instalments of the compliance amount of environment plans levies must be refunded or remitted to the titleholder.

Section 31 – Seismic or exploratory drilling environment plan to be resubmitted if significantly modified

This section deals with situations where a seismic or exploratory drilling environment plan is significantly modified after NOPSEMA has published the plan under section 28 or subsection 30(5), and before NOPSEMA makes a decision under section 33 of the Environment Regulations to accept, or refuse to accept, the plan.

The significant modifications covered by section 31 are a significant modification or addition of a new stage of any of the seismic or exploratory drilling activities to which the plan previously related (subparagraph 31(1)(b)(i)), or inclusion in the plan of a new seismic or exploratory drilling activity (subparagraph 31(1)(b)(ii)). The wording of subparagraph 31(1)(b)(i) mirrors the wording of subsection 39(1) of the Environment Regulations, and it is intended to apply in similar circumstances.

If a titleholder significantly modifies a seismic or exploratory drilling environment plan prior to a decision by NOPSEMA, particularly where this occurs after the period for public comment on the plan, this impacts the ability to achieve desired policy outcomes in relation to consultation and transparency. Section 31 therefore requires the titleholder to resubmit the plan, as modified, to NOPSEMA and commence a new 30-day public comment period. The new public comment period will commence following a provisional decision by NOPSEMA that the plan includes material apparently addressing all of the content requirements for an environment plan (see sections 27, 28 and 29) and publication of the plan and an invitation to comment (see subsection 30(1)).

On submission of a modified plan, NOPSEMA must cease its assessment of the previous version of the plan (if the assessment process has commenced), or cease acting under section 30 in relation to the previous version of the plan (if the process in section 30 is underway at the time of submission of the modified plan). A new assessment period begins when the plan is submitted, whether modified or not, after the end of the public comment period.

It is not intended that the requirement to re-commence a 30-day public comment period will apply where there has been a reduction in the size or scale of a proposed activity. For example, if the environment plan was modified so that the area for a proposed seismic survey was reduced, a further 30-day public comment period is not required. The requirement to commence another public comment period is only intended to apply where there are changes to a proposed activity that increase the environmental risk profile for the activity.

Further, the provision does not relate to modifications of an environment plan made solely in response to comments received during the public comment period in section 30. The purpose of the public comment period is that the titleholder may make changes to its plan in response to public comments, which are then considered by NOPSEMA in its assessment of the plan

(noting that, in assessing the plan, NOPSEMA is required to take public comments into account – see subsection 30(6)).

Under the Levies Act, an environment plan levy is imposed on submission of an environment plan to NOPSEMA under section 26 of the Environment Regulations. As a plan resubmitted to NOPSEMA following a significant modification is submitted under subsection 31(2), levy is not imposed on submission of the plan.

Section 32 – Further information

If a titleholder submits an environment plan, this section enables NOPSEMA to request the titleholder to provide further written information about any matter mentioned in Division 2 of Part 4 of the Environment Regulations (content requirements for an environment plan), or any matter that is relevant for NOPSEMA to decide whether it is reasonably satisfied that the plan meets the acceptance criteria for an environment plan.

The Environment Regulations provide for modification and resubmission of an environment plan if NOPSEMA is not reasonably satisfied that the plan meets the acceptance criteria following its assessment of the plan (see paragraphs 33(1)(b) and 33(7)(b)). However, section 32 allows flexibility for NOPSEMA to request additional information during its assessment of the plan. This ensures that, if a submitted plan does not include relevant information, rather than being required to give the titleholder a notice under subsection 33(5), or refuse to accept the plan, NOPSEMA can request and have regard to the information.

NOPSEMA can request further written information more than once prior to making a decision about the plan. Each request must be in writing, set out each matter for which information is requested, and specify a reasonable period within which the information is to be provided.

For the information to be considered by NOPSEMA, the titleholder must provide the information within the period specified by NOPSEMA in the request, or a longer time agreed with NOPSEMA (see subsection 32(4)). NOPSEMA is required to have regard to the information provided in response to a request. If the titleholder provides only some of the information requested to be provided, NOPSEMA must consider that information.

If the titleholder does not provide the information within the period specified or a longer period agreed to by NOPSEMA, NOPSEMA can make a decision on the basis of the version of the plan in relation to which further information had been requested.

Under subsection 33(3) or 33(8), NOPSEMA has 30 days after the event specified in the subsection to make a decision in relation to the plan. The ability for NOPSEMA to request further written information under section 32 does not change this 30-day timeframe. However, if NOPSEMA requests further information, and the time to receive and consider that information would be longer than 30 days after the event specified in subsection 33(3) or 33(8) (as applicable), NOPSEMA has the ability to make a decision under paragraph 33(3)(b) or 33(8)(b) that it is unable to make a decision on the plan within the 30 day period and give the titleholder notice in writing to this effect, setting out a later day by which a decision will be made.

Subsection 32(3) requires a titleholder, when providing information requested by NOPSEMA under section 32, to resubmit to NOPSEMA the environment plan with the information incorporated, whether or not the titleholder also provides the information separately. This ensures that, if the plan is subsequently accepted, and therefore required to be published on NOPSEMA's website (see paragraph 35(4)(b)), the published plan reflects the plan as it has been accepted.

Section 33 – Making decision on submitted environment plan

Section 33 prescribes the assessment and decision-making process in relation to an environment plan submitted to NOPSEMA.

Subsection 33(1) applies if an event described in subsection 33(2) occurs (see discussion below). Under subsection 33(1), if NOPSEMA is reasonably satisfied that the plan meets the acceptance criteria in section 34, then NOPSEMA is required to accept the plan. However, this is subject to section 16, which makes demonstration of financial assurance a prior condition for the acceptance of an environment plan for petroleum activities. If NOPSEMA is not reasonably satisfied that the plan meets the criteria, it must give the titleholder a notice under subsection 33(5).

Subsection 33(2) provides that, for the purposes of subsection 33(1), the event for a seismic or exploratory drilling environment plan is receipt by NOPSEMA of a resubmitted plan under paragraph 30(3)(b) and, if applicable, a statement of response to comments under paragraph 30(3)(c), following the public comment period for the plan. Commencing the assessment period for a seismic or exploratory drilling environment plan only once NOPSEMA has received both the plan and the statement of response to comments ensures there is incentive for the titleholder to comply with the requirement to provide the statement of response.

For all other environment plans, the event is publication of the plan by NOPSEMA under section 28.

The effect of subsection 33(3) is that a decision on an environment plan under subsection 33(1), or a notification of a longer period for NOPSEMA to make the decision, is required within 30 days after the event described in subsection 33(2).

Environment plans can be technically complex and lengthy documents. Despite best efforts, NOPSEMA may not be in a position to consider and decide upon a plan within 30 days, particularly if further information is required. If NOPSEMA is unable to make a decision on the plan within 30 days, NOPSEMA can notify the titleholder of a later date by which the decision will be made.

Subsection 33(4) ensures that non-compliance with the 30-day time period for a decision does not affect the validity of NOPSEMA's decision under subsection 33(1). This ensures that the validity of all decisions is maintained, providing certainty for the titleholder, NOPSEMA and other interested stakeholders.

Subsection 33(5) sets out the requirements for a notice given to the titleholder if NOPSEMA is not reasonably satisfied that the environment plan meets the acceptance criteria. In particular, the notice is required to identify the criteria in section 34 about which NOPSEMA is not reasonably satisfied, and specify a day by which the titleholder may resubmit the plan

for further assessment. The day specified must give the titleholder a reasonable opportunity to modify and resubmit the plan (subsection 33(6)).

If the titleholder resubmits the plan by the date referred to in the notice, or a later date agreed with NOPSEMA, then NOPSEMA is required to make a decision under subsection 33(7). If NOPSEMA is reasonably satisfied that the resubmitted plan meets the acceptance criteria in section 34, then NOPSEMA is required to accept the plan. However, this is subject to section 16, which makes demonstration of financial assurance a prior condition for the acceptance of an environment plan for petroleum activities.

On the other hand, if NOPSEMA is not reasonably satisfied that the resubmitted plan meets the acceptance criteria, NOPSEMA is required to do one of the following, subject to section 16 (which makes demonstration of financial assurance a prior condition for the acceptance of an environment plan for petroleum activities):

- Give the titleholder a further written notice under subsection 33(5). Again, the notice must set out the criteria about which NOPSEMA is not reasonably satisfied, and specify a day by which the titleholder may resubmit the plan. NOPSEMA can use this option to give a titleholder a reasonable number of opportunities to modify and resubmit the plan, as considered appropriate by NOPSEMA, rather than one of the options below.
- Refuse to accept the plan.
- Accept the plan in part for a particular stage of the activity, or accept the plan subject to limitations or conditions applying to operations for the activity.

Under subsection 33(8), NOPSEMA has 30 days after receiving the resubmitted plan to decide whether or not it is reasonably satisfied that the resubmitted plan meets the acceptance criteria in section 34. Alternatively, if NOPSEMA is unable to make a decision within 30 days, NOPSEMA may give the titleholder notice in writing to this effect notifying the titleholder of a later day by which the decision will be made.

Again, subsection 33(9) makes it clear that a decision by NOPSEMA in relation to the plan is not invalid only because NOPSEMA did not meet the 30-day period to make a decision. This ensures that the validity of all decisions is maintained, providing certainty for the titleholder, NOPSEMA and other interested stakeholders.

If the titleholder does not resubmit the plan by the date referred to in the notice, or a later date agreed with NOPSEMA, then NOPSEMA is required to refuse to accept the plan, to accept the plan in part for a particular stage of the activity, or to accept the plan subject to limitations or conditions applying to operations for the activity (subsection 33(10)). A decision to accept the plan in part, or subject to limitations or conditions, is subject to section 16, which makes demonstration of financial assurance a prior condition for the acceptance of an environment plan for petroleum activities.

The Environment Regulations do not provide for merits review of a decision by NOPSEMA to accept, or refuse to accept, an environment plan. A decision to accept, or refuse to accept, an environment involves the evaluation of complex and competing facts and policies. If NOPSEMA refuses to accept an environment plan, it must provide reasons, and the applicant would be able to submit a further plan taking account of those reasons. It is consistent with the Administrative Review Council's guide, "What decisions should be subject to merits

review?” available at <https://www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications/what-decisions-should-be-subject-merit-review-1999> that decisions involving this type of process and complexity would not be subject to merits review. In addition, a merits review tribunal would be required to possess an understanding of the environmental risks associated with offshore petroleum or greenhouse gas activities to be reasonably satisfied as to whether the plan does or does not meet the criteria in section 34. The costs and difficulty of finding experts in areas of environmental regulation and offshore petroleum or greenhouse gas storage operations would outweigh any impact a lack of merits review may have on the titleholder.

Section 34 – Criteria for acceptance of environment plan

This section prescribes the criteria for acceptance of an environment plan. Under section 33 of the Environment Regulations, if NOPSEMA is reasonably satisfied that a plan meets the acceptance criteria prescribed in this section, then NOPSEMA is required to accept the plan. If NOPSEMA is not reasonably satisfied that the environment plan meets the acceptance criteria, NOPSEMA is required to either give the titleholder a reasonable opportunity to modify and resubmit the plan (this opportunity is required to be given at least once), refuse to accept the plan, or accept the plan in part for a particular stage of the activity or subject to limitations or conditions applying to operations for the activity.

The acceptance criteria aim to ensure that the object of the Environment Regulations (set out in section 4) will be met in relation to the activity or activities carried out under an environment plan. For example, NOPSEMA is required to be reasonably satisfied that the environment plan is appropriate for the nature and scale of the project, taking into account matters such as the scope and location of the activity, the type of activity and the environment that may be affected by the activity. NOPSEMA is also required to be satisfied that the environment plan demonstrates that the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable and of an acceptable level.

NOPSEMA is also required to assess whether the plan provides for appropriate environmental performance outcomes, environmental performance standards and measurement criteria, which will be directed to ensuring that the acceptable levels of impact and risk can be met. The criterion relating to the appropriateness of the implementation strategy and monitoring, recording, and reporting arrangements is directed, among other things, to ensuring that environmental performance outcomes and standards will be met and monitored on an ongoing basis.

Paragraph 34(d) includes as an acceptance criterion that the environment plan provides for appropriate environmental performance outcomes. Where the environment plan relates to an activity that is, or is part of, an offshore project, the appropriateness of environmental performance outcomes will be assessed, among other things, in the context of the environmental performance outcomes for the project set out in the accepted offshore project proposal. A titleholder may refine the outcomes, after an offshore project proposal has been accepted, as further details about the activity are determined. However, if the outcomes defined in the environment plan would appear to provide for a reduced level of environmental protection compared to the outcomes defined in the offshore project proposal, the titleholder

is expected to provide justification for the change. The outcomes will still also need to demonstrate that environmental impacts and risks will be managed to an acceptable level.

Paragraph 34(f) prescribes as an acceptance criterion that a plan cannot be accepted if the activity, or any part of the activity, would be conducted in any part of a declared World Heritage property (within the meaning of the EPBC Act). The Australian Government has committed through international agreements that it will not allow mineral exploration or exploitation activities to be undertaken within the boundaries of a declared World Heritage property. The prohibition applies even if NOPSEMA is reasonably satisfied that the plan meets the other acceptance criteria in section 34.

The prohibition only applies to activities that are to be carried out in a World Heritage property. It does not extend to activities that are outside of, but proximate to, a World Heritage property.

An exception to this acceptance criterion provides for measures undertaken to monitor the environment or respond to an emergency. In some cases, there may be a risk that activities carried out outside a declared World Heritage property may have impacts within the property. An environment plan is required to contain arrangements for monitoring the effects of an activity, and emergency response arrangements. The exception is intended to make clear that measures for monitoring and emergency response within a World Heritage property are not prohibited simply because the activity or activities to which the plan relates cannot take place within the World Heritage property. The exception therefore ensures the protection of declared World Heritage properties by encouraging proactive ongoing environmental (i.e. baseline) monitoring, and by allowing emergency response and monitoring in the event of an emergency within World Heritage properties.

Paragraph 34(g) requires NOPSEMA to be reasonably satisfied that an environment plan demonstrates that the titleholder has carried out the consultations required by section 25. This will include an assessment of whether relevant persons have been identified and given sufficient information and a reasonable period to allow them to make an informed assessment of the possible consequences of the proposed activity on them. In order to accept the environment plan, NOPSEMA also needs to be reasonably satisfied that any measures the titleholder has adopted, or proposes to adopt, because of the consultations are appropriate. As a result of the consultation process, NOPSEMA will be properly informed in order to make an assessment as to whether measures proposed in the environment plan to address adverse impacts and risks are appropriate.

