



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

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

Dated: 5 December 2024

Sam Mostyn AC  
Governor-General

By Her Excellency's Command

Madeleine King  
Minister for Resources

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# Chapter 1—Preliminary

## 1.1 Name

This instrument is the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2024*.

## 1.2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	12 June 2025.	12 June 2025

Note: This table relates only to the provisions of this instrument as originally made.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

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

## 1.3 Authority

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

## 1.4 Objects

- (1) An object of this instrument is to ensure that facilities are designed, constructed, installed, operated, modified and decommissioned in Commonwealth waters only in accordance with safety cases that have been accepted by NOPSEMA.
- (2) An object of this instrument is to ensure that safety cases for facilities make provision for the following matters in relation to the health and safety of persons at or near the facilities:
- (a) the identification of hazards, and assessment of risks;
  - (b) the implementation of measures to eliminate the hazards, or otherwise control the risks;
  - (c) a comprehensive and integrated system for management of the hazards and risks;
  - (d) monitoring, audit, review and continuous improvement.
- (3) An object of this instrument is to ensure that the risks to the health and safety of persons at facilities are reduced to a level that is as low as reasonably practicable.

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- (4) An object of this instrument is to ensure that diving to which the Act applies is carried out in Commonwealth waters only in accordance with:
  - (a) diving safety management systems that have been accepted by NOPSEMA; and
  - (b) diving project plans that have been:
    - (i) approved by operators of facilities; or
    - (ii) if there is no operator for a facility—accepted by NOPSEMA.
- (5) An object of this instrument is to ensure that diving safety management systems make provision for the following matters in relation to the health and safety of persons:
  - (a) the identification of hazards and assessment of risks;
  - (b) the implementation of measures to eliminate the hazards, or otherwise control the risks;
  - (c) a comprehensive and integrated system for management of the hazards and risks;
  - (d) monitoring, audit, review and continuous improvement.
- (6) An object of this instrument is to ensure that the risks to the health and safety of persons who carry out diving to which the Act applies are reduced to a level that is as low as reasonably practicable.

## 1.5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

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

In this instrument:

**accepted DSMS** means a DSMS that has been accepted by NOPSEMA under section 4.5 or 4.6.

**Act** means the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

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

**AS/NZS**, followed by a number, means the Australian and New Zealand Standard of that number, as in force from time to time.

**Commonwealth waters** has the meaning given by section 643 of the Act.

Note: In section 643 of the Act, the definition of **Commonwealth waters** refers to offshore areas. **Offshore area** is defined in section 7 of the Act.

**confined space** means an enclosed, or partially enclosed, space that:

- (a) is not used or intended for use as a regular workplace; and
- (b) has restricted means of entry and exit; and

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- (c) has, or may have, inadequate ventilation, contaminated atmosphere or oxygen deficiency; and
- (d) is at atmospheric pressure when occupied.

**contractor** has the meaning given by clause 3 of Schedule 3 to the Act.

**controlled substance** means a substance listed in:

- (a) Schedule 8 to the *Customs (Prohibited Exports) Regulations 1958*; or
- (b) Schedule 4 to the *Customs (Prohibited Imports) Regulations 1956*.

**dangerous occurrence**: see section 2.41.

**designated work group** has the meaning given by clause 3 of Schedule 3 to the Act.

**diving contractor** has the meaning given by clause 3 of Schedule 3 to the Act.

**diving project** means an activity consisting of one or more diving operations.

**diving supervisor** has the meaning given by clause 3 of Schedule 3 to the Act.

**diving work** means work involving diving.

**DSMS** means a diving safety management system.

**election** means an election for a health and safety representative or a deputy health and safety representative under clause 26 of Schedule 3 to the Act.

**emergency**, in relation to a facility, means an urgent situation that presents, or may present, a risk of death or serious injury to persons at the facility.

**employer** has the meaning given by clause 3 of Schedule 3 to the Act.

**facility** has the meaning given by clause 3 of Schedule 3 to the Act.

**facility activity**: a person carries out a **facility activity** if the person:

- (a) constructs or installs a facility or part of the facility; or
- (b) operates a facility or part of the facility; or
- (c) modifies a facility or part of the facility; or
- (d) carries out maintenance on a facility or part of the facility; or
- (e) decommissions a facility or part of the facility; or
- (f) does any other work at a facility or part of the facility.

Note: Work has the meaning given by clause 3 of Schedule 3 to the Act. That clause defines work as work offshore that is directly or indirectly related to the construction, installation, operation, maintenance or decommissioning of a facility.

**facility owner** includes an owner, a charterer or a lessee of a facility or a proposed facility.

**foreign company** has the meaning given by section 9 of the *Corporations Act 2001*.

**health and safety representative** means a person selected as a health and safety representative for a designated work group under clause 25 of Schedule 3 to the Act.

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**intoxicant** means a beverage or other substance for human consumption (other than a substance for medical or pharmaceutical use) that contains alcohol.

**major accident event** means an event connected with a facility, including a natural event, having the potential to cause multiple fatalities of persons at or near the facility.

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

**member of the workforce** has the meaning given by clause 3 of Schedule 3 to the Act.

**new GHG facility**: see section 2.4FB.

**new production facility**: see section 2.4FA.

**NOPSEMA waters** has the meaning given by section 643 of the Act.

**offshore greenhouse gas storage operations** has the meaning given by section 643 of the Act.

**offshore petroleum operations** has the meaning given by section 643 of the Act.

**operator** has the meaning given by clause 3 of Schedule 3 to the Act.

**performance standard** means a standard, established by the operator of a facility, of the performance required of a system, item of equipment, person or procedure which is used as a basis for managing the risk of a major accident event connected with the facility.

**pipe**:

- (a) means a pipe for the purpose of conveying petroleum or a greenhouse gas substance; and
- (b) includes:
  - (i) a petroleum or greenhouse gas pipeline; and
  - (ii) a secondary line.

**proposed operator**, in relation to a facility or proposed facility, has the meaning given by subsection 2.4A(1).

**qualified**:

- (a) in relation to a medical practitioner—means qualified or entitled, under a law of a State or Territory, to practise as a medical practitioner; and
- (b) in relation to a nurse—means qualified or entitled, under a law of a State or Territory, to practise as a nurse; and
- (c) in relation to a pharmacist—means qualified or entitled, under a law of a State or Territory, to practise as a pharmacist.

**returning officer** means a person appointed as a returning officer under section 3.8.

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**revise**, in relation to a safety case, includes extend or modify.

**safety case** means the document known as a safety case that is submitted to NOPSEMA under Part 4 of Chapter 2.

**safety case in force in relation to a facility**:

- (a) means:
  - (i) a safety case for a facility that is accepted under section 2.26; or
  - (ii) if the safety case is revised and the revised safety case is accepted under section 2.34—the revised safety case; and
- (b) does not include a safety case for a facility if:
  - (i) the safety case ceases to be in force in accordance with subsection 2.4D(2); or
  - (ii) the acceptance of the safety case is withdrawn under section 2.37.

**safety management system**, for a facility, means a system for managing occupational health and safety at the facility.

**sexually harass** has the meaning given by section 28A of the *Sex Discrimination Act 1984*.

Note: Other parts of speech and grammatical forms of “sexually harass” (for example, “sexual harassment”) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*, as that section applies because of paragraph 13(1)(a) of the *Legislation Act 2003*).

**significantly altered**: see subsections 2.4FA(2) and 2.4FB(2).

**stage in the life of the facility** means any of the following:

- (a) construction of the facility;
- (b) installation of the facility;
- (c) operation of the facility;
- (d) modification of the facility;
- (e) decommissioning of the facility.

**therapeutic drug** means a drug that:

- (a) may be prescribed by a qualified medical practitioner under a law of a State or Territory; or
- (b) may be sold under that law, without a prescription prepared by a qualified medical practitioner.

**titleholder** means:

- (a) a greenhouse gas assessment permittee; or
- (b) a greenhouse gas holding lessee; or
- (c) a greenhouse gas injection licensee; or
- (d) an infrastructure licensee; or
- (e) a petroleum exploration permittee; or
- (f) a petroleum production licensee; or
- (g) a petroleum retention lessee; or
- (h) a pipeline licensee.

**validation** has the meaning given by section 2.40.

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**voter** means a person who is eligible to vote in an election under the Act.

**work** has the meaning given by clause 3 of Schedule 3 to the Act.

**workplace** has the meaning given in clause 3 of Schedule 3 to the Act.

## 1.6 Vessels that are not facilities

- (1) For the purposes of paragraph 4(6)(d) of Schedule 3 to the Act, a vessel mentioned in column 1 of an item of the following table is declared not to be a **facility** if:
- (a) the vessel is located at a site in Commonwealth waters; and
  - (b) while located at the site, the vessel is used only for one or more of the purposes mentioned in column 2 of the item.

Table 1.6—Vessels that are not facilities

Item	Column 1 Vessel	Column 2 Purpose
1	A vessel supporting a remotely operated vehicle	Any of the following: <ul style="list-style-type: none"> <li>(a) inspection;</li> <li>(b) cleaning;</li> <li>(c) non-disturbing span rectification (for example, grout bagging);</li> <li>(d) the operation of a valve;</li> <li>(e) the recovery of debris;</li> <li>(f) valve control unit change out;</li> <li>(g) the removal of weight coating from a pipe before hydro-testing</li> </ul>
2	A vessel supporting a diving operation	Any of the following: <ul style="list-style-type: none"> <li>(a) inspection;</li> <li>(b) cleaning;</li> <li>(c) non-disturbing span rectification (for example, grout bagging);</li> <li>(d) the operation of a valve;</li> <li>(e) the recovery of debris;</li> <li>(f) valve control unit change out;</li> <li>(g) the removal of weight coating from a pipe before hydro-testing</li> </ul>
3	Any vessel	Any of the following: <ul style="list-style-type: none"> <li>(a) laying an umbilical or a cable;</li> <li>(b) laying a clump weight anchor or mattress on a pipe during its construction before hydro-testing;</li> <li>(c) conducting rock dumping on a pipe during its construction before hydro-testing;</li> <li>(d) placing support structures or foundations on the sea bed for the purpose of a facility (including foundation supports for a platform)</li> </ul>

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Table 1.6—Vessels that are not facilities

Item	Column 1 Vessel	Column 2 Purpose
		jacket, pipe end manifold or other manifold or foundation piles);
		(e) undertaking pipe trenching and burial during the construction of a facility before hydro-testing;
		(f) installing and attaching a jumper if there is no petroleum or greenhouse gas substance contained in the equipment to which the jumper is being connected;
		(g) placing a subsea pipe manifold or pipe end manifold during the construction of a facility before hydro-testing;
		(h) attaching a cathodic protection anode to a pipe if welding is not required
4	A vessel that is a dumb barge that is “hipped-up” to a facility	Temporarily increasing the space available to carry out petroleum operations related to the facility

- (2) For the purposes of subsection (1), a vessel mentioned in column 1 of an item of the table in subsection (1) that is used for a purpose mentioned in column 2 of the item in relation to a pipe is taken to be located at a site, despite the fact that the vessel moves when it is used for that purpose.

## 1.7 Vessels that are not associated offshore places

- (1) For the purposes of paragraph (c) of the definition of *associated offshore place* in clause 3 of Schedule 3 to the Act, a vessel mentioned in column 1 of an item of the following table is declared not to be an associated offshore place if:
- (a) both:
    - (i) the vessel is located at a site in Commonwealth waters; and
    - (ii) while located at the site, the vessel is used only for one or more of the purposes mentioned in column 2 of the item; and
  - (b) when the vessel is being so used, a facility is not causing a risk (other than an ordinary marine risk) to the vessel or to people on the vessel.

Table 1.7—Vessels that are not associated offshore places

Item	Column 1 Vessel	Column 2 Purpose
1	A vessel supporting a remotely operated vehicle	Any of the following: <ul style="list-style-type: none"> <li>(a) inspection;</li> <li>(b) cleaning;</li> <li>(c) non-disturbing span rectification (for example, grout bagging);</li> <li>(d) the operation of a valve;</li> <li>(e) the recovery of debris;</li> <li>(f) valve control unit change out;</li> </ul>

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**Table 1.7—Vessels that are not associated offshore places**

<b>Item</b>	<b>Column 1 Vessel</b>	<b>Column 2 Purpose</b>
		(g) the removal of weight coating from a pipe before hydro-testing
2	Any vessel	Any of the following: (a) laying an umbilical or a cable; (b) laying a clump weight anchor or mattress on a pipe during its construction before hydro-testing; (c) conducting rock dumping on a pipe during its construction before hydro-testing; (d) placing support structures or foundations on the sea bed for the purpose of a facility (including foundation supports for a platform jacket, pipe end manifold or other manifold or foundation piles); (e) undertaking pipe trenching and burial during the construction of a facility before hydro-testing; (f) installing and attaching a jumper if there is no petroleum or greenhouse gas substance contained in the equipment to which the jumper is being connected; (g) placing a subsea pipe manifold or pipe end manifold during the construction of a facility before hydro-testing; (h) attaching a cathodic protection anode to a pipe if welding is not required

- (2) For the purposes of paragraph (1)(a), a vessel mentioned in column 1 of an item of the table in subsection (1) that is used for a purpose mentioned in column 2 of the item in relation to a pipe is taken to be located at a site, despite the fact that the vessel or structure moves when it is used for that purpose.

**1.8 Notices and reports**

- (1) A person who is required, for the purposes of the Act or this instrument, to give notice or make a report, must give notice or make the report in sufficient detail to allow proper consideration of the notice or report.
- (2) A notice or report must be produced clearly and legibly in handwriting or by means of a machine in such a manner as to enable clear and legible reproduction of the contents of the notice or report.



## Chapter 2—Offshore facilities

### Part 1—Preliminary

#### 2.1AA Simplified outline of this Chapter

This Chapter includes requirements in relation to the following:

- (a) operators and proposed operators of facilities;
- (b) design notifications for new production facilities and new GHG facilities;
- (c) safety cases for facilities.

Under Part 2, a facility owner or titleholder may nominate a person to be the operator of a facility or proposed facility. NOPSEMA must accept the nomination if the requirements in section 2.3 are satisfied. Otherwise NOPSEMA must reject the nomination. NOPSEMA must maintain a register of operators and must publish details of each operator on its website.

A facility owner or titleholder may also nominate a person to replace an existing operator of a facility or proposed facility. NOPSEMA may accept or reject such a nomination. If NOPSEMA accepts the nomination, the nominee may submit a safety case for the facility and NOPSEMA must decide whether to accept the safety case.

If NOPSEMA accepts the safety case, the nominee must notify NOPSEMA that the nominee will replace the existing operator on a day specified in the notice. NOPSEMA must register the nominee as the operator on that day and must publish the name of the nominee in the register of operators.

NOPSEMA must also maintain a register of proposed operators and publish details of proposed operators on its website.

Under Part 3, a person proposing to construct a new production facility or a new GHG facility must submit to NOPSEMA a design notification for the facility. Such facilities include an existing vessel or structure that is to be significantly altered (see subsections 2.4FA(2) and 2.4FB (2)).

A design notification must be submitted to NOPSEMA before any construction or alteration work is commenced and must include all the details and information required by section 2.4H. NOPSEMA must assess and respond to the design notification. A fee is payable to NOPSEMA for an assessment of a design notification.

Part 4 provides for the contents of safety cases. Each facility must be covered by a safety case. A safety case includes a description of the facility, the formal safety assessment for the facility and how the safety management system for the facility will be implemented. A safety case is to be submitted to NOPSEMA and NOPSEMA may accept or reject the safety case or accept the safety case subject to conditions or limitations.

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An operator of a facility must submit a revised safety case if there is a change in circumstances or operations. NOPSEMA may also request an operator to submit a revised safety case.

A safety case must be revised every 5 years.

In certain circumstances NOPSEMA may withdraw its acceptance of a safety case.

Under Division 5 of Part 4 NOPSEMA may give an operator an exemption in relation to safety cases.

Under Part 5 NOPSEMA may require an operator of a facility or proposed facility to provide a validation in respect of the proposed facility or a proposed significant change to an existing facility.

Part 6 specifies occurrences at facilities that are declared to be dangerous occurrences. That Part also specifies the time within which, and the information that must be included in, notices and reports that are required to be given to NOPSEMA under clause 82 of Schedule 3 to the Act about accidents and dangerous occurrences at or near facilities.

Part 7 sets out the information that must be provided to NOPSEMA, in accordance with clause 83B of Schedule 3 to the Act, when a vessel becomes a facility or an associated offshore place or when a vessel ceases to be a facility or an associated offshore place.

Parts 8, 9 and 10 contain various penalty, miscellaneous and application provisions.

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## Part 2—Operators and proposed operators

### Division 1—Operators

#### 2.1AB Purpose of this Part

This Part is made for the purposes of clause 5 of Schedule 3 to the Act.

#### 2.1 Nomination of operator—general

- (1) A facility owner or a titleholder may give NOPSEMA a written notice nominating a person to be the operator of a facility or a proposed facility.
- (2) The notice must include the following:
  - (a) the person's name;
  - (b) the following contact details for the person:
    - (i) if the person carries on business in Australia—the address of the person's principal place of business in Australia;
    - (ii) if the person does not carry on business in Australia—the address of the person's principal place of business;
    - (iii) a telephone number and an email address for the person at the place of business specified in the notice;
    - (iv) a telephone number and an email address for the person outside business hours at the place of business specified in the notice;
  - (c) the following details, if applicable:
    - (i) the person's Australian Company Number (ACN);
    - (ii) the person's Australian Business Number (ABN);
    - (iii) the person's Australian Registered Body Number (ARBN);
    - (iv) the person's Australian Registered Scheme Number (ARSN);
  - (d) the person's consent to the nomination.

#### 2.3 Acceptance or rejection of nomination of operator

- (1) Subject to subsection (3), NOPSEMA must accept a nomination of a person (the **nominee**) as the operator of a facility or proposed facility under subsection 2.1(1) if it is satisfied that:
  - (a) the nominee has, or will have, the day-to-day management and control of:
    - (i) the facility or proposed facility; and
    - (ii) operations at the facility or proposed facility; and
  - (b) if the nominee is a foreign company—the nominee is registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*.
- (2) Subject to subsection (3), NOPSEMA must reject the nomination if it is not satisfied that:
  - (a) the nominee has, or will have, the day-to-day management and control of:
    - (i) the facility or proposed facility; and
    - (ii) operations at the facility or proposed facility; or

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- (b) if the nominee is a foreign company—the nominee is registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*.
- (3) NOPSEMA must not accept a nomination unless it has taken into account the following:
  - (a) the ability of the nominee to undertake the functions and responsibilities of an operator of the facility;
  - (b) the physical and operational features of the facility;
  - (c) if there is an existing operator of the facility or proposed facility—the views (if applicable) of the operator.
- (4) If NOPSEMA accepts the nomination, it must register the nominee as the operator of the facility or proposed facility.
- (5) NOPSEMA must, in writing, notify the facility owner or titleholder who made the nomination, and the nominee, of the following:
  - (a) the decision to accept or reject the nomination;
  - (b) if NOPSEMA has decided to reject the nomination—the reasons for the rejection.

## 2.4 Register of operators

- (1) NOPSEMA must:
  - (a) maintain a register of operators of facilities; and
  - (b) publish on its website:
    - (i) the name of each operator; and
    - (ii) the address of each operator, as notified under subparagraph 2.1(2)(b)(i) or (ii); and
    - (iii) the name of each facility which the operator operates.
- (2) A facility owner, titleholder or operator of a facility must give NOPSEMA written notice that the operator has ceased to be the person who has, or will have, the day-to-day management and control of:
  - (a) the facility or proposed facility; and
  - (b) operations at the facility or proposed facility.
- (3) If the operator of a facility or proposed facility is a foreign company and the operator ceases to be registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*, the operator must, as soon as practicable after ceasing to be so registered, give NOPSEMA written notice that the operator has ceased to be registered.
- (4) NOPSEMA must remove the name of the operator of a facility from the register if NOPSEMA is given a notice under subsection (2) or (3) in relation to the operator.
- (5) Subsection (6) applies if NOPSEMA believes, on reasonable grounds:
  - (a) that the operator of a facility does not have, or will not have, day-to-day management and control of the facility and operations at the facility; or

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- (b) if the operator of a facility or proposed facility is a foreign company—that the operator has ceased to be registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*.
- (6) NOPSEMA may give notice of intention to remove the name of the operator of a facility from the register to:
  - (a) the facility owner or titleholder who nominated the operator under subsection 2.1(1); and
  - (b) the operator of the facility.
- (7) NOPSEMA must remove the name of the operator of a facility from the register if NOPSEMA:
  - (a) has given notice of intention to remove the operator’s name from the register under subsection (6); and
  - (b) has considered any representations made by the facility owner, titleholder or operator within the period of 30 days beginning when the notice was given; and
  - (c) continues to believe, on reasonable grounds:
    - (i) that the operator does not have, or will not have, day-to-day management and control of the facility and operations at the facility; or
    - (ii) if the operator is a foreign company—that the operator has ceased to be registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*.

