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OFFSHORE ELECTRICITY INFRASTRUCTURE BILL 2021

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for Energy and Emissions Reduction,
the Honourable Angus Taylor, MP

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GLOSSARY

Abbreviation	Definition
AIA	*Acts Interpretation Act 1901*
ADJR Act	*Administrative Decisions (Judicial Review) Act 1977*
Bill	Offshore Electricity Infrastructure Bill 2021
CA	*Corporations Act 2001*
Commonwealth offshore area	The following areas, and the seabed and subsoil beneath those areas: a) the territorial sea of Australia; and b) the exclusive economic zone; but does not include the coastal waters of a State or the Northern Territory
Crimes Act	*Crimes Act 1914*
Criminal Code	*Criminal Code Act 1995*
EPBC Act	*Environment Protection and Biodiversity Conservation Act 1999*
External territories	• Coral Sea Islands Territory Norfolk Island • Territory of Ashmore and Cartier Islands • Territory of Christmas Island • Territory of Cocos (Keeling) Islands • Territory of Heard Island and McDonald Islands
FATA	*Foreign Acquisitions and Takeovers Act 1975*
Guide to Framing Commonwealth Offences	*Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*
ICCPR	International Convention on Civil and Political Rights
LAA	*Lands Acquisition Act 1989*
NOPSEMA	National Offshore Petroleum Safety and Environmental Management

Abbreviation	Definition
	Authority
NOPTA	National Offshore Petroleum Titles Administrator
NT	Northern Territory
OEI	Offshore Electricity Infrastructure: this term covers OREI and OETI
OETI	Offshore Electricity Transmission Infrastructure: fixed or tethered infrastructure that has the primary purpose of storing, transmitting or conveying electricity (whether or not the electricity is generated from a renewable energy resource)
Offshore infrastructure activities	Constructing, installing, commissioning, operating, maintaining or decommissioning Offshore Electricity Infrastructure
Offshore infrastructure project	In relation to a licence, means all of the following: a) the offshore renewable energy infrastructure or offshore electricity transmission infrastructure that is, or is to be, constructed, installed, commissioned, operated, maintained or decommissioned under the licence; b) any activities that are, or are to be, carried out under the licence in the licence area by or on behalf of the licence holder; c) any activities that this Act requires to be carried out in the licence area by or on behalf of the licence holder
OPGGS Act	*Offshore Petroleum and Greenhouse Gas Storage Act 2006*
OREI	Offshore Renewable Energy Infrastructure: fixed or tethered

Abbreviation	Definition
	infrastructure that has the primary purpose of engaging in any of the following activities: a) exploring for one or more renewable energy resources; b) assessing the feasibility of exploiting a renewable energy resource; c) exploiting a renewable energy resource; d) storing, transmitting or conveying a renewable energy product
Privacy Act	*Privacy Act 1988*
Registrar	Offshore Infrastructure Registrar (the Minister may appoint NOPTA under the Bill)
Regulator	Offshore Infrastructure Regulator (NOPSEMA)
Responsible Commonwealth Minister or the Minister	The Minister responsible for the administration of the Bill
Responsible State Minister	The State Minister responsible for administration of laws of the State that correspond to the Bill
RPA	*Regulatory Powers (Standard Provisions) Act 2014*
State/NT coastal waters	Waters of the sea that extend to 3 nautical miles from the territorial sea baseline, and any waters that are on the landward side of the territorial sea baseline but not within the limits of the State or the NT
TA	*Telecommunications Act 1997*
WHS Act	*Work Health and Safety Act 2011*

OFFSHORE ELECTRICITY INFRASTRUCTURE BILL 2021

OUTLINE

The Offshore Electricity Infrastructure Bill 2021 (the Bill) establishes a regulatory framework to enable the construction, installation, commissioning, operation, maintenance, and decommissioning of offshore electricity infrastructure (collectively, offshore infrastructure activities) in the Commonwealth offshore area.

The Bill provides a robust framework for granting licences to undertake offshore infrastructure activities in the Commonwealth offshore area, while providing for the safety of workers and the protection of Offshore Electricity Infrastructure (OEI). Regulatory certainty will allow investors to move their projects forward, enabling a new offshore industry to develop in Australia.

The establishment of an offshore electricity industry in Australia supports the Australian Government's objective to deliver a reliable, secure and affordable energy system by:

- facilitating the growth of new sources of energy supply;
- delivering reliability and improved grid security; and
- ensuring the energy sector is well regulated.