Section 35 – Notice of decision on environment plan, publication of accepted plan and submission and publication of summary

This section requires NOPSEMA to give written notice of its decision in relation to an environment plan to the titleholder who submitted the plan. To ensure transparency for the titleholder, if NOPSEMA decides to refuse to accept the plan, or to accept the plan in part for a particular stage of the activity or subject to limitations or conditions, the notice is required to set out the terms of the decision (i.e. what the decision is) and the reasons for the decision. For a decision to accept a plan subject to limitations or conditions, the notice is also required to set out those limitations or conditions.

Paragraph 35(4)(a) requires NOPSEMA to publish a description of the decision made by NOPSEMA in relation to an environment plan, as soon as practicable after notice of the

decision is given to the titleholder. The description of the decision is intended to state whether the plan has been accepted in whole or in part, accepted subject to limitations or conditions, or whether NOPSEMA refused to accept the plan.

The requirement for NOPSEMA to publish a description of the final decision in relation to an environment plan does not prevent NOPSEMA from publishing interim decisions made during the assessment of an environment plan. For example, NOPSEMA may publish a notice advising that NOPSEMA is unable to make a decision within 30 days, in accordance with paragraph 33(3)(b) or 33(8)(b), or advising that NOPSEMA has given the titleholder a reasonable opportunity to modify and resubmit a plan, in accordance with subsection 33(5).

Subsection 35(4) also provides for publication of an environment plan that has been accepted by NOPSEMA. To promote transparency it is important that, if an environment plan is accepted by NOPSEMA, the final version of the plan is made publicly available. For example, the plan may have been modified as a result of NOPSEMA giving the titleholder one or more opportunities to modify and resubmit the plan under section 33 of the Environment Regulations. Paragraph 35(4)(b) provides that if NOPSEMA accepts an environment plan, either in whole or in part, the plan must be published on NOPSEMA's website, as soon as practicable after notice of the decision is given to the titleholder, with the sensitive information part removed – see discussion regarding the definitions of “sensitive information” and “sensitive information part” in section 5, and subsection 26(8). The entire plan (minus the sensitive information part) must be published, regardless of whether the plan is accepted in whole or in part.

It is intended in practice that all versions of an environment plan that are published on NOPSEMA's website (i.e. on submission, after the end of a public comment period (if applicable), and on acceptance) will be retained on NOPSEMA's website on an ongoing basis. This enables comparison between each version of the environment plan.

Paragraph 35(4)(c) applies if NOPSEMA has decided to accept (in whole or in part) a seismic or exploratory drilling environment plan on which one or more comments were received during the public comment period – see section 30. To promote public confidence in the decision-making of NOPSEMA and improve transparency, when publishing the accepted plan NOPSEMA must also publish a statement as to how NOPSEMA took comments into account in making the decision. Given that the statement is published, subsection 35(5) prohibits NOPSEMA from including sensitive information in the statement – see discussion regarding the definition of “sensitive information” in section 5.

Although an environment plan is published on acceptance, a titleholder must also submit a separate summary of an accepted environment plan under subsections 35(6) and (7) for publication. The summary is required whether the plan was accepted in full, in part or subject to limitations or conditions. The summary does not need to repeat large portions of text from the environment plan. Rather, the summary can provide links to the parts of the environment plan that deal with the matters that are required to be included in a summary. The summary therefore provides a useful reference point for persons interested in particular aspects of a plan.

Subsection 35(8) requires NOPSEMA to publish a summary as soon as practicable after the summary has been submitted by the titleholder in accordance with subsections 35(6) and (7).

This includes the requirement that a summary must be to the satisfaction of NOPSEMA under paragraph 35(7)(b). If the information in the environment plan summary is not to the satisfaction of NOPSEMA, the titleholder is required to submit a revised summary to NOPSEMA.

Section 36 – When environment plan is in force

This section provides for when an environment plan for an activity is in force. A number of sections in the Environment Regulations refer to an environment plan that is “in force”.

The effect of the provision is that an environment plan for an activity, including a revised environment plan, commences to be in force when the plan has been accepted by NOPSEMA. The plan only ceases to be in force if NOPSEMA accepts a revised environment plan for the activity that was submitted under Division 5 (at which time the revised environment plan becomes the environment plan that is in force), if acceptance of the plan has been withdrawn by NOPSEMA under section 43, or if the operation of the plan has ended in accordance with section 46.

Section 37 – Withdrawal of environment plan before decision

This section provides a specific ability for a titleholder to withdraw an environment plan it has submitted to NOPSEMA, at any time before NOPSEMA has made a decision under section 33 to accept or refuse to accept the plan.

If the titleholder withdraws the submitted plan, the compliance amount of environment plan levy imposed on submission of the plan by the Levies Act is refunded (for any instalments of the compliance amount paid prior to withdrawal of the plan) or remitted (for instalments yet to be paid) – see subsection 59E(2) or 59I(2) (as applicable) of the Levies Regulations.

For the purposes of transparency, subsection 37(2) ensures that, if NOPSEMA had published the environment plan before the plan was withdrawn by the titleholder, NOPSEMA must publish notice of the withdrawal on NOPSEMA’s website.

Division 5—Revision of environment plan

Section 38 – Revision to include new activity

This section enables a titleholder to submit a revised environment plan to include a new activity under the title, subject to approval from NOPSEMA (see subsection 26(7)). If a titleholder proposes to undertake a new activity, they have two options: submit a new environment plan or submit a revised environment plan if approved by NOPSEMA. It is intended that a titleholder could use the latter option in cases where there is a connection between the activity or activities in the existing environment plan and the new activity. In other cases, it may be more appropriate for the titleholder to submit a new environment plan.

Section 38 provides for the revised environment plan to be submitted under section 26. This means, in effect, that the revised environment plan is treated like a new plan, and is subject to the same processes and requirements as a new plan. This includes the content requirements for an environment plan set out in Division 2, the requirement to consult with relevant

persons during the development of the plan set out in Division 3, and the submission, assessment and acceptance process set out in Division 4 (including a public comment period if the new activity is a seismic or exploratory drilling activity).

If the new activity is, or is part of, an offshore project, a revised environment plan may only be submitted if there is an accepted offshore project proposal that includes the activity, or if there is a relevant decision of the Environment Minister in relation to the activity (see subsections 26(3) to (5)). If a plan is submitted in contravention of this requirement, the plan is taken not to have been submitted. The plan will not be considered by NOPSEMA, and the assessment and acceptance process in sections 27 to 35 do not apply. As the plan is taken not to have been submitted, the environment plan levy is not imposed.

It is an offence for a titleholder to undertake an activity without an environment plan in force for the activity (see section 17). Therefore, if the titleholder wishes to undertake the new activity that is, or is part of, an offshore project, it will need to develop, submit, publicly consult on, and obtain NOPSEMA's acceptance of an offshore project proposal that includes that activity. An offshore project proposal will only need to be developed for that particular activity. Therefore if the activity were part of a broader development for which an offshore project proposal had been accepted, but the particular activity had not been included in the original proposal, it is not intended that the titleholder will need to re-do the original proposal for all activities, including the new activity.

If the new activity is a petroleum activity, NOPSEMA must not accept the revised environment plan unless NOPSEMA is reasonably satisfied that the titleholder is compliant with its financial assurance obligations in relation to the activity, and that compliance is in a form that is acceptable to NOPSEMA – see the discussion at section 16.

Under paragraph 10F(1)(a) of the Levies Act, an environment plan levy is imposed on submission of a revised environment plan in accordance with section 38, as such a plan is submitted under section 26. As for a new environment plan submitted under section 26, a levy is only imposed on the initial submission of a revised environment plan. Levies are not imposed if the revised environment plan is subsequently modified and resubmitted in response to a written notice from NOPSEMA under section 29, resubmitted (whether modified or not) after the end of a public comment period under section 30, resubmitted following a significant modification under section 31, or modified and resubmitted in accordance with a notice under subsection 33(5).

A titleholder must submit a revised environment plan in full, and cannot submit only a revised part of an environment plan. If a titleholder could submit a revised part of a plan, this may cause complexity in relation to requirements to publish the environment plan and, in the case of a revision of a seismic or exploratory drilling environment plan, invite public comment on the revised environment plan. Requiring the whole plan to be submitted, as it has been revised, ensures clarity and transparency for the purposes of publication of the plan and public comment on the revised environment plan (if applicable).

If the revised environment plan is accepted by NOPSEMA under section 33, the revised environment plan commences to be in force. The revised environment plan replaces the previous plan, which ceases to be in force – see section 36.

Section 39 – Revision because of other change, or proposed change, of circumstances or operations

This section requires a titleholder to submit a revised environment plan in certain circumstances.

Subsection 39(1) – significant modification or new stage of activity

Subsection 39(1) requires a titleholder to submit a revised environment plan for an activity before the commencement of any significant modification or new stage of the activity that is not provided for in the environment plan as currently in force. It is an offence for a titleholder to undertake an activity in a way that is contrary to the environment plan in force for the activity (see section 18).

A revised plan is not required for a decrease in the scope of the activities to be carried out, where the activities within the new scope are already covered by the environment plan as currently in force. For example, a revised plan is not required for a reduction in scope from six wells to five wells, or reducing the spatial extent of a seismic survey, where the environment plan already provides for the wells or reduced spatial extent as part of the initial proposal for a larger scope of work.

Subsection 39(2) – new or increased environmental impact or risk

Subsection 39(2) requires a titleholder to submit a revised environment plan for an activity before, or as soon as practicable after, the occurrence of any significant new or significant increase in an environmental impact or risk, or the occurrence of a series of new or series of increases in environmental impacts or risks that together amount to a significant new or significant increase in an environmental impact or risk, that is not provided for in the environment plan in force. The intent of subsection 39(2) is to require revision of an environment plan when an activity has already commenced and the titleholder identifies an unforeseen impact or risk, or unforeseen increase in an identified impact or risk.

A revised environment plan submitted in accordance with subsection 39(2) is not a seismic or exploratory drilling environment plan, even if the activity or activities to which the plan relates are seismic or exploratory drilling activities. This means that a revised environment plan submitted in accordance with subsection 39(2) is not subject to any of the requirements in Division 4 of the Environment Regulations that apply specifically in relation to a seismic or exploratory drilling environment plan, including the requirement for a period of public comment under section 30 of the Environment Regulations. See discussion in relation to the definition of *seismic or exploratory drilling environment plan* in section 5.

A revised environment plan submitted in accordance with subsection 39(2) is still required to be published under subsection 28(1) prior to assessment by NOPSEMA. NOPSEMA's assessment of the revised environment plan will commence in accordance with paragraph 33(2)(b); i.e. on the day NOPSEMA publishes the revised environment plan under section 28 following a provisional decision that the revised environment plan includes material apparently addressing all of the content requirements for an environment plan.

Subsection 39(3) – change in titleholder

Subsection 39(3) requires that if there is a change in the titleholder that will result in a change in the manner in which the environmental impacts and risks of an activity will be managed, the new titleholder must submit a revised environment plan as soon as practicable after becoming the new titleholder. It is an offence for a titleholder to undertake an activity in a way that is contrary to the environment plan in force for the activity (see section 18).

Subsection 39(3) does not require a revised environment plan every time there is a change in the membership of the titleholder group. If this were the case, a titleholder would be required to submit a revised environment plan for every change in title, including transfers of relatively minor title interests that have no impact on the management of environmental impacts and risks. This would create an unnecessary burden on industry for no corresponding increase in environmental standards.

General notes applicable to revised environment plans

Section 39 provides for a revised environment plan to be submitted under section 26. This means, in effect, that the revised environment plan is treated like a new plan, and is subject to the same processes and requirements as a new plan. This includes the content requirements for an environment plan set out in Division 2, the requirement to consult with relevant persons during the development of the plan set out in Division 3, and the submission, assessment and acceptance process set out in Division 4 (including a public comment period if the revised environment plan is a seismic or exploratory drilling environment plan, with the exception of a revised environment plan submitted under subsection 39(2) as discussed above).

If the revised environment plan is for a petroleum activity, NOPSEMA must not accept the revised environment plan unless NOPSEMA is reasonably satisfied that the titleholder is compliant with its financial assurance obligations in relation to the activity, and that compliance is in a form that is acceptable to NOPSEMA – see the discussion at section 16.

Under paragraph 10F(1)(a) of the Levies Act, an environment plan levy is imposed on submission of a revised environment plan in accordance with section 39, as such a plan is submitted under section 26. As for a new environment plan submitted under section 26, a levy is only imposed on the initial submission of a revised environment plan. Levies are not imposed if the revised environment plan is subsequently modified and resubmitted in response to a written notice from NOPSEMA under section 29, resubmitted (whether modified or not) after the end of a public comment period under section 30, resubmitted following a significant modification under section 31, or modified and resubmitted in accordance with a notice under subsection 33(5).

A titleholder is required to submit a revised environment plan in full, and does not have the ability to submit only a revised part of an environment plan. If a titleholder could submit a revised part of a plan, this may cause complexity in relation to requirements to publish the environment plan and, in the case of a revision of a seismic or exploratory drilling environment plan, invite public comment on the revised environment plan. For example, publishing only a revised part of a plan would not enable the public to consider the revised part in the context of the overall plan, or may result in confusion as to which parts of a plan are applicable. Requiring the whole plan to be submitted, as it has been revised, ensures

clarity and transparency for the purposes of publication of the plan and public comment on the proposed revision (if applicable).

If the revised environment plan is accepted by NOPSEMA under section 33, the revised environment plan commences to be in force. The revised environment plan replaces the previous plan, which ceases to be in force – see section 36.

Section 40 – Revision on request by NOPSEMA

This section enables NOPSEMA to request a titleholder to submit a revised environment plan for an activity. This ensures that NOPSEMA can request a revised environment plan in circumstances where NOPSEMA considers it is necessary to do so to deal with a matter relating to the management of the environmental impacts and risks of an activity, in circumstances where a titleholder is not otherwise required to submit a revised environment plan under the Environment Regulations.

Under subsection (2), the request is required to set out the matters to be addressed in the revised environment plan, the time by which the revised environment plan is to be submitted and the grounds for the request.

The titleholder has an opportunity to make a written submission in response to a request from NOPSEMA stating the titleholder's reasons as to why a revised environment plan is not needed, and/or why the revised environment plan does not need to address one or more matters in the request or needs to address different matters, and/or why a longer time should be allowed to submit the revised environment plan (paragraphs (3)(a)-(c)). This written submission is required to be made within 21 days of NOPSEMA's request, or a longer period if allowed by NOPSEMA in writing (subsection (4)).