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### Division 2—Proposed operators

#### 2.4A Nomination of proposed operator—general

- (1) A facility owner or a titleholder may give NOPSEMA a written notice nominating a person (the **proposed operator**) to replace the existing operator of the facility or proposed facility.
- (2) The notice must include the following:
  - (a) the proposed operator's name;
  - (b) the following contact details for the proposed operator:
    - (i) if the proposed operator carries on business in Australia—the address of the proposed operator's principal place of business in Australia;
    - (ii) if the proposed operator does not carry on business in Australia—the address of the proposed operator's principal place of business;
    - (iii) a telephone number and an email address for the proposed operator at the place of business specified in the notice;
    - (iv) a telephone number and an email address for the proposed operator outside business hours at the place of business specified in the notice;
  - (c) the following details, if applicable:
    - (i) the proposed operator's Australian Company Number (ACN);
    - (ii) the proposed operator's Australian Business Number (ABN);
    - (iii) the proposed operator's Australian Registered Body Number (ARBN);
    - (iv) the proposed operator's Australian Registered Scheme Number (ARSN);
  - (d) the proposed operator's consent to the nomination.

#### 2.4B Acceptance or rejection of nomination of proposed operator

- (1) Subject to subsection (3), NOPSEMA must accept a nomination of a proposed operator for a facility or proposed facility under subsection 2.4A(1) if it is satisfied that:
  - (a) the proposed operator will have, if registered as the operator of the facility or proposed facility, the day-to-day management and control of:
    - (i) the facility or proposed facility; and
    - (ii) operations at the facility or proposed facility; and
  - (b) if the proposed operator is a foreign company—the proposed operator is registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*.
- (2) Subject to subsection (3), NOPSEMA must reject the nomination of a proposed operator if it is not satisfied that:
  - (a) the proposed operator will have, if registered as the operator of the facility or proposed facility, the day-to-day management and control of:
    - (i) the facility or proposed facility; and
    - (ii) operations at the facility or proposed facility; or
  - (b) if the proposed operator is a foreign company—the proposed operator is registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*.

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- (3) In deciding whether to accept a nomination, NOPSEMA must take into account:
  - (a) the ability of the proposed operator to undertake the functions and responsibilities of an operator of the facility; and
  - (b) the physical and operational features of the facility; and
  - (c) the views (if any) of the existing operator of the facility or proposed facility.
- (4) If NOPSEMA accepts the nomination of a proposed operator, it must register the proposed operator as the proposed operator of the facility or proposed facility.
- (5) NOPSEMA must, in writing, notify the facility owner or titleholder who made the nomination, and the proposed operator, of the following:
  - (a) the decision to accept or reject the nomination of the proposed operator;
  - (b) if NOPSEMA has decided to reject the nomination of the proposed operator—the reasons for the rejection.

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

- (1) If, under subsection 2.4B(4), NOPSEMA registers a person as the proposed operator of a facility or proposed facility:
  - (a) the proposed operator may submit a safety case to NOPSEMA under section 2.24; and
  - (b) NOPSEMA must:
    - (i) make a decision on the submitted safety case in accordance with section 2.26; and
    - (ii) notify the proposed operator in accordance with section 2.27; and
  - (c) the other provisions of Parts 2 and 3 of this Chapter apply (to the extent that those provisions are applicable) as if the reference to the operator included a reference to the proposed operator.
- (2) If NOPSEMA notifies the proposed operator under section 2.27 that it has decided to accept the safety case:
  - (a) the proposed operator must, in writing, notify NOPSEMA that the proposed operator intends to replace the existing operator of the facility or proposed facility:
    - (i) on a day specified in the notice (which must be no earlier than 5 business days after the notice is given to NOPSEMA); or
    - (ii) on another day specified in the notice that is agreed between NOPSEMA and the proposed operator; and
  - (b) the safety case does not come into force unless and until the proposed operator is registered as the operator of the facility or proposed facility in accordance with paragraph 2.4D(1)(a).

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

- (1) If a proposed operator for a facility or proposed facility notifies NOPSEMA under paragraph 2.4C(2)(a), NOPSEMA must:

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- (a) register the proposed operator as the operator (the ***new operator***) of the facility or proposed facility on the day specified by the proposed operator in the notice; and
  - (b) publish the name of the new operator in the register of operators maintained under section 2.4; and
  - (c) remove the name of the new operator from the register of proposed operators maintained under section 2.4E; and
  - (d) remove the name of the previous operator of the facility or proposed facility from the register of operators maintained under section 2.4.
- (2) The previous safety case in relation to the facility or proposed facility ceases to be in force at the time the new operator is registered as the operator of the facility or proposed facility.

### 2.4E Register of proposed operators

- (1) NOPSEMA must:
- (a) maintain a register of proposed operators; and
  - (b) publish on its website:
    - (i) the name of each proposed operator; and
    - (ii) the address of each proposed operator, as notified under subparagraph 2.4A(2)(b)(i) or (ii); and
    - (iii) the name of each facility which the proposed operator is intended to operate.
- (2) A facility owner, titleholder or proposed operator of a facility must give NOPSEMA written notice if the proposed operator will not, if registered as the operator of the facility or proposed facility, have the day-to-day management and control of:
- (a) the facility or proposed facility; and
  - (b) operations at the facility or proposed facility.
- (3) If the proposed operator of a facility or proposed facility is a foreign company and the proposed operator ceases to be registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*, the proposed operator must, as soon as practicable after ceasing to be so registered, give NOPSEMA written notice that the proposed operator has ceased to be registered.
- (4) NOPSEMA must remove the name of a proposed operator from the register of proposed operators if NOPSEMA is given a notice under subsection (2) or (3) in relation to the proposed operator.
- (5) Subsection (6) applies if NOPSEMA believes, on reasonable grounds:
- (a) that the proposed operator of a facility will not have day-to-day management and control of the facility and operations at the facility; or
  - (b) if the proposed operator of a facility or proposed facility is a foreign company—that the proposed operator has ceased to be registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*.
- (6) NOPSEMA may give notice of intention to remove the name of a proposed operator from the register of proposed operators to:



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- (a) the facility owner or titleholder who nominated the proposed operator under subsection 2.4A(1); and
  - (b) the proposed operator.
- (7) NOPSEMA must remove the name of a proposed operator from the register of proposed operators if NOPSEMA:
  - (a) has given notice of intention to remove the name of the proposed operator from the register under subsection (6); and
  - (b) has considered any representations made by the facility owner, titleholder or proposed operator within the period of 30 days beginning when the notice was given; and
  - (c) continues to believe, on reasonable grounds:
    - (i) that the proposed operator will not have day-to-day management and control of the facility and operations at the facility; or
    - (ii) if the proposed operator is a foreign company—that the proposed operator has ceased to be registered under Division 2 of Part 5B.2 of the *Corporations Act 2001*.

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

### 2.4F Purpose of this Part

This Part is made for the purposes of paragraph 17(3)(s) of Schedule 3 to the Act and applies to and in relation to a vessel or structure that is:

- (a) a new production facility; or
- (b) a new GHG facility.

### 2.4FA New production facilities

- (1) A vessel or a structure is a ***new production facility*** if the vessel or structure:
  - (a) either:
    - (i) for a new vessel or structure—is, or is to be, constructed on or after the commencement of this Part; or
    - (ii) for an existing vessel or structure—is, or is to be, significantly altered after the commencement of this Part; and
  - (b) is, or is proposed to be, located at a site in Commonwealth waters; and
  - (c) is, or is proposed to be, used at that site for:
    - (i) the recovery of petroleum; or
    - (ii) the processing of petroleum; or
    - (iii) the storage and offloading of petroleum; or
    - (iv) any combination of those activities; and
  - (d) is not, or will not be, any of the following:
    - (i) an offtake tanker;
    - (ii) a tug or an anchor handler;
    - (iii) a vessel or structure used for supplying a facility or otherwise travelling between a facility and the shore;
    - (iv) a vessel or structure used for any purpose such that it is declared under section 1.6 not to be a facility;

whether the vessel or structure is, or will be, floating or fixed and whether or not the vessel or structure is, or will be, capable of independent navigation.

- (2) An existing vessel or structure is ***significantly altered*** if:
  - (a) the vessel or structure is altered or repurposed, or proposed to be altered or repurposed, in a way that enables, or will enable, the altered or repurposed vessel or structure to be used for:
    - (i) the recovery of petroleum; or
    - (ii) the processing of petroleum; or
    - (iii) the storage and offloading of petroleum; or
    - (iv) any combination of the activities mentioned in subparagraphs (i) to (iii); and
  - (b) either:

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- (i) without the alteration or repurposing, the vessel or structure is not able to be used, or would not be able to be used, for an activity mentioned in paragraph (a); or
- (ii) if, before the alteration or repurposing, the vessel or structure is able to be used for a particular activity mentioned in paragraph (a), the vessel or structure is, after the alteration or repurposing, able to be used for a different activity mentioned in paragraph (a).

**2.4FB New GHG facilities**

- (1) A vessel or a structure is a **new GHG facility** if the vessel or structure:
- (a) either:
    - (i) for a new vessel or structure—is, or is to be, constructed on or after the commencement of this Part; or
    - (ii) for an existing vessel or structure—is, or is to be, significantly altered after the commencement of this Part; and
  - (b) is, or is proposed to be, located at a site in Commonwealth waters; and
  - (c) is, or is proposed to be, used at that site for:
    - (i) the injection of a greenhouse gas substance into the seabed or subsoil; or
    - (ii) the storage of a greenhouse gas substance in the seabed or subsoil; or
    - (iii) the compression of a greenhouse gas substance; or
    - (iv) the processing of a greenhouse gas substance; or
    - (v) the pre-injection storage of a greenhouse gas substance; or
    - (vi) the offloading of a greenhouse gas substance; or
    - (vii) the transportation of a greenhouse gas substance; or
    - (viii) the monitoring of a greenhouse gas substance stored in the seabed or subsoil; or
    - (ix) any combination of activities covered by any of the preceding subparagraphs; and
  - (d) is not, or will not be, any of the following:
    - (i) an offtake tanker;
    - (ii) a tug or an anchor handler;
    - (iii) a vessel or structure used for supplying a facility or otherwise travelling between a facility and the shore;
    - (iv) a vessel or structure used for any purpose such that it is declared under section 1.6 not to be a facility;

whether the vessel or structure is, or will be, floating or fixed and whether or not the vessel or structure is, or will be, capable of independent navigation.

- (2) An existing vessel or structure is **significantly altered** if:
- (a) the vessel or structure is altered or repurposed, or proposed to be altered or repurposed, in a way that enables, or will enable, the altered or repurposed vessel or structure to be used for:
    - (i) the injection of a greenhouse gas substance into the seabed or subsoil; or
    - (ii) the storage of a greenhouse gas substance in the seabed or subsoil; or
    - (iii) the compression of a greenhouse gas substance; or

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- (iv) the processing of a greenhouse gas substance; or
- (v) the pre-injection storage of a greenhouse gas substance; or
- (vi) the offloading of a greenhouse gas substance; or
- (vii) the transportation of a greenhouse gas substance; or
- (viii) the monitoring of a greenhouse gas substance stored in the seabed or subsoil; or
- (ix) any combination of activities covered by any of the preceding subparagraphs; and
- (b) either:
  - (i) without the alteration or repurposing, the vessel or structure is not able to be used, or would not be able to be used, for an activity mentioned in paragraph (a); or
  - (ii) if, before the alteration or repurposing, the vessel or structure is able to be used for a particular activity mentioned in paragraph (a), the vessel or structure is, after the alteration or repurposing, able to be used for a different activity mentioned in paragraph (a).

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

- (1) A person must submit to NOPSEMA a design notification for a new production facility or a new GHG facility.

Note: See paragraph 2.26(1)(e) which requires a design notification to be submitted to NOPSEMA in order for NOPSEMA to accept a safety case for a new production facility or a new GHG facility.

- (2) The design notification must comply with the requirements specified in section 2.4H.

### 2.4H Requirements of design notification

For the purposes of subsection 2.4G(2), the design notification for a new production facility or a new GHG facility (the *new facility*) must:

- (a) be submitted to NOPSEMA:
  - (i) in sufficient time to allow for any comments made by NOPSEMA to be taken into account in the final design decision; and
  - (ii) before any construction or alteration work is commenced; and
- (b) be in writing; and
- (c) include the following:
  - (i) the name of the person submitting the design notification;
  - (ii) the address in Australia of that person;
  - (iii) the contact details of that person; and
- (d) include a description of the following:
  - (i) the design process (from the initial concept to the submitted design) for the new facility;
  - (ii) the design and performance standards used to guide the design process; and
- (e) include a description of the chosen design for the new facility, including:

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- (i) diagrams of the design; and
  - (ii) a summary of other design options that were considered; and
  - (iii) for a vessel or structure that is to be repurposed—the justification of the suitability for repurposing the vessel or structure; and
  - (iv) the criteria used to select the design in the design notification and the process by which the selection was made; and
- (f) include a description of how the design in the design notification for the new facility ensures that risks associated with hazards that have the potential to cause a major accident event are reduced to a level that is as low as reasonably practicable; and
- (g) include information explaining the following:
  - (i) how the new facility will be able to withstand such forces acting upon it as are reasonably foreseeable throughout its entire lifecycle, including during the post closure period until fully decommissioned;
  - (ii) how the layout and configuration of the new facility, including the layout and configuration of its plant, will not adversely impact upon its safety and integrity;
  - (iii) how the fabrication, transportation, construction, commissioning, operation, modification, maintenance and repair of the new facility will proceed without adversely impacting upon its safety and integrity;
  - (iv) how the new facility will be able to be decommissioned and, if necessary, dismantled in such a way that it will, as far as is reasonably practicable, have sufficient integrity to enable decommissioning to be carried out safely;
  - (v) how, in the event of reasonably foreseeable damage to the new facility, the new facility will be able to retain sufficient integrity to enable actions to be taken to safeguard the health and safety of persons at, or near, the new facility; and
- (h) include a description of how the design in the design notification for the new facility makes use of construction materials that are:
  - (i) suitable, having regard to the need to ensure that at all times the new facility maintains such structural integrity as is reasonably practicable; and
  - (ii) as far as is reasonably practicable, able to provide sufficient protection against anything that may prejudice the structural integrity of the new facility; and
- (i) include a description of the following:
  - (i) the layout of the new facility;
  - (ii) the safety and environmental management system by which the intended major accident risk control measures are to be maintained;
  - (iii) the process technology proposed to be used for the new facility;
  - (iv) the principal features of any pipeline proposed to be connected to or used in connection with the new facility;
  - (v) any petroleum-bearing reservoir or identified storage formation intended to be exploited using the new facility;
  - (vi) the basis of design for any wells to be connected to the new facility; and

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- (j) include an initial list of operations, procedures and equipment that are critical to safety; and
- (k) include a plan setting out the proposed location of the new facility and anything that may be connected to the new facility, including particulars of:
  - (i) the meteorological and oceanographic conditions to which the new facility may foreseeably be subject; and
  - (ii) the properties of the seabed and subsoil at the proposed location of the new facility; and
- (l) include a description of the following:
  - (i) any environmental, meteorological and seabed limitations on the safe installation, operation and decommissioning of the new facility;
  - (ii) the arrangements for identifying risks from seabed and marine hazards such as pipelines and moorings of adjacent installations; and
- (m) include a description of the types of operation, and the activities in connection with an operation, that are proposed to be undertaken at the new facility.

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

- (1) If a person submits a design notification for a new production facility or a new GHG facility to NOPSEMA, NOPSEMA must:
  - (a) assess the design notification; and
  - (b) subject to subsection (6), provide written comments to the person within 90 days of receiving the design notification.
- (2) The comments must include details of any matters that NOPSEMA considers may affect the safety of the new production facility or the new GHG facility or that may otherwise impact on the reduction of safety risks to a level that is as low as reasonably practicable.

*NOPSEMA may request further information*

- (3) NOPSEMA may request the person to provide further written information about any matter relating to the design of the new production facility or the new GHG facility that is required by this Part to be included in a design notification.
- (4) The request must:
  - (a) be in writing; and
  - (b) set out each matter for which information is requested; and
  - (c) specify a period of at least 30 days within which the information is to be provided.
- (5) If the person provides all information requested by NOPSEMA:
  - (a) the information becomes part of the design notification for the new production facility or the new GHG facility (when the design notification for the facility is submitted to NOPSEMA) as if it had been included with the design notification for the facility as submitted to NOPSEMA; and
  - (b) NOPSEMA must have regard to the information as if it had been so included.

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*Time does not run while further information being sought*

- (6) If NOPSEMA requests further information under subsection (3), a day is not to be counted for the purposes of paragraph (1)(b) if it is:
  - (a) on or after the day NOPSEMA requested the information; and
  - (b) on or before the day on which NOPSEMA receives the last of the information requested.

**2.4K Fee for assessing design notification**

- (1) For the purposes of subsection 685(1) of the Act, a fee is payable to NOPSEMA by a person submitting a design notification under section 2.4J for an assessment of the design notification.
- (2) The fee is the total amount of the expenses incurred by NOPSEMA in assessing the design notification.
- (3) The fee is due and payable in accordance with the terms of the invoice for the fee.

Section 2.4L

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**Part 4—Safety cases**

**Division 1A—Purpose of this Part**

**2.4L Purpose of this Part**

This Part is made for the purposes of section 639 of the Act.



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## Division 1—Contents of safety cases

### Subdivision A—Contents of a safety case

#### 2.5 Facility description, formal safety assessment and safety management system

##### *Facility description*

- (1) The safety case for a facility must contain a description of the facility that gives details of the following:
  - (a) the layout of the facility;
  - (b) the technical and other control measures identified as a result of the formal safety assessment;
  - (c) the activities that will, or are likely to, take place at, or in connection with, the facility;
  - (d) for a facility that is a pipeline:
    - (i) the route corridor of the pipeline and the pipeline's interface start and end positions; and
    - (ii) the compositions of petroleum or greenhouse gas substance that are to be conveyed through the pipeline when it is operating; and
    - (iii) the safe operating limits for conveying those compositions through the pipeline;
  - (e) any other relevant matters.

##### *Technical and other control measures that are critical to safety*

- (2) The safety case for the facility must also identify which of the technical and other control measures mentioned in paragraph (1)(b) are critical to safety.

##### *Formal safety assessment*

- (3) The safety case for the facility must also contain a detailed description of the formal safety assessment for the facility, being an assessment, or series of assessments, conducted by the operator of the facility that:
  - (a) identifies all hazards having the potential to cause a major accident event; and
  - (b) is a detailed and systematic assessment of the risk associated with each of those hazards, including the likelihood and consequences of each potential major accident event; and
  - (c) identifies the technical and other control measures that are necessary to reduce that risk to a level that is as low as reasonably practicable; and
  - (d) describes the emergency response plan required to be followed in the event of an emergency in connection with the facility.

Note: A formal safety assessment relates only to major accident events.

##### *Safety management system*

- (4) The safety case for the facility must also contain a detailed description of the safety management system that:
  - (a) is comprehensive and integrated; and

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- (b) provides for all activities that will, or are likely to, take place at, or in connection with, the facility; and
- (c) provides for the continual and systematic identification of hazards to health and safety of persons at or near the facility; and
- (d) provides for the continual and systematic assessment of:
  - (i) the likelihood of the occurrence, during normal or emergency situations, of injury or occupational illness associated with those hazards; and
  - (ii) the likely nature of such injury or occupational illness; and
- (e) provides for the reduction to a level that is as low as reasonably practicable of risks to health and safety of persons at or near the facility including, but not limited to:
  - (i) risks arising during evacuation, escape and rescue in case of emergency; and
  - (ii) risks arising from equipment and hardware; and
- (f) provides for inspection, testing and maintenance of the equipment and hardware that are the physical control measures for those risks; and
- (g) provides for adequate communications between the facility and any relevant:
  - (i) facility; or
  - (ii) vessel; or
  - (iii) aircraft; or
  - (iv) on-shore installation; and
- (h) provides for any other matter that is necessary to ensure that the safety management system meets the requirements and objects of this instrument; and
- (i) specifies the performance standards that apply.

**Note:** The safety management system must provide for all hazards and risks to persons at the facility, not just risks of major accident events.

### *Safety case for construction or installation stage*

- (5) If the operator of a facility submits to NOPSEMA a safety case for a construction or installation stage in the life of the facility, the safety case must contain the matters mentioned in subsections (1) to (4) in relation to:
  - (a) the facility at that stage in the life of the facility; and
  - (b) the activities that will, or are likely to, take place at, or in connection with, the facility during that stage in the life of the facility; and
  - (c) to the extent that it is practicable—the facility and the activities that will, or are likely to, take place when the facility is in operation.

### *Requirements for safety case if facility is a new production facility or a new GHG facility*

- (6) If a design notification in relation to a facility was required to be submitted to NOPSEMA under Part 3, the safety case for the facility must include the following:
  - (a) the design notification in relation to the facility that was provided to NOPSEMA in accordance with Part 3;

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- (b) the details of the matters (if any) that NOPSEMA raised in its written comments on the design notification under Part 3;
- (c) a description of how those matters have been incorporated into the facility design, either by:
  - (i) describing how the facility design has been adapted in response to NOPSEMA's comments; or
  - (ii) providing reasons why NOPSEMA's comments have not been incorporated into the facility design.

### 2.6 Implementation and improvement of the safety management system

The safety case for a facility must demonstrate that there are effective means of ensuring:

- (a) the implementation of the safety management system; and
- (b) continual and systematic identification of deficiencies in the safety management system; and
- (c) continual and systematic improvement of the safety management system.

### Subdivision B—Safety measures

#### 2.7 Standards to be applied

The safety case for a facility must specify all Australian and international standards that have been applied, or will be applied, in relation to the facility or plant used on or in connection with the facility for the relevant stage or stages in the life of the facility for which the safety case is submitted.

#### 2.8 Command structure

- (1) The safety case for a facility must specify:
  - (a) an office or position in relation to the facility, the occupant of which is in command of the facility and responsible for its safe operation when on duty; and
  - (b) an office or position in relation to the facility, the occupant of which is responsible for implementing and supervising procedures in the event of an emergency at the facility; and
  - (c) the command structure that will apply in the event of an emergency at the facility.