The development of the offshore electricity industry offers additional benefits in Australia's national interest, including the creation of new jobs, regional development, and significant investment in Australia's coastal economies.

The Australian Government manages the marine environment in recognition of all users and seeks to balance competing interests. Under this framework, offshore infrastructure activities must be done in a way that does not adversely impinge on existing marine users. This Bill ensures co-users are consulted ahead of any construction. Projects will only proceed if impacts can be appropriately managed.

Specifically this Bill:

- Places a prohibition on offshore infrastructure activities in the Commonwealth offshore area without a licence.

- Empowers the Minister to declare specified areas suitable for offshore infrastructure activities.
- Empowers the Minister to grant licences allowing proponents to undertake offshore infrastructure activities in specified areas.
- Provides for protection of OEI in the Commonwealth offshore area.
- Establishes the statutory authorities to administer and regulate the framework.
- Provides for compliance and enforcement of the regulatory framework.
- Provides for the protection of worker safety through modified application of the *Work Health and Safety Act 2011* (WHS Act).

KEY ELEMENTS OF THE BILL

Enabling the industry - offshore infrastructure activities permitted in the Commonwealth offshore area

The Bill will allow licence holders to undertake offshore infrastructure activities within the Commonwealth offshore area. The Commonwealth offshore area is defined as the waters beyond three nautical miles, to the outer edge of Australia's Exclusive Economic Zone.

Declared areas

This Bill empowers the Minister to declare a specified area suitable for offshore infrastructure activities. In determining whether an area is suitable, the Minister will consider the existing uses of the area and seek to identify where potential interactions between offshore infrastructure activities and other marine uses may occur. Areas will be excluded where uses are considered incompatible. The responsibility for managing interactions in a declared area rests with any future licence holders, consistent with the principle of shared use of the marine environment.

Licensing scheme

The framework implements a licensing scheme to allow for offshore infrastructure activities and for research and demonstration of emerging offshore electricity generation technologies.

There are three licence streams. Applications submitted under all streams must be made in a form approved by the Offshore Infrastructure Registrar (the Registrar). An applicant must demonstrate they satisfy prescribed suitability and merit criteria in order to be granted a licence.

1. Commercial

This stream is intended for commercial-scale projects intending to generate electricity through Offshore Renewable Energy Infrastructure (OREI). To obtain a commercial licence, a feasibility licence must first be obtained. The Minister will issue a public invitation to industry to apply for feasibility licences in respect of all or part of a declared area. A feasibility licence allows the licence holder to undertake scoping activities within the prescribed licence area for a period of up to seven years. Feasibility licence areas cannot overlap. The licensing scheme may allow for a financial offer to be considered in the circumstance where applications for the same licence area are similarly meritorious. Once feasibility work is completed, the licence holder can apply for the grant of a commercial licence which has a duration of up to 40 years.

A commercial licence authorises the holder to carry out an offshore electricity generation project in the licence area, and to undertake offshore infrastructure activities for the purpose of the project. The holder of a feasibility licence or a commercial licence may apply for an extension of the licence where certain criteria are met.

2. Research and demonstration

This stream is intended for small-scale projects to undertake research, or to test and demonstrate emerging technologies (such as wave, tidal or ocean thermal electricity generation). All infrastructure installed under this licence must be removed by the end of the licence period. Research and demonstration licences are granted for a maximum of 10 years, with the possibility of extension, and do not lead to the issue of commercial licences (only holders of feasibility licences can apply for commercial licences). Research and demonstration licences are granted through direct application and can overlap other licence areas provided impacts on existing uses and users of the area are managed.

3. Transmission and infrastructure

Transmission and infrastructure licences will allow the licence holder to construct and operate infrastructure that will store, transmit or convey electricity or a renewable energy product, including within or through a licence area. These licences will allow electricity generated offshore to connect to onshore grid infrastructure or other end users. Transmission and infrastructure licences can overlap other licence areas provided impacts on existing uses and users of the area are managed. The licences can be issued for the term of the asset life. A declaration is not required to grant a transmission and infrastructure licence, and a licence can be granted within and/or outside a declared area.

Licences under this framework are limited to the Commonwealth offshore area. There may be additional state/territory requirements for licensing of infrastructure in coastal waters, connection to onshore transmission/distribution infrastructure and participation in the National Electricity Market.