If the submission from the titleholder contains the required information and is submitted within the required period, NOPSEMA will need to consider the submission and decide whether to continue with its request for a revised environment plan as initially stated, or whether to vary or withdraw the request (subsection (5)). If NOPSEMA decides to vary or withdraw the request, NOPSEMA is required to give the titleholder notice in writing setting out the new terms of the request, or advising that the request has been withdrawn. If NOPSEMA does not accept the reasons in the submission from the titleholder, and decides to continue with its request as initially stated, NOPSEMA is required to give the titleholder notice in writing of the grounds for not accepting the titleholder's reasons.

If a request by NOPSEMA for a titleholder to submit a revised environment plan is not withdrawn, subsection (6) requires the titleholder to submit the requested revised environment plan under section 26 by the time stated in the request (as varied if applicable).

Section 40 provides for a revised environment plan to be submitted under section 26. This means, in effect, that the revised environment plan is treated like a new plan, and is subject to the same processes and requirements as a new plan. This includes the content requirements for an environment plan set out in Division 2, the requirement to consult with relevant persons during the development of the plan set out in Division 3, and the submission, assessment and acceptance process set out in Division 4 (including a public comment period if the revised environment plan is a seismic or exploratory drilling environment plan).

If the revised environment plan is for a petroleum activity, NOPSEMA must not accept the revised environment plan unless NOPSEMA is reasonably satisfied that the titleholder is compliant with its financial assurance obligations in relation to the activity, and that compliance is in a form that is acceptable to NOPSEMA – see the discussion at section 16.

Under paragraph 10F(1)(a) of the Levies Act, an environment plan levy is imposed on submission of a revised environment plan in accordance with section 40, as such a plan is to be submitted under section 26. As for a new environment plan submitted under section 26, a levy is only imposed on the initial submission of a revised environment plan. Levies are not imposed if the revised environment plan is subsequently modified and resubmitted in response to a written notice from NOPSEMA under section 29, resubmitted (whether modified or not) after the end of a public comment period under section 30, resubmitted following a significant modification under section 31, or modified and resubmitted in accordance with a notice under subsection 33(5).

A titleholder must submit a revised environment plan in full, and does not have the ability to submit only a revised part of an environment plan. If a titleholder was able to submit a revised part of a plan, this may cause complexity in relation to requirements to publish the environment plan and, in the case of a revision of a seismic or exploratory drilling environment plan, invite public comment on the revised environment plan. For example, publishing only a revised part of a plan does not enable the public to consider the revised part in the context of the overall plan, or may result in confusion as to which parts of a plan are applicable. Requiring the whole plan to be submitted, as it has been revised, ensures clarity and transparency for the purposes of publication of the plan and public comment on the proposed revision (if applicable).

If the revised environment plan is accepted by NOPSEMA under section 33, the revised environment plan commences to be in force. The revised environment plan replaces the previous plan, which ceases to be in force – see section 36.

Section 41 – Revision at the end of each 5 years

For a longer-term activity, this section requires a titleholder to submit a revised environment plan for the activity before the end of each consecutive five year period. A revised environment plan is required whether or not there has been a change in the activity or the environmental impacts and risks of the activity. This ensures that the titleholder is periodically required to consider whether the environmental management measures set out in the plan are still appropriate to reduce environmental impacts and risks to as low as reasonably practicable and an acceptable level, and that NOPSEMA is required to assess the revised environment plan to ensure that it still meets the acceptance criteria set out in section 34.

A titleholder is required to submit a revised environment plan to NOPSEMA at least 14 days before the end of the five-year period starting on the day that the plan is first accepted under section 33, and subsequently at least 14 days before the end of each five-year period starting on the day NOPSEMA accepts each five-yearly revision. However, NOPSEMA has the ability to restart the five-year clock if a revised environment plan has been submitted by the titleholder in accordance with section 38, 39 or 40 within a five-year period (paragraph 41(1)(c) and subsection 41(2)). This will avoid the requirement for the titleholder to submit

another revised environment plan in accordance with section 41 within a potentially short period of time, and thereby reduces the regulatory burden for titleholders.

Under section 43, it is a ground for NOPSEMA to withdraw its acceptance of an environment plan if the titleholder does not submit a revised environment plan in accordance with section 41.

Section 41 provides for a revised environment plan to be submitted under section 26. This means, in effect, that the revised environment plan is treated like a new plan, and is subject to the same processes and requirements as a new plan. This includes the content requirements for an environment plan set out in Division 2, the requirement to consult with relevant persons during the development of the plan set out in Division 3, and the submission, assessment and acceptance process set out in Division 4 (including a public comment period if the revised environment plan is a seismic or exploratory drilling environment plan).

If the revised environment plan is for a petroleum activity, NOPSEMA must not accept the revised environment plan unless NOPSEMA is reasonably satisfied that the titleholder is compliant with its financial assurance obligations in relation to the activity, and that compliance is in a form that is acceptable to NOPSEMA – see the discussion at section 16.

Under paragraph 10F(1)(a) of the Levies Act, an environment plan levy is imposed on submission of a revised environment plan in accordance with section 41, as such a plan is submitted under section 26. As for a new environment plan submitted under section 26, a levy is only imposed on the initial submission of a revised environment plan. Levies are not imposed if the revised environment plan is subsequently modified and resubmitted in response to a written notice from NOPSEMA under section 29, resubmitted (whether modified or not) after the end of a public comment period under section 30, resubmitted following a significant modification under section 31, or modified and resubmitted in accordance with a notice under subsection 33(5).

A titleholder is required to submit a revised environment plan in full, and does not have the ability to submit only a revised part of an environment plan. If a titleholder can submit a revised part of a plan, this may cause complexity in relation to requirements to publish the environment plan and, in the case of a revision of a seismic or exploratory drilling environment plan, invite public comment on the revised environment plan. For example, publishing only a revised part of a plan would not enable the public to consider the revised part in the context of the overall plan, or may result in confusion as to which parts of a plan are applicable. Requiring the whole plan to be submitted, as it has been revised, ensures clarity and transparency for the purposes of publication of the plan and public comment on the proposed revision (if applicable).

If the revised environment plan is accepted by NOPSEMA under section 33, the revised environment plan commences to be in force. The revised environment plan replaces the previous plan, which ceases to be in force – see section 36.

Section 42 – Existing environment plan continues in force if revised environment plan not accepted

This section clarifies that, if a revised environment plan for an activity that has been submitted in accordance with Division 5 is not accepted by NOPSEMA, the environment plan that is in force for the activity continues to be in force. The titleholder is able to continue to undertake the activity, and is required to do so in accordance with the plan as in force. This includes during the time from submission of the revised environment plan until NOPSEMA makes a decision in relation to the revised environment plan, and following a decision of NOPSEMA to refuse to accept a revised environment plan.

Section 42 makes clear that the continuation in force of the existing environment plan is subject to the OPGGS Act and the Environment Regulations. In particular, Division 6 applies so that it is a ground for NOPSEMA to withdraw the acceptance of the environment plan for an activity if NOPSEMA refused to accept a revised environment plan for the activity. For example, NOPSEMA may wish to consider withdrawing acceptance if a revised environment plan submitted under subsection 39(2) before or as soon as practicable after the occurrence of a significant new or significant increase in risk is refused, where the existing environment plan does not adequately deal with the new or increased risk. (Note also the effect of section 19 of the Environment Regulations, which makes it an offence to undertake an activity after the occurrence of a significant new or significant increase in risk, including in circumstances where a revised environment plan submitted under subsection 39(2) has been refused by NOPSEMA.)

If NOPSEMA accepts a revised environment plan, the revised environment plan commences to be in force and must be complied with. The revised environment plan replaces the previous plan, which ceases to be in force – see section 36.

Division 6—Withdrawing acceptance of environment plan

Section 43 – Withdrawing acceptance of environment plan

This section provides for NOPSEMA to withdraw the acceptance of the environment plan for an activity on any of the grounds specified in the section.

Under section 17 of the Environment Regulations, a titleholder commits an offence if they undertake an activity and an environment plan is not in force for the activity. If NOPSEMA withdraws acceptance of an environment plan, there is no longer an environment plan in force for the activity, and the titleholder cannot legally undertake the activity. See also section 36, which sets out when an environment plan is in force.

Section 44 provides for steps to be taken prior to withdrawal of acceptance to ensure procedural fairness for the titleholder. The written notice withdrawing NOPSEMA's acceptance of an environment plan is required to set out the reasons for the withdrawal (subsection 43(2)).

NOPSEMA has a range of graduated enforcement mechanisms available to it, and has a discretion to withdraw the acceptance of an environment plan when a ground under subsection 43(1) arises. Provided that such a ground exists, NOPSEMA can take account of

all relevant circumstances in deciding whether to withdraw the acceptance of an environment plan. This may include whether the titleholder has made genuine attempts to comply, or whether the failure to comply has caused NOPSEMA to be concerned that there may be a risk to the environment from the activity. The OPGGS Act also provides other potential consequences for non-compliance with the OPGGS Act or regulations. These include, as a last resort, the ability for the Joint Authority to cancel a petroleum title, or for the responsible Commonwealth Minister to cancel a greenhouse gas title.

Paragraph 43(1)(a) provides NOPSEMA with the ability to withdraw acceptance of an environment plan if the titleholder has not complied with a provision of the OPGGS Act relating to environmental requirements. It is also a ground for withdrawal of acceptance if the titleholder has not complied with:

- a direction given by NOPSEMA under the general power to give directions (section 574 or 579A), the power to give a direction for a significant offshore petroleum incident (section 576B), or the power to give a remedial direction (section 586 or 591B)
- a direction given by the responsible Commonwealth Minister under the general power to give a direction (section 580) or the power to give a remedial direction (section 592).

Paragraph 43(1)(b) makes it a ground for withdrawal if the titleholder has not complied with specified provisions of the Environment Regulations. These provisions relate to:

- the prohibition against a titleholder undertaking an activity in a way that is contrary to the environment plan in force for the activity, or any limitation or condition to which the acceptance of the plan was made subject (section 18)
- the prohibition against a titleholder undertaking an activity after the occurrence of any significant new environmental impact or risk, or any significant increase in an existing environmental impact or risk, arising from the activity that is not provided for in the environment plan in force for the activity (section 19)
- the requirement to submit a revised environment plan because of a change, or proposed change, of circumstances or operations (section 39)
- the requirement to submit a revised environment plan on request by NOPSEMA (section 40)
- the requirement to submit a revised environment plan at the end of each five-year period (section 41)
- the requirement to submit environmental performance reports to NOPSEMA for the activity, at the time or times provided for in the environment plan in force for the activity (subsection 51(1)).

Paragraph 43(1)(c) provides NOPSEMA the ability to withdraw the acceptance of an environment plan if NOPSEMA has refused to accept a revised environment plan for the activity. For example, NOPSEMA may wish to consider withdrawing acceptance if a revised environment plan submitted under subsection 39(2) before or as soon as practicable after the occurrence of a significant new or significant increase in risk is refused, where the existing environment plan does not adequately deal with the new or increased risk.

Paragraph 43(1)(d) allows NOPSEMA to withdraw the acceptance of an environment plan when NOPSEMA is not reasonably satisfied, after two or more requests for modification of a report on environmental performance, that the titleholder has given NOPSEMA sufficient information to enable it to determine whether the environmental performance outcomes and environmental performance standards in the environment plan have been met. Section 51 of the Environment Regulations requires a titleholder to submit regular reports to NOPSEMA in relation to the titleholder's environmental performance for an activity. This includes the ability for NOPSEMA to ask the titleholder to modify a report if NOPSEMA is not reasonably satisfied that the report is sufficient to enable NOPSEMA to determine whether the environmental performance outcomes and standards in the environment plan have been met.

Paragraph 43(1)(e) makes failure by a titleholder to maintain compliance with its financial assurance obligations in subsection 571(2) of the OPGGS Act in relation to a petroleum activity, in a form that is acceptable to NOPSEMA, a ground for NOPSEMA to withdraw acceptance of the environment plan in force for the activity.

Section 44 – Steps to be taken before withdrawing acceptance

This section sets out the steps that NOPSEMA must take before NOPSEMA can withdraw the acceptance of an environment plan for an activity under section 43. The purpose of the provision is to ensure procedural fairness for the titleholder given the potentially severe consequences of a decision to withdraw acceptance, such as potential increases to project costs and delays.

NOPSEMA is required to give at least 30 days' notice to the titleholder of its intention to withdraw the acceptance of an environment plan. NOPSEMA is also able to give a copy of the notice to any other persons that NOPSEMA thinks fit. This may occur, for example, in circumstances where NOPSEMA considers that another person may be directly impacted by the proposed decision, or where NOPSEMA considers that another person may have information that is relevant to the decision.

NOPSEMA is required to give the titleholder, and any other person to whom a copy of the notice has been given, an opportunity to submit any matters for NOPSEMA to take into account in finally deciding whether to withdraw the acceptance of the plan. The notice of intent to withdraw acceptance is required to specify a day by which submissions must be made.

Subsection 44(5) sets out matters that NOPSEMA must take into account in deciding whether to withdraw acceptance of an environment plan. NOPSEMA is required to take into account any action taken by the titleholder to remove the ground for withdrawal of acceptance or to prevent the ground occurring again. NOPSEMA is also required to take into account any matter submitted by the titleholder or any other person in response to the notice of intent to withdraw given by NOPSEMA, where that submission has been provided before the date specified in the notice.

Section 45 – Withdrawal of acceptance not affected by other provisions

This section is inserted for the avoidance of doubt. The section confirms that NOPSEMA may withdraw the acceptance of an environment plan on the ground that the titleholder has not complied with a provision of the OPGGS Act or the Environment Regulations, even in circumstances where the titleholder has also been convicted of an offence by reason of the failure to comply with the provision.

The section also confirms that, if NOPSEMA withdraws the acceptance of an environment plan on the ground that the titleholder has not complied with a provision of the OPGGS Act or the Environment Regulations, the titleholder may still be convicted of an offence by reason of the relevant non-compliance. That is, the administrative sanction of withdrawing acceptance of an environment plan and criminal sanctions may be applied separately or cumulatively.

Division 7—End of environment plan

Section 46 – Plan ends when titleholder notifies completion

This section provides for the end of the operation of an environment plan for an activity or activities under a title. This ensures that there is a mechanism for ceasing an environment plan to be in force once all of the activities and obligations under the plan have been completed. This also avoids unintended consequences, such as a continuing obligation to submit five-year revisions of an environment plan under section 41 even after the activities covered by the plan have ceased.

Section 46 specifies that the operation of an environment plan will end when NOPSEMA accepts a notification from the titleholder that the activity or activities to which the plan relates have ended and all obligations under the environment plan have been completed.

Section 36 provides for an environment plan to no longer be in force when the operation of the plan ends under section 46.

Part 5—Incidents, reports and records

Section 47 – Notifying reportable incidents

This section makes it an offence of strict liability if there is a reportable incident for an activity under a title, and the titleholder undertaking the activity does not notify NOPSEMA of the reportable incident in accordance with the requirements in subsection 47(2).