Note: The same person may occupy both of the offices or positions mentioned in paragraphs (1)(a) and (b).

- (2) The safety case for a facility must also describe, in detail, the means by which the operator of the facility will ensure, as far as is reasonably practicable, that:
  - (a) the offices or positions mentioned in subsection (1) are continuously occupied while the facility is in operation; and
  - (b) the person who occupies each office or position mentioned in subsection (1) has the necessary skills, training and ability to perform the functions of the office or position; and
  - (c) the identity of the following persons can, at all times, be readily ascertained by any person at the facility:

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- (i) persons who occupy each office or position mentioned in paragraphs (1)(a) and (b);
- (ii) persons in the command structure mentioned in paragraph (1)(c).

### 2.9 Members of the workforce must be competent

The safety case for a facility must describe the means by which the operator of the facility will ensure that each member of the workforce at the facility has the necessary skills, training and ability:

- (a) to undertake routine and non-routine tasks that might reasonably be given to the member:
  - (i) in normal operating conditions; and
  - (ii) in abnormal or emergency conditions; and
  - (iii) during any changes to the facility; and
- (b) to respond and react appropriately, and at the level that might be reasonably required of the member, during an emergency.

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

- (1) The safety case for a facility must provide for the operator of the facility to establish and maintain a documented system of coordinating and controlling the safe performance of all work activities of members of the workforce at the facility, including in particular:
  - (a) welding and other hot work; and
  - (b) cold work (including physical isolation); and
  - (c) electrical work (including electrical isolation); and
  - (d) entry into, and working in, a confined space; and
  - (e) procedures for working over water; and
  - (f) diving operations.

Note: **Confined space** is defined in section 1.5.

- (2) The system must:
  - (a) form part of the Safety Management System described in the safety case in force for the facility; and
  - (b) identify the persons having responsibility to authorise and supervise work; and
  - (c) ensure that members of the workforce are competent in the application of the permit to work system.

### 2.11 Involvement of members of the workforce

- (1) The operator of a facility must demonstrate to NOPSEMA, to the reasonable satisfaction of NOPSEMA, that:
  - (a) in the development or revision of the safety case for the facility, there has been effective consultation with, and participation of, members of the facility's workforce; and
  - (b) the safety case provides adequately for effective consultation with, and the effective participation of, the members of the facility's workforce, so that

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they are able to arrive at informed opinions about the risks and hazards to which they may be exposed on the facility.

- (2) A demonstration for the purposes of paragraph (1)(a) must be supported by adequate documentation.
- (3) In subsection (1):

*members of the facility's workforce* includes members of the facility's workforce who are:

- (a) identifiable before the safety case for the facility is developed; and
- (b) working, or likely to be working, on the facility.

Note: Part 3 of Schedule 3 to the Act sets out the broad consultative provisions that apply, including provisions for the establishment of designated work groups, the election of health and safety representatives and the establishment of OHS committees. The arrangements under these consultative provisions should be used for consultation with members of the workforce about the development, preparation and revision of the safety case.

### 2.12 Design, construction, installation, maintenance and modification

- (1) The safety case for a facility must describe the means by which the operator of the facility will ensure the adequacy of the design, construction, installation, maintenance or modification of the facility, for the relevant stage or stages in the life of the facility for which the safety case has been submitted.
- (2) In particular, the design, construction, installation, maintenance and modification of the facility must provide for:
  - (a) adequate means of inventory isolation and pressure relief in the event of an emergency; and
  - (b) adequate means of gaining access for servicing and maintenance of the facility and machinery and other equipment on board the facility; and
  - (c) adequate means of maintaining the structural integrity of the facility; and
  - (d) implementation of the technical and other control measures identified as a result of the formal safety assessment.

### 2.13 Medical and pharmaceutical supplies and services

The safety case for a facility must specify the medical and pharmaceutical supplies and services, sufficient for an emergency situation, that must be maintained on, or in respect of, the facility.

### 2.14 Machinery and equipment

- (1) The safety case for a facility must specify the equipment required on the facility (including process equipment, machinery and electrical and instrumentation systems) that relates to, or may affect, the safety of the facility.
- (2) The safety case must demonstrate that:
  - (a) the equipment is fit for its function or use in normal operating conditions; and

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- (b) to the extent that the equipment is intended to function, or to be used, in an emergency—the equipment is fit for its function or use in the emergency.

### 2.15 Drugs and intoxicants

The safety case for a facility must describe the means by which the operator of the facility will ensure that there is in place, or will be put in place, a method of:

- (a) securing, supplying, and monitoring the use of, therapeutic drugs on the facility; and
- (b) preventing the use of controlled substances (other than therapeutic drugs) on the facility; and
- (c) preventing the use of intoxicants on the facility.

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

The safety case for a facility must describe the measures the operator of the facility has, or will, put in place to:

- (a) prevent sexual harassment, bullying and harassment at the facility; and
- (b) comply with relevant legislation relating to sexual harassment, bullying and harassment; and
- (c) report incidents of sexual harassment, bullying and harassment at the facility to NOPSEMA.

**Note:** The *Fair Work Act 2009* prohibits sexual harassment in connection with work. Other Commonwealth legislation (such as the *Sex Discrimination Act 1984*) and State and Territory legislation may also apply in particular cases.

## Subdivision C—Emergencies

### 2.16 Evacuation, escape and rescue analysis

- (1) The safety case for a facility must contain a detailed description of an evacuation, escape and rescue analysis in the event of an emergency at the facility.
- (2) The evacuation, escape and rescue analysis must:
  - (a) identify the types of emergency that could arise at the facility; and
  - (b) evaluate a range of routes for evacuation and escape of persons at the facility in the event of an emergency; and
  - (c) evaluate alternative routes for evacuation and escape if a primary route is not freely passable; and
  - (d) evaluate different possible procedures for managing evacuation, escape and rescue in the event of an emergency; and
  - (e) evaluate a range of means of, and equipment for, evacuation, escape and rescue; and
  - (f) evaluate a range of amenities and means of emergency communication to be provided in a temporary refuge; and
  - (g) evaluate a range of life saving equipment, including:
    - (i) life rafts to accommodate safely the maximum number of persons that are likely to be at the facility at any time; and

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- (ii) equipment to enable that number of persons to obtain access to the life rafts after launching and deployment; and
- (iii) in the case of a floating facility—suitable equipment to provide a float-free capability and a means of launching; and
- (h) identify, as a result of the above evaluations, the technical and other control measures necessary to reduce the risks associated with emergencies to a level that is as low as reasonably practicable.

Note: In so far as it addresses major accident events, the evacuation, escape and rescue analysis forms part of the formal safety assessment.

### 2.17 Fire and explosion risk analysis

- (1) The safety case for a facility must contain a detailed description of a fire and explosion risk analysis for the facility in the event of a fire or explosion at the facility.
- (2) The fire and explosion risk analysis must:
  - (a) identify the types of fires and explosions that could occur at the facility; and
  - (b) evaluate a range of measures for detecting those fires and explosions in the event that they do occur; and
  - (c) evaluate a range of measures for eliminating those potential fires and explosions, or for otherwise reducing the risk arising from fires and explosions; and
  - (d) evaluate the incorporation into the facility of both automatic and manual systems for the detection, control and extinguishment of:
    - (i) outbreaks of fire; and
    - (ii) leaks or escapes of petroleum; and
  - (e) evaluate a range of means of isolating and safely storing hazardous substances, such as fuel, explosives and chemicals, that are used or stored at the facility; and
  - (f) evaluate the evacuation, escape and rescue analysis, in so far as it relates to fires and explosions; and
  - (g) identify, as a result of the above evaluations, the technical and other control measures necessary to reduce the risks associated with fires and explosions to a level that is as low as reasonably practicable.

Note: In so far as it addresses major accident events, the fire and explosion risk analysis forms part of the formal safety assessment.

### 2.18 Emergency communications systems

- (1) The safety case for a facility must provide for communications systems that, in the event of an emergency in connection with the facility, are adequate for communication:
  - (a) within the facility; and
  - (b) between the facility and:
    - (i) associated on-shore installations; and
    - (ii) associated vessels and aircraft; and
    - (iii) other associated facilities.

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- (2) In particular, the safety case must provide for the communications systems of the facility to be:
- (a) adequate to handle:
    - (i) a likely emergency on or relating to the facility; and
    - (ii) the operation requirements of the facility; and
  - (b) protected so as to be capable of operating in an emergency, to the extent specified by the formal safety assessment relating to the facility.

Note: See subsection 2.5(3) for the requirements of a formal safety assessment.

### 2.19 Control systems

The safety case for a facility must make adequate provision for the facility, in the event of an emergency, in respect of:

- (a) back-up power supply; and
- (b) lighting; and
- (c) alarm systems; and
- (d) ballast control; and
- (e) emergency shut-down systems.

### 2.20 Emergency preparedness

- (1) The safety case for a facility must:
- (a) describe a response plan designed to address possible emergencies, the risk of which has been identified in the formal safety assessment for the facility; and
  - (b) provide for the implementation of that plan.
- (2) The plan must:
- (a) specify all reasonably practicable steps to ensure the facility is safe and without risk to the health of persons likely to be on the facility at the time of the emergency; and
  - (b) specify the performance standards that it applies.
- (3) The safety case must make adequate provision for escape drill exercises and fire drill exercises by persons on the facility.
- (4) In particular, those exercises must ensure that persons on the facility will be trained to function in the event of emergency with an adequate degree of knowledge, preparedness and confidence concerning the relevant emergency procedures.
- (5) The safety case must provide for the operator of the facility to ensure, as far as is reasonably practicable, that escape drill exercises and fire drill exercises are held in accordance with the safety case relating to the facility.
- (6) The safety case for a mobile facility must also specify systems that:
- (a) in the event of emergency, are adequate to shut down or disconnect all operations on the facility that could adversely affect the health or safety of persons at or near the facility; and



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- (b) are adequate to give appropriate audible and visible warnings of the shutting down or disconnecting of those operations.

## 2.21 Pipes

- (1) This section applies if:
  - (a) a facility is:
    - (i) connected to one or more pipes; or
    - (ii) proposed to be connected to one or more pipes; and
  - (b) the pipes convey, or will convey, petroleum or greenhouse gas substance to the facility.
- (2) The safety case for the facility must describe the arrangements and procedures that are, or will be, in place for shutting down or isolating, in the event of emergency, each of those pipes so as to stop the flow of petroleum or greenhouse gas substance into the facility through the pipe.
- (3) In particular, the arrangements and procedures must include:
  - (a) effective means of controlling and operating all relevant emergency shut-down valves for a pipe; and
  - (b) a fail-safe system of isolating a pipeline in the event of failure of other safety devices for the pipe.
- (4) The safety case for the facility must also specify:
  - (a) adequate means of mitigating, in the event of emergency, the risks associated with each pipe connected to the facility; and
  - (b) the frequency of periodic inspection and testing of pipe emergency shut-down valves that can reasonably be expected to ensure that the shut-down valves will operate correctly in an emergency.
- (5) In this section:  
*facility* does not include:
  - (a) a well mentioned in paragraph 4(4)(a) or (b), or in subparagraph 4(8)(b)(i) or (ii), of Schedule 3 to the Act; or
  - (b) plant and equipment associated with a well mentioned in any of those provisions; or
  - (c) a pipe or system of pipes mentioned in any of those provisions.

## 2.22 Vessel and aircraft control

- (1) The safety case for a facility must describe a system, that is in place or will be implemented, as part of the operation of the facility, that ensures, as far as is reasonably practicable, the safe performance of operations that involve vessels or aircraft.
- (2) The system must be:
  - (a) able to meet the emergency response requirements identified in the formal safety assessment in relation to the facility; and
  - (b) described in the facility's safety management system.

Note 1: See subsection 2.5(3) for the requirements of a formal safety assessment.

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Note 2: See subsection 2.5(4) for the requirements of a safety management system.

- (3) The equipment and procedures for ensuring safe vessel and aircraft operations must be fit for purpose.

### **Subdivision D—Record keeping**

#### **2.23 Arrangements for records**

- (1) This section applies to the following documents:
  - (a) the safety case in force for a facility;
  - (b) a revision to the safety case for the facility;
  - (c) a written audit report for the safety case;
  - (d) a copy of each notice and report given to NOPSEMA in accordance with section 2.42.
- (2) The safety case for a facility must include arrangements for:
  - (a) making a record of the documents to which this section applies; and
  - (b) securely storing the record and those documents:
    - (i) at an address nominated for the facility; and
    - (ii) in a manner that facilitates their retrieval as soon as practicable.
- (3) A document mentioned in paragraph (1)(a) or (b) for a facility must be retained by the operator of the facility for 5 years after the date of acceptance of the document by NOPSEMA.
- (4) A report mentioned in paragraph (1)(c) for a facility must be retained by the operator of the facility for a period of 5 years after the date of receipt of the report by the operator.
- (5) A copy of a notice or report referred to in paragraph (1)(d) for a facility must be retained by the operator of the facility for a period of 5 years after the date the report was given to NOPSEMA.

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

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

- (1) If the operator of a facility wants to have a safety case accepted for the facility, the operator must submit the safety case to NOPSEMA.
- (2) The safety case may relate to one or more stages in the life of the facility.
- (3) The safety case may relate to more than one facility.
- (4) The operator must not submit the safety case before the operator and NOPSEMA have agreed on the scope of the validation for the facility.

Note: For validation in relation to a facility, see section 2.40.

- (5) However, the operator may submit the safety case before the operator and NOPSEMA have agreed on the scope of the validation for the facility if the safety case is for a proposed facility that is:
  - (a) proposed to be or is being constructed at a place outside NOPSEMA waters; and
  - (b) proposed to be installed and operated in Commonwealth waters or in designated coastal waters of a State or the Northern Territory.
- (6) NOPSEMA may at any time inform the operator that it will not assess the safety case for the proposed facility unless the operator and NOPSEMA have agreed on the scope of the validation for the proposed facility.

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

- (1) If the operator of a facility submits a safety case to NOPSEMA, NOPSEMA may request the operator to provide further written information about any matter required by this instrument to be included in a safety case.
- (2) The request must:
  - (a) be in writing; and
  - (b) set out each matter for which information is requested; and
  - (c) specify a period of at least 30 days within which the information is to be provided.
- (3) If the operator provides all information requested by NOPSEMA within the period specified:
  - (a) the information becomes part of the safety case as if it had been included with the safety case as it was submitted to NOPSEMA; and
  - (b) NOPSEMA must have regard to the information as if it had been so included.

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

- (1) NOPSEMA must accept a safety case for a facility if:
  - (a) the safety case is appropriate to the facility and to the activities conducted at the facility; and

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- (b) the safety case complies with Subdivisions A, B and C of Division 1 of this Part for each stage in the life of the facility in respect of which the safety case is submitted; and
  - (c) the safety case complies with Subdivision D of Division 1 of this Part; and
  - (d) if NOPSEMA required a validation under subsection 2.40(1):
    - (i) the validation established, to the level of assurance required by NOPSEMA, the matters (as appropriate) mentioned in subsection 2.40(4); and
    - (ii) the person, or each person, who undertook the validation had the necessary competence, ability and access to data as mentioned in subsection 2.40(5); and
  - (e) if a design notification in relation to the facility was required to be submitted to NOPSEMA under Part 3—the following requirements are satisfied:
    - (i) a design notification for the facility was provided to NOPSEMA in accordance with Part 3;
    - (ii) the operator of the facility has provided NOPSEMA with details of the matters (if any) that NOPSEMA raised in its written comments on the design notification under Part 3;
    - (iii) the operator of the facility has described how those matters have been incorporated into the facility design, either by describing how the facility design has been adapted in response to NOPSEMA's comments or by providing reasons why NOPSEMA's comments have not been incorporated into the facility design;
    - (iv) NOPSEMA is satisfied that the matters in its written comments in relation to the design notification under Part 3 for the facility have been adequately addressed in the facility design.
- (2) If a safety case for a facility is submitted for more than one stage in the life of the facility, NOPSEMA may accept the safety case for one or more stages in the life of the facility.
- (3) If NOPSEMA proposes to reject a safety case for a facility because NOPSEMA is not satisfied in relation to any of the matters mentioned in subsection (1):
- (a) NOPSEMA must give the operator of the facility a reasonable opportunity to change the safety case and resubmit it; and
  - (b) the operator may resubmit the safety case with such changes as the operator considers necessary.
- (4) NOPSEMA must reject the safety case for a facility if:
- (a) NOPSEMA has given the operator of the facility a reasonable opportunity to change and resubmit the safety case for the facility; and
  - (b) the operator resubmits the safety case; and
  - (c) NOPSEMA is not satisfied in relation to any of the matters mentioned in subsection (1).
- (5) When accepting a safety case for a facility, NOPSEMA may impose limitations or conditions on the acceptance in respect of the facility or activities at the facility.

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

- (1) Within 90 days after receiving a safety case for a facility submitted under section 2.24, or resubmitted under paragraph 2.26(3)(b), NOPSEMA must:
  - (a) notify the operator of the facility, in writing, that NOPSEMA has decided:
    - (i) to accept the safety case; or
    - (ii) to reject the safety case; or
    - (iii) to accept the safety case for one or more specified stages in the life of the facility, but not for every stage in the life of the facility, in respect of which the safety case was submitted and to reject the rest of the safety case; or
    - (iv) to accept the safety case subject to conditions or limitations; or
  - (b) notify the operator of the facility, in writing, that NOPSEMA is unable to make a decision about the safety case within the period of 90 days, and set out a proposed timetable for its consideration of the safety case.
- (2) A failure by NOPSEMA to comply with subsection (1) in relation to a safety case does not affect the validity of a decision by NOPSEMA to accept or reject the safety case.
- (3) A notice under paragraph (1)(a) must include the terms of the decision (including any limitations or conditions) and the reasons for it.

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

- (1) NOPSEMA may, by notice in writing given to the operator of a facility, consent to the conduct of an activity in a manner that is different from the safety case in force in relation to the facility.
- (2) NOPSEMA must not give a consent under subsection (1) unless it is satisfied that there will not be an occurrence of a significant new risk to health and safety or a significant increase in an existing risk to health and safety arising from the activity in relation to the facility.

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

The acceptance of a safety case for a facility by NOPSEMA, or compliance by the operator of a facility or another person with a safety case for a facility that has been accepted by NOPSEMA, does not derogate from the duties of the operator or person under Part 2 of Schedule 3 to the Act.

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### Division 3—Revised safety cases

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

- (1) Subject to subsection (4), the operator of a facility for which a safety case is in force must submit a revised safety case to NOPSEMA as soon as practicable if:
  - (a) the technical knowledge relied upon to formulate the safety case, including the knowledge of systems for identifying hazards and evaluating risks of major accident events, has become outdated so that the safety case no longer adequately provides for the matters mentioned in Subdivisions A, B and C of Division 1 of this Part; or
  - (b) the operator proposes to modify or decommission the facility, and the proposed modification or decommissioning is not adequately addressed in the safety case; or
  - (c) there are reasonable grounds for believing that a series of proposed modifications to the facility would result in a significant cumulative change in the overall level of risk of major accident events; or
  - (d) the operator proposes to significantly change the safety management system; or
  - (e) for a facility that is a pipeline—the compositions of petroleum or greenhouse gas substance conveyed in the pipeline are different from the compositions contemplated in the safety case; or
  - (f) the activities to be carried out at the facility are different from the activities contemplated in the safety case; or
  - (g) subject to subsection (2), there has been, or will be, a loss or removal of a technical or other control measure identified under subsection 2.5(2) as being critical to safety.
- (2) Paragraph (1)(g) does not apply if:
  - (a) a technical or other control measure is out of service for the purpose of testing the technical or control measure; or
  - (b) the operator of the facility has ceased to undertake an activity that is directly related to the technical or other control measure; or
  - (c) NOPSEMA has agreed (in writing) that in the particular circumstances paragraph (1)(g) does not apply.
- (3) Subject to subsection (4), the operator of a facility for which a safety case is in force must submit a revised safety case to NOPSEMA as soon as practicable if there has been:
  - (a) a significant increase in the level of risk to the health or safety of persons at or near the facility; or
  - (b) a series of increases in the level of risk to the health or safety of persons at or near the facility that, in total, are significant.
- (4) If a circumstance mentioned in subsection (1) or (3) may arise, or is likely to arise, because the operator proposes to modify or decommission the facility, the operator must not submit the revised safety case before the operator and NOPSEMA have agreed on the scope of the validation of the proposal.

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- (5) If NOPSEMA agrees, the operator may submit a revised safety case under subsection (1) or (2) in the form of a revision to part of the safety case in force for the facility.

### *Strict liability offence*

- (6) A person commits an offence of strict liability if the person contravenes subsection (1) or (3).

Penalty: 100 penalty units.

### *Civil penalty provision*

- (7) A person is liable to a civil penalty if the person contravenes subsection (1) or (3).

Civil penalty: 1,000 penalty units.