All licence holders will be required to have an approved management plan in place and to provide appropriate financial security before any OEI can be installed.

Financial security

Licence holders will be required to provide financial security that covers the cost of decommissioning all proposed infrastructure. Appropriate financial security will need to be agreed by the Offshore Infrastructure Regulator (the Regulator) and in place before any infrastructure can be installed. The financial security required will be sufficient to pay the estimated cost for Government to decommission the infrastructure installed. This approach ensures taxpayers are not left to pay for the removal of infrastructure in the event that the licence holder is unable or unwilling to do so.

Regulations may specify that financial security will be required to be provided in a form acceptable to the Regulator. The security amounts required and the timing of securities will vary and will be assessed by the Regulator on a case-by-case basis taking into account the specific project or activity.

In the event a licence is transferred to another eligible person, the transferor and the transferee may both be required to comply with the financial security arrangements in relation to the licence. It is intended that securities should only be relinquished to the transferor where the transferee has provided appropriate financial security to the satisfaction of the Regulator.

Management plans

Management plans will describe how a licence holder intends to provide for the OEI and manage the potential impacts and risks of offshore infrastructure activities that are to be carried out under a licence. Management plans will cover environmental management (including compliance with obligations and the outcomes of any assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)), work health and safety, infrastructure integrity, emergency management, consultation and financial security arrangements. A management plan must be approved by the Regulator before any infrastructure can be installed.

For the commercial stream, the Minister may only grant a commercial licence if there is an approved management plan in place. Approval of the management plan can be sought during the feasibility licence stage for a commercial project.

Safety zones and protection zones

The Bill provides for safety zones and protection zones to be established to assure the safety of offshore workers and other users of the marine environment, and to protect OEI from damage that may be caused by the actions of other marine users. It is intended that access to and transit through OEI project locations by other marine users would not be restricted any more than is necessary to ensure safety of navigation and operations, and the protection of assets. This is consistent with the principle of shared use of the marine environment.

Safety zones are temporary, specified areas, extending up to 500 metres around eligible infrastructure. Eligible infrastructure is OREI or Offshore Electricity Transmission Infrastructure (OETI) other than a cable that rests on the sea bed to transmit electricity outside of the licence area. Safety zones are intended to prohibit either all vessels, all vessels other than specified vessels, or all vessels other than the vessels included in a specified class of

vessels, from entering or being present in a specified area surrounding eligible infrastructure without the written consent of the Regulator. Safety zones can be established as a result of a successful application to the Regulator, or where an application is not received, established by the Regulator.

Protection zones are longer term, specified areas, surrounding OEI (including OETI) where certain activities can be prohibited from being undertaken. Protection zones will protect OEI which may be vulnerable to damage from activities such as anchoring or trawling. Protection zones established under this Bill are distinct from protection zones under the *Telecommunications Act 1997* (TA).

The Registrar and Regulator

The Bill establishes the Registrar to administer the framework. The National Offshore Petroleum Titles Administrator (NOPTA) may be appointed as the Registrar. The Registrar's principal functions will be to administer the licensing scheme, including maintaining a register of licences and managing the licence application process.

The Bill also identifies the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) as the Regulator. The principal functions of the Regulator will relate to work health and safety, OEI integrity, environmental management and regulation of day-to-day operations. In addition, the Regulator will provide advice and support to the Minister and the Registrar in administration of the framework as well as providing advice to industry on compliance.

Costs associated with the Regulator and Registrar's functions under the framework will be recovered through a combination of fees and levies imposed on regulated entities. Levies will be collected through a separate regulatory levies scheme to be introduced at a later date following enactment of this Bill.

Directions powers

To support the administration and integrity of the licensing scheme, the Bill provides the Regulator and the Minister with a range of powers of directions in respect of the licence holder. Part 2 of Chapter 4 provides the Regulator with a general directions power to ensure that licence holders comply with

the requirements of the Bill, including work health and safety provisions, the conditions of the licence or its management plan, and to set out how offshore infrastructure activities can be carried out under the licence. These include the power to issue a direction that another person carry out offshore infrastructure activities on behalf of the licence holder. A breach of such direction may carry a criminal or civil penalty, as specified under the Bill.

Remedial directions powers are also provided, including for the Minister and in regard to surrendered or cancelled licences. Remedial directions can include a direction to make good any damage to the seabed or subsoil or any other environmental damage in the Commonwealth offshore area, which may require assessment and monitoring of environmentally sensitive areas and providing reports on specified matters, as well as directions to remove property.