Section 5 defines a *reportable incident* as an incident relating to an activity that has caused, or has the potential to cause, moderate to significant environmental damage. The requirement to notify NOPSEMA of a reportable incident ensures that NOPSEMA is made aware of the incident as soon as practicable to ensure it can consider and take regulatory action where required, such as conducting an oil pollution environmental inspection or issuing a direction under the OPGGS Act.

The maximum penalty for a failure to comply with subsection 47(1) is 40 penalty units, or 200 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. It is appropriate to apply strict liability to the offence because of its nature, which is to require that the titleholder is accountable and reports incidents in relation to offshore operations. Strict liability is appropriate to ensure this level of accountability. In addition, it would be difficult to prove intent in respect of an offence based on the titleholder's knowledge of an offshore operation, including where multiple titleholder arrangements are prevalent, and given the remote and complex nature of offshore operations. The intention of the application of strict liability is therefore to improve compliance in the regulatory regime. This is consistent with the principles outlined in [*A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011*](#), which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct. The maximum penalty of 40 penalty units is also consistent with the Guide, which expresses a preference for a maximum of 60 penalty units for offences of strict liability.

The 2009 Environment Regulations specified that it was a defence to a prosecution for a failure to notify a reportable incident if the titleholder had a reasonable excuse. This defence is not specified in the Environment Regulations, as the general defences in Part 2.3 of the Criminal Code can be relied on. The kinds of factors that may have been included in the defence in the 2009 Environment Regulations, and could still be captured under the general defences, includes where immediate efforts are focussed on avoiding significant impacts to human health or safety and/or the environment, or communications at a facility are down so that communications to shore were unable to be made within the required timeframe. The general defence in section 10.1 of the Criminal Code relates to intervening conduct or an event, i.e. where the offence is brought about by another person or a non-human act or event over which the person has no control, and the alleged offender could not reasonably be expected to guard against that. This is likely to include the cutting of communications at a facility. The Criminal Code also includes a defence of sudden or extraordinary emergency in section 10.3. A person will not be criminally responsible for an offence if the failure to notify the reportable incident to NOPSEMA is in response to circumstances of sudden or extraordinary emergency.

A notification of a reportable incident is required to comply with the requirements of subsection 47(2). The notification is required to be given as soon as practicable, and no later than 2 hours, after the first occurrence of the incident or, if not detected at the time of the first occurrence, the time that the titleholder becomes aware of the incident. The notification is required to include all material facts and circumstances that are known or can be obtained by reasonable search or enquiry, any action taken to mitigate adverse environmental impacts, and corrective action already taken or proposed to be taken to stop, control or remedy the incident.

The notification must be oral (paragraph 47(2)(b)). If a notification could be made in writing, there is a risk that the notification may not be received when or soon after it is sent, and therefore the notification may not be actioned promptly or appropriately.

Given that a notification of a reportable incident must be oral, subsection 47(3) requires the titleholder to give a written record of a notification to NOPSEMA, the Titles Administrator and, depending on where the incident occurred, the Department of the responsible State Minister or the Department of the responsible Northern Territory Minister. The written record is required to be provided as soon as practicable after the initial oral notification, and need not include anything that was not in the oral notification (subsection 47(4)). This provision ensures that NOPSEMA has a written record of the notification which confirms the information in the initial oral notification and can be retained as a record. This provision also ensures that both the Titles Administrator and the Department of the relevant State or Northern Territory Minister are made aware of the occurrence of the incident.

The terms ‘responsible State Minister’ and ‘responsible Northern Territory Minister’ are defined in section 7 of the OPGGS Act. The responsible State Minister for all States other than Tasmania is the Minister who is the State member of the Joint Authority for the offshore area of the relevant State. The responsible State Minister for Tasmania is the Minister of Tasmania who is responsible for administering the Tasmanian Petroleum Submerged Lands Act. The responsible Northern Territory Minister is the Minister who is the Northern Territory member of the Joint Authority for the Principal Northern Territory offshore area.

As an example, if the incident occurred in the offshore area of Western Australia, the titleholder is required to give a written record of the notification to the Department of the Western Australian Minister who is the State member of the Joint Authority for Western Australia.

Section 48 – Written report of reportable incidents

This section makes it an offence of strict liability if there is a reportable incident for an activity under a title and the titleholder undertaking the activity does not give NOPSEMA a written report of the incident in accordance with the requirements in subsection 48(2).

Section 5 defines a *reportable incident* as an incident relating to an activity that has caused, or has the potential to cause, moderate to significant environmental damage. The requirement to give NOPSEMA a written report of a reportable incident ensures that NOPSEMA is provided with additional information in relation to an incident, further to the initial notification under section 47, to ensure it can consider and take regulatory action where required, such as conducting an oil pollution environmental inspection or issuing a direction under the OPGGS Act.

The maximum penalty for a failure to comply with subsection 48(1) is 40 penalty units, or 200 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. It is appropriate to apply strict liability to the offence because of its nature, which is to require that the titleholder is accountable and reports incidents in relation to offshore operations. Strict liability is appropriate to ensure this level of accountability. In addition, it would be difficult to prove intent in respect of an offence based on the titleholder’s knowledge of an offshore operation, including where multiple titleholder arrangements are prevalent, and given the remote and complex nature of offshore operations. The intention of the application of strict liability is therefore to improve compliance in the regulatory regime. This is consistent with the principles outlined in [A Guide to Framing](#)

Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011, which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct. The maximum penalty of 40 penalty units is also consistent with the Guide, which expresses a preference for a maximum of 60 penalty units for offences of strict liability.

The 2009 Environment Regulations specified that it was a defence to a prosecution for a failure to give a written report of a reportable incident if the titleholder had a reasonable excuse. This defence is not specified in the Environment Regulations, as the general defences in Part 2.3 of the Criminal Code can be relied on. The kinds of factors that were envisaged when referring to a reasonable excuse defence included factors such as having to focus immediate efforts on avoiding significant impacts to human health or safety and/or the environment, or communications at a facility being down so that communications to shore were unable to be made within the required timeframe. The general defence in section 10.1 of the Criminal Code relates to intervening conduct or an event, i.e. where the offence is brought about by another person or a non-human act or event over which the person has no control, and the alleged offender could not reasonably be expected to guard against that. This is likely to include the cutting of communications at a facility. The Criminal Code also includes a defence of sudden or extraordinary emergency in section 10.3. A person will not be criminally responsible for an offence if he or she carries out the conduct constituting the offence (i.e. the failure to give a written report to NOPSEMA) in response to circumstances of sudden or extraordinary emergency.

A written report of a reportable incident is required to comply with the requirements of subsection 48(2). The report must be given as soon as practicable, and no later than three days, after the first occurrence of the incident. Alternatively, NOPSEMA is able to specify another period within which the report must be provided. The timeframe for giving a report is intended to balance the need for NOPSEMA to be provided with information as quickly as practicable with the time needed for the titleholder to obtain a better understanding of the incident and take action to stop, control or remedy the incident.

The report is required to include all material facts and circumstances that are known or can be obtained by reasonable search or enquiry, any action taken to mitigate adverse environmental impacts, corrective action already taken or proposed to be taken to stop, control or remedy the incident, and any action taken or proposed to be taken to prevent a similar incident occurring in future.

Subsection 48(3) requires the titleholder to provide a copy of a written report of a reportable incident to the Titles Administrator and, depending on where the incident occurred, the Department of the responsible State Minister or the Department of the responsible Northern Territory Minister. The copy of the report must be provided within seven days of submitting the report to NOPSEMA. Providing a copy of the report to the Titles Administrator and the Department of relevant State or Northern Territory Minister ensures these authorities have sufficient information in relation to the reportable incident.

The terms ‘responsible State Minister’ and ‘responsible Northern Territory Minister’ are defined in section 7 of the OPGGS Act. The responsible State Minister for all States other

than Tasmania is the Minister who is the State member of the Joint Authority for the offshore area of the relevant State. The responsible State Minister for Tasmania is the Minister of Tasmania who is responsible for administering the Tasmanian Petroleum Submerged Lands Act. The responsible Northern Territory Minister is the Minister who is the Northern Territory member of the Joint Authority for the Principal Northern Territory offshore area.

As an example, if the incident occurred in the offshore area of Western Australia, the titleholder is required to give a copy of the written report to the Department of the Western Australian Minister who is the State member of the Joint Authority for Western Australia.

Section 49 – Additional written reports if requested

This section is only enlivened if a titleholder notifies a reportable incident in accordance with section 47. Section 49 enables NOPSEMA to require additional written reports of a reportable incident, following the initial notification of a reportable incident as required by section 47, and provision of a written report of the incident as required by section 48.

In the case of an on-going incident, further information may be necessary to ensure that NOPSEMA remains informed about the status of the incident, incident response activities, and activities undertaken to prevent the occurrence of further incidents. In addition, the requirement for a written report under section 48 within three days of the occurrence of the incident may not provide the titleholder with a sufficient period to determine the root cause of the incident and to devise preventative actions to stop similar incidents occurring in the future.

Section 49 enables NOPSEMA to require in writing that the titleholder provide further written reports of a reportable incident, including periodic reports, subsequent to the written report required by section 48. The written notice must identify the information or matters to be addressed in the report, and specify a date or time for the report to be given to NOPSEMA. The specified date or time must give the titleholder a reasonable time to prepare the report.

Failure to submit a written report of a reportable incident in accordance with a notice given by NOPSEMA under section 49 is an offence of strict liability, with a maximum penalty of 40 penalty units. Due to the operation of subsection 4B(3) of the Crimes Act, the penalty that may be imposed on a body corporate for a breach of section 49 is 200 penalty units.

The application of strict liability to an offence means that a fault element such as intention to do the act, or not do the act, is not required to be proved. It is appropriate to apply strict liability to the offence because of its nature, which is to require that the titleholder is accountable and reports incidents in relation to offshore operations. Strict liability is appropriate to ensure this level of accountability. In addition, it would be difficult to prove intent in respect of an offence based on the titleholder's knowledge of an offshore operation, including where multiple titleholder arrangements are prevalent, and given the remote and complex nature of offshore operations. The intention of the application of strict liability is therefore to improve compliance in the regulatory regime. This is consistent with the principles outlined in [*A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011*](#), which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct. The maximum penalty

of 40 penalty units is also consistent with the Guide, which expresses a preference for a maximum of 60 penalty units for offences of strict liability.

The 2009 Environment Regulations specified that it was a defence to a prosecution for a failure to give an additional written report of a reportable incident if the titleholder had a reasonable excuse. This defence is not specified in the Environment Regulations, as the general defences in Part 2.3 of the Criminal Code can be relied on. The kinds of factors that were envisaged when referring to a reasonable excuse defence included factors such as having to focus immediate efforts on avoiding significant impacts to human health or safety and/or the environment, or communications at a facility being down so that communications to shore were unable to be made within the required timeframe. The general defence in section 10.1 of the Criminal Code relates to intervening conduct or an event, i.e. where the offence is brought about by another person or a non-human act or event over which the person has no control, and the alleged offender could not reasonably be expected to guard against that. This is likely to include the cutting of communications at a facility. The Criminal Code also includes a defence of sudden or extraordinary emergency in section 10.3. A person will not be criminally responsible for an offence if he or she carries out the conduct constituting the offence (i.e. the failure to give an additional written report to NOPSEMA) in response to circumstances of sudden or extraordinary emergency.

Section 50 – Reporting recordable incidents

This section makes it an offence of strict liability if there is a recordable incident for an activity under a title and the titleholder does not give NOPSEMA a written report of the incident in accordance with the requirements in subsection 50(2).

Section 5 defines a *recordable incident* for an activity for which there is an environment plan in force as a breach of an environmental performance outcome for the activity, or an environmental performance standard relating to the activity, that is not a reportable incident. Reportable incidents must be notified and reported in accordance with sections 47, 48 and 49. The environmental performance outcomes and standards set out in an environment plan are essential to ensuring that the environmental impacts and risks of an activity are managed to as low as reasonably practicable and an acceptable level. Section 50 ensures that NOPSEMA is provided with regular information about any such incidents, and can consider and take regulatory action where required.

The maximum penalty for a failure to comply with subsection 50(1) is 40 penalty units, or 200 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. It is appropriate to apply strict liability to the offence because of its nature, which is to require that the titleholder is accountable and reports incidents in relation to offshore operations. Strict liability is appropriate to ensure this level of accountability. In addition, it would be difficult to prove intent in respect of an offence based on the titleholder's knowledge of an offshore operation, including where multiple titleholder arrangements are prevalent, and given the remote and complex nature of offshore operations. The intention of the application of strict liability is therefore to improve compliance in the regulatory regime. This is consistent with the principles outlined in [A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011](#), which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct. The maximum penalty of 40 penalty units is also

consistent with the Guide, which expresses a preference for a maximum of 60 penalty units for offences of strict liability.

The 2009 Environment Regulations specified that it was a defence to a prosecution for a failure to give a written report of a recordable incident if the titleholder had a reasonable excuse. This defence is not specified in the Environment Regulations, as the general defences in Part 2.3 of the Criminal Code can be relied on. The kinds of factors that were envisaged when referring to a reasonable excuse defence included factors such as having to focus immediate efforts on avoiding significant impacts to human health or safety and/or the environment, or communications at a facility being down so that communications to shore were unable to be made within the required timeframe. The general defence in section 10.1 of the Criminal Code relates to intervening conduct or an event, i.e. where the offence is brought about by another person or a non-human act or event over which the person has no control, and the alleged offender could not reasonably be expected to guard against that. This is likely to include the cutting of communications at a facility. The Criminal Code also includes a defence of sudden or extraordinary emergency in section 10.3. A person will not be criminally responsible for an offence if he or she carries out the conduct constituting the offence (i.e. the failure to give a written report to NOPSEMA) in response to circumstances of sudden or extraordinary emergency.

A written report of a recordable incident is required to comply with the requirements of subsection 50(2). The report must relate to a calendar month and be given to NOPSEMA as soon as practicable, and no later than 15 days, after the end of that month. This is intended to ensure that the titleholder has sufficient time to prepare the report, while also ensuring that there is not an undue delay to NOPSEMA's receipt of the written report.

The written report must include a record of all recordable incidents that occurred during the calendar month, all material facts and circumstances concerning the incidents that are known or can be obtained by reasonable search or enquiry, any action taken to mitigate adverse environmental impacts, corrective action already taken or proposed to be taken to stop, control or remedy the incidents, and any action taken or proposed to be taken to prevent similar incidents occurring in future.