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

- (1) NOPSEMA may request the operator of a facility for which a safety case is in force to submit a revised safety case to NOPSEMA.
- (2) If NOPSEMA agrees, the operator may submit the revised safety case in the form of a revision to part of the safety case in force for the facility.
- (3) A request by NOPSEMA must be in writing and include the following information:
- (a) the matters to be addressed by the revision;
  - (b) the date by which the revision is required to be submitted to NOPSEMA;
  - (c) the grounds for the request.
- (4) The operator may make a written submission to NOPSEMA requesting the variation or withdrawal of the request and stating the reasons why:
- (a) the revision should not occur; or
  - (b) the revision should be in different terms from the terms proposed by NOPSEMA; or
  - (c) the revision should be submitted by a date other than the date proposed by NOPSEMA.
- (5) The operator must make the submission:
- (a) within 21 days after receiving the request; or
  - (b) within a longer period specified in writing by NOPSEMA.
- (6) If NOPSEMA receives the submission and the submission complies with subsections (4) and (5), NOPSEMA must:
- (a) decide whether to accept the submission or part of the submission; and
  - (b) give the operator written notice of the decision; and
  - (c) to the extent that the submission is accepted—give the operator written notice that varies or withdraws the request in accordance with the decision; and

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- (d) to the extent that the submission is rejected—give the operator written notice of the grounds for rejecting the submission or part of the submission.
- (7) Unless the request is withdrawn, the operator must comply with the request, or the request as varied.

### *Strict liability offence*

- (8) A person commits an offence of strict liability if the person contravenes subsection (7).

Penalty: 100 penalty units.

### *Civil penalty provision*

- (9) A person is liable to a civil penalty if the person contravenes subsection (7).

Civil penalty: 1,000 penalty units.

## 2.32 Revision at the end of each 5 year period

- (1) The operator of a facility for which a safety case is in force must submit a revised safety case in accordance with this section to NOPSEMA:
- (a) within 14 days before the end of the 5 year period beginning on the day the safety case was accepted by NOPSEMA under section 2.26; and
  - (b) within 14 days before the end of each subsequent 5 year period.
- (2) The operator must submit a revised safety case at the end of a period mentioned in subsection (1) even if the operator has submitted a revised safety case to NOPSEMA under section 2.30 or 2.31 in the same period.
- (3) A revised safety case submitted under this section must describe the means by which the operator will ensure the ongoing integrity of the technical and other control measures identified by the formal safety assessment for the facility.

Note: See subsection 2.5(3) for the requirements of a formal safety assessment.

### *Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 50 penalty units.

### *Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 500 penalty units.

## 2.33 NOPSEMA may request more information

- (1) If the operator of a facility submits a revised safety case to NOPSEMA, NOPSEMA may request the operator to provide further written information about any matter required by this instrument to be included in a safety case.



- (2) The request must:
  - (a) be in writing; and
  - (b) set out each matter for which information is requested; and
  - (c) specify a period of not less than 10 days within which the information is to be provided.
- (3) If the operator receives the request and provides all information requested by NOPSEMA within the period specified:
  - (a) the information becomes part of the revised safety case for the facility as if it had been included with the revised safety case as it was submitted to NOPSEMA; and
  - (b) NOPSEMA must have regard to the information as if it had been so included.

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

- (1) NOPSEMA must accept a revised safety case for a facility if:
  - (a) the revised safety case is appropriate to the facility and to the activities conducted at the facility; and
  - (b) the revised safety case complies with Subdivisions A, B and C of Division 1 of this Part for each stage in the life of the facility in respect of which the revision is submitted; and
  - (c) the revised safety case complies with Subdivision D of Division 1 of this Part; and
  - (d) if NOPSEMA required a validation under subsection 2.40(1):
    - (i) the validation established, to the level of assurance required by NOPSEMA, the matters (as appropriate) mentioned in subsection 2.40(4); and
    - (ii) the person, or each person, who undertook the validation had the necessary competence, ability and access to data as mentioned in subsection 2.40(5).
- (2) If a safety case for a facility is revised in relation to more than one stage in the life of the facility, NOPSEMA may accept the revised safety case for one or more stages in the life of the facility and reject the revised safety case for one or more stages in the life of the facility.
- (3) If NOPSEMA proposes to reject a revised safety case for a facility because NOPSEMA is not satisfied in relation to any of the matters mentioned in subsection (1):
  - (a) NOPSEMA must give the operator of the facility a reasonable opportunity to change the revised safety case and resubmit it; and
  - (b) the operator may resubmit the revised safety case with such changes as the operator considers necessary.
- (4) NOPSEMA must reject a revised safety case for a facility if:
  - (a) NOPSEMA has given the operator of the facility a reasonable opportunity to change and resubmit a revised safety case or a revised part of a safety case; and

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- (b) the operator resubmits the revised safety case or revised part of the safety case; and
  - (c) NOPSEMA is not satisfied in relation to any of the matters mentioned in subsection (1).
- (5) When accepting a revised safety case for a facility, NOPSEMA may impose limitations or conditions on the acceptance in respect of the facility or activities at the facility.

### 2.35 Notice of decision on revised safety case

- (1) Within 30 days after receiving a revised safety case for a facility, or a revised part of a safety case for the facility, or a safety case for the facility resubmitted under paragraph 2.34(3)(b), NOPSEMA must:
- (a) notify the operator of the facility, in writing, that NOPSEMA has decided:
    - (i) to accept the revised safety case; or
    - (ii) to reject the revised safety case; or
    - (iii) to accept the revised safety case for one or more specified stages in the life of the facility (but not for every stage in the life of the facility) in respect of which the safety case was submitted and to reject the rest of the revised safety case; or
    - (iv) to accept the revised safety case subject to conditions or limitations;or
  - (b) notify the operator, in writing, that NOPSEMA is unable to make a decision about the revised safety case within the period of 30 days, and set out a proposed timetable for its consideration of the revised safety case.
- (2) A failure by NOPSEMA to comply with subsection (1) in relation to a revised safety case, or a revised part of a safety case, for a facility does not affect the validity of a decision by NOPSEMA to accept or reject the safety case for the facility.
- (3) A notice of a decision under paragraph (1)(a) must include the terms of the decision (including any limitations or conditions) and the reasons for it.

### 2.36 Effect of rejection of revised safety case

If a revised safety case is not accepted, the safety case in force in relation to the facility immediately before the revised safety case was submitted remains in force subject to the Act and this instrument, as if the revised safety case had not been submitted.

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

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

- (1) NOPSEMA may, by written notice given to the operator of a facility, withdraw the acceptance of a safety case for the facility if:
  - (a) the operator of the facility has not complied with any of the following:
    - (i) a provision of Schedule 3 to the Act;
    - (ii) a notice issued by a NOPSEMA inspector under Schedule 3 to the Act;
    - (iii) section 2.30, 2.31 or 2.32 of this instrument; or
  - (b) NOPSEMA has rejected a revised safety case under section 2.34 of this instrument.
- (2) A notice under subsection (1) must specify:
  - (a) the reasons for the withdrawal; and
  - (b) the day when the withdrawal takes effect.

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

- (1) Before withdrawing the acceptance of a safety case for a facility NOPSEMA must comply with subsections (2), (4), (5) and (6).
- (2) NOPSEMA must give the operator at least 30 days' notice, in writing, of NOPSEMA's intention to withdraw acceptance of the safety case.
- (3) NOPSEMA may give a copy of the notice to such other persons (if any) as NOPSEMA thinks fit.
- (4) NOPSEMA must include in the notice its reasons for proposing to withdraw acceptance of the safety case.
- (5) NOPSEMA must specify in the notice a day by which the operator (or any other person to whom a copy of the notice has been given) may submit to NOPSEMA, in writing, any matters for NOPSEMA to take into account in deciding whether to withdraw the acceptance of the safety case.
- (6) In deciding whether to withdraw the acceptance of the safety case, NOPSEMA must take into account:
  - (a) any action taken by the operator to remove the ground for withdrawal of acceptance, or to prevent the recurrence of that ground; and
  - (b) any matter submitted to NOPSEMA before the day specified in the notice by:
    - (i) the operator; or
    - (ii) if another person is given a copy of the notice under subsection (3)—that other person.

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## **Division 5—Exemptions**

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

- (1) The operator of a facility may, in writing, apply to NOPSEMA for an exemption from the operation of specified provisions of this Part.

Note: NOPSEMA will issue guidelines regarding the granting of exemptions under this section.

- (2) NOPSEMA may also, on its own initiative, exempt an operator of a facility from the operation of specified provisions of this Part.
- (3) NOPSEMA may grant an exemption if it considers that, in all the circumstances, it is appropriate to do so.
- (4) An exemption granted under this section must be in writing.
- (5) NOPSEMA may specify conditions and limitations on an exemption.

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## Part 5—Validation

### 2.39A Purpose of this Part

This Part is made for the purposes of section 639 of the Act.

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

- (1) NOPSEMA may, by notice in writing, require the operator of a proposed facility, or an existing facility, to provide a validation:
  - (a) in respect of the proposed facility; or
  - (b) in respect of a proposed significant change to the existing facility.
- (2) A validation of a proposed facility is a statement in writing by an independent validator in respect of the design, construction and installation (including instrumentation, process layout and process control systems) of the facility, to the extent that these matters are covered by the scope of the validation agreed between NOPSEMA and the operator.
- (3) A validation of a proposed significant change to an existing facility is a statement in writing by an independent validator in respect of the proposed change, to the extent required by the scope of the validation agreed between NOPSEMA and the operator.
- (4) The validation must establish, to the level of assurance reasonably required by NOPSEMA:
  - (a) in the case of a proposed facility—that the design, construction and installation (including instrumentation, process layout and process control systems) of the facility incorporate measures that:
    - (i) will protect the health and safety of persons at the facility; and
    - (ii) are consistent with the formal safety assessment for the facility; and
  - (b) in the case of a proposed significant change to an existing facility—that, after any proposed change or changes, the facility incorporates measures that will protect the health and safety of persons at or near the facility.
- (5) An operator who has provided material for a validation must satisfy NOPSEMA that each person who undertook the validation had the necessary competence, ability and access to data, in respect of each matter being validated, to arrive at an independent opinion on the matter.
- (6) In this section:

**existing facility** means a facility at a location in Commonwealth waters, if the facility is or has been in use, or is available for use, in that location.

**significant change** in relation to an existing facility includes decommissioning the facility.

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

### 2.41 Interpretation

For the purposes of the definition of *dangerous occurrence* in clause 3 of Schedule 3 to the Act, an occurrence, at a facility, that is specified in column 1 of an item of the following table is declared to be a dangerous occurrence.

Item	Column 1 Occurrence
1	An occurrence at the facility that did not cause, but could reasonably have caused: <ul style="list-style-type: none"> <li>(a) the death of, or serious personal injury to, a person; or</li> <li>(b) a member of the workforce to be incapacitated from performing work for the period prescribed in subsection 2.42(1) of this instrument for the purposes of paragraph 82(1)(b) of Schedule 3 to the Act</li> </ul>
2	A fire or explosion at the facility
3	A collision of a marine vessel with the facility
4	An uncontrolled release of hydrocarbon vapour from the facility exceeding 1 kilogram
5	An uncontrolled release of petroleum liquids from the facility exceeding 80 litres
6	A well kick at the facility exceeding 8 cubic metres (or 50 barrels)
7	An unplanned event at the facility that required the emergency response plan for the facility to be implemented
8	Damage, loss or removal of a technical or other control measure at the facility that is identified under subsection 2.5(2) as being critical to safety
9	An occurrence at the facility not covered by items 1 to 8 that: <ul style="list-style-type: none"> <li>(a) results in significant damage to a pipeline (for example, reducing the capacity of the pipeline to contain petroleum or greenhouse gas substance flowing through it); or</li> <li>(b) is likely to have a result of a kind mentioned in paragraph (a); or</li> <li>(c) is of a kind that a reasonable pipeline licensee would consider requires immediate investigation</li> </ul>
10	Any other occurrence at the facility of a kind that a reasonable operator of a facility would consider requires an immediate investigation

### 2.42 Periods of incapacitation and notices and reports of accidents and dangerous occurrences

#### *Prescribed period of incapacitation*

- (1) A period of at least 3 days is prescribed for the purposes of the following provisions of Schedule 3 to the Act:
  - (a) paragraph 82(1)(b);
  - (b) subparagraph 82(5)(d)(ii);
  - (c) paragraph 82(6)(b);
  - (d) subparagraph 82(9A)(d)(ii).

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*Operator of facility to give NOPSEMA notice of accidents and dangerous occurrences at or near facility*

- (2) For the purposes of subclause 82(1) of Schedule 3 to the Act, the notice that must be given to NOPSEMA under that subclause must be given in accordance with subsection (3) of this section.

Note: Under subclause 82(2) of Schedule 3 to the Act, the notice must be given in the approved form (if any) and in an approved manner (if any).

- (3) For the purposes of subclause 82(3) of Schedule 3 to the Act, the notice:
- (a) must be given:
    - (i) as soon as practicable after the first occurrence of the accident or dangerous occurrence; or
    - (ii) if the accident or dangerous occurrence is not detected by the operator at the time of its first occurrence—as soon as practicable after the operator becomes aware of the accident or dangerous occurrence; and
  - (b) must include all material information concerning the accident or dangerous occurrence that are reasonably available to the operator at the time of the notification.

*Diving supervisor to give NOPSEMA notice of certain accidents and dangerous occurrences*

- (4) For the purposes of subclause 82(5) of Schedule 3 to the Act, the notice that must be given to NOPSEMA under that subclause must be given in accordance with subsection (5) of this section.

Note Under subclause 82(5A) of Schedule 3 to the Act, the notice must be given in the approved form (if any) and in an approved manner (if any).

- (5) For the purposes of subclause 82(5B) of Schedule 3 to the Act, the notice:
- (a) must be given:
    - (i) as soon as practicable after the first occurrence of the accident or dangerous occurrence; or
    - (ii) if the accident or dangerous occurrence is not detected by the operator at the time of its first occurrence—as soon as practicable after the diving supervisor becomes aware of the accident or dangerous occurrence; and
  - (b) must include all material information concerning the accident or dangerous occurrence that are reasonably available to the diving supervisor at the time of the notification.

*Operator of facility to give NOPSEMA a written report of accidents and dangerous occurrences at or near facility*

- (6) For the purposes of subclause 82(6) of Schedule 3 to the Act, the written report that must be given to NOPSEMA under that subclause must be given in accordance with subsection (7) of this section.

Note: Under subclause 82(7) of Schedule 3 to the Act, the report must be given in the approved form (if any) and in an approved manner (if any).

- (7) For the purposes of subclause 82(8) of Schedule 3 to the Act, the report:

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- (a) unless otherwise agreed by NOPSEMA—must be given:
  - (i) within 3 days after the first occurrence of the accident or dangerous occurrence; or
  - (ii) if the accident or dangerous occurrence is not detected by the operator at the time of its first occurrence—within 3 days after the operator becomes aware of the accident or dangerous occurrence; and
- (b) must include the following information:
  - (i) all material facts and circumstances concerning the accident or dangerous occurrence that the operator knows or is able, by reasonable search or enquiry, to discover;
  - (ii) any emergency response initiated in response to the accident or dangerous occurrence;
  - (iii) the corrective action that has been taken, or is proposed to be taken, to stop, control or remedy the accident or dangerous occurrence and make the worksite safe;
  - (iv) the action that has been taken, or is proposed to be taken, to prevent a similar accident or dangerous occurrence occurring in the future.

*Diving supervisor to give NOPSEMA a written report of certain accidents and dangerous occurrences*

- (8) For the purposes of subclause 82(9A) of Schedule 3 to the Act, the written report that must be given to NOPSEMA under that subclause must be given in accordance with subsection (9) of this section.

Note: Under subclause 82(9B) of Schedule 3 to the Act, the report must be given in the approved form (if any) and in an approved manner (if any).

- (9) For the purposes of subclause 82(9C) of Schedule 3 to the Act, the report:
  - (a) unless otherwise agreed by NOPSEMA—must be given:
    - (i) within 3 days after the first occurrence of the accident or dangerous occurrence; or
    - (ii) if the accident or dangerous occurrence is not detected by the diving supervisor at the time of its first occurrence—within 3 days after the diving supervisor becomes aware of the accident or dangerous occurrence; and
  - (b) must include the following information:
    - (i) all material facts and circumstances concerning the accident or dangerous occurrence that the diving supervisor knows or is able, by reasonable search or enquiry, to discover;
    - (ii) any emergency response initiated in response to the accident or dangerous occurrence;
    - (iii) the corrective action that has been taken, or is proposed to be taken, to stop, control or remedy the accident or dangerous occurrence and make the worksite safe;
    - (iv) the action that has been taken, or is proposed to be taken, to prevent a similar accident or dangerous occurrence occurring in the future.



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*Operator to give NOPSEMA a written report that includes root cause analysis etc. of accidents and dangerous occurrences*

- (10) For the purposes of subclause 82(6) of Schedule 3 to the Act, an operator must, in accordance with subsection (11) of this section, give NOPSEMA a written report about the root cause of an accident, or dangerous occurrence, of the kind mentioned in that subclause.

Note: Under subclause 82(7) of Schedule 3 to the Act, the report must be given in the approved form (if any) and in an approved manner (if any).

- (11) For the purposes of subclause 82(8) of Schedule 3 to the Act, the report:
- (a) unless otherwise agreed by NOPSEMA—must be given as soon as practicable, but not later than 30 days, after the first occurrence of the accident or dangerous occurrence; and
  - (b) must include the following information:
    - (i) information about the root cause of the accident or dangerous occurrence;
    - (ii) full details of the accident or dangerous occurrence;
    - (iii) details of the actions taken, or proposed to be taken, to prevent a reoccurrence of the same kind of accident or dangerous occurrence.

*Diving supervisor to give NOPSEMA a written report that includes root cause analysis etc. of accidents and dangerous occurrences*

- (12) For the purposes of subclause 82(9A) of Schedule 3 to the Act, a diving supervisor must, in accordance with subsection (13) of this section, give NOPSEMA a written report about the root cause of an accident, or dangerous occurrence, of the kind mentioned in that subclause.

Note: Under subclause 82(9B) of Schedule 3 to the Act, the report must be given in the approved form (if any) and in an approved manner (if any).

- (13) For the purposes of subclause 82(9C) of Schedule 3 to the Act, the report:
- (a) unless otherwise agreed by NOPSEMA—must be given as soon as practicable, but not later than 30 days, after the first occurrence of the accident or dangerous occurrence; and
  - (b) must include the following information:
    - (i) information about the root cause of the accident or dangerous occurrence;
    - (ii) full details of the accident or dangerous occurrence;
    - (iii) details of the actions taken, or proposed to be taken, to prevent a reoccurrence of the same kind of accident or dangerous occurrence.

**2.42A Monthly reporting of operational activities**

- (1) The operator of a facility must, in accordance with subsections (2) and (3) of this section, give NOPSEMA a written report required under subclause 83A(1) of Schedule 3 to the Act.

Note 1: Under subclause 83A(2) of Schedule 3 to the Act, the report for a calendar month must be given in the approved form (if any) and in an approved manner (if any).

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Note 2: Under subclause 83A(5) of Schedule 3 to the Act, a person is liable to a civil penalty if the person contravenes a requirement under subclause 83A(1) of Schedule 3 to the Act.

- (2) For the purposes of paragraph 83A(3)(a) of Schedule 3 to the Act, the report must be given to NOPSEMA no later than 15 days after the end of the month to which the report relates.
- (3) For the purposes of paragraph 83A(3)(b) of Schedule 3 to the Act, the report for a calendar month must include the following information:
  - (a) the name, business address, telephone number and email address of the chief executive officer of the facility or the person who has executive oversight of the facility's operations in Australia;
  - (b) the name, business address, telephone number and email address of the person within the operator's organisation who has overall responsibility for the facility;
  - (c) the name, business address, telephone number and email address of the person in charge of the day-to-day management at the facility;
  - (d) if the operator is not the titleholder or licensee—the name, business address, telephone number and email address of the titleholder's representative;
  - (e) the telephone numbers and email addresses outside business hours for the persons mentioned in paragraphs (a) to (d);
  - (f) the minimum and maximum number of workers (including contractors) at the facility during the month;
  - (g) the total number of hours worked by workers (including contractors) at the facility during the month;
  - (h) the number and types of injuries to persons at the facility, other than:
    - (i) minor injuries not requiring treatment; or
    - (ii) injuries requiring treatment only in the nature of first aid; or
    - (iii) injuries already reported under section 2.42 of this instrument;
  - (i) all material facts and circumstances concerning each injury;
  - (j) any action taken to avoid or mitigate any adverse safety impacts of each injury;
  - (k) the corrective action that has been taken, or is proposed to be taken, during the month to stop, control or remedy each injury;
  - (l) the action that has been taken, or is proposed to be taken, during the month to prevent similar injuries occurring in the future;
  - (m) de-identified information about any suicides or attempted suicides at the facility during the month;
  - (n) de-identified information about incidents of mental ill-health at the facility during the month that have required treatment (other than first aid), including the affected person being repatriated from the facility;
  - (o) a listing of emergency contact details for the next month (including the name of each contact person and the times they are available).

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## Part 7—Vessel activity notification scheme

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

For the purposes of paragraph 83B(3)(b) of Schedule 3 to the Act, the following information is prescribed in relation to a notice under subclause 83B(1) of that Schedule:

- (a) the name, address, telephone number and email address of a nominated person who can be contacted by NOPSEMA for the purposes of the vessel activity notification scheme mentioned in clause 83B of Schedule 3 to the Act;
- (b) the name of the facility or associated offshore place;
- (c) the name of the title relevant to the facility or associated offshore place;
- (d) the time and date when the vessel became a facility or an associated offshore place;
- (e) the intended purpose for which the vessel became a facility or an associated offshore place.

Note: A notice under subclause 83B(1) of Schedule 3 to the Act must be given:

- (a) within 24 hours after a vessel becomes a facility or an associated offshore place in relation to a facility; and
- (b) in the approved form (if any) and in an approved manner (if any), see paragraph 83B(3)(a) of that Schedule.