These directions powers are intended to ensure the integrity of the licensing scheme and regulatory functions under the Bill.

Compliance and enforcement

The Bill provides a suite of powers to the Regulator and its inspectors to monitor and enforce compliance with the requirements of the framework. This includes the health and safety of offshore workers, OEI integrity and compliance with environmental management obligations, including any requirements imposed under the EPBC Act in relation to activities to be carried out under a licence.

The Regulator will appoint and deploy inspectors with both broad and specific compliance monitoring and investigation powers. The Bill sets out a range of specific compliance monitoring powers, while general monitoring and investigation powers under the *Regulatory Powers (Standard Provisions) Act 2014* (RPA) will apply.

To ensure the Regulator is appropriately equipped to monitor and enforce compliance with the requirements of the framework, the Regulator will have access to a suite of graduated enforcement tools. These tools include powers to issue a range of notices, issue infringements, enter into enforceable undertakings, issue directions, and seek prosecutions for offences against legislative requirements. In a number of areas, relevant powers, penalties and

approaches have been implemented consistent with the OPGGS Act because of the similarities with the issues that are likely to arise.

Managing work health & safety

The framework has a strong focus on the protection of the workforce and aligns with Australia's model work health and safety laws by adopting the WHS Act, with some modifications to make the laws fit for purpose for the offshore environment. For example, Part 7 of the WHS Act (Workplace entry by WHS entry permit holders) is not applied to a workplace in the Commonwealth offshore area, given significant safety, security and logistical issues associated with accessing extremely hazardous and high risk remote offshore sites. However, WHS permit holders, as defined in the WHS Act (noting the modification to the definition made by clause 237 of this Bill), can access related onshore premises to inquire into suspected contraventions of WHS requirements and to engage with the workforce.

The framework will not apply to vessels or structures that are being navigated or towed through a Commonwealth offshore area that have not reached the site where offshore infrastructure activities are to be undertaken, such as transporting supplies or persons to the workplace. These vessels or structures will be covered by applicable maritime safety regimes including the *Navigation Act 2012* and the *Occupational Health and Safety (Maritime Industry) Act 1993*.

Workplace health and safety provisions will cease to apply once regulated offshore activities cease, and the vehicle, vessel, aircraft or other mobile structure is returned to a form in which it can be moved to another place.

Modified application of the WHS Act through the Bill will allow for consistency with State and Territory jurisdictions that have adopted the model laws.

FINANCIAL IMPACT STATEMENT

The Bill is expected to have nil financial impact. The fees collected through the Bill, as well as the levies collected through the Offshore Electricity Infrastructure (Regulatory Levies) Bill 2021 once enacted, will ensure the functions of the Registrar and the Regulator are fully cost recovered.

As part of the 2020/21 Budget process, the Government invested $4.8 million over two years to develop the offshore electricity infrastructure regulatory regime, including preparing the legislative framework and setting up administrative systems and processes. These funds have been distributed between the Department of Industry, Science, Energy and Resources, NOPTA, NOPSEMA and Geoscience Australia for these preparatory purposes.

REGULATION IMPACT STATEMENT

A Regulation Impact Statement (RIS) was prepared in April 2021 (reference number: 42703). The RIS is attached in full at the end of this Explanatory Memorandum (Annexure A).

CONSULTATION

In developing the Bill, consultation was undertaken with relevant Departments and agencies across the Commonwealth, including:

- Attorney-General's Department
- Australian Communications and Media Authority
- Australian Fisheries Management Authority
- Australian Maritime Safety Authority
- Australian Public Service Commission
- Department of Agriculture, Water and the Environment
- Department of Defence
- Department of Finance
- Department of Home Affairs
- Department of Infrastructure, Transport, Regional Development and Communications
- Department of the Prime Minister and Cabinet
- Geoscience Australia
- NOPSEMA
- NOPTA
- The Treasury

A public consultation process was held from 3 January 2020 to 28 February 2020. During this period over 40 submissions were received from industry, non-government organisations, academia and the

community. In addition, around 250 people attended public consultation workshops in Perth and Melbourne. The submissions received were generally supportive of the design and principles of the framework and the matters raised have been taken into account in the Bill.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Offshore Electricity Infrastructure Bill 2021

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

Human rights implications

This Bill engages the following human rights:

- right to an adequate standard of living;
- right to privacy and reputation;
- the right to be presumed innocent until proved guilty according to law;
- the right to minimum guarantees in criminal proceedings.