Section 51 – Reporting environmental performance

This section requires titleholders to submit regular reports about their environmental performance for an activity to NOPSEMA. Section 5 defines *environmental performance* as the performance of a titleholder in relation to the environmental performance outcomes and environmental performance standards mentioned in an environment plan.

Reports must be provided at the times or intervals provided for in the environment plan. A titleholder is required to state when the reports will be provided (no less than annually) in the environment plan for the activity (see subsection 22(7)).

The purpose of this section is to ensure an adequate level of reporting is provided on a regular basis that is sufficient for NOPSEMA to assess whether the environmental performance outcomes and environmental performance standards set out in the titleholder's environment plan are being met. NOPSEMA therefore has the ability to request that the titleholder modify a report if NOPSEMA is not reasonably satisfied that the information in the report is sufficient to enable NOPSEMA to determine that the environmental performance outcomes and standards set out in the environment plan have been met.

NOPSEMA must identify the reasons it is not reasonably satisfied with the report, so that the titleholder can make modifications accordingly.

If, after two or more requests for a modified report, NOPSEMA is still not reasonably satisfied that the titleholder has provided sufficient information, NOPSEMA has the discretion to withdraw the acceptance of the environment plan, in accordance with the procedures set out in Division 6 of the Environment Regulations – see paragraph 43(1)(d).

Section 52 – Storage of records

This section makes it an offence of strict liability if a titleholder does not store certain documents in a way that makes their retrieval reasonably practicable. This reflects that the documents listed, including the environment plan, notifications and related reports are critical to offshore operations and should be readily accessible. NOPSEMA may want to view records during an inspection to ensure that a titleholder is in compliance with its obligations under the OPGGS Act and the Environment Regulations. Further, there is an expectation that the titleholder may need to readily be able to retrieve records for its own purposes, such as to share the environment plan with employees and/or contractors, particularly during implementation of an incident response, or to check performance records to determine whether there are patterns that may point to a heightened risk of an incident.

Subsection 52(2) makes it an offence of strict liability if a titleholder does not store an environment plan for an activity, in a way that makes retrieval of the plan reasonably practicable, at all times while the plan is in force, and for the period of five years beginning on the day that the plan ceases to be in force.

For example, if the titleholder has an environment plan accepted on 7 April 2023 it is required to store that plan, as the plan commences to be in force on acceptance (in accordance with section 36 of the Environment Regulations). If a revised environment plan is subsequently submitted in accordance with Division 5 of the Environment Regulations, and is accepted by NOPSEMA on 10 May 2025, the titleholder is required to do both of the following:

- store the revised environment plan, which is now the environment plan in force
- store the version of the plan that had been accepted on 7 April 2023, and ceased to be in force on acceptance of the revised environment plan, until 10 May 2030 (i.e. five years after the day it ceased to be in force).

An environment plan may no longer be in force because a revised environment plan submitted in accordance with Division 5 was accepted by NOPSEMA, acceptance of the plan was withdrawn, or the operation of the plan ended – see section 36 of the Environment Regulations.

Subsection 52(4) makes it an offence of strict liability if a titleholder does not store the following documents for a period of five years beginning on the day the document is given to NOPSEMA, in a way that makes retrieval of the document reasonably practicable:

- a written record of a notification of a reportable incident given to NOPSEMA under subsection 47(3) of the Environment Regulations
- a written report given to NOPSEMA under section 48 (initial written report of a reportable incident), section 49 (additional written reports of a reportable incident), section 50 (monthly reports of recordable incidents) or section 51 (environmental performance reports) of the Environment Regulations.

Subsection 52(5) makes it an offence of strict liability if a titleholder creates a record or report mentioned in subsection 52(7) and does not store the record or report in a way that makes retrieval of the record or report reasonably practicable. The records and reports mentioned in subsection 52(7) include records relating to environmental performance, or the implementation strategy, under an environment plan in force for an activity, as well as records of emissions and discharges and records of calibration and maintenance of monitoring devices. This makes clear that it is not only formal written reports that are required to be stored.

The emissions and discharges referred to in paragraph 52(7)(b) are those for which arrangements for monitoring and recording are required to be set out in the implementation strategy in an environment plan (see subsection 22(6)). The monitoring devices referred to in paragraph 52(7)(c) include devices being used to determine that the titleholder is meeting its environmental performance objectives and environmental performance standards as set out in the environment plan. For example, remotely operated vehicles may be used to monitor pipelines or seabed impacts, and anti-collision monitoring equipment may be used on a drilling facility to minimise the risk of impact with the facility. The monitoring devices used for a particular activity will be set out in the environment plan for that activity.

Subsection 52(6) makes it a defence to an offence under subsection 52(5) if the failure to store the record or report in a way that makes retrieval reasonably practicable occurs more than five years after the day that the record or report was created. The defendant bears an evidential burden in relation to this matter. This evidential burden is imposed on the defendant titleholder because the circumstances are likely to be exclusively within the knowledge of the defendant; for example, the defendant would know when it creates a particular document or record. This is particularly the case given the remote nature of offshore petroleum and greenhouse gas storage operations.

The penalty for a failure to comply with subsection 52(1), (3) or (5) is 30 penalty units, or 150 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. It is appropriate to apply strict liability to the offences to ensure that the section can be enforced more effectively as, given the remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements, it is extremely difficult to prove intent. The intention of the application of strict liability is therefore to improve compliance in the regulatory regime. This is consistent with the principles outlined in [*A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011*](#), which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct. The penalty of 30 penalty units is also consistent with the Guide, which expresses a preference for a maximum of 60 penalty units for offences of strict liability.

Section 53 – Making records available

This section makes it an offence of strict liability if a titleholder fails to make a copy of a document or other record available when requested to do so by NOPSEMA, a NOPSEMA inspector or a Greater Sunrise visiting inspector. The provision applies to a document or other record that is required to be stored by a titleholder under section 52, for the period that that section requires that document or record to be stored (subsection 53(1)).

The purpose of this section is to ensure that NOPSEMA and inspectors under the offshore petroleum and greenhouse gas storage regime are able to access copies of documents and

records to better enable them to monitor and assess compliance by a person with their obligations under the OPGGS Act and the Environment Regulations.

A request by NOPSEMA, a NOPSEMA inspector or a Greater Sunrise visiting inspector must be made in writing (subsection 53(2)). The request may state that a copy of the document or record be made available to an agent of NOPSEMA, a NOPSEMA inspector or a Greater Sunrise visiting inspector. The titleholder is then required to make the copy available to the agent (subsection 53(3)).

Prior to making a copy of a document available in accordance with a request under this section, the titleholder may request written evidence of the person's appointment as a NOPSEMA inspector, a Greater Sunrise visiting inspector or an agent. If the person does not produce the evidence to the titleholder, then the titleholder is not required to make the copy of the document available (subsection 53(4)).

Subsection 53(5) provides for when a copy of the document or record must be made available. In the usual case the copy of the document or record must be made available during business hours on a business day in the place where the document or record is kept. However, in the case of an emergency, the copy of the document or record must be made available as soon as possible at any time of the day or night on any day during the emergency. During an emergency, it is essential that the regulator and inspectors have up-to-date information to enable them to monitor the emergency response and determine if regulatory action is required.

Under subsection 53(6), to minimise burden for the titleholder, the copy of the document must be made available at the place where the document or record is kept or another place as agreed. The titleholder and the person requesting access to the copy of the document can agree another place if it would be more convenient to do so. This may include by means of electronic transmission.

If the relevant document or record is stored on a computer, the copy must be made available in hard copy, or, if agreed, in electronic form (subsection 53(7)). Providing a hard copy will more readily enable the person requesting the copy of the document or record to access and review the information contained in the document or record. However, the copy may be made available in electronic form if agreed between the titleholder and the person requesting the copy of the document or record.

The maximum penalty for a failure to comply with a request in accordance with section 53 is 30 penalty units, or 150 penalty units for an offence committed by a body corporate due to the operation of subsection 4B(3) of the Crimes Act. It is appropriate to apply strict liability to the offence to ensure that the section can be enforced more effectively as, given the remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements, it is extremely difficult to prove intent. The intention of the application of strict liability is therefore to improve compliance in the regulatory regime. This is consistent with the principles outlined in [*A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011*](#), which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct. The penalty of 30 penalty units is also consistent with the Guide, which expresses a preference for a maximum of 60 penalty units for offences of strict liability.

Part 6—Miscellaneous

Division 1—Information requirements

Section 54 – Notifying start and end of activity

This section requires titleholders to notify NOPSEMA that an activity is to commence, at least ten days before the activity commences. It also requires titleholders to notify NOPSEMA that an activity is completed, within ten days after the completion of the activity.

Paragraph 21(1)(c) of the Environment Regulations requires, among other things, an environment plan to contain information about an activity, including proposed timetables. However, in some circumstances the actual timing of the activity may differ from that originally proposed in the environment plan (such as, for example, if poor weather delayed the commencement of an activity). In such a case, NOPSEMA may not be aware that an activity is occurring, or when it has ceased. This could have ramifications for compliance inspections, planning, and tracking of performance reports, as well as resulting in NOPSEMA not receiving important information about the timing of activities in Commonwealth waters.

The obligation in section 54 relates to activities, and there may be more than one activity covered by an environment plan. If an environment plan relates to more than one activity, the titleholder must notify the commencement and completion of each of those activities.

Section 55 – Notifying certain operations to State or Territory

This section makes it an offence of strict liability if a titleholder commences a drilling activity or a seismic survey in the offshore area of a State, or in the Principal Northern Territory offshore area, and did not notify the proposed date of commencement of the activity to the department of the responsible State Minister, or the department of the responsible Northern Territory Minister, prior to commencing the activity.

The intention of requiring notification of the commencement of drilling and seismic survey activities is to facilitate State/Northern Territory economic and social planning, and on public interest grounds noting the increased community interest in offshore petroleum activities.

The terms ‘responsible State Minister’ and ‘responsible Northern Territory Minister’ are defined in section 7 of the OPGGS Act. The responsible State Minister for all States other than Tasmania is the Minister who is the State member of the Joint Authority for the offshore area of the relevant State. The responsible State Minister for Tasmania is the Minister of Tasmania who is responsible for administering the Tasmanian Petroleum Submerged Lands Act. The responsible Northern Territory Minister is the Minister who is the Northern Territory member of the Joint Authority for the Principal Northern Territory offshore area.

As an example, if the operations are to take place in the offshore area of Western Australia, the titleholder must notify the Department of the Western Australian Minister who is the State member of the Joint Authority for Western Australia.

The provision does not specify when the titleholder has to notify the relevant department of the proposed date of commencement, other than to require that it be before the commencement of operations. Generally, this should be done close to the proposed date, to allow for the possibility that changes may be made to the actual date of commencement. In addition, although it is not required that the titleholder will notify the department again if the actual date of commencement will be different from the proposed date, there is an expectation (although not a requirement) that they will do so if the actual date of commencement ended up being significantly different from the proposed date originally notified to the department.

Failure to notify the Department of the responsible State Minister or the Department of the responsible Northern Territory Minister in accordance with section 55 is an offence of strict liability, with a maximum penalty of 30 penalty units. Due to the operation of subsection 4B(3) of the Crimes Act, the penalty that may be imposed on a body corporate for a breach of section 55 is 150 penalty units.

The application of strict liability to an offence means that a fault element such as intention to do the act, or not do the act, is not required to be proved. This ensures that the section can be enforced more effectively as, given the remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements, it is extremely difficult to prove intent. The intention of the application of strict liability is therefore to improve compliance in the regulatory regime. This is consistent with the principles outlined in [*A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011*](#), which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct. The penalty of 30 penalty units is also consistent with the Guide, which expresses a preference for a maximum of 60 penalty units for offences of strict liability.

Section 56 – Titleholder may refer to information previously given

In order to remove potential duplication of process and increase efficiencies for industry, this section specifically enables titleholders to reference information or documentation that has previously been provided to NOPSEMA, rather than provide the same information or documentation again, for the purpose of the Environment Regulations.

In addition to environmental management, NOPSEMA is the regulator of occupational health and safety (OHS) and structural integrity of facilities, wells and well-related equipment for offshore petroleum and greenhouse gas storage operations. NOPSEMA therefore receives information from titleholders (or facility operators in the case of OHS) for the purposes of assessments and approvals under the OPGGS Act or other regulations under the OPGGS Act that relate to those regulatory functions. In some cases, that information may also be relevant for the purposes of assessing compliance with the requirements of the Environment Regulations. For example, technical information on the structure and layout of a facility, which is provided in some detail in a safety case, may also be relevant for the assessment of an environment plan. A titleholder must provide general details of the construction and layout of a facility in an environment plan, and it may be useful for a titleholder to reference the safety case if NOPSEMA requires any further detail on this aspect.

To provide flexibility, the titleholder can refer to information or documentation that was previously submitted to NOPSEMA by a person other than the titleholder. For example,

assume Company X is the proponent who submits an offshore project proposal. The proposal may include a large amount of detail describing the environment in which a particular activity is to take place. If that detail is also applicable for the content of the subsequent environment plan for that activity, the plan can refer to the detail already provided in the offshore project proposal, rather than including all of the detail again. However, the titleholder who is required to include the information in the environment plan may not be Company X who previously provided the information (e.g. the titleholder may be a group of companies, or possibly may not even include Company X). By not specifying who must have previously submitted the information, the titleholder can refer to the previously provided information, even though it was not the titleholder who submitted it.

In the event that, for any reason, information provided previously is no longer available to NOPSEMA, subsection 56(2) enables NOPSEMA to inform the titleholder that the information is no longer available, and the titleholder must re-submit the information or documentation.

It is not conducive to the promotion of transparency through publication of environment plans if the information referred to is only available to NOPSEMA and is not otherwise publicly available. Subsection 56(3) therefore provides that a titleholder may only include information in an environment plan by referring to information it has previously given to NOPSEMA for another purpose under the OPGGS Act or regulations if that information is publicly available, and the environment plan includes a link or reference to where the information is available.

For example, an environment plan for an activity in the same region as another activity, for which an accepted environment plan of the titleholder has previously been published on NOPSEMA's website, may include a similar oil pollution emergency plan. The environment plan for the new activity may therefore include a reference to the oil pollution emergency plan in the accepted environment plan that was previously published, rather than reproducing the oil pollution emergency plan in full.

Subsection 56(4) makes it clear that information accepted by NOPSEMA in the context for which it was initially submitted will not automatically be taken to be acceptable for the purpose of the relevant provision/s of the Environment Regulations. The purpose of section 56 is to avoid duplicative effort for the titleholder, and does not provide a guarantee that previously accepted information will be acceptable for all purposes.

Division 2—Fees

Section 57 – Offshore project proposals

This section requires payment of a fee to NOPSEMA for the expenses incurred by NOPSEMA in considering an offshore project proposal (see Part 2 of the Environment Regulations).