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

For the purposes of paragraph 83B(3)(b) of Schedule 3 to the Act, the following information is prescribed in relation to a notice under subclause 83B(2) of that Schedule:

- (a) the name, address, telephone number and email address of a nominated person who can be contacted by NOPSEMA for the purposes of the vessel activity notification scheme mentioned in section clause 83B of Schedule 3 to the Act;
- (b) the name of the facility or associated offshore place;
- (c) the name of the title relevant to the facility or associated offshore place;
- (d) the time and date when the vessel ceased to be a facility or an associated offshore place.

Note: A notice under subclause 83B(2) of Schedule 3 to the Act must be given:

- (a) as soon as practicable after the vessel ceases to be a facility or an associated offshore place in relation to a facility; and
- (b) in the approved form (if any) and in an approved manner (if any), see paragraph 83B(3)(a) of that Schedule.

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## Part 8—Penalty provisions

### 2.42D Purpose of this Part

This Part is made for the purposes of sections 790 and 790A of the Act and clause 17 of Schedule 3 to the Act.

### 2.43 Facility must have an operator

- (1) A person must not carry out a facility activity in Commonwealth waters if there is no operator in respect of the facility.

*Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 100 penalty units.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

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

- (1) A person must not carry out a facility activity in Commonwealth waters if there is no safety case in force for the facility that provides for the activity.

*Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 100 penalty units.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

Note: A safety case is not required under this instrument for construction or modification of a facility at a location that is not in Commonwealth waters (for example, at a shipyard).

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

- (1) A person must not carry out a facility activity in Commonwealth waters if the activity is carried out in a manner that is contrary to:
- (a) the safety case in force for the facility; or
  - (b) a limitation or condition imposed under subsection 2.26(5) or 2.34(5).

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*Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 100 penalty units.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

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

- (1) A person must not carry out a facility activity in Commonwealth waters if:
- (a) there has been an occurrence of a significant new risk to health and safety, or a significant increase in an existing risk to health and safety, in relation to the facility activity; and
  - (b) the new risk or increased risk is not provided for:
    - (i) in the safety case in force for the facility; or
    - (ii) in a revised safety case submitted to NOPSEMA and not refused acceptance by NOPSEMA.

- (2) If a titleholder becomes aware that there has been:

- (a) an occurrence of a significant new risk to health and safety in relation to a facility activity in Commonwealth waters; or
- (b) a significant increase in an existing risk to health and safety in relation to a facility activity in Commonwealth waters;

the titleholder must notify the operator and NOPSEMA of the new risk or increased risk as soon as practicable after becoming aware of the new risk or increased risk.

- (3) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Penalty: 100 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 1,000 penalty units.

## Section 2.46A

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### 2.46A Access to safety case

- (1) The operator of a facility must, at all times, make a copy of the safety case in force for the facility available, in a readily accessible place, to persons at the facility (including health and safety representatives).

#### *Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 30 penalty units.

#### *Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

### 2.46B Reporting incidents of sexual harassment etc.

- (1) The operator of a facility must give NOPSEMA a written notice if the operator becomes aware that any of the following has occurred at the facility:
  - (a) an incident of sexual harassment;
  - (b) an incident of bullying;
  - (c) an incident of harassment.
- (2) The notice must be given to NOPSEMA as soon as practicable after the operator becomes aware of the incident and must include a de-identified account of the incident.
- (3) The operator must, within 30 days after notifying NOPSEMA of an incident under subsection (1) (or within such longer period as NOPSEMA approves), give a written report to NOPSEMA about the incident in accordance with subsection (4).

Note: For further information in relation to sexual harassment, see the *Model Code of Practice: Sexual and gender-based harassment*, published by Safe Work Australia on 20 December 2023. This document could in 2024 be viewed on Safe Work Australia's website (<https://www.safeworkaustralia.gov.au>).

- (4) The report must include the following:
  - (a) a de-identified account of the incident;
  - (b) details of the action taken, or proposed to be taken, to deal with the incident;
  - (c) details of measures that have been, or will be, put in place at the facility to prevent or lessen similar incidents occurring at the facility.

#### *Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (1) or (3).

Penalty: 100 penalty units.

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*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (1) or (3).

Civil penalty: 1,000 penalty units.

**2.47 Maintaining records**

- (1) The operator of a facility must keep all documents required by the safety case in force for the facility in the manner set out in the safety case.

*Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 30 penalty units.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 300 penalty units.

Note: Subdivision D of Division 1 of Part 4 sets out the record keeping requirements in relation to documents.

**2.48 Person at a facility must comply with safety case**

A person at a facility commits an offence of strict liability if the person fails to comply with a safety requirement of the safety case in force for the facility that applies to the person.

Penalty: 50 penalty units.

**2.49 Interference with accident sites**

- (1) A person commits an offence of strict liability if:
- (a) any of the following events occur at a facility site:
    - (i) an accident that causes the death of, or serious personal injury to, any person;
    - (ii) an accident that causes a member of the workforce to be incapacitated from performing work for a period of at least 3 days;
    - (iii) a dangerous occurrence; and
  - (b) an inspection of the site by a NOPSEMA inspector has not been completed; and
  - (c) the person interferes with the site.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the person was acting with the written or oral authority of a NOPSEMA inspector; or

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- (b) the person was acting, in a reasonable manner, for any of the following purposes:
  - (i) helping or rescuing a sick, injured or endangered person;
  - (ii) maintaining the safety of the facility or of persons at the facility;
  - (iii) reducing danger to the facility or to persons at the facility;
  - (iv) retrieving, or attempting to retrieve, the body of a dead person; or
- (c) the operator of the facility has given NOPSEMA notice of, and a report about, the accident or dangerous occurrence under clause 82 of Schedule 3 to the Act, and a NOPSEMA inspector has not entered the facility where the accident or dangerous occurrence occurred in response to the notice within 3 working days of the operator giving notice to NOPSEMA.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.



## **Part 9—Miscellaneous**

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

- (1) An application or submission (however described) that a person is required or permitted to make or give to NOPSEMA under this instrument must include:
  - (a) the person's name; and
  - (b) if applicable, the name of the person's agent; and
  - (c) the person's or agent's address in Australia; and
  - (d) the person's or agent's telephone number and email address.
- (2) If there is a change to any of the details mentioned in subsection (1), the person or agent must notify NOPSEMA in writing as soon as practicable.
- (3) Despite any provision of this instrument, NOPSEMA may delay proceeding with an application or submission until the person or agent has complied with this section.

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

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

- (1) This section applies if:
  - (a) a direction (a ***petroleum remedial direction***) is in force under section 586, 586A, 587 or 587A of the Act; or
  - b) a direction (a ***greenhouse gas remedial direction***) is in force under section 591B, 592, 594A or 595 of the Act.
- (2) This instrument (other than the definition of ***titleholder*** in section 1.5) applies as if a reference to a titleholder included a reference to a person who is subject to a petroleum remedial direction or a greenhouse gas remedial direction.

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## Chapter 3—Occupational health and safety

### Part 1—Preliminary

#### 3.1AA Simplified outline of this Chapter

This Chapter:

- (a) includes requirements to protect the health and safety of members of the workforce at a facility (see Part 2); and
- (b) provides for the election of health and safety representatives for work groups at a facility and sets out how such elections are to be conducted (see Part 3); and
- (c) provides for the way in which samples taken during OHS inspections are to be treated (see Part 4); and
- (d) provides for exemptions from the requirements in Part 3 of Schedule 3 to the Act, which deals with health and safety workplace arrangements (see Part 5); and
- (e) provides that certain State and Territory occupational health and safety laws do not apply in relation to facilities (see Part 6).

Section 3.1AB

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## Part 2—Health and safety

### 3.1AB Purpose of this Part

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

### 3.1 Avoiding fatigue

- (1) This section applies to the following persons:
  - (a) the operator of a facility;
  - (b) an employer;
  - (c) another person in control of:
    - (i) a facility; or
    - (ii) a part of a facility; or
    - (iii) particular work carried out at a facility.
- (2) A person to whom this section applies must develop and implement strategies:
  - (a) to prevent or minimise members of the workforce at the facility who are under the person's control being exposed to work-related conditions that may cause fatigue; and
  - (b) to prevent and control exposure to work-related conditions at the facility that may cause fatigue.

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 100 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 1,000 penalty units.

### 3.2 Possession or control of drugs or intoxicants

- (1) A person at a facility commits an offence of strict liability if the person has possession or control of:
    - (a) a controlled substance; or
    - (b) an intoxicant.
- Penalty: 50 penalty units.
- (2) Subsection (1) does not apply if:
    - (a) the person had possession or control of a controlled substance that is a therapeutic drug; and
    - (b) the person had the therapeutic drug in the person's possession or control:

### Section 3.3

- (i) in the course of the person's employment; or
- (ii) in the course of the person's duties or practice as a qualified medical practitioner, a qualified nurse or a qualified pharmacist; or
- (iii) in accordance with the law of a State or Territory; or
- (iv) if the person had lawfully acquired the therapeutic drug—for the person's bona fide personal use.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

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

- (1) A person at a facility commits an offence if the person does not leave the facility if instructed to do so by a person in command of the facility.

Note: Paragraph 2.8(1)(a) provides that the safety case for a facility must specify an office or position in relation to the facility, the occupant of which is in command of the facility.

Penalty: 50 penalty units.

- (2) The person in command of the facility:
- (a) in the case of an emergency—may give the instruction orally; or
  - (b) in any other case, relevant to occupational health and safety at the facility:
    - (i) must give the instruction in writing; and
    - (ii) must include in the instruction the reasons for the instruction.

### 3.4 Prohibition on the use of certain hazardous substances

- (1) This section applies to the following persons:
- (a) the operator of a facility;
  - (b) an employer;
  - (c) another person in control of:
    - (i) a facility; or
    - (ii) a part of a facility; or
    - (iii) particular work carried out at a facility.
- (2) A person to whom this section applies must not allow a hazardous substance, mentioned in column 1 of an item in Part 2 or 3 of Schedule 1, to be used in any circumstance at the facility other than a circumstance specified in column 2 of the item.

#### *Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 100 penalty units.

#### *Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 1,000 penalty units.

## Section 3.5

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- (5) Subsections (3) and (4) do not apply if the use is in accordance with an exemption granted by NOPSEMA under section 3.7.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

### 3.5 Limitations on exposure to certain hazardous substances

- (1) This section applies to the following persons:
- (a) the operator of a facility;
  - (b) an employer;
  - (c) another person in control of:
    - (i) a facility; or
    - (ii) a part of a facility; or
    - (iii) particular work carried out at a facility.
- (2) A person to whom this section applies must not allow a member of the workforce at the facility, under the person's control, to be exposed to an airborne concentration of a hazardous substance in the breathing zone of the member of the workforce at a level that exceeds the appropriate exposure standard for the relevant period of time.

#### *Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 100 penalty units.

#### *Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 1,000 penalty units.

- (5) Subsections (3) and (4) do not apply if the airborne concentration of the hazardous substance in the breathing zone of the member of the workforce is in accordance with an exemption given by NOPSEMA under section 3.7.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

- (6) In this section:

***appropriate exposure standard*** means an airborne concentration for a substance as set out in the *Workplace exposure standards for airborne contaminants* published by Safe Work Australia on 18 January 2024, as in force from time to time.

***hazardous substance*** means a substance:

- (a) that is a hazardous chemical within the meaning of the *Work Health and Safety Regulations 2011*; or
- (b) that has been determined, in writing, to be a hazardous substance by its manufacturer in accordance with the *Classifying hazardous chemicals*—

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*National Guide* (2023) published by Safe Work Australia, as in force from time to time; or

- (c) that is mentioned in column 1 of an item in the table in Part 3 of Schedule 1.

### 3.6 Exposure to noise

- (1) This section applies to the following persons:
- (a) the operator of a facility;
  - (b) an employer;
  - (c) another person in control of:
    - (i) a facility; or
    - (ii) a part of a facility; or
    - (iii) particular work carried out at a facility.
- (2) A person to whom this section applies must not allow a member of the workforce at the facility who is under the person's control to be exposed to a level of noise that is in excess of either of the 2 noise exposure limits (see subsections (6) and (7)).

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 100 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 1,000 penalty units.

- (5) Subsections (3) and (4) do not apply if the level of noise to which the member of the workforce is exposed is in accordance with an exemption given by NOPSEMA under section 3.7.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

*Noise exposure limits*

- (6) The first **noise exposure limit** is  $L_{Aeq,8h}$  of 85 dB(A).
- (7) The second **noise exposure limit** is  $L_{C,peak}$  of 140 dB(C).
- (8) For the purposes of subsection (6), the  **$L_{Aeq,8h}$**  is the eight-hour equivalent continuous A-weighted sound pressure level in decibels (dB(A)) referenced to 20 micropascals, determined in accordance with AS/NZS 1269.1:2005 (Occupational noise management—Measurement and assessment of noise immission and exposure), as in force from time to time.
- (9) For the purposes of subsection (7), the  **$L_{C,peak}$**  is the C-weighted peak sound pressure level in decibels (dB(C)) referenced to 20 micropascals, determined in

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accordance with AS/NZS 1269.1:2005 (Occupational noise management—Measurement and assessment of noise immission and exposure), as in force from time to time.

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

- (1) This section applies to the following persons:
  - (a) the operator of a facility;
  - (b) an employer;
  - (c) another person in control of:
    - (i) a facility; or
    - (ii) a part of a facility; or
    - (iii) particular work carried out at a facility.
- (2) A person to whom this section applies may, in writing, apply to NOPSEMA for an exemption from compliance with subsection 3.4(2), 3.5(2) or 3.6(2).
- (3) NOPSEMA may grant an exemption if it considers that, in specified circumstances:
  - (a) compliance is not practicable; and
  - (b) technical and control measures to reduce any risk arising from non-compliance to as low as is reasonably practicable are in place or will be implemented.
- (4) An exemption granted under this section must be in writing.
- (5) NOPSEMA may specify conditions and limitations on an exemption.



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

### **Division 1—Returning officer**

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

This Part is made for the purposes of subclause 26(4) of Schedule 3 to the Act.

#### **3.8 Appointment of returning officer**

- (1) If, under subclause 26(3) of Schedule 3 to the Act, the operator of a facility is required to conduct, or arrange for the conduct, of an election, the operator must nominate a person to act as the returning officer for the election.
- (2) The operator must notify NOPSEMA of the nomination.
- (3) NOPSEMA may:
  - (a) approve the nomination and appoint the nominee as returning officer; or
  - (b) appoint another person as returning officer.

## Section 3.9

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### **Division 2—The poll**

#### **3.9 Number of votes**

Each person eligible to vote in an election is entitled to one vote only in the election.

#### **3.10 Right to secret ballot**

A person eligible to vote in an election may request the returning officer for the election to conduct the poll for the election by secret ballot.

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

- (1) As soon as practicable after a request under section 3.10, the returning officer must issue ballot-papers for the poll to voters.
- (2) The returning officer must conduct the poll in accordance with Divisions 3 and 4.

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

Subject to Division 5, if no request is made for a secret ballot, the returning officer for an election may conduct a poll for the election in a manner determined by the returning officer to produce a fair result.

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

If, in an election, no candidate is elected, the election is taken to have failed.

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

### **3.14 Ballot-papers**

A ballot-paper must:

- (a) state the election to which it relates; and
- (b) set out the name of each candidate in alphabetical order; and
- (c) state the manner of voting.

### **3.15 Distribution of ballot papers**

- (1) As soon as practicable before the close of a poll by secret ballot, the returning officer for an election must give to each voter:
  - (a) a ballot-paper that is initialled by the returning officer; and
  - (b) an envelope that:
    - (i) is addressed to the returning officer; and
    - (ii) shows on its face that it relates to the election.
- (2) The envelope given to a voter by a returning officer:
  - (a) may be pre-paid as to postage; and
  - (b) in that case—may include on its face a statement by the returning officer that the envelope may be posted to the returning officer without expense to the voter.
- (3) The returning officer must ensure that the ballot-paper and envelope are enclosed in a covering envelope that is sealed and addressed to the voter.

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

- (1) A voter in a poll by secret ballot must mark the ballot-paper to indicate the voter's preference by placing the number *1* in the box printed opposite the name of the candidate for whom the voter wishes to vote.
- (2) After marking the ballot-paper, the voter must:
  - (a) fold the ballot-paper so as to conceal the marking; and
  - (b) put the ballot-paper in the envelope referred to in paragraph 3.15(1)(b) and seal the envelope; and
  - (c) lodge the ballot by:
    - (i) putting the envelope containing the ballot-paper in a locked and sealed ballot box, provided for the election by the returning officer, in a secure part of the workplace where the members of the workforce in the designated work group to which the election relates may place envelopes of that kind; or
    - (ii) sending the envelope to the returning officer so as to reach the returning officer not later than the close of the poll.
- (3) If, before lodging their ballot, a voter:
  - (a) claims that the voter has spoilt the voter's ballot-paper; and
  - (b) returns the ballot-paper to the returning officer; and
  - (c) requests a further ballot-paper;

### Section 3.16

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the returning officer must:

- (d) give the voter a fresh ballot-paper; and
- (e) write the word ‘spoilt’ across the returned ballot-paper and sign and date the writing; and
- (f) retain the spoilt ballot-paper until the end of 6 months after notification of the result of the poll is given under section 3.27.

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## **Division 4—The count**

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

- (1) A returning officer for an election must:
  - (a) keep the ballots received by the returning officer before the close of the poll secure; and
  - (b) keep the envelopes containing the ballot-papers unopened until the count.
- (2) The returning officer must not admit to the count ballot-papers received by the returning officer after the close of the poll.
- (3) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Penalty: 10 penalty units.

### **3.18 Scrutineers**

Each candidate in a poll conducted by secret ballot may appoint one scrutineer to represent the candidate at the count.

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

A candidate must tell the returning officer for the election the name of the candidate's scrutineer (if any) before the commencement of the count.

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

- (1) The returning officer for an election may direct a person to leave the place where the count is being conducted if the person:
  - (a) is not entitled to be present, or to remain present, at the count; or
  - (b) being entitled to be present, interrupts the count, except as provided by subsection (2).
- (2) A candidate's scrutineer may interrupt the count and so inform the returning officer if the scrutineer:
  - (a) objects to a decision by the returning officer that a ballot paper is formal or informal, as the case may be; or
  - (b) considers that an error has been made in the conduct of the count.
- (3) A person commits an offence of strict liability if the person fails to comply with a direction given to the person under subsection (1).

Penalty: 10 penalty units.

- (4) Subsection (3) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

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### 3.21 Conduct of the count

- (1) As soon as practicable after the close of the poll, the returning officer must count the votes for each candidate.
- (2) A scrutineer, appointed under section 3.18, may be present at the count.
- (3) A returning officer must, as soon as practicable before the count, notify each candidate, or a scrutineer of each candidate, of the place where, and the time when, the count is to occur.
- (4) The candidate who receives the most votes is the successful candidate.
- (5) If 2 or more candidates receive the same number of votes, the successful candidate is to be determined by lots drawn by the returning officer.

### 3.22 Informal ballot-papers

A ballot-paper is informal if:

- (a) it is not initialled by the returning officer; or
- (b) it has no vote marked on it; or
- (c) it is so imperfectly marked that the intention of the person who marked the ballot-paper is not clear; or
- (d) it has any mark or writing on it by which the person who marked the ballot-paper can be identified.

### 3.23 Completion of the count

After the count conducted in respect of a poll has been completed, the returning officer must prepare, date and sign a statement setting out:

- (a) the number of valid votes given to each candidate; and
- (b) the number of informal ballot-papers.

### 3.24 Destruction of election material

At the end of 6 months after notification of the result of the poll for an election is given under section 3.27, the returning officer may destroy:

- (a) the nominations for that election; and
- (b) the ballot-papers, including any spoilt ballot-papers, for the election.

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## **Division 5—Result of election**

### **3.25 Request for recount**

- (1) At any time before notification of the result of the poll for an election is given under section 3.27, the returning officer:
  - (a) on the returning officer's own initiative—may conduct a recount of any ballot-papers received in the election; or
  - (b) if a candidate makes a request, either orally or in writing, for a recount of any ballot-papers received in the election and gives reasons for the request—must conduct a recount of the ballot-papers.
- (2) In conducting a recount, the returning officer:
  - (a) in the case of a poll by secret ballot—has the same powers for the purposes of the recount as the returning officer had in the count; and
  - (b) in any other case—may make any reasonable decision in respect of the allowance and admission, or disallowance and rejection, of a vote cast in the poll.

### **3.26 Irregularities at election**

- (1) Subject to subsection (2), if the returning officer has reasonable grounds to believe that there has been an irregularity in the conduct of an election, the returning officer may, at any time before notification of the result of the poll is given under section 3.27, declare the election to be void.
- (2) The returning officer must not declare the election to be void only because of:
  - (a) a defect or irregularity in the conduct of the election that did not affect the result of the election; or
  - (b) an error or defect in an instrument or other document made, or purporting to be made, for the purposes of this Part; or
  - (c) an illegal practice, other than bribery or corruption, or attempted bribery or corruption, having been engaged in by a person, unless:
    - (i) it is likely that the result of the election was affected by the practice; and
    - (ii) it is just that the election be declared void.
- (3) If an election is declared void, section 3.27 applies as if the election had failed.

### **3.27 Result of poll**

- (1) As soon as practicable after the failure of an election, a returning officer must notify in writing:
  - (a) the operator of the facility to which the election relates; and
  - (b) NOPSEMA;of the failure of the election.
- (2) As soon as practicable after the close of the poll for an election that has not failed, the returning officer must notify in writing the candidate who is elected and enclose with the notification a copy of the statement prepared under section 3.23.