A discussion of how the Bill engages each of these rights is outlined below.

Right to an adequate standard of living

Article 11 of the *International Covenant on Economic, Social and Cultural Rights* sets out the right to an adequate standard of living.

The Bill engages positively with this right as investments in OEI will improve affordability for energy users, including residential households, businesses and industries, as well as deliver new reliable generation into the market to ensure a secure and stable energy supply to Australians.

Right to privacy and reputation

Article 17 of the *International Covenant on Civil and Political Rights* prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

The Bill contains some limitations on this right, set out below. These limitations have been established to support the regulatory functions under the regime, intended to ensure the safety of infrastructure within the Commonwealth offshore area and the health and safety of workers at these sites. These adjustments to the operation of this right are considered integral to the effective administration and operation of activities authorised under the Bill and, therefore, not arbitrary.

Compliance monitoring and enforcement powers

Chapter 5, Part 4 of the Bill provides for OEI inspectors to carry out inspections and investigations to determine whether the licence holder is complying with the requirements of the framework. In particular, clause 198 provides powers for inspectors to undertake warrant-free monitoring and investigation activities on premises located in the Commonwealth offshore area in urgent circumstances.

It is considered appropriate to provide warrant free access for inspectors to offshore premises in these circumstances to ensure that the Regulator can rapidly respond to significant offshore incidents which may involve serious injuries and fatalities. Timely regulatory response is considered essential in these situations to ensure that evidence of potential contraventions and the ongoing safety of persons interacting with OEI is appropriately protected.

Using and sharing of OEI information

Chapter 7, Part 4 of the Bill provides for the use and making available of certain information, documents and things obtained for the purposes of administering the OEI framework. Information, documents or things may be used by the Regulator for the purpose of exercising its powers or performing its functions under the Bill. Information may also be shared between the Minister, the Secretary, the Regulator and the Registrar and certain other agencies, including law enforcement and State and Territory Government agencies where the information will assist those agencies to exercise their powers or functions.

The ability to share information is discretionary and its use can only be for lawful purposes. The person in possession of the information will be able to specifically consider the type of information to be shared and the rationale for sharing that information in each circumstance. Further, the information-

sharing provisions are subject to the *Privacy Act 1988* (Privacy Act) and require parties to de-identify personal information wherever possible (where the sharing of specific personal information is not necessary). This means that any effect on privacy will be lawful.

Ability to retain possession of documents

Chapter 7 of the Bill will enable the Registrar or an OEI inspector to take possession of a document produced by a person and retain it for as long as reasonably necessary.

Clause 269 will enable the Registrar and the Regulator, through inspectors, to require a person to provide information or a document if it is believed on reasonable grounds that the person has information or a document that is relevant to activities carried out under the framework.

The purpose of the provision is to enable the Registrar or Regulator and inspectors to obtain information about offshore infrastructure activities in the Commonwealth offshore area, for the purposes of exercising powers and functions in relation to licence holders.

Once a document is produced, it may be necessary for the Registrar or an OEI inspector to be able to retain the document in order to fully consider the information when exercising relevant powers and functions related to offshore infrastructure activities. The Bill provides for the document to only be held for as long as reasonably necessary. The person otherwise entitled to possession of the document would be provided with a certified true copy, which has the same status as the original in all courts and tribunals. Until that copy is provided, the person will have reasonable access to the original document.

The right to be presumed innocent until proved guilty according to law

Article 14(2) of the *International Covenant on Civil and Political Rights* provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. This article imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proven beyond reasonable doubt. For the charge to be proven beyond reasonable doubt, the legal and evidential burden is on the prosecution.

The Bill creates various offences, some of which are of strict liability. The imposition of strict liability is a departure from the common law principle that a criminal offence must include a *mens rea* (guilty mind) element, which avoids the evidential burden on the prosecution. Strict liability offences engage the presumption of innocence through the imposition of liability without the need to prove fault. A strict liability offence will not unequivocally limit the right to the presumption of innocence if the reason for the offence is to achieve a legitimate aim and is reasonable, necessary, and proportionate to that aim.[1]

Nature of strict liability provisions

Offences of strict liability are provided for in the Bill for the following types of actions:

- actions that are not-authorised by a licence;
- actions that interfere with the activities of a licence holder;
- tampering with notices issued by the Regulator or non-compliance with licence holder notification requirements;
- non-compliance with data management directions;
- non-compliance with other directions issued by the Regulator or the Minister (relating to removal of property, other general or remedial directions, other directions to a licence holder);
- unauthorised entry into a safety zone or failing to comply with requirements in a protection zone.