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

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

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

A fee must be paid by all persons who submit an offshore project proposal, whether the proposal is submitted under subsection 6(1) or subsection 15(2) (see subsection 15(3)).

A person may request internal review of the fee that NOPSEMA has determined. NOPSEMA may remit all or part of an imposed fee where it is considered appropriate. In making that decision, NOPSEMA would be likely to consider a range of factors, such as the amount of expenses incurred by NOPSEMA, the complexity of the submission, and how far the submission has progressed through the assessment process. Judicial review of NOPSEMA's decision about the fee could also be sought on such grounds as an error of law.

Section 58 – Financial assurance assessments

This section requires payment of a fee to NOPSEMA for the expenses incurred by NOPSEMA in assessing financial assurance arrangements proposed by a titleholder in relation to a petroleum activity, for the purposes of section 16 of the Environment Regulations.

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

The total amount of the fee is the total of the expenses incurred by NOPSEMA in assessing the proposed financial assurance arrangements. The fee is calculated by multiplying the hourly rate of each NOPSEMA staff member by the number of hours they worked on the assessment. The fee may also include the cost of engaging external experts to thoroughly assess the proposed arrangements in order to assist NOPSEMA's assessment.

However, if a titleholder uses the method developed by the Australian Energy Producers, and endorsed by NOPSEMA, to estimate an appropriate level of financial assurance for pollution incidents that may arise because of their proposed petroleum activities, NOPSEMA does not charge a fee for assessing the financial assurance arrangements. The costs associated with NOPSEMA's review and handling of the financial assurance declaration and confirmation forms are considered part of the routine administration associated with the environment plan, for which levies are applied.

The fee is due and payable in accordance with the terms of an invoice issued by NOPSEMA to the petroleum titleholder. In practice, it is expected that NOPSEMA and the titleholder would agree on the terms of payment of the fee.

A person may request internal review of the fee that NOPSEMA has determined. NOPSEMA may remit all or part of an imposed fee where it is considered appropriate. In making that decision, NOPSEMA would be likely to consider a range of factors, such as the amount of expenses incurred by NOPSEMA, the complexity of the proposed financial assurance arrangements, and how far the arrangements have progressed through the assessment process. Judicial review of NOPSEMA's decision about the fee could also be sought on such grounds as an error of law.

Division 3—Application of this instrument if remedial direction is in force

Section 59 – Application of this instrument if remedial direction is in force

This section modifies the application of the Environment Regulations if a remedial direction is in force under the OPGGS Act.

The Environment Regulations apply to activities undertaken by a titleholder under a title. An *activity* is defined by section 5 to mean a petroleum activity or a greenhouse gas activity, which are themselves defined by section 5 to mean works or operations in an offshore area undertaken to exercise a right conferred by a petroleum title or a greenhouse gas title respectively, or to discharge an obligation imposed on a petroleum titleholder or a greenhouse gas titleholder under the OPGGS Act or regulations.

Section 59 provides that, if a direction is in force under section 586, 586A, 587 or 587A of the OPGGS Act (referred to as a *petroleum remedial direction*) or section 591B, 592, 594A or 595 of the OPGGS Act (referred to as a *greenhouse gas remedial direction*), the Environment Regulations also apply in relation to the person who is subject to the direction and activities carried out for the purpose of complying with the direction.

Subsection 59(2) operates by deeming a reference to certain terms used in the Environment Regulations to include a reference to other terms. Specifically, if a remedial direction is in force, the Environment Regulations apply:

- as if a reference to a petroleum titleholder included a reference to a person who is subject to a petroleum remedial direction;
- as if a reference to a titleholder included a reference to a person who is subject to a petroleum or greenhouse gas remedial direction;
- as if a reference to a petroleum activity under a petroleum title included a reference to an activity carried out for the purpose of complying with a petroleum remedial direction;
- as if a reference to an activity under a title included a reference to an activity carried out for the purpose of complying with a petroleum or greenhouse gas remedial direction.

Not all of the references to an activity in the Environment Regulations specifically use the phrase “activity under a title”. Similarly, not all of the references to a petroleum activity specifically use the phrase “petroleum activity under a petroleum title”. However, this is to avoid repeating these words unnecessarily in the drafting of the Environment Regulations. The initial reference in the relevant Division or provision refers to an “activity under a title” or a “petroleum activity under a petroleum title”, so that all of the following references to an “activity” or a “petroleum activity” in the Division or provision also effectively refer to an activity under a title or a petroleum activity under a petroleum title. Therefore, the effect of paragraphs 59(2)(c) and (d) is that references to an “activity” or a “petroleum activity”

(except in the excluded definitions) can also be read as having an extended reference if a remedial direction is in force.

The provisions of the Environment Regulations that will apply in relation to a remedial direction would depend on what is required to comply with that particular direction. Generally, if a remedial direction is in force, the extended references of the terms listed in subsection 59(2) will apply in relation to the direction so that:

- an accepted environment plan is required to be in force for an activity carried out for the purpose of complying with the direction under section 17;
- the person who is subject to the direction is required to undertake the activity in accordance with the environment plan under section 18;
- the person is prohibited from undertaking the activity after the occurrence of any significant new environmental impact or risk, or any significant increase in an existing environmental impact or risk, arising from the activity if the new or increased impact or risk is not provided for in the environment plan (see section 19);
- the person is eligible to submit an environment plan, or a revised environment plan, to NOPSEMA for its assessment and acceptance (see section 26 and Division 5 of Part 4);
- if the direction is a petroleum remedial direction, NOPSEMA must be reasonably satisfied of the person's compliance with the financial assurance obligation under section 571 of the OPGGS Act as a prior condition to NOPSEMA's acceptance of the environment plan, or the revised environment plan, under section 16, and the person is required to pay a fee to NOPSEMA for its assessment of the person's financial assurance arrangements (see section 58); and
- the person must comply with other ancillary obligations and provisions provided for in the Environment Regulations, including (but not limited to) the reportable incident and recordable incident notification and other reporting requirements under Part 5.

Subsection 59(3) provides that the extended references of the terms outlined in subsection 59(2) do not apply to the definitions of those terms as provided for in section 5. The definitions are excluded as it is not necessary for the references to those terms in the definitions to include the extended references given the deeming effect of subsection 59(2).

If a person is a current titleholder subject to a remedial direction under section 586, 586A, 591B or 592, the Environment Regulations continue to apply to that person as a titleholder. Section 59 ensures extended application of the Environment Regulations if a remedial direction is given to a person other than the current titleholder.

Part 7—Application, saving and transitional provisions

Division 1—Application provisions relating to repeal of the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009

Section 60 – Definitions for Division

This section would define terms for the purposes of Division 1 of Part 7 of the Environment Regulations.

Section 61 – Offshore project proposal accepted before commencement day

This section provides for an offshore project proposal that was accepted under the 2009 Environment Regulations to be taken to have been accepted under the Environment Regulations. This ensures that a titleholder may submit an environment plan under the Environment Regulations for one or more activities that are included in the accepted offshore project proposal – see subsection 26(3). The titleholder does not need to develop a new offshore project proposal for the activity or activities under the Environment Regulations.

Section 62 – Offshore project proposal submitted before commencement day but no decision made

This section provides transitional arrangements where an offshore project proposal was submitted under the 2009 Environment Regulations and had not been withdrawn, but a decision to accept or refuse to accept the proposal was not made before the commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations).

The section provides for a number of scenarios, with the effect that the process for submission, assessment, public consultation, and acceptance of the offshore project proposal would continue under the Environment Regulations from the point it had reached under the 2009 Environment Regulations.

If an offshore project proposal was initially submitted to NOPSEMA under regulation 5A of the 2009 Environment Regulations, the proposal is taken to have been submitted to NOPSEMA under section 6 of the Environment Regulations (subsection 62(2)). Similarly, if an offshore project proposal was submitted to NOPSEMA under subregulation 5F(2) of the 2009 Environment Regulations (voluntary submission of a proposal for an activity that is not, or does not form part of, an offshore project), the proposal is taken to have been submitted to NOPSEMA under subsection 15(2) of the Environment Regulations (subsection 62(3)). The proponent is not required to submit a new offshore project proposal under the Environment Regulations.

If NOPSEMA had made a request for further information in relation to an offshore project proposal under regulation 5B of the 2009 Environment Regulations, and both the period for providing the information had not passed and the information had not yet been given upon commencement of the Environment Regulations, the request is taken to have been made by NOPSEMA under section 8 of the Environment Regulations (subsection 62(4)). Similarly, if NOPSEMA had made a request for further information in relation to an offshore project proposal under subregulation 5D(2) of the 2009 Environment Regulations, and both the period for providing the information had not passed and the information had not yet been given upon commencement of the Environment Regulations, the request is taken to have been made by NOPSEMA under section 12 of the Environment Regulations (subsection 62(8)). The request continues to have effect, and NOPSEMA is not required to submit another notice under the Environment Regulations to request the further information. The period to provide the information remains the same as the period specified in the original written notice given under regulation 5B or subregulation 5D(2), unless NOPSEMA agrees to a longer period under subsection 8(3) or 12(3) (as applicable). If the proponent provides the information in the required timeframe, the information becomes part of the proposal, and NOPSEMA is required to have regard to the information as if it had been included in the submitted proposal.

If NOPSEMA had published a notice under paragraph 5C(3)(b) of the 2009 Environment Regulations inviting the public to comment on an offshore project proposal, the notice is taken to have been published by NOPSEMA under paragraph 9(5)(b) of the Environment Regulations (subsection 62(5)). The notice continues to have effect, and the period for public comment is the same as the period specified in the notice published under paragraph 5C(3)(b). Section 10 of the Environment Regulations will require NOPSEMA to provide comments received during the public comment period to the proponent as soon as practicable after receiving the comments. The processes set out in sections 11, 12 and 13 will apply after the end of the public comment period.

If the proponent had given NOPSEMA another copy of an offshore project proposal (whether altered or not) in accordance with paragraph 5D(1)(b) of the 2009 Environment Regulations, the proponent is taken to have resubmitted the proposal to NOPSEMA in accordance with paragraph 11(b) of the Environment Regulations (subsection 62(6)). Similarly, if the proponent had given NOPSEMA the material mentioned in paragraph 5D(1)(c) of the 2009 Environment Regulations (which includes a summary of comments received during the public comment period, an assessment of the merits of each objection or claim, and a statement of the proponent's response or proposed response), the proponent is taken to have given the material to NOPSEMA in accordance with paragraph 11(c) of the Environment Regulations (subsection 62(7)). The titleholder is not required to resubmit the proposal or give the material to NOPSEMA again under the Environment Regulations. The transitional provision ensures that NOPSEMA can continue its assessment of the resubmitted proposal in accordance with section 13 of the Environment Regulations. The 30-day period mentioned in subsection 13(2) starts from the day the proposal was resubmitted under the 2009 Environment Regulations.

Section 63 – Environment plan in force immediately before commencement day

This section provides transitional arrangements for an environment plan for an activity that was in force under the 2009 Environment Regulations immediately before the commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations). The plan continues in force under the Environment Regulations. This ensures that titleholders can continue to undertake the activity or activities covered by the plan in accordance with the plan.

If the plan was accepted under the 2009 Environment Regulations subject to limitations or conditions applying to operations for the activity, these are taken to be limitations or conditions to which acceptance of the plan was made subject under section 33 of the Environment Regulations (subsection 63(3)). This ensures that the limitations or conditions continue to apply to the operations.

Under subsection 63(2), the plan is taken to have been accepted by NOPSEMA on the day that it was accepted under the 2009 Environment Regulations. This is important to ensure that the requirement to submit a revised environment plan at the end of each five years under section 41 of the Environment Regulations applies from the date that the plan was accepted, rather than from the date of commencement of the Environment Regulations. If it is five years after a titleholder's plan was accepted under the 2009 Environment Regulations, the titleholder is required to submit a revised environment plan in accordance with the Environment Regulations.

For example, assume a titleholder's environment plan was accepted under the 2009 Environment Regulations on 31 August 2021. This date is also taken to be the date that the

plan was accepted in accordance with subsection 63(2). On commencement of the Environment Regulations, Division 5 of Part 4 applies (including section 41). Therefore, at least 14 days before the end of the period of five years beginning on the day the plan was accepted, the titleholder is required to submit a revised environment plan. That is, the titleholder is required to submit a revised environment plan by 17 August 2026 (unless NOPSEMA notifies a different date under subsection 41(2)).

Subregulation 7(2) of the 2009 Environment Regulations provided for the titleholder to receive consent in writing from NOPSEMA to undertake an activity in a particular way. If the titleholder has consent from NOPSEMA under subregulation 7(2) immediately before commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations), the consent is taken to have been given by NOPSEMA under the equivalent provision in subsection 18(2) of the Environment Regulations. The consent continues to have effect, and is not required to be provided again under the Environment Regulations.

Section 64 – Request to revise environment plan

Under subregulation 18(1) of the 2009 Environment Regulations, NOPSEMA had the ability to request a titleholder to submit a proposed revision of the environment plan in force for an activity. Section 64 ensures that if NOPSEMA had requested a titleholder to submit a proposed revision of an environment plan under subregulation 18(1) of the 2009 Environment Regulations, and the request had not been withdrawn and a proposed revision had not been submitted before the commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations), the request is taken to be a request by NOPSEMA for the titleholder to submit a revised environment plan for the activity under the equivalent provision in subsection 40(1) of the Environment Regulations.

The request continues to have effect, and NOPSEMA is not required to request the titleholder to submit a revised environment plan again under the Environment Regulations. The 21-day period for the titleholder to make a submission in relation to the request (see subsections 40(3) and (4)) continues from the day on which the request was made under the 2009 Environment Regulations. If the request is not subsequently withdrawn, the titleholder is required to submit the requested revised environment plan by the time stated in the request (or the time as varied under paragraph 40(5)(c) if applicable).

Section 65 – Revision of environment plan at the end of each 5 years

This section provides that, if a proposed revision of an environment plan for an activity was submitted to NOPSEMA under regulation 19 of the 2009 Environment Regulations (which required revision of the plan at the end of each 5 years), it is taken to be a revised environment plan for the activity submitted in accordance with the equivalent provision in section 41 of the Environment Regulations (subsection 65(1)). Under the transitional arrangements in subsection 63(2), an environment plan that continues to be in force under the Environment Regulations would be taken to have been accepted on the day it was accepted under the 2009 Environment Regulations. A five-yearly revision of the plan is therefore required five years from that date of acceptance. Subsection 65(1) ensures that, where a titleholder has submitted a five-year revision in accordance with the 2009 Environment Regulations, the titleholder is not required to submit the revised environment plan again under the Environment Regulations.