Section 3.29

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

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

- (1) If a sample of a substance or thing taken under subclause 75(1) of Schedule 3 to the Act is safely and practicably divisible, the NOPSEMA inspector who has taken the sample must:
  - (a) divide the sample into 3 parts; and
  - (b) put each part into a container and seal and label the container appropriately; and
  - (c) give one part to the operator of the facility or the employer for whom the substance or thing was being used; and
  - (d) provide another part for inspection, examination, measuring or testing for the purposes of Schedule 3 to the Act; and
  - (e) retain the remaining part for any further inspection, examination, measuring or testing that is required.
- (2) If a sample of a substance or thing taken under subclause 75(1) of Schedule 3 to the Act is not safely and practicably divisible, the NOPSEMA inspector who has taken the sample must provide the whole sample for inspection, examination, measuring or testing for the purposes of the Schedule.
- (3) A NOPSEMA inspector who, under subclause 75(1) of Schedule 3 to the Act:
  - (a) has taken possession of any plant, substance or thing; or
  - (b) has taken a sample of a substance or thing;and removed the plant, substance or thing or the sample from the workplace must take all reasonable steps to ensure that, while in the inspector's possession or control:
  - (c) the plant, substance or thing is not damaged; or
  - (d) the sample is not contaminated.



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

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

- (1) For the purposes of subclause 46(1) of Schedule 3 to the Act, a person may apply in writing to NOPSEMA for an order exempting the person from any or all of the provisions of Part 3 of that Schedule.
  - (2) Within 28 days after NOPSEMA receives an application, NOPSEMA must decide whether or not to make the order.
  - (3) In making the decision, NOPSEMA must:
    - (a) consult with persons who might be affected by the decision to grant or refuse the order; and
    - (b) take into account submissions made by those persons.
- Note: If the operator of a facility applies for an order, a health and safety representative might be affected by a decision to grant or refuse the order. If a health and safety representative for a facility applies for an order, the operator of the facility might be affected by a decision to grant or refuse the order.
- (4) In making an order for an exemption, NOPSEMA may specify a period of time during which the order applies.
  - (5) NOPSEMA must give reasons for the decision.

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

### 3.32 Laws or parts of laws that do not apply

- (1) For the purposes of paragraph 89(1)(f) of the Act, for a State listed in an item in column 1 of the following table, the laws or parts of laws listed in column 2 of the item are prescribed.

Item	Column 1 State	Column 2 Laws or parts of laws
1	New South Wales	<i>Gas and Electricity (Consumer Safety) Act 2017</i> <i>Explosives Act 2003</i> <i>Work Health and Safety Act 2011</i>
2	Victoria	<b>Dangerous Goods Act 1985</b> <b>Electricity Safety Act 1998</b> <b>Gas Safety Act 1997</b> <b>Occupational Health and Safety Act 2004</b>
3	Queensland	<i>Work Health and Safety Act 2011</i> <i>Electrical Safety Act 2002</i> <i>Explosives Act 1999</i>
4	Western Australia	<i>Dangerous Goods Act 2004</i> <i>Dangerous Goods Safety Act 2004</i> <i>Electricity Act 1945</i> to the extent that it relates to occupational health and safety <i>Petroleum and Geothermal Energy Resources Act 1967</i> to the extent that it relates to occupational health and safety <i>Petroleum Pipelines Act 1969</i> to the extent that it relates to occupational health and safety <i>Work Health and Safety Act 2020</i>
5	South Australia	<i>Dangerous Substances Act 1979</i> <i>Electricity Act 1996</i> to the extent that it relates to occupational health and safety <i>Electrical Products (Safety and Efficiency) Act 2000</i> <i>Work Health and Safety Act 2012</i>

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Item	Column 1 State	Column 2 Laws or parts of laws
6	Tasmania	<i>Electricity Industry Safety and Administration Act 1997</i> <i>Gas Industry Act 2019</i> to the extent that it relates to occupational health and safety <i>Work Health and Safety Act 2012</i>

- (2) For the purposes of paragraph 89(1)(f) of the Act, the following laws or parts of laws of the Northern Territory are prescribed in relation to the Northern Territory:

- (a) *Dangerous Goods Act 1998*;
- (b) Part 5 of the *Electricity Reform Act 2000*;
- (c) *Work Health and Safety (National Uniform Legislation) Act 2011*.

- (3) For the purposes of paragraph 89(4)(b) of the Act, the laws or parts of laws mentioned in column 2 of an item in the table in subsection (1), that are substantive criminal law of a State, are prescribed in relation to the State mentioned in column 1 of the item.

- (4) For the purposes of paragraph 89(4)(b) of the Act, the laws or parts of laws mentioned in subsection (2), that are substantive criminal law of the Northern Territory, are prescribed in relation to the Northern Territory.

- (5) In this section:

***substantive criminal law*** has the meaning given in subclause 1(1) of Schedule 1 to the *Crimes at Sea Act 2000*.

Section 4.1

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## Chapter 4—Diving

### Part 1—Preliminary

#### 4.1 Simplified outline of this Chapter

Diving projects and diving operations are to be conducted in accordance with the requirements of this Chapter.

Under Part 2, a diving contractor must have a diving safety management system (DSMS) that is accepted and current before beginning or continuing diving work. A copy of the DSMS must be given to any diver on a diving project who requests a copy of the DSMS.

A DSMS must meet the minimum standards set out in guidelines made by NOPSEMA and must provide for the matters set out in subsection 4.4(2).

NOPSEMA must accept or reject a particular DSMS within 60 days of receiving the DSMS. If a DSMS is revised, NOPSEMA must accept or reject the revised DSMS within 28 days (or such other agreed period) after receiving the revised DSMS. In deciding whether to accept or reject a DSMS or a revised DSMS, NOPSEMA may request a diving contractor to provide further information about any matter required to be included in a DSMS.

NOPSEMA must keep a public register of each DSMS and revised DSMS that it receives.

A diving contractor must revise a DSMS in the following circumstances:

- (a) if, for example, developments in scientific or technical knowledge, or in the assessment of hazards, relevant to diving projects make it appropriate to do so, or if a significant change is proposed to the method of operation described in the DSMS;
- (b) if required to do so by NOPSEMA under section 4.11;
- (c) every 5 years.

Under Part 3, NOPSEMA may withdraw its acceptance of a DSMS for a diving project in the circumstances set out in section 4.11A. Before withdrawing its acceptance NOPSEMA must give a diving contractor notice of its intention to do so and must follow the other steps set out in section 4.11B.

Part 4 requires diving project plans for each diving project. If there is an operator of a facility in connection with a diving project, the diving project plan must be approved by the operator before diving can begin. If there is no such operator, the diving contractor must give a copy of the plan to NOPSEMA and NOPSEMA must accept the plan before diving can begin.

A diving project plan must set out the matters specified in section 4.16.

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Under Part 5, divers and members of the workforce who will, or may, be working on a diving project must be consulted and involved in the development or revision of a DSMS or diving project plan.

Part 6 sets out the safety responsibilities of diving contractors and limits the diving depths of certain diving operations.

Part 7 provides for the appointment of qualified diving supervisors and sets out the duties of diving supervisors.

Under Part 8, start-up notices must be given to NOPSEMA at least 28 days (or other agreed time) before diving on a diving project can begin. A start-up notice must include details of the diving contractor, the date when diving is to begin, the location of the diving project, the depth to which divers will dive and the equipment to be used in the diving project.

NOPSEMA can accept or reject a start-up notice and may also request further information about any matter that NOPSEMA requires to properly consider the start-up notice.

NOPSEMA may withdraw its acceptance of a start-up notice if:

- (a) NOPSEMA has reasonable safety concerns about a diving project (and diving has not commenced); or
- (b) a new or increased diving risk arising from the diving project has been identified and the management or elimination of the risk is not provided for in the relevant DSMS or the diving project plan.

Part 9 sets out requirements in relation to the competency, qualifications and physical health of divers for a diving operation.

Part 10 requires a diving supervisor for a diving operation to maintain diving records for the diving operation. The diving record must be in the form required by subsection 4.27(2) and include the specified details about the diving operation. The record must be kept for at least 7 years.

A diver must also keep a log book for each dive made by the diver. The log book must be in the form required by subsection 4.28(2) and must contain the specified information about the dive. The log book must be kept for at least 7 years.

## 4.2 Purpose of this Chapter

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

Section 4.3

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## Part 2—Diving safety management systems

### 4.3 No diving without DSMS

- (1) A diving contractor must, before beginning diving work that forms part of a diving project:
  - (a) have a DSMS for the diving project that is:
    - (i) accepted; and
    - (ii) current; and
  - (b) if there is an operator of a facility in connection with the diving project—give the DSMS to the operator.
- (2) If there is an operator of a facility in connection with a diving project, the operator must not allow diving work, that forms part of the diving project, to begin if the diving contractor has not given to the operator a DSMS that is:
  - (a) accepted; and
  - (b) current.
- (3) A diving contractor must not allow diving to continue on a diving project if the DSMS is no longer:
  - (a) accepted; and
  - (b) current.

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (1), (2) or (3).

Penalty: 100 penalty units.

*Civil penalty provision*

- (5) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (3).

Civil penalty: 1,000 penalty units.

*When is a DSMS current*

- (6) For the purposes of this section, an accepted DSMS is current if:
  - (a) the DSMS has not been revised, or the acceptance of the DSMS has not been withdrawn, since its latest acceptance; and
  - (b) it is not more than 5 years since its latest acceptance.

Note: A person may consult the register mentioned in section 4.9 to find out if a DSMS is accepted and current.

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

- (1) A diving contractor commits an offence if the diving contractor does not give a copy of the DSMS for a diving project to any diver on the diving project who requests a copy of the DSMS.

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Penalty: 30 penalty units.

- (2) A diving contractor commits an offence if the diving contractor allows diving work on a diving project to begin if:
  - (a) a diver on the diving project requests a copy of the DSMS for the diving project; and
  - (b) the diving contractor does not give a copy of the DSMS to the diver before the diving begins.

Penalty for a contravention of this subsection: 30 penalty units.

### 4.4 Contents of DSMS

- (1) A DSMS for a diving project must meet the minimum standards set out in written guidelines made by NOPSEMA for the purposes of this subsection, as in force from time to time.
- (2) A DSMS for a diving project must provide for:
  - (a) all activities connected with the diving project; and
  - (b) the preparation of a diving project plan, in accordance with Part 3, for the diving project (including consultation with members of the workforce in the preparation of the plan) and the revision of the plan as necessary; and
  - (c) the continual and systematic identification of hazards related to the diving project; and
  - (d) the continual and systematic assessment of:
    - (i) the likelihood of the occurrence, during normal or emergency situations, of injury or damage associated with those hazards; and
    - (ii) the likely nature of any injury or damage; and
  - (e) the elimination of risks to persons involved with the diving project and associated work including:
    - (i) risks arising during evacuation, escape and rescue in case of emergency; and
    - (ii) risks to persons involved with the operation arising from equipment and hardware;or the reduction of those risks to a level that is as low as reasonably practicable; and
  - (f) the identification of operations, procedures and equipment that are critical to safety; and
  - (g) the inspection and maintenance of, and testing programs for, equipment and hardware integral to the control of those risks; and
  - (h) communications between persons involved in the diving project; and
    - (i) the performance standards that apply to the DSMS; and
    - (j) a program of continuous improvement.
- (3) A DSMS for a diving project must:
  - (a) specify any standard or code of practice that is to be used in the diving project; and
  - (b) require the diving to be carried out in accordance with those standards or codes.

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- (4) A DSMS for a diving project must contain:
  - (a) any information that is reasonably necessary to demonstrate that the DSMS complies with this instrument; and
  - (b) a system for the management of any changes to the DSMS.

### 4.5 Acceptance of new DSMS

- (1) If a diving contractor does not have an accepted DSMS for a diving project, the contractor must give a DSMS for the diving project to NOPSEMA for acceptance at least 60 days before the proposed diving project is expected to begin.
- (2) Subject to section 4.5A, NOPSEMA must accept or reject the DSMS within 60 days of receiving the DSMS. If NOPSEMA accepts the DSMS, NOPSEMA may impose conditions on the acceptance.
- (3) As soon as practicable after making a decision under subsection (2), NOPSEMA must notify the diving contractor of its decision.
- (4) If NOPSEMA requests further information under section 4.5A, a day is not to be counted for the purposes of subsection (2) if it is:
  - (a) on or after the day NOPSEMA requested the information; and
  - (b) on or before the day on which NOPSEMA receives the last of the information requested.

### 4.5A NOPSEMA may request more information

- (1) If a diving contractor gives a DSMS for a diving project to NOPSEMA for acceptance under section 4.5, NOPSEMA may request the diving contractor to provide further written information about any matter required by this instrument to be included in a DSMS.
- (2) A request under subsection (1) must:
  - (a) be in writing; and
  - (b) set out each matter for which information is requested; and
  - (c) specify a period of at least 30 days within which the information is to be provided.
- (3) If the diving contractor provides all information requested by NOPSEMA within the period specified:
  - (a) the information becomes part of the DSMS for the diving project as if it had been included with the DSMS as it was given to NOPSEMA; and
  - (b) NOPSEMA must have regard to the information as if it had been so included.

### 4.6 Acceptance of revised DSMS

- (1) If a diving contractor has revised a DSMS that has been accepted by NOPSEMA for a diving project, the contractor must give the revised DSMS to NOPSEMA.
- (2) Subject to section 4.6A, NOPSEMA must accept or reject the revised DSMS within:



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- (a) 28 days after receiving the revised DSMS; or
  - (b) another period agreed between NOPSEMA and the diving contractor.
- If NOPSEMA accepts the revised DSMS, NOPSEMA may impose conditions on the acceptance.
- (3) As soon as practicable after making a decision under subsection (2), NOPSEMA must notify the diving contractor of its decision.
- (4) If NOPSEMA requests further information under section 4.6A, a day is not to be counted for the purposes of subsection (2) if it is:
  - (a) on or after the day NOPSEMA requested the information; and
  - (b) on or before the day on which NOPSEMA receives the last of the information requested.

#### **4.6A NOPSEMA may request more information—revised DSMS**

- (1) If a diving contractor gives a revised DSMS for a diving project to NOPSEMA under section 4.6, NOPSEMA may request the diving contractor to provide further written information about any matter required by this instrument to be included in a DSMS.
- (2) A request under subsection (1) must:
  - (a) be in writing; and
  - (b) set out each matter for which information is requested; and
  - (c) specify a period of at least 30 days within which the information is to be provided.
- (3) If a diving contractor receives a request, and provides all information requested by NOPSEMA within the period specified:
  - (a) the information becomes part of the DSMS for the diving project as if it had been included with the DSMS as it was given to NOPSEMA; and
  - (b) NOPSEMA must have regard to the information as if it had been so included.

#### **4.7 Grounds for rejecting DSMS**

NOPSEMA must reject a DSMS for a diving project given to NOPSEMA under section 4.5 or 4.6 if NOPSEMA is not satisfied that:

- (a) the DSMS or revised DSMS complies with section 4.4; or
- (b) there was consultation with divers and other members of the workforce in the preparation of the DSMS, as required by section 4.18.

#### **4.8 Notice of reasons**

- (1) If NOPSEMA decides to reject a DSMS or revised DSMS, NOPSEMA must set out, in writing, with the notice mentioned in subsection 4.5(3) or 4.6(3), the reasons for rejecting the DSMS or revised DSMS.
- (2) If NOPSEMA decides to impose conditions on acceptance of a DSMS or revised DSMS, NOPSEMA must set out, in writing, with the notice mentioned in subsection 4.5(3) or 4.6(3), the reasons for imposing the conditions.

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### 4.9 Register of DSMSs

- (1) NOPSEMA must keep a register of each DSMS and revised DSMS it receives, in a form that allows public access.
- (2) The register must record as many of the following details as apply to the DSMS:
  - (a) the name of the diving contractor;
  - (b) the date of acceptance;
  - (c) any conditions on acceptance;
  - (d) the date of rejection;
  - (e) the date that acceptance was withdrawn;
  - (f) the date of any revision notice under section 4.11.
- (3) NOPSEMA must also record, on the register:
  - (a) for each diving project plan it accepts under section 4.13—the following details:
    - (i) the name of the diving contractor;
    - (ii) the diving project to which the diving project plan applies;
    - (iii) the proposed commencement date of the diving project;
    - (iv) the date the diving project plan was accepted by NOPSEMA; and
  - (b) for each diving project plan that is given to NOPSEMA under section 4.24AA—the following details:
    - (i) the name of the diving contractor;
    - (ii) the diving project to which the diving project plan applies;
    - (iii) the proposed commencement date of the diving project;
    - (iv) the date the diving project plan was given NOPSEMA;
    - (v) the start-up notice to which the diving project plan relates.

### 4.10 Revision of DSMS

- (1) A diving contractor must revise a DSMS for a diving project in the following circumstances:
  - (a) if developments in scientific or technical knowledge, or in the assessment of hazards, relevant to diving projects make it appropriate to do so;
  - (b) if a significant change is proposed to the method of operation, or to procedures, equipment or plant, described in the DSMS;
  - (c) if the diving contractor proposes to make a change to:
    - (i) any methods of operation relevant to the diving project that are critical to safety; or
    - (ii) procedures or equipment that may affect the safety of the diving project;
  - (d) if NOPSEMA gives notice in accordance with section 4.11;
  - (e) if a number of minor changes to the DSMS result in the DSMS being significantly different from the latest version of the DSMS accepted by NOPSEMA.

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*Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 100 penalty units.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

*DSMS to be revised after 5 years*

- (4) A diving contractor must revise a DSMS for a diving project:
- (a) within 14 days before the end of the 5 year period beginning on the day the DSMS was accepted by NOPSEMA under section 4.5; and
  - (b) within 14 days before the end of each subsequent 5 year period.

*Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (4).

Penalty: 50 penalty units.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 500 penalty units.

#### **4.11 Notice to revise DSMS**

- (1) NOPSEMA may give notice (the **revision notice**) to a diving contractor to revise a DSMS for a diving project.
- (2) The revision notice must be in writing and must set out:
- (a) the matters to be revised; and
  - (b) the time within which the revision must be completed; and
  - (c) the reasons why the revision is necessary.
- (3) The diving contractor may make a submission in writing to NOPSEMA, within 21 days after receiving the notice or any longer period that NOPSEMA allows in writing, setting out the diving contractor's reasons for any of the following:
- (a) why the revision is not necessary;
  - (b) why the revision should be in different terms from those proposed;
  - (c) whether or not the contractor gives other reasons—why the time within which the revision must be completed should be extended.
- (4) If a diving contractor makes a submission under subsection (3), NOPSEMA must, within 28 days after receiving the submission:
- (a) decide whether NOPSEMA accepts the reasons in the submission; and

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- (b) give the diving contractor notice in writing affirming, varying or withdrawing the revision notice; and
  - (c) if NOPSEMA decides not to accept the reasons or any part of them—set out in the notice the grounds for not accepting them.
- (5) If NOPSEMA does not withdraw the revision notice, the diving contractor must revise the DSMS, in accordance with the notice as originally given or as varied under subsection (4), and give it to NOPSEMA.
- (6) If the diving contractor does not revise a DSMS as required by this section to do so, NOPSEMA may withdraw its acceptance of the DSMS.

*Strict liability offence*

- (7) A person commits an offence of strict liability if the person contravenes subsection (5).

Penalty: 100 penalty units.

*Civil penalty provision*

- (8) A person is liable to a civil penalty if the person contravenes subsection (5).

Civil penalty: 1,000 penalty units.

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

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

- (1) NOPSEMA may, by written notice given to the diving contractor for a diving project, withdraw its acceptance of the DSMS for the diving project if:
  - (a) the diving contractor has not complied with any of the following:
    - (i) a provision of Schedule 3 to the Act;
    - (ii) a notice issued by a NOPSEMA inspector under Schedule 3 to the Act;
    - (iii) section 4.10 or subsection 4.11(5) of this instrument; or
  - (b) NOPSEMA has rejected a revised DSMS for the diving project under section 4.6 of this instrument.
- (2) A notice under subsection (1) must specify:
  - (a) the reasons for the withdrawal; and
  - (b) the day when the withdrawal takes effect.

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

- (1) Before withdrawing the acceptance of a DSMS for a diving project NOPSEMA must comply with subsections (2), (4) and (5).
- (2) NOPSEMA must give the diving contractor for the diving project at least 30 days' notice, in writing, of NOPSEMA's intention to withdraw acceptance of the DSMS.
- (3) NOPSEMA may give a copy of the notice to such other persons (if any) as NOPSEMA thinks fit.
- (4) NOPSEMA must specify in the notice a day by which the diving contractor (or any other person to whom a copy of the notice has been given) may submit to NOPSEMA, in writing, any matters for NOPSEMA to take into account in deciding whether to withdraw the acceptance of the DSMS.
- (5) In deciding whether to withdraw the acceptance of the DSMS, NOPSEMA must take into account:
  - (a) any action taken by the diving contractor to remove the ground for withdrawal of acceptance, or to prevent the recurrence of that ground; and
  - (b) any matter submitted to NOPSEMA before the day specified in the notice by:
    - (i) the diving contractor; or
    - (ii) if another person is given a copy of the notice under subsection (3)—that other person.

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### Part 4—Diving project plans

#### 4.12 Diving project plan to be approved

- (1) This section applies if there is an operator of a facility in connection with a diving project.
- (2) The diving contractor must, in consultation with the operator, prepare a diving project plan for each diving project.
- (3) The diving project plan must be approved by the operator before diving can commence on the diving project.
- (4) The operator must approve the diving project plan only if the operator is satisfied that:
  - (a) the plan complies with section 4.16; and
  - (b) effective consultation and participation, as required by subsection 4.18(2), was carried out in developing or revising the plan.