For these offences, the penalty is imposed by way of penalty units.

Reasonableness, necessity and proportionality

The strict liability offences in this Bill are considered reasonable, necessary, and proportionate to the objective of ensuring the safety of the offshore workforce, the protection of OEI and the integrity of the licensing scheme. This will strengthen the regulatory functions under the Bill in the Commonwealth offshore area. The offences that carry strict liability are intended to compel reasonable compliance with requirements in relation to activities that are regulated under the Bill that would otherwise be intrinsically or potentially unsafe unless high standards of compliance are

[1] See e.g., Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Examination of Legislation in Accordance with the Human Rights (Parliamentary Scrutiny) Act 2011*, *Bills Introduced 18-29 June 2012, Fist Report of 2012* (2012)

met. The removal of the requirement to prove fault in the relevant circumstances aims to provide a strong deterrent. They are consistent with other contemporary robust regulatory regimes such as the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) and do not unreasonably or impermissibly limit the presumption of innocence. The offences are designed to ensure offshore infrastructure activities are carried out in a safe and responsible manner. The offences are also consistent with the guidance set out in *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, September 2011* (which is a freely available policy document, available at https://www.ag.gov.au/legal-system/publications/guide-framing-commonwealth-offences-infringement-notices-and-enforcement-powers). The strict liability offences have available the defence of honest and reasonable mistake.

The right to minimum guarantees in criminal proceedings

Article 14(3) of the *International Covenant on Civil and Political Rights* establishes a number of guarantees that must be observed in criminal proceedings including, as set out in Article 14(3)(g), the right to be free from self-incrimination.

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

Chapter 7 of the Bill will enable the Registrar or OEI Inspector to require a person to provide information or a document if the Registrar or OEI inspector believes on reasonable grounds that the person has information or a document that is relevant to activities carried out under this Bill.

Clause 273 abrogates the privilege against self-incrimination, but also provides an immunity against use of the information or document in civil or criminal proceedings other than for specified offences. The clause ensures that powers are sufficiently broad to establish facts, while protecting individuals from proceedings on the basis of providing the information. This safeguard ensures that the clause is reasonable and proportionate to meeting this objective, and therefore the provision meets Australia's human rights obligations to afford minimum guarantees in criminal proceedings.

This partial immunity from legal consequences has the benefit that it increases the likelihood of obtaining information. This is particularly important where the Registrar or Regulator may have no other avenue to obtain the information. Maintaining a privilege against self-incrimination would significantly hamper the Registrar and Regulator's ability to monitor a licence holder's compliance with applicable requirements.

The 'use' immunity is restricted only to individuals. This ensures continuing protection of the human rights of the individual, and is consistent with other Commonwealth legislation, such as the WHS Act and the TA.

Conclusion

The Bill is compatible with human rights and it promotes the right of everyone to an adequate standard of living. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

OFFSHORE ELECTRICITY INFRASTRUCTURE BILL 2021

NOTES ON CLAUSES

CHAPTER 1—PRELIMINARY

Part 1—Introduction

Division 1—Preliminary

Clause 1 - Short title

1. This is a formal provision specifying the short title of this Bill when it becomes law. It specifies that the Act shall be known as the *Offshore Electricity Infrastructure Act 2021*.

Clause 2 - Commencement

2. The table in this clause is a standard provision which sets out the commencement date for when the provisions of the Bill commence.

3. The Bill will commence on a day fixed by proclamation. If the Bill does not commence within 6 months from the day the *Offshore Electricity Infrastructure Act 2021* receives Royal Assent, the whole of the Bill will commence on the day after the end of that 6 month period.

4. This commencement by proclamation will allow the requisite regulations, statutory appointments and administrative arrangements to be put in place in order to effect the operation of the legislative framework.

5. No provisions in this Bill will apply retrospectively.

Clause 3 - Object of this Act

6. This clause sets out the object of this legislation. The object is to provide an effective regulatory framework for offshore renewable energy infrastructure (OREI) and offshore electricity transmission infrastructure (OETI) (collectively, offshore electricity infrastructure (OEI)).