Under subregulation 19(2) of the 2009 Environment Regulations, NOPSEMA was able to notify a titleholder of a different date to commence the period of 5 years at the end of which a proposed revision of an environment plan was required to be submitted. If such a notice was given prior to commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations), subsection 65(2) provides for NOPSEMA to have been taken to have given the titleholder the notice under the equivalent provision in subsection 41(2) of the Environment Regulations. This ensures that the notice continues to operate under the Environment Regulations so that the five-year period starts on the day specified in the notice, despite the repeal of the 2009 Environment Regulations.

Section 66 – Environment plan submitted before commencement day but no decision made

This section provides transitional arrangements where an environment plan (including a proposed revision of an environment plan) was submitted under the 2009 Environment Regulations and had not been withdrawn, but a decision to accept or refuse to accept the plan was not made before the commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations).

This section provides for a number of scenarios, with the effect that the process for submission, public consultation, assessment, and acceptance of the environment plan continues under the Environment Regulations from the point it had reached under the 2009 Environment Regulations.

The environment plan is taken to have been submitted to NOPSEMA under section 26 of the Environment Regulations (subsection 66(2)). The titleholder is not required to submit a new environment plan under the Environment Regulations. The environment plan levy imposed under the Levies Act continues to apply in relation to the environment plan as if the 2009 Environment Regulations had not been repealed.

If NOPSEMA had published the plan under regulation 9AB of the 2009 Environment Regulations (following the initial completeness check), the plan is taken to have been published by NOPSEMA under the equivalent provision in section 28 of the Environment Regulations (subsection 66(3)). For a plan that is not a seismic or exploratory drilling environment plan, publication of the plan commences the 30-day period for NOPSEMA to make a decision in relation to the plan, or to advise a later day to make a decision. The 30-day period still commences from the day that the plan was published under regulation 9AB of the 2009 Environment Regulations.

If NOPSEMA gave the titleholder a notice under regulation 9AC of the 2009 Environment Regulations (that the plan does not include material apparently addressing each of the content requirements for a plan) following the initial completeness check of the plan, the notice is taken to have been given under the equivalent provision in section 29 of the Environment Regulations. The notice continues to have effect so that the titleholder may modify the plan and resubmit it to NOPSEMA, and does not require a new notice to be given under the Environment Regulations. Any plan resubmitted in response to the notice will in effect be resubmitted in response to a notice under section 29.

If NOPSEMA published an invitation under subregulation 11B(1) of the 2009 Environment Regulations for the public to provide comments in relation to a seismic or exploratory drilling environment plan, the invitation is taken to have been published by NOPSEMA under subsection 30(1) of the Environment Regulations (subsection 66(5)). The invitation

continues to have effect, and the 30-day period for public comment still commences on the day that the invitation was published under the 2009 Environment Regulations. Subsection 30(2) of the Environment Regulations continues to require NOPSEMA to provide comments received during the public comment period to the titleholder as soon as practicable after receiving the comments. The processes set out in subsections 30(3) to (7) apply after the end of the public comment period.

If the titleholder resubmitted the seismic or exploratory drilling environment plan (whether modified or not) within 12 months of the end of the public comment period in accordance with paragraph 11B(3)(b) of the 2009 Environment Regulations, the titleholder is taken to have resubmitted the plan to NOPSEMA in accordance with paragraph 30(3)(b) of the Environment Regulations (subsection 66(6)). Similarly, if the titleholder had given NOPSEMA a written statement in accordance with paragraph 11B(3)(c) of the 2009 Environment Regulations (which responded in general terms to comments received during the public comment period and indicated whether any modifications of the plan were made in response), the titleholder is taken to have given the statement to NOPSEMA in accordance with paragraph 30(3)(c) of the Environment Regulations (subsection 66(7)). The titleholder is not required to resubmit the plan or give the statement to NOPSEMA again under the Environment Regulations. The transitional provision ensures that NOPSEMA can continue its assessment of the resubmitted plan in accordance with section 33 of the Environment Regulations. The 30-day period mentioned in subsection 30(3) starts from the day the plan was resubmitted under the 2009 Environment Regulations.

Under regulation 11C of the 2009 Environment Regulations, if a titleholder modified a seismic or exploratory drilling environment plan to include a new seismic or exploratory drilling activity, or to include a significant modification or new stage of any of the seismic or exploratory drilling activities to which the plan previously related, after the plan was published by NOPSEMA and before NOPSEMA decided whether to accept the plan, the titleholder was required to resubmit the plan (as modified) to NOPSEMA. Subsection 66(8) provides for a plan resubmitted under subregulation 11C(2) of the 2009 Environment Regulations to be taken to have been resubmitted under the equivalent provision in subsection 31(2) of the Environment Regulations. The plan is not required to resubmitted again under the Environment Regulations. NOPSEMA must undertake an initial completeness check of the plan under section 27 (if it has not already done so). If NOPSEMA decides under section 27 that the plan includes material addressing each of the content requirements for an environment plan, NOPSEMA must publish the plan under section 28, with an invitation for anyone to comment on matters relating to the resubmitted plan under section 30.

If NOPSEMA had made a request for further information in relation to an environment plan under regulation 9A of the 2009 Environment Regulations, and both the period for providing the information had not passed and the information had not yet been given upon commencement of the Environment Regulations, the request is taken to have been made by NOPSEMA under section 32 of the Environment Regulations (subsection 66(9)). The request continues to have effect, and NOPSEMA is not required to submit another notice under the Environment Regulations to request the further information. The period to provide the information remains the same as the period specified in the original written notice given under regulation 9A or any longer period agreed by NOPSEMA under subregulation 9A(4), unless NOPSEMA agrees to a longer period under subsection 32(4). If the titleholder provides the information in the required timeframe, NOPSEMA must have regard to the information in deciding whether to accept the plan.

Under regulation 10 of the 2009 Environment Regulations, if NOPSEMA was not reasonably satisfied that a submitted environment plan met the acceptance criteria in regulation 10A, NOPSEMA could give a notice to the titleholder under subregulation 10(2) giving the titleholder a reasonable opportunity to modify and resubmit the plan. If a notice was given under subregulation 10(2) before the commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations), subsection 66(10) provides for the notice to be taken to have been given under the equivalent provision in subsection 33(5) of the Environment Regulations. The notice continues to have effect and is not required to be given again under the Environment Regulations. Any plan resubmitted in response to the notice will in effect be resubmitted in response to a notice under subsection 33(5). The titleholder must still resubmit the plan by the day specified in the notice, unless a later date is agreed with NOPSEMA, in order for NOPSEMA to continue its assessment of the plan (see subsection 33(7)).

Subsection 66(11) ensures that information given in relation to an environment plan before the commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations) that is sensitive information within the meaning of the 2009 Environment Regulations will be taken to be sensitive information within the meaning of the Environment Regulations. This ensures that personal information, and information provided by a person that the person has requested not be published, continues not to be able to be published under the Environment Regulations.

Section 67 – Withdrawing acceptance of environment plan

Under paragraph 23(2)(b) of the 2009 Environment Regulations, the grounds for withdrawal of the acceptance of an environment plan included that the titleholder had not complied with regulation 7, 8, 17, 18 or 19 of the 2009 Environment Regulations. This section ensures that non-compliance with regulation 7, 8, 17, 18 or 19 of the 2009 Environment Regulations continues to be a ground for the withdrawal of the acceptance of an environment plan under section 43 of the Environment Regulations. This ensures that non-compliance with one or more of the provisions does not cease to be a ground for withdrawal of acceptance merely due to the remake of the 2009 Environment Regulations in advance of the sunseting date. Section 67 continues the provision in effect as it would have if the 2009 Environment Regulations had not been repealed.

If NOPSEMA gave the titleholder a notice under subregulation 24(2) of the 2009 Environment Regulations of NOPSEMA's intention to withdraw acceptance of an environment plan, and NOPSEMA had not made a decision whether to withdraw acceptance of the plan prior to commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations), the notice is taken to have been given under the equivalent provision in subsection 44(2) of the Environment Regulations. The notice continues to have effect and a new notice is not required to be given under the Environment Regulations. The titleholder, and any other person to whom a copy of the notice had been given, have until the day specified in the notice to submit matters that NOPSEMA must take into account when deciding whether to withdraw acceptance of the plan.

Section 68 – End of environment plan

This section provides that, if a titleholder had notified NOPSEMA under regulation 25A of the 2009 Environment Regulations that the activity or activities to which an environment plan relates have ended, and all of the obligations under the plan have been completed, and

NOPSEMA had not accepted the notification before the commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations), the titleholder is taken to have notified NOPSEMA under the equivalent provision in section 46 of the Environment Regulations. This transitional provision ensures that the titleholder does not need to submit the notification again under the Environment Regulations. NOPSEMA must consider the notification, and the operation of the plan ends if NOPSEMA accepts the notification.

Section 69 – Requirements in relation to incidents

This section provides for regulations 26 (notifying reportable incidents), 26A (written report of reportable incidents) and 26AA (additional written reports if requested) of the 2009 Environment Regulations to continue to apply in relation to any reportable incidents that occurred before the commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations). While it would have been possible to transition to the equivalent provisions in sections 47, 48 and 49 of the Environment Regulations as there is no policy change compared to the previous provisions, it was considered to be simpler not to transition these relatively short-term obligations if an incident occurred within the few days before commencement of the Environment Regulations.

This section also provides for regulation 26B (reporting recordable incidents) of the 2009 Environment Regulations to continue to apply in relation to any recordable incidents that occurred before the commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations). Given the short-term nature of the reporting obligation in relation to recordable incidents, it was considered to be simpler not to transition this provision for any incidents that may have occurred shortly before the commencement of the Environment Regulations.

Section 70 – Reporting on environmental performance

This section provides that, if NOPSEMA made a request under regulation 26C of the 2009 Environment Regulations for a titleholder to modify a report in relation to the titleholder's environmental performance, and the titleholder had not submitted a modified report before the commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations), the request is taken to have been made by NOPSEMA under the equivalent provision in section 51 of the Environment Regulations. The request continues to have effect, and NOPSEMA is not required to make a new request under the Environment Regulations.

This section also provides that the requirement to submit environmental performance reports in section 51 of the Environment Regulations does not apply to environment plans in force before 28 February 2014, or submitted to NOPSEMA before 28 February 2014, where:

- no revision of the plan was accepted by NOPSEMA after 28 February 2014, or
- any revision of the plan that was accepted by NOPSEMA after 28 February 2014 was submitted to NOPSEMA before that date.

The requirement to submit environmental performance reports under the equivalent provision in regulation 26C of the 2009 Environment Regulations was inserted by amendments that commenced on 28 February 2014. The transitional provisions for those amendments provided for the requirement to only apply to environment plans, or revised environment plans, submitted on or after 28 February 2014. Subsection 70(2) ensures that the arrangements outlined in those transitional provisions continue to apply so that

environment plans, or revised environment plans, submitted prior to 28 February 2014 do not become subject to the requirement to submit environmental performance reports as a result of the remake of the 2009 Environment Regulations. Subsection 70(2) is likely to apply to only a few (if any) environment plans that are currently in force.

Section 71 – Storage of records

This section provides transitional arrangements in relation to the storage of records.

Subsection 71(1) provides that subsection 52(1) of the Environment Regulations applies to environment plans that ceased to be in force before the commencement of the Environment Regulations. Subsection 52(1) requires a titleholder to store an environment plan for five years beginning on the day that it ceases to be in force, in a way that makes retrieval of the plan reasonably practicable. There is no change in effect as regulation 27 of the 2009 Environment Regulations would have required titleholders to store the plans for five years from the day they ceased to be in force if those Regulations had not been repealed. The transitional provision ensures that the plans will still be stored and can be made available for a five-year period after they cease to be in force.

Any environment plans that ceased to be in force more than five years before the commencement of the Environment Regulations are not required to be stored under subsection 52(1).

Subsection 71(2) provides that subsection 52(3) of the Environment Regulations applies to certain records and reports given or submitted under the 2009 Environment Regulations. Subsection 52(3) requires a titleholder to store records and reports given or submitted under the equivalent provisions of the Environment Regulations for a period of five years beginning on the day the document is given or submitted to NOPSEMA, in a way that makes retrieval of the document reasonably practicable. There is no change in effect as regulation 27 of the 2009 Environment Regulations would have required titleholders to store the documents for five years from the day they were given or submitted to NOPSEMA if those Regulations had not been repealed. The transitional provision ensures that the documents will still be stored and can be made available for a five-year period.

Any documents given or submitted to NOPSEMA more than five years before the commencement of the Environment Regulations are not required to be stored under subsection 52(3).

Subsection 71(3) provides for subsection 52(5) of the Environment Regulations to apply to records and reports whether created before, on or after the commencement of the Environment Regulations. Subsection 52(5) requires a titleholder to store the records and reports mentioned in subsection 52(7) for a period of five years after the day the document is created, in a way that makes retrieval of the document reasonably practicable. There is no change in effect as regulation 27 of the 2009 Environment Regulations would have required titleholders to store the documents for five years from the day they were created if those Regulations had not been repealed. The transitional provision ensures that the documents will still be stored and can be made available for a five-year period.

The record or report still needs to be stored for a period of five years from the day it was created, rather than five years from the date of commencement of the Environment Regulations. Any documents created more than five years before the commencement of the Environment Regulations are not required to be stored under subsection 52(5).

Under regulation 28 of the 2009 Environment Regulations, a titleholder was required to make copies of certain records available if requested to do so by NOPSEMA, a NOPSEMA inspector or a Greater Sunrise visiting inspector. Subsection 71(4) provides that if a request was made under regulation 28 of the 2009 Environment Regulations in relation to a document or record that is required to be stored under section 52 of the Environment Regulations, the requested copies were not made available before commencement of the Environment Regulations, and the period during which the document or record is required to be stored under section 52 had not ended before commencement of the Environment Regulations, the request is taken to have been made under the equivalent provision in section 53 of the Environment Regulations. The request continues to apply, and a new request does not need to be made under the Environment Regulations. The titleholder commits an offence of strict liability under section 53 of the Environment Regulations if they do not comply with the request.

Section 72 – Notifying end of activity

Subregulation 29(2) of the 2009 Environment Regulations required a titleholder to notify NOPSEMA that an activity had been completed within 10 days after the completion of the activity. This section provides that the equivalent provision in subsection 54(2) of the Environment Regulations applies and requires titleholders to notify NOPSEMA of an activity that was completed before the commencement of the Environment Regulations (and repeal of the 2009 Environment Regulations) if the titleholder had not already done so. This ensures NOPSEMA will still be made aware of any activities that were completed in the few days prior to commencement of the Environment Regulations. There is no change in effect as subregulation 29(2) of the 2009 Environment Regulations would have required titleholders to notify the completion of activities if those Regulations had not been repealed.