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

- (1) This section applies if there is no operator of a facility in connection with a diving project.
- (2) The diving contractor must prepare a diving project plan for the diving project and give a copy of the plan to NOPSEMA.
- (3) The diving project plan must be accepted by NOPSEMA before diving can commence on the diving project.
- (4) NOPSEMA must accept the diving project plan only if it is satisfied that:
  - (a) the plan meets the requirements in section 4.16; and
  - (b) effective consultation and participation, as required by subsection 4.18(2), was carried out in developing or revising the plan; and
  - (c) the diving operations to which the plan relates are appropriate to be covered by a single plan.

#### 4.14 Diving project plan to be given to NOPSEMA if requested

If NOPSEMA asks the operator of a facility in connection with a diving project for a copy of the diving project plan, the operator must give a copy of the plan to NOPSEMA.

#### 4.15 Updating diving project plan

- (1) A diving contractor for a diving project must keep the diving project plan for the diving project up to date during the diving project.
- (2) The diving contractor must update the diving project plan if:
  - (a) because of a modification of the diving project, there is a significant increase in the overall level of risk to a diving operation; or

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- (b) the operator of the facility in connection with the diving project proposes to undertake or permit a modification of the diving project that might influence significantly the level of specific risks to a diving operation or the ranking of risk contributors.
- (3) The diving contractor must ensure that the updated diving project plan is approved by the operator of the facility in connection with the diving project before diving commences under the updated diving project plan.

*Updated diving project plan to be resubmitted to NOPSEMA where no operator of facility in connection with diving project*

- (4) If there is no operator of a facility in connection with the diving project and the diving project plan has been updated, the diving contractor must:
  - (a) resubmit the updated plan to NOPSEMA for consideration; and
  - (b) ensure that the updated diving project plan is accepted by NOPSEMA before diving commences under the updated diving project plan.

*Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (1), (2), (3) or (4).

Penalty: 100 penalty units.

*Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (1), (2), (3) or (4).

Civil penalty: 1,000 penalty units.

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

- (1) A diving project plan for a diving project must set out in detail the following matters:
  - (a) a description of the work to be done;
  - (b) a list of the Commonwealth, and State or Territory, legislation (including this instrument) that is reasonably likely to apply to the diving project;
  - (c) a list of standards and codes of practice that will be applied in carrying out the diving project;
  - (d) a hazard identification;
  - (e) a risk assessment;
  - (f) a safety management plan;
  - (g) job hazard analyses for the diving operations making up the diving project;
  - (h) an emergency response plan;
  - (i) the provisions of the accepted DSMS for the diving project, and the safety case, that are relevant to the diving project, in particular the arrangements in the DSMS and safety case for simultaneous operations and emergency response;

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- (j) details of consultation with, and participation of, divers and other members of the workforce working on the diving project.
- (2) The diving project plan must describe each diving operation included in the diving project.
- (3) The diving project plan must not specify as a diving operation a task that is too complex, or too big, to be supervised safely by one diving supervisor.
- (4) The diving project plan must provide for adequate communications between persons undertaking the diving project and any relevant:
  - (a) contractor; and
  - (b) facility; and
  - (c) vessel or aircraft; and
  - (d) on-shore installation.

### 4.17 No diving without approved or accepted diving project plan

- (1) A diving contractor for a diving project must not allow a person to dive on the diving project if:
  - (a) there is no diving project plan for the diving project; or
  - (b) if there is an operator of the facility in connection with the diving project—the diving project plan, or the updated project plan, for the diving project has not been approved by the operator in accordance with subsection 4.12(3) or 4.15(3), as appropriate; or
  - (c) if there is no operator of the facility in connection with the diving project—the diving project plan, or the updated project plan, for the diving project has not been accepted by NOPSEMA in accordance with subsection 4.13(3) or 4.15(4), as appropriate; or
  - (d) if, under section 4.14, NOPSEMA has asked the operator of the facility in connection with the diving project for a copy of the diving project plan—the operator has not given a copy of the plan to NOPSEMA before the diving commences.

#### *Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 100 penalty units.

#### *Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.



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

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

#### *Developing or revising a DSMS*

- (1) In developing or revising a DSMS, a diving contractor must ensure that there is effective consultation with, and participation of, divers and other members of the workforce who will, or may, be working on diving projects for which the DSMS would be appropriate.

#### *Developing or revising a diving project plan*

- (2) In developing or revising a diving project plan for a diving project, a diving contractor must ensure that there is effective consultation with, and participation of, divers and other members of the workforce who will, or may, be working on the diving project.
- (3) When submitting a DSMS to NOPSEMA for acceptance, the diving contractor must set out, in writing, details of the consultation and participation that has taken place, including:
  - (a) details of any submissions or comments made during the consultation or participation; and
  - (b) details of any changes that have been made to the DSMS as a result of the consultation or participation.

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## Part 6—Safety responsibilities

### 4.19 Safety responsibilities of diving contractors

- (1) A diving contractor must take all necessary steps to provide and maintain a working environment (including equipment and systems of work) that reduces risks to the health and safety of divers and other members of the workforce to a level that is as low as reasonably practicable.
- (2) A diving contractor must take all necessary steps to ensure that a diving operation for which the diving contractor is responsible is carried out in a way that complies with:
  - (a) the accepted DSMS for the diving project; and
  - (b) the diving project plan approved under section 4.12 or accepted under section 4.13, as the case requires.

*Offence*

- (3) A person commits an offence if the person contravenes subsection (1) or (2).  
Penalty: 100 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).  
Civil penalty: 1,000 penalty units.

### 4.20 Safety in the diving area

- (1) At each place of diving, before the beginning of a diving operation included in a diving project, a diving contractor must ensure that all divers and other workers who will be engaged in the diving operation are aware, and that there is a copy available to them, of the following:
  - (a) the instrument by which the diving supervisor for the diving operation was appointed under section 4.22;
  - (b) the accepted DSMS for the diving operation;
  - (c) the approved diving project plan for the diving project.

*Offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).  
Penalty: 30 penalty units.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).  
Civil penalty: 300 penalty units.

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- (4) A person engaged in a diving operation commits an offence of strict liability if the person fails to comply with:
- (a) an instruction given by a diving supervisor for the diving operation about a matter in the diving project plan; or
  - (b) a direction under subsection 4.23(3) given to the person by a diving supervisor for the diving operation.

Penalty for a contravention of this subsection:      50 penalty units.

#### 4.21 Diving depths

- (1) The operator of a facility that is directly involved with a surface-oriented diving operation involving the use of air or mixed gas as a breathing medium must not direct or allow the operation to be carried out at a depth of more than 50 metres.
- (2) The diving contractor for a surface-oriented diving operation involving the use of air or mixed gas as a breathing medium must not allow the diving operation to be carried out at a depth of more than 50 metres.
- (3) The operator of a facility in connection with a diving operation that is carried out at a depth of more than 50 metres must ensure that the diving operation involves the use of:
  - (a) a closed diving bell and a suitable mixed gas breathing medium; or
  - (b) a manned submersible craft.
- (4) The diving contractor for a diving operation that is carried out at a depth of more than 50 metres must ensure that the diving operation involves the use of:
  - (a) a closed diving bell and a suitable mixed gas breathing medium; or
  - (b) a manned submersible craft.

##### *Strict liability offence*

- (5) A person commits an offence of strict liability if the person contravenes subsection (1), (2), (3) or (4).

Penalty: 100 penalty units.

##### *Civil penalty provision*

- (6) A person is liable to a civil penalty if the person contravenes subsection (1), (2), (3) or (4).

Civil penalty:      1,000 penalty units.

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

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## Part 7—Diving supervisors

### 4.22 Appointment of diving supervisors

- (1) A diving contractor responsible for a diving operation must appoint, in writing, one or more diving supervisors to ensure that there is a diving supervisor to supervise all diving included in the diving operation.

Note: Subsection 4.16(3) limits the scope of a diving operation that can be supervised by one diving supervisor.

- (2) A diving contractor must not appoint, as a diving supervisor, a person who is not:
- (a) qualified as a supervisor under ADAS; and
  - (b) competent to supervise the diving operation.

*Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Penalty: 100 penalty units.

*Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 1,000 penalty units.

### 4.23 Duties of diving supervisors

- (1) The duties of a diving supervisor for a diving operation are:
- (a) to ensure that the diving operation is carried out:
    - (i) as far as reasonably practicable without risk to the health or safety of anybody taking part in the diving operation or of anyone else who may be affected by the diving operation; and
    - (ii) in accordance with the law; and
    - (iii) in accordance with the accepted DSMS for the operation; and
    - (iv) in accordance with the conditions (if any) on acceptance of the DSMS; and
    - (v) in accordance with the relevant approved diving project plan for the project; and
  - (b) to countersign entries about the diving operation in divers' log books; and
  - (c) if there is an operator of a facility in connection with a diving project—to report to the operator, during the diving operation, any of the following:
    - (i) the death of, or serious personal injury to, a person;
    - (ii) the incapacitation of a person that prevents the person from performing work for 3 or more days;
    - (iii) an event that could reasonably have led to a consequence of the type mentioned in subparagraph (i) or (ii);
    - (iv) a decompression illness;

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- (v) a pulmonary barotrauma;
- (vi) a case of omitted decompression;
- (vii) an occurrence for which a standby diver is deployed for an emergency (except for the purposes of training, exercises or drills);
- (viii) a failure of life support equipment or man riding equipment; and
- (d) if there is no operator of a facility in connection with a diving project—to report to NOPSEMA and the relevant titleholder in relation to the facility, during the operation, any of the following:
  - (i) the death of, or serious personal injury to, a person;
  - (ii) the incapacitation of a person that prevents the person from performing work for 3 or more days;
  - (iii) an event that could reasonably have led to a consequence of the type mentioned in subparagraph (i) or (ii);
  - (iv) a decompression illness;
  - (v) a pulmonary barotrauma;
  - (vi) a case of omitted decompression;
  - (vii) an occurrence for which the standby diver is deployed for an emergency (except for the purposes of training, exercises or drills);
  - (viii) a failure of life support equipment or man riding equipment.

- (2) A diving supervisor commits an offence if the diving supervisor fails to carry out a duty imposed on the diving supervisor by subsection (1).

Penalty: 50 penalty units.

- (3) When supervising a diving operation, a diving supervisor may give such reasonable directions to any person taking part in the diving operation as are necessary to enable the diving supervisor to comply with subparagraph (1)(a)(i).
- (4) A diving supervisor commits an offence if the diving supervisor dives while the diving supervisor is on duty as a diving supervisor.

Penalty: 50 penalty units.

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

- (5) A diving supervisor for a diving operation commits an offence if the diving supervisor does not advise each person who takes part in the diving operation of any instruction relating to the diving project plan for the diving operation that applies to the person.

Penalty: 50 penalty units.

- (6) In this section:

***man riding equipment*** includes any of the following:

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

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- Note 1: If the diving operation is at a place other than a facility, State or Northern Territory laws, as applied by section 80 of the Act, may require the reporting of accidents and incidents.
- Note 2: Section 4.27 requires a diving supervisor to maintain a diving operations record.

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## Part 8—Start-up notices

### 4.24 Start-up notice

In this Part:

**start-up notice**, for a diving project, means a written notice, signed by or for the person giving it, dated and containing the following information:

- (a) the name, address and telephone number of the diving contractor for the diving project;
- (b) the name, address and telephone number of a person who can be contacted by NOPSEMA at any time during the diving project;
- (c) the date when diving is expected to begin;
- (d) the expected duration of the diving project;
- (e) the location of the diving project;
- (f) the depth to which divers will dive;
- (g) the dive table to be used for the diving project;
- (h) the diving equipment to be used in the diving project;
- (i) if the dive includes deep diving—the decompression rates for the diving project;
- (j) the purpose of the diving project;
- (k) the estimated number of people to be engaged in the diving project;
- (l) the tasks and duties of each person involved in the diving project;
- (m) the breathing mixture to be used in the diving project;
- (n) the title, document number and revision number of the diving project plan for the diving project;
- (o) details of any relevant permissions, however described, related to the diving project (for example, the accepted DSMS and safety case).

#### 4.24AA Start-up notice required for diving projects

- (1) If the operator of a facility in connection with a diving project has approved, under section 4.12, a diving project plan for a diving project, the operator must not allow diving on the diving project to begin, unless:
  - (a) the diving contractor for the diving project has given NOPSEMA a start-up notice and an approved diving project plan for the diving project:
    - (i) at least 28 days before the day the diving is to begin; or
    - (ii) on another day agreed between NOPSEMA and the diving contractor; and
  - (b) NOPSEMA has accepted the start-up notice under section 4.24A.
- (2) If there is no operator of a facility in connection with a diving project, a diving contractor for the diving project must not allow the diving project to begin, unless:
  - (a) the diving contractor has given NOPSEMA a start-up notice and an accepted diving project plan for the diving project:
    - (i) at least 28 days before the day the diving is to begin; or

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- (ii) on another day agreed between NOPSEMA and the diving contractor;  
and
- (b) NOPSEMA has accepted the start-up notice under section 4.24A.

### *Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Penalty: 100 penalty units.

### *Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 1,000 penalty units.

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

- (1) Subject to section 4.24B, if NOPSEMA receives a start-up notice under section 4.24AA, NOPSEMA must accept or reject the start-up notice within:
  - (a) 28 days after receiving the start-up notice; or
  - (b) another period agreed between NOPSEMA and the diving contractor.
- (2) In making a decision under subsection (1), NOPSEMA must take into account the following matters:
  - (a) whether the start-up notice meets the requirements of the definition of **start-up notice** in section 4.24;
  - (b) whether all the activities covered by the start-up notice are consistent with the DSMS and the diving project plan for the diving project to which the start-up notice relates.
- (3) As soon as practicable after making a decision under subsection (1), NOPSEMA must:
  - (a) in writing, notify the operator of the facility in connection with the diving project or the diving contractor, as applicable, of its decision; and
  - (b) if the decision is to reject the start-up notice—include the reasons for its decision in the notice under paragraph (a).

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

- (1) If the operator of a facility in connection with a diving project, or a diving contractor for a diving project, gives a start-up notice under section 4.24AA to NOPSEMA, NOPSEMA may, within 14 days of receiving the start-up notice, request the operator or contractor (as applicable) to provide further written information about any matter that NOPSEMA requires to properly consider the start-up notice.
- (2) The request must:
  - (a) be in writing; and
  - (b) set out each matter for which information is requested; and



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- (c) specify a reasonable period within which the information is to be provided.

*Time does not run under section 4.24A while further information being sought*

- (3) If NOPSEMA requests further information under subsection (1), a day is not to be counted for the purposes of subsection 4.24A(1) if it is:
  - (a) on or after the day NOPSEMA requested the information; and
  - (b) on or before the day on which NOPSEMA receives the last of the information requested.
- (4) NOPSEMA must reject a start-up notice if the operator, or contractor, as applicable, fails to comply with a request under subsection (1) of this subsection.

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

- (1) NOPSEMA may, by written notice given to the operator of a facility in connection with a diving project, or a diving contractor for a diving project, as applicable, withdraw the acceptance of a start-up notice for the diving project if:
  - (a) NOPSEMA has reasonable safety concerns about the diving project; and
  - (b) diving under the accepted start-up notice has not commenced.
- (2) The notice must set out the reasons for the decision.

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

- (1) NOPSEMA may, by written notice to the operator of a facility in connection with a diving project, or to a diving contractor for a diving project, as applicable, withdraw the acceptance of a start-up notice for the diving project if NOPSEMA believes, on reasonable grounds, that:
  - (a) a new or increased diving risk arising from the diving project has been identified; and
  - (b) the management or elimination of that risk is not provided for in the DSMS or the diving project plan for the diving project.
- (2) The notice must set out the reasons for the decision.
- (3) If NOPSEMA withdraws the acceptance of a start-up notice for the diving project, the following persons must ensure that diving on the diving project ceases:
  - (a) if there is an operator of a facility in connection with a diving project—the operator of the facility;
  - (b) if there is no operator of a facility in connection with a diving project—the diving contractor for the diving project.

**4.24E Reinstatement of acceptance of start-up notice**

- (1) If, after NOPSEMA withdraws acceptance of a start-up notice for a diving project under section 4.24C or 4.24D, the operator of the facility in connection with the diving project, or the diving contractor for the diving project, as applicable, demonstrates to NOPSEMA that the reasons for the withdrawal no longer apply, NOPSEMA may reinstate the acceptance of the start-up notice.

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- (2) If NOPSEMA reinstates the acceptance of the start-up notice, NOPSEMA must:
  - (a) in writing, notify the operator, or the diving contractor, as applicable, that NOPSEMA has reinstated the acceptance of the start-up notice; and
  - (b) set out in the notice the reasons why NOPSEMA has reinstated the acceptance of the start-up notice.

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## Part 9—Diving operations

### 4.25 Divers in diving operations

#### *Competence of divers—responsibility of diving contractors*

- (1) A diving contractor for a diving operation must not allow a person to dive in the diving operation if the person is not competent to carry out safely any activity that is reasonably likely to be necessary while the person is taking part in the diving operation.

#### *Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 100 penalty units.

#### *Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 1,000 penalty units.

#### *Competence of divers—responsibility of diving supervisors*

- (4) A diving supervisor for a diving operation commits an offence of strict liability if:
- (a) the diving supervisor allows a person to dive in the diving operation; and
  - (b) the person is not competent to carry out safely any activity that is reasonably likely to be necessary while the person is taking part in the diving operation.

Penalty: 50 penalty units.

#### *Divers to hold current diving qualifications—diving contractor responsibility*

- (5) A diving contractor for a diving operation must not allow a person to dive in the diving operation if the person does not have a current diving qualification from ADAS to carry out any activity that is reasonably likely to be necessary while the person is taking part in the operation.

#### *Strict liability offence*

- (6) A person commits an offence of strict liability if the person contravenes subsection (5).

Penalty: 100 penalty units.

#### *Civil penalty provision*

- (7) A person is liable to a civil penalty if the person contravenes subsection (5).

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Civil penalty: 1,000 penalty units.

### *Divers to hold current diving qualifications—diving supervisor responsibility*

- (8) A diving supervisor for a diving operation commits an offence of strict liability if:
- (a) the diving supervisor allows a person to dive in the diving operation; and
  - (b) the person does not have a current diving qualification required under ADAS permitting the person to carry out any activity that is reasonably likely to be necessary while the person is taking part in the operation.

Penalty: 50 penalty units.

### *Divers to hold valid medical certificates—diving contractor responsibility*

- (9) A diving contractor for a diving operation must not allow a person to dive in the diving operation if the person does not have a valid medical certificate.

Note: The meaning of **valid medical certificate** is explained in section 4.26.

### *Strict liability offence*

- (10) A person commits an offence of strict liability if the person contravenes subsection (9).

Penalty: 100 penalty units.

### *Civil penalty provision*

- (11) A person is liable to a civil penalty if the person contravenes subsection (9).

Civil penalty: 1,000 penalty units.

### *Divers to hold valid medical certificates—diving supervisor responsibility*

- (12) A diving supervisor for a diving operation commits an offence of strict liability if:
- (a) the diving supervisor allows a person to dive in the diving operation; and
  - (b) the person does not have a valid medical certificate.

Penalty: 20 penalty units.

Note: The meaning of **valid medical certificate** is explained in section 4.26.

### *Exceptions*

- (13) Subsections (5), (8), (9) and (12) do not apply if the person:
- (a) is diving in a manned submersible craft; or
  - (b) is diving to provide emergency medical care to an injured person in a chamber.

Note: A defendant bears an evidential burden in relation to the matter in subsection (13), see subsection 13.3(3) of the *Criminal Code*.

#### **4.26 Medical certificates**

A diver's medical certificate is valid if:

- (a) it certifies that, at the time it was given, the diver was fit to dive in accordance with the fitness requirements in AS/NZS 2299; and
- (b) it is not more than one year old; and
- (c) the medical practitioner who issued it:
  - (i) is accredited by the South Pacific Underwater Medicine Society, the Health and Safety Executive of the United Kingdom or the Underwater Hyperbaric Medicine Society; or
  - (ii) has completed an appropriate course of training conducted by the Royal Australian Navy or the Royal Adelaide Hospital; or
  - (iii) has been approved under the ADAS; and
- (d) before issuing it, the medical practitioner examined the diver in accordance with the Schedule of Minimum Examination Requirements in AS/NZS 2299; and
- (e) immediately after the examination, the medical practitioner entered the details set out in the certificate in the diver's log book.

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## Part 10—Records

### 4.27 Diving operations record

*Diving supervisor must maintain diving operations record*

- (1) A diving supervisor for a diving operation commits an offence of strict liability if the diving supervisor does not ensure that a diving operations record for the operation is maintained in the form required by subsections (2) and (3).

Penalty: 50 penalty units.

*Form of diving operations record*

- (2) A diving operations record:
- (a) must be kept in a hard-covered form bound in such a way that its pages cannot easily be removed; or
  - (b) if it is in a form that has multiple copies of each page, must be bound so that at least one copy of each page cannot easily be removed.
- (3) The pages of a diving operations record must be serially numbered.

*Diving supervisor must make entries in diving operations record for each day of diving*

- (4) The diving supervisor for a diving operation commits an offence of strict liability if the diving supervisor does not ensure that an entry is made in the diving operations record for each day when diving for the diving operation takes place, with the following information about the diving operation on that day:
- (a) the date to which the entry relates;
  - (b) the diving contractor's name and address;
  - (c) the name of the diving supervisor, or the names of the diving supervisors, who supervised the operation;
  - (d) the location of the diving operation (including, if the diving was done from a vessel or installation, the name of the vessel or installation);
  - (e) the name of each person who took part in the diving operation (whether as a diver or as a member of a dive team);
  - (f) the name of each person who took part as a diver or stand-by diver in the diving operation;
  - (g) the purpose of the diving operation;
  - (h) for each diver—the breathing apparatus and breathing mixture used in the diving operation;
  - (i) for each diver—the times at which the diver left the surface, reached the bottom of the dive, left the bottom of the dive and arrived at the surface again, and bottom time;
  - (j) for each diver—the maximum depth reached during the dive;
  - (k) the decompression schedule followed, including, for each diver, details of the depths and the duration at each depth during decompression;

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- (l) details of any emergency or incident of special note that happened during the diving operation;
- (m) details of any decompression illness and any treatment given;
- (n) details of any significant defect or significant failure of diving plant or equipment used in the diving operation;
- (o) details of any environmental factors relevant to the diving operation;
- (p) anything else that is likely to affect the health or safety of anybody who took part in the diving operation.

Penalty: 30 penalty units.

*Diving supervisor must sign and print name in diving operations record*

- (5) A diving supervisor responsible for a diving operation commits an offence of strict liability if the diving supervisor does not, in the diving operations record for the operation:
  - (a) either:
    - (i) if the record is in a form that has multiple copies of each page—sign the original of each page of each entry and print the supervisor's name below the signature; or
    - (ii) in any other case—sign each page of each entry and print the supervisor's name below the signature; or
  - (b) if there are 2 or more diving supervisors for the operation—sign those parts of the entry that relate to diving work that the diving supervisor supervised and print the diving supervisor's name below the signature.

Penalty: 30 penalty units.

*Diving contractor must retain diving operations record*

- (6) A diving contractor must retain a diving operations record for at least 7 years after the date of the last entry in it.

*Strict liability offence*

- (7) A person commits an offence of strict liability if the person contravenes subsection (6).

Penalty: 30 penalty units.

*Civil penalty provision*

- (8) A person is liable to a civil penalty if the person contravenes subsection (6).

Civil penalty: 300 penalty units.

## 4.28 Divers' log books

- (1) A diver commits an offence of strict liability if the diver does not:
  - (a) have a log book in the form required by subsection (2); and
  - (b) for each time the diver dives:

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- (i) make an entry in the log book, in ink, as required by subsection (3);  
and
- (ii) sign the entry; and
- (iii) have the diving supervisor for the operation countersign the entry; and
- (c) keep the log book for at least 7 years after the date of the last entry in it.

Penalty: 30 penalty units.

- (2) The log book must:
  - (a) have hard covers; and
  - (b) be bound so that pages cannot easily be removed; and
  - (c) have its pages serially numbered; and
  - (d) show the diver's name; and
  - (e) have a clear photograph of the head and shoulders of the diver; and
  - (f) have a specimen of the diver's signature.
- (3) An entry in the log book must contain the following information:
  - (a) the date to which the entry relates;
  - (b) the location of the dive (and, if the dive was from a ship or installation, the name of the ship or installation);
  - (c) the maximum depth reached;
  - (d) the times at which the diver left the surface, reached the bottom, left the bottom and arrived at the surface again, and bottom time;
  - (e) the breathing apparatus and breathing mixture used;
  - (f) the decompression schedule followed;
  - (g) the work done and the plant and tools used;
  - (h) any decompression illness, barotrauma, discomfort or injury and details of any treatment given;
  - (i) details of any emergency or incident;
  - (j) anything else relevant to the diver's health or safety.



## Chapter 5—Compliance and Enforcement

### Part 1—Preliminary

#### 5.1 Simplified outline of this Chapter

The civil penalty provisions of this instrument are enforceable under Part 4 of the Regulatory Powers Act. The strict liability offence provisions of this instrument are subject to infringement notices under Part 5 of the Regulatory Powers Act.

The provisions of this instrument are also enforceable using enforceable undertakings under Part 6 of the Regulatory Powers Act and injunctions under Part 7 of the Regulatory Powers Act.

The maximum daily penalty for continuing offences and continuing contraventions of civil penalty provisions is 10% of the maximum penalty, or civil penalty, that can be imposed in respect of those offences and contraventions.

Note: This instrument is a listed NOPSEMA law (see the definition of *listed NOPSEMA law* in section 601 of the Act and regulation 11B.01 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011*). This instrument is subject to monitoring under Part 2 of the Regulatory Powers Act, and offences and civil penalty provisions of this instrument are subject to investigation under Part 3 of the Regulatory Powers Act (see, in particular, sections 602C and 602D of the Act).

#### 5.2 Purpose of this Chapter

- (1) This Chapter (except for subsection 5.9(1)) is made for the purposes of section 790A of the Act.
- (2) Section 5.8 is also made for the purposes of section 790 of the Act.
- (3) Subsection 5.9(1) is made for the purposes of section 790 of the Act.

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## **Part 2—Civil penalties**

### **5.3 Civil penalty provisions**

*Enforceable civil penalty provisions*

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

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

*Authorised applicant*

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Chief Executive Officer of NOPSEMA is an authorised applicant in relation to the civil penalty provisions of this instrument.

*Relevant court*

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

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## Part 3—Infringement notices

### 5.4 Infringement notices

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

- (1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
  - (a) subsection 2.46A(2);
  - (b) subsection 2.47(2);
  - (c) subsection 3.17(3);
  - (d) subsection 3.20(3);
  - (e) subsection 4.20(2);
  - (f) subsection 4.20(4);
  - (g) subsection 4.27(1);
  - (h) subsection 4.27(4);
  - (i) subsection 4.27(5);
  - (j) subsection 4.27(7);
  - (k) subsection 4.28(1).

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

#### *Infringement officers*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, each of the following persons is an infringement officer in relation to the provisions mentioned in subsection (1):
  - (a) the Chief Executive Officer of NOPSEMA;
  - (b) a NOPSEMA inspector.

#### *Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the relevant chief executive in relation to an infringement notice is the Chief Executive Officer of NOPSEMA.

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### Part 4—Enforceable undertakings

#### 5.5 Enforceable undertakings

##### *Enforceable provisions*

- (1) The following provisions are enforceable under Part 6 of the Regulatory Powers Act:
- (a) each offence provision of this instrument;
  - (b) each civil penalty provision of this instrument.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

##### *Authorised person*

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Chief Executive Officer of NOPSEMA is an authorised person in relation to the provisions mentioned in subsection (1).

##### *When undertaking must not be accepted*

- (3) The Chief Executive Officer of NOPSEMA must not accept an undertaking that was given by a person (the **first person**) under section 114 of the Regulatory Powers Act in response to an alleged contravention of an offence provision of this instrument if:
- (a) the alleged contravention contributed, or may have contributed, to the death of another person; or
  - (b) the alleged contravention involved recklessness (within the meaning of the *Criminal Code*); or
  - (c) during the previous 5 years, the first person has been convicted of an offence provision of this instrument that contributed to the death of another person.
- (4) Subsection (3) does not apply if there are exceptional circumstances.

##### *Relevant court*

- (5) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
  - (b) the Federal Circuit and Family Court of Australia (Division 2);
  - (c) the Supreme Court of a State or Territory.

#### 5.6 Publication of enforceable undertakings

- (1) If:
- (a) a person has given an undertaking under section 114 of the Regulatory Powers Act in relation to a provision of this instrument; and

Section 5.6

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- (b) the undertaking has been accepted by the Chief Executive Officer of NOPSEMA under section 114 of the Regulatory Powers Act; and
  - (c) the undertaking has not been withdrawn or cancelled;
- the Chief Executive Officer of NOPSEMA must publish the undertaking on NOPSEMA's website.
- (2) If an undertaking contains personal information (within the meaning of the *Privacy Act 1988*), the Chief Executive Officer of NOPSEMA must take such steps as are reasonable in the circumstances to ensure that the information is de-identified before the undertaking is published under subsection (1).

*De-identified information*

- (3) For the purposes of this section, information is ***de-identified*** if the information is no longer about an identifiable individual or an individual who is reasonably identifiable.

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## **Part 5—Injunctions**

### **5.7 Injunctions**

#### *Enforceable provisions*

- (1) The following provisions are enforceable under Part 7 of the Regulatory Powers Act:
- (a) each offence provision of this instrument;
  - (b) each civil penalty provision of this instrument.

**Note:** Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

#### *Authorised person*

- (2) For the purposes of Part 7 of the Regulatory Powers Act, the Chief Executive Officer of NOPSEMA is an authorised person in relation to the provisions mentioned in subsection (1).

#### *Relevant court*

- (3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
  - (b) the Federal Circuit and Family Court of Australia (Division 2);
  - (c) the Supreme Court of a State or Territory.

#### *Consent injunctions*

- (4) A relevant court may grant an injunction under Part 7 of the Regulatory Powers Act in relation to a provision mentioned in subsection (1) by consent of all the parties to proceedings brought under that Part, whether or not the court is satisfied that section 121 of that Act applies.

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## Part 6—Other matters

### 5.8 Contravening offence provisions and civil penalty provisions

- (1) This section applies if a provision of this instrument provides that a person contravening another provision of this instrument (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this instrument, and the Regulatory Powers Act to the extent that it relates to this instrument, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

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

#### *Continuing offences*

- (1) The maximum penalty for each day that an offence under any of the following provisions continues is 10% of the maximum penalty that can be imposed in respect of that offence:
  - (a) subsection 2.32(4);
  - (b) subsection 2.46B(5);
  - (c) subsection 4.10(5);
  - (d) subsection 4.11(7).

#### *Continuing contraventions of civil penalty provisions*

- (2) The maximum civil penalty for each day that a contravention referred to in any of the following provisions continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention:
  - (a) subsection 2.32(5);
  - (b) subsection 2.46B(6);
  - (c) subsection 4.10(6);
  - (d) subsection 4.11(8).

Section 6.1

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## Chapter 6—Transitional, saving and application provisions

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

#### 6.1 Definitions

In this Part:

**commencement day** means the day on which this instrument commences.

**old regulations** means the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* as in force immediately before the commencement day.

#### 6.2 Things done by, or in relation to, NOPSEMA

If, before the commencement day, a thing was done by, or in relation to, NOPSEMA under the old regulations, then the thing is taken, on and after that day, to have been done by, or in relation to, NOPSEMA under this instrument.

#### 6.3 Things started but not finished by NOPSEMA

- (1) This section applies if:
  - (a) before the commencement day, NOPSEMA started doing a thing under the old regulations; and
  - (b) immediately before that day, NOPSEMA had not finished doing that thing.
- (2) NOPSEMA may, on and after the commencement day, finish doing the thing under this instrument.

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

- (1) If:
  - (a) an instrument (the **subordinate instrument**) was made for a particular purpose under a provision of the old regulations; and
  - (b) the subordinate instrument was in effect or in force immediately before the commencement day; and
  - (c) the subordinate instrument could be made for that purpose under a provision of this instrument;then, despite the repeal of the old regulations by this instrument, the subordinate instrument continues in effect or in force, on and after the commencement day, as if it were made for that purpose under that provision of this instrument.
- (2) If:
  - (a) any other thing was done for a particular purpose under the old regulations; and
  - (b) the thing could be done for that purpose under this instrument;



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the thing has effect for the purposes of this instrument as if it had been done for that purpose under this instrument.

- (3) Without limiting subsection (2), a reference in that subsection to a thing being done includes a reference to a notice being given and an investigation being undertaken.

### 6.5 Conduct, event, circumstances occurring before commencement day

- (1) To avoid doubt, a function or duty may be performed, or a power exercised, under this instrument in relation to conduct engaged in, an event that occurred, or a circumstance that arose, before the commencement day.
- (2) This section does not limit anything in this Part or section 7 of the *Acts Interpretation Act 1901* (as that Act applies in relation to this instrument because of paragraph 13(1)(a) of the *Legislation Act 2003*).

### 6.6 Operator of a facility before commencement day

A person who was registered (or who continued to be registered) under the old regulations immediately before the commencement day and whose name was not removed from the register before the commencement day continues to be registered as the operator of the facility until NOPSEMA removes the person's name from the register under section 2.4 of this instrument.

### 6.7 Existing safety cases remain in force

- (1) A safety case (the *old safety case*) that:
  - (a) was accepted, or was taken to have been accepted, by NOPSEMA under the old regulations before the commencement day; and
  - (b) was in force immediately before the commencement day;is taken to be a safety case for a facility that was accepted by NOPSEMA under section 2.26 of this instrument with effect from the date on which it was accepted, or was taken to have been accepted, under the old regulations.
- (2) If the old safety case:
  - (a) is taken to be accepted by NOPSEMA in accordance with subsection (1) of this section; and
  - (b) is subject to a limitation, condition or restriction imposed under the old regulations;then the old safety case continues to be subject to the limitation, condition or restriction as if it had been imposed by NOPSEMA under this instrument.
- (3) If an occurrence at a facility was specified in column 1 of item 8 of the table in regulation 2.41 of the old regulations to be a dangerous occurrence then, on and after the commencement day:
  - (a) the occurrence is taken to be specified in column 1 of item 8 of the table in section 2.41 of this instrument and declared to be a dangerous occurrence; and
  - (b) is taken to be so specified and declared until the old safety case is revised in accordance with this instrument; and

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- (c) section 2.42 of this instrument applies to the occurrence accordingly.

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

A DSMS that:

- (a) was accepted, or was taken to have been accepted, by NOPSEMA under the old regulations before the commencement day; and
- (b) was in force immediately before the commencement;

is taken to be a DSMS that was accepted by NOPSEMA under section 4.5 or 4.6 of this instrument with effect from the date on which it was accepted, or was taken to have been accepted, under the old regulations.

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

A diving project plan that:

- (a) was accepted, or was taken to have been accepted, by NOPSEMA under the old regulations before the commencement day; and
- (b) was in force immediately before the commencement day;

is taken to be a diving project plan that was accepted by NOPSEMA under section 4.13 of this instrument with effect from the date on which it was accepted, or was taken to have been accepted, under the old regulations.

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

Despite the repeal of the old regulations, those regulations continue to apply in relation to an election if:

- (a) the election was commenced under Part 2 of Chapter 3 of the old regulations; and
- (b) the count conducted in respect of the poll for the election had not been completed before the commencement day.

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

An order issued by NOPSEMA under the old regulations before the commencement day, exempting a person from one or more of the provisions of Part 3 of Schedule 3 to the Act, and in force immediately before the commencement day, is taken:

- (a) to remain in force; and
- (b) to remain subject to any conditions or time limitations to which the order was subject.

## Schedule 1—Hazardous substances

Note: See section 3.4.

### Part 1—Definitions

#### 1 Definitions

In this Schedule:

***bona fide research*** means a systematic, investigative or experimental activity conducted for the purpose of:

- (a) acquiring new knowledge; or
- (b) creating new or improved materials, products, devices, processes or services; or
- (c) analysis to identify the kind or quantities of ingredients in a substance.

***in situ*** means:

- (a) in relation to a facility that contains asbestos—that the asbestos was fixed or installed in the facility:
  - (i) before 1 January 2005; and
  - (ii) in such a way that the asbestos does not constitute a risk to any person unless the asbestos is disturbed; and
- (b) in relation to an item of plant—that the asbestos was fixed or installed in the item of plant:
  - (i) before 1 January 2005; and
  - (ii) in such a way that the asbestos does not constitute a risk to any person unless the asbestos is disturbed.

Section 2

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

**2 Permitted circumstances—certain hazardous substances**

The following table sets out permitted circumstances for using certain hazardous substances.

Item	Column 1 Substance (identified by substance name)	Column 2 Permitted circumstance
201	Polychlorinated biphenyls (also known as PCBs)	1 Handling for storage prior to removal or disposal 2 Storage prior to removal or disposal 3 Removal or disposal 4 Use when contained in existing electrical equipment or construction material 5 Repair of existing electrical equipment or construction material

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

### 3 Permitted circumstances—certain hazardous substances with carcinogenic properties

The following table sets out circumstances for using certain hazardous substances with carcinogenic properties.

Item	Column 1 Substance (identified by substance name, with chemical abstract number in square brackets)	Column 2 Permitted circumstance
301	2-Acetylaminofluorene [53-96-3]	Bona fide research
302	Aflatoxins	Bona fide research
303	4-Aminodiphenyl [92-67-1]	Bona fide research
304	Amosite (brown asbestos) [12172-73-5]	<ol style="list-style-type: none"> <li>1 Bona fide research</li> <li>2 Handling for storage prior to removal or disposal of amosite</li> <li>3 Storage prior to removal or disposal of amosite</li> <li>4 Removal or disposal of amosite in accordance with a law of a State or Territory relating to the removal of asbestos</li> <li>5 Disturbance of naturally occurring amosite that is incidental to operations not related to the extraction or processing of amosite, for example, roadworks</li> <li>6 Use of a facility that contains amosite, or use of an item of plant that is attached to a facility and that contains amosite, if: <ol style="list-style-type: none"> <li>(a) the amosite is in situ; and</li> <li>(b) the use does not disturb the amosite</li> </ol> </li> </ol>
305	Benzidine [92-87-5] and its salts, including benzidine dihydrochloride [531-85-1]	Bona fide research
306	bis(Chloromethyl) ether [542-88-1]	Bona fide research
307	Chloromethyl methyl ether (technical grade containing bis(chloromethyl) ether) [107-30-2]	Bona fide research

**Schedule 1** Hazardous substances**Part 3** Permitted circumstances for using certain hazardous substances with carcinogenic properties

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Item	Column 1 Substance (identified by substance name, with chemical abstract number in square brackets)	Column 2 Permitted circumstance
308	Crocidolite (blue asbestos) [12001-28-4]	<ol style="list-style-type: none"><li>1 Bona fide research</li><li>2 Handling for storage prior to removal or disposal of crocidolite</li><li>3 Storage prior to removal or disposal of crocidolite</li><li>4 Removal or disposal of crocidolite in accordance with a law of a State or Territory relating to the removal of asbestos</li><li>5 Disturbance of naturally occurring crocidolite that is incidental to operations not related to the extraction or processing of crocidolite, for example, roadworks</li><li>6 Use (without disturbance) of crocidolite in products that are in situ</li></ol>
309	4-Dimethylaminoazo-benzene [60-11-7]	Bona fide research
310	2-Naphthylamine [91-59-8] and its salts	Bona fide research
311	4-Nitrodiphenyl [92-93-3]	Bona fide research
312	Actinolite asbestos [77536-66-4]	<ol style="list-style-type: none"><li>1 Bona fide research</li><li>2 Handling for storage prior to removal or disposal of actinolite</li><li>3 Storage prior to removal or disposal of actinolite</li></ol>

Section 3

Item	Column 1 Substance (identified by substance name, with chemical abstract number in square brackets)	Column 2 Permitted circumstance
		<ul style="list-style-type: none"> <li>4 Removal or disposal of actinolite in accordance with a law of a State or Territory relating to the removal of asbestos</li> <li>5 Disturbance of naturally occurring actinolite that is incidental to operations not related to the extraction or processing of actinolite, for example, roadworks</li> <li>6 Use (without disturbance) of actinolite in products that are in situ</li> </ul>
313	Anthophyllite asbestos [77536-67-5]	<ul style="list-style-type: none"> <li>1 Bona fide research</li> <li>2 Handling for storage prior to removal or disposal of anthophyllite</li> <li>3 Storage prior to removal or disposal of anthophyllite</li> <li>4 Removal or disposal of anthophyllite in accordance with a law of a State or Territory relating to the removal of asbestos</li> <li>5 Disturbance of naturally occurring anthophyllite that is incidental to operations not related to the extraction or processing of anthophyllite, for example, roadworks</li> <li>6 Use (without disturbance) of anthophyllite in products that are in situ</li> </ul>
314	Chrysotile (white asbestos) [12001-29-5]	<ul style="list-style-type: none"> <li>1 Bona fide research</li> <li>2 Handling for storage prior to removal or disposal of chrysotile</li> <li>3 Storage prior to removal or disposal of chrysotile</li> </ul>

**Schedule 1** Hazardous substances**Part 3** Permitted circumstances for using certain hazardous substances with carcinogenic properties

## Section 3

Item	Column 1 Substance (identified by substance name, with chemical abstract number in square brackets)	Column 2 Permitted circumstance
		<ul style="list-style-type: none"><li>4 Removal or disposal of chrysotile in accordance with a law of a State or Territory relating to the removal of asbestos</li><li>5 Disturbance of naturally occurring chrysotile that is incidental to operations not related to the extraction or processing of chrysotile, for example, roadworks</li><li>6 Use (without disturbance) of chrysotile in products that are in situ</li></ul>
315	Tremolite asbestos [77536-68-6]	<ul style="list-style-type: none"><li>1 Bona fide research</li><li>2 Handling for storage prior to removal or disposal of tremolite</li><li>3 Storage prior to removal or disposal of tremolite</li><li>4 Removal or disposal of tremolite in accordance with a law of a State or Territory relating to the removal of asbestos</li><li>5 Disturbance of naturally occurring tremolite that is incidental to operations not related to the extraction or processing of tremolite, for example, roadworks</li><li>6 Use (without disturbance) of tremolite in products that are in situ</li></ul>

Note: This Part sets out the prohibitions and permitted uses that apply to all Australian workplaces under a national agreement. However, not all items and permitted uses are relevant to offshore petroleum operations or offshore greenhouse gas operations.