Renumbering table – Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 and Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023

<i>Old number (2009 Regulations)</i>	<i>New number (2023 Regulations)</i>
1	1
Not in 2009 Regulations	2
Not in 2009 Regulations	3
3	4
4	5
Definition of <i>in force</i> in section 4	36
5	Incorporated in the definition of <i>activity</i> in section 5
5A(1) to (4)	6
5A(5) to (8)	7
5B	8
5C	9
Not in 2009 Regulations	10
5D(1)	11
5D(2) to (4)	12
5D(5) to (9)	13
5E	14
5F	15
5G	16
6	17
7	18
8	19
9	26
9AA	27
9AB	28(1)
9AC	29
9A	32
10	33
10A	34
11	35
11AA	37
11A	25
11B	30
11C	31
12	20
13	21
14(1)	22(1)
14(2)	22(7)
14(3) to (7)	22(2) to (6)
14(8) to (10)	22(8) to (16)
15	23
16	24
17(1)	38
17(2) to (4)	26(3) to (5) (applies to revised environment plans)
17(5) to (7)	39

<i>Old number (2009 Regulations)</i>	<i>New number (2023 Regulations)</i>
17(8) to (11)	Not in 2023 Regulations – spent transitional provisions
18(1) to (6)	40
18(7) to (14)	Not in 2023 Regulations – spent transitional provisions
19	41
20	Not in 2023 Regulations in current form – regulations 38, 39, 40 and 41 require submission of a revised environment plan
21(1)	Not in 2023 Regulations in current form – regulations 38, 39, 40 and 41 require submission of a revised environment plan under section 26 – all of the provisions that apply to a new environment plan submitted under section 26 therefore also apply to a revised environment plan submitted under section 26
21(2)	28(2)
21(3)	Not in 2023 Regulations in current form – incorporated in the definition of <i>seismic or exploratory drilling environment plan</i>
21(4)	Not in 2023 Regulations in current form – continues in effect through the operation of section 36
22	42
23	43
24	44
25	45
25A	46
26	47
26A	48
26AA	49
26B	50
26C	51
27	52
28	53
29	54
30	55
31	56
32	57
33	58
34	59
38 to 46	Not in 2023 Regulations – spent transitional provisions
47	70(2)
48 to 52	Not in 2023 Regulations – spent transitional provisions
Not in 2009 Regulations – application provisions relating to the repeal of the 2009 Regulations	60 to 70(1), 71 to 72

Statement of Compatibility with Human Rights

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

Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023

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

Overview of the Legislative Instrument

The *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023* (the Regulations) is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations provide for the regulation of environmental management of petroleum and greenhouse gas activities in offshore areas. The Regulations ensure activities are carried out in a manner that is consistent with ecologically sustainable development and by which the environmental impacts and risks of the activity will be reduced to as low as reasonably practicable and an acceptable level.

Under the Regulations, persons who want to conduct a petroleum or greenhouse gas activity are required to prepare and implement an environment plan for the activity. The environment plan sets out the risks and impacts of the activity and the titleholder's proposed measures to reduce the risks and impacts to as low as reasonably practicable and an acceptable level. The regulator, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), is required to assess the environment plan and decide whether to accept it. An accepted environment plan is required to be in place prior to commencement of the activity.

The purpose of the Regulations is to remake the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (the 2009 Environment Regulations) in substantially the same form, with minor amendments to provide consistency with current drafting practices, simplify language and restructure provisions for ease of navigation. The 2009 Environment Regulations are due to sunset on 1 April 2024.

The Department of Industry, Science and Resources (the department), in consultation with the NOPSEMA, reviewed the effectiveness and efficiency of the operation of the 2009 Environment Regulations. The department found that the 2009 Environment Regulations are still required and fit for purpose, and that they should be remade without substantive change.

Human rights implications

The Regulations engage, or have the potential to engage, the following rights:

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

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

Article 14(2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. Generally, consistency with the presumption of innocence requires the prosecution to prove each element of an offence beyond reasonable doubt. Offences of strict liability will engage the presumption of innocence. This is because a fault element, such as intention to do an act or not do an act, is not required to be proved. Offences that place an evidential burden on the defendant will also engage the presumption of innocence. This is because a defendant's failure to discharge the burden may permit their conviction despite reasonable doubt as to their guilt.

This right may be subject to permissible limitations where those limitations are provided by law and non-arbitrary. In order for limitations not to be arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary, and proportionate to that objective.

Offences of strict liability

The Regulations provide that a titleholder commits an offence of strict liability if the titleholder:

- undertakes an activity under the title and an environment plan is not in force for the activity (section 17)
- undertakes an activity in a way that is contrary to the environment plan in force for the activity, or any limitation or condition to which acceptance of the plan was made subject (section 18)
- undertakes an activity under the title after the occurrence of any significant new environmental impact or risk, or any significant increase in an existing environmental impact or risk, arising from the activity, and the new or increased impact or risk is not provided for in the environment plan in force for the activity (section 19)
- does not notify NOPSEMA of a reportable incident for an activity under the title (section 47)
- does not give NOPSEMA a written report of a reportable incident for an activity under the title (section 48)
- does not submit an additional written report of a reportable incident to NOPSEMA if requested to do so (section 49)
- does not give NOPSEMA a written report of a recordable incident for an activity under the title (section 50)
- does not store the environment plan in force for an activity, or does not store an environment plan that has ceased to be in force for a period of five years beginning on the day that the plan ceased to be in force, in a way that makes retrieval of the plan reasonably practicable (subsection 52(2))
- does not store certain records or reports for a period of five years beginning on the day the record or report is given or submitted to NOPSEMA, in a way that makes retrieval of the document reasonably practicable (subsection 52(4))
- does not store certain records or reports for a period of five years beginning on the day the record or report was created, in a way that makes retrieval of the document reasonably practicable (subsection 52(5))

- does not make a copy of a document or record available to NOPSEMA, a NOPSEMA inspector or a Greater Sunrise visiting inspector when requested to do so (section 53)
- commences a drilling activity or a seismic survey under the title in the offshore area of a State, or in the Principal Northern Territory offshore area, and did not notify the proposed date of commencement to the department of the responsible State Minister or the department of the responsible Northern Territory Minister (as applicable) (section 55).

Strict liability is applied to these offence provisions to enhance the effectiveness of the provisions in deterring certain conduct, and thereby reduce the likelihood of non-compliance.

For sections 17, 18 and 19, the intention of the application of strict liability is to improve compliance in the regulatory regime, particularly given the potentially severe environmental consequences that may result if a titleholder were to undertake an activity without an environment plan in force, in a way that is contrary to the environment plan in force, or after the occurrence of any significant new environmental impact or risk, or any significant increase in an existing environmental impact or risk, arising from the activity that is not provided for in the environment plan in force.

For sections 47, 48, 49 and 50, it is appropriate to apply strict liability to the offence because of its nature, which is to require that the titleholder is accountable and reports incidents in relation to offshore operations. Strict liability is appropriate to ensure this level of accountability.

For subsections 52(2), (4) and (5), and section 53, the application of strict liability reflects that the documents that are required to be stored in a way that makes their retrieval reasonably practicable, including the environment plan, notifications and related reports, are critical to offshore operations and should be readily accessible. It is also important that NOPSEMA can readily access documents to ensure that a titleholder is in compliance with its obligations under the Environment Regulations.

For section 55, the requirement to notify the commencement of drilling and seismic survey activities will facilitate State/Northern Territory economic and social planning, and is also important on public interest grounds noting the increased community interest in offshore petroleum activities.

In addition, for all of the offences, the remote and complex nature of offshore operations and the prevalence of multiple titleholder arrangements means it is extremely difficult to prove intent. Application of strict liability to the relevant offence provisions is therefore necessary to ensure that the relevant regulations can be enforced more effectively and thereby improve compliance with the regulatory regime. This is consistent with the principles outlined in [*A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011*](#), which include that the punishment of offences not involving fault may be appropriate where it is likely to significantly enhance the effectiveness of the enforcement regime in deterring certain conduct.

The penalties imposed for failure to comply with most of the strict liability offences are consistent with the Guide, which expresses a preference for a maximum of 60 penalty units for offences of strict liability.

Three of the strict liability offences apply a penalty of 80 penalty units (sections 17, 18 and 19). It is appropriate to apply this penalty, noting this is higher than the preference stated in the Guide for a maximum of 60 penalty units. The penalty of 80 penalty units applies to the three most serious offences within the Regulations. The potential for serious environmental consequences resulting from a breach of these provisions justifies the application of a higher penalty. In addition, offshore resources activities, as a matter of course, require a very high level of expenditure. Therefore, by comparison, a smaller penalty would be an ineffective deterrent.

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

Reverse burden provision

Sections 18, 19 and 52 of the Regulations create defences to offence provisions that impose an evidential burden on the defendant. This does not reverse the onus of proof as such, but engages the right to be presumed innocent until proven guilty.

Subsection 18(1) makes it an offence of strict liability if a titleholder undertakes an activity in a way that is contrary to the environment plan in force for the activity, or any limitation or condition to which acceptance of the plan was made subject. Subsection 18(2) provides that subsection 18(1) does not apply in relation to an activity if the titleholder has the written consent of NOPSEMA to undertake the activity in that way.

Subsection 19(1) makes it an offence of strict liability if a titleholder undertakes an activity under the title after the occurrence of any significant new environmental impact or risk, or any significant increase in an existing environmental impact or risk, arising from the activity, and the new or increased impact or risk is not provided for in the environment plan in force for the activity. Subsection 19(2) provides that subsection 19(1) does not apply in relation to an activity if the titleholder has submitted a revised environment plan for the activity in accordance with subsection 39(2) and NOPSEMA has not refused to accept the environment plan.

Subsection 52(5) makes it an offence of strict liability if the titleholder creates a record or report of a kind mentioned in subsection 52(7) and either does not store the record or report, or stores the record or report in a way that does not make retrieval of the record or report reasonably practicable. Subsection 52(6) provides that subsection 52(5) does not apply if the failure to store the record or report, or failure to store the record or report in a way that makes retrieval reasonably practicable, occurs more than five years after the day that the record or report was created.

In each case, due to the operation of subsection 13.3(3) of the *Criminal Code Act 1995*, a person who wishes to rely on the exception bears an evidential burden in relation to the matter. When a defendant bears an evidential burden in relation to a matter, it means that the defendant bears the burden of adducing or pointing to evidence suggesting a reasonable possibility that the exception has been met.

For subsection 18(2), the evidential burden is imposed because it is a more straightforward matter for a defendant to show that they have consent than for NOPSEMA to prove that it did not provide consent, particularly given that the consent must be in writing. A prosecution is unlikely if NOPSEMA already knows that consent has been given. Similarly for subsection 19(2), the burden of proof is reversed because it is a more straightforward matter for a defendant to show that they have submitted a revised environment plan than for NOPSEMA to prove that the defendant has not submitted a revised environment plan.

For subsection 52(6), the evidential burden is imposed because the circumstances are likely to be exclusively within the knowledge of the defendant; for example, the defendant would know when it creates a particular document or record. This is particularly the case given the remote nature of offshore petroleum and greenhouse gas storage operations. This is consistent with [*A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011*](#), which states that where the facts of a defence are peculiarly within a defendant's knowledge, it may be appropriate for the burden of proof to be placed on the defendant.

In each case, an onus of proof has not been placed on the defendant. If the defendant discharges its evidential burden, the prosecution will still be required to disprove the matters raised by the defendant beyond reasonable doubt.

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

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

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

The right to privacy and reputation may be limited, provided that the interference with the right is authorised by law and not arbitrary. In order for limitations not to be arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary, and proportionate to that objective.

Contact details of a titleholder's nominated liaison person

An environment plan is required to contain contact details for the titleholder's nominated liaison person (section 23), such as the person's name, business address, telephone number and email address. In addition, NOPSEMA is required to publish those contact details (subsections 28(1) and 35(8)), and the Regulations provide for publication of environment plans for petroleum and greenhouse gas activities both at the time of submission and after having been accepted under the Regulations (section 28, and subsections 30(5) and 35(4)). These provisions may engage the right to privacy and reputation in Article 17 of the ICCPR as the contact details are personal information.

The purpose of provision and publication of details of a titleholder's nominated liaison person is to ensure that there is a specific person that NOPSEMA or members of the public can contact in relation to an activity that is to be, or is being, undertaken in an offshore area. In particular, it provides NOPSEMA with a person who may be contacted in the event of an emergency.

Publication of contact details enables persons to engage with the titleholder in relation to an activity, in particular if they have questions about the activity. This helps to increase transparency in relation to operations undertaken in offshore areas.

The information that is required to be provided and published is business-related only. For example, a business address for the liaison person is required to be provided, rather than the person's residential address.

In addition, the use or disclosure of any information that is personal information is subject to the *Privacy Act 1988* (the Privacy Act). Accordingly, the requirement to provide and publish contact details of a titleholder's nominated liaison person is reasonable, necessary, and proportionate in the circumstances.

Information to be excluded from publication

The Regulations provide for publication of environment plans for petroleum and greenhouse gas activities both at the time of submission and after having been accepted under the Regulations (section 28, and subsections 30(5) and 35(4)). Certain information will be excluded from publication in an environment plan. To safeguard personal privacy, this will include personal information (within the meaning of the Privacy Act) about an individual that is contained in information given by:

- (a) a relevant person (e.g. a person whose functions, interests or activities may be affected by the activities to be carried out under an environment plan) in consultation during development of an environment plan; or
- (b) any person during public comment on a seismic or exploratory drilling environment plan.

Copies of the full text of any response by a relevant person in consultation during development of an environment plan will also be excluded from publication.

To ensure this information is omitted from publication, titleholders are required to include sensitive information (including personal information) and the full text of responses from relevant persons in a separate part of their environment plan (the "sensitive information part"). Following submission of an environment plan (including resubmission of a plan after the end of a public comment period), and as soon as practicable after an environment plan is accepted, NOPSEMA is required to publish the plan with the sensitive information part removed.

When resubmitting an environment plan for a seismic or exploratory drilling activity at the end of the public comment period, the titleholder must provide NOPSEMA a statement of their response to any comments received during the comment period. As the statement of response will be published, the Regulations specify that the statement must not include sensitive information (which includes personal information).

To promote public confidence in NOPSEMA’s decision-making and improve transparency, NOPSEMA is required to prepare a statement detailing how it has taken into account any comments received during public comment on a seismic or exploratory drilling environment plan. The statement will be required to be published on NOPSEMA’s website at the same time as it publishes an accepted plan. The Regulations specify that the statement must not include sensitive information (which includes personal information).

Conclusion

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

The Hon Madeleine King MP
Minister for Resources