Clause 4 - Simplified outline of this Act

7. Clause 4 provides a simplified outline of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Clause 5 - External Territories

8. This clause sets out the external territories of the Commonwealth to which the proposed Act would apply. These include:

- Norfolk Island;
- the Coral Sea Islands Territory;
- the Territory of Ashmore and Cartier Islands;
- the Territory of Christmas Island;
- the Territory of Cocos (Keeling) Islands;
- the Territory of Heard Island and McDonald Islands.

9. The Commonwealth offshore area under the Bill includes the territorial sea, and the exclusive economic zone, surrounding each of these external territories.

10. In keeping with the ambit of other related legislation, the Bill would have no application to the Australian Antarctic Territory.

Clause 6 - Crown to be bound

11. The purpose of subclause (1) is to bind the Crown. It clarifies that the Bill applies to the Crown in right of the Commonwealth as well as the States and Territories. The Bill must apply to the Crown in all its capacities to ensure that the regulatory framework operates effectively.

12. Subclause (2) provides an exemption stating that the Bill does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence. It should be noted however the intention is that subclause 6(2) does not apply in relation to the workplace health and safety provisions as a result of the application of the WHS Act by Chapter 6 of the Bill, and section 10 of that Act as applied.

13. Subclause (3) clarifies that the protection against a pecuniary penalty or prosecution for an offence does not apply to an authority of the Crown.

Clause 7 - Provisions to apply to certain offshore electricity transmission infrastructure subject to international obligations

14. This clause deals with how the Bill will apply to OETI for the transmission of electricity to, or from, a place beyond the outer limits of the Commonwealth offshore area. The intention is that the legislation will have effect in relation to OETI according to its terms.

15. Subclause (2) specifies the provisions are subject to Australia's obligations under international law, including obligations under any agreement between Australia and any foreign country or countries.

Part 2—Definitions

Clause 8 - Definitions

16. This clause sets out definitions applying to the key terms used in the Bill.

17. A number of definitions are signpost definitions which refer the reader to where the term is defined in detail later in the Bill. Examples include "approval period", "authorised safety zone official" and "controls". A number of terms are also defined by reference to other legislation, such as "premises" and "civil penalty provision".

18. Other key terms include:

"applied work health and safety provisions" are defined in relation to the provisions of the Work Health and Safety Act (see clause 226), and the regulations made under that Act, as applied by Part 1 of Chapter 6 of this Bill, subject to clause 243 of this Bill.

Australia is defined to include the external Territories to which this Bill extends, see clause 5.

"Australian vessel" is defined to have the same meaning as the term "***Australian ship"*** has in the *Customs Act 1901*.

"CEO" means the Chief Executive Officer of NOPSEMA, the Regulator under the Bill.

"coastal waters" is defined consistently with other Commonwealth legislation so that:

(a) in relation to a State—means that part of the sea that is included in the coastal waters of the State within the meaning of the *Coastal Waters*

(State Powers) Act 1980 and includes the airspace over, and the sea-bed and subsoil beneath, that part of that sea; and

(b) in relation to the Northern Territory—means that part of the sea that is included in the coastal waters of the Territory within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980* and includes the airspace over, and the sea-bed and subsoil beneath, that part of that sea.

"Commonwealth offshore area" is defined consistently with other Commonwealth legislation to mean the territorial sea and exclusive economic zone (and the seabed and subsoil beneath those areas).

However, it does not include the coastal waters of a State or the Northern Territory.

"eligible person" means:

(a) a body corporate that has a registered office (within the meaning of the CA) in Australia; or

(b) a body corporate established for a public purpose by or under a law of the Commonwealth or a State or Territory (such as a statutory corporation).

"exploit", in relation to a renewable energy resource, is defined to include:

(a) generating or obtaining a renewable energy product from the renewable energy resource; and

(b) storing, transmitting or otherwise conveying a renewable energy product generated or obtained from the renewable energy resource.

"fixed or tethered infrastructure" is defined broadly to be any infrastructure, structure or installation that:

(a) rests on the seabed; or

(b) is fixed or connected to the seabed (whether or not the infrastructure, structure or installation is floating); or

(c) is attached or tethered to any other fixed or tethered infrastructure (including other fixed or tethered infrastructure covered by this paragraph);

However, it does not include a vessel that is temporarily moored or anchored to the seabed.

"holder", in relation to a licence, means an eligible person to whom a licence has been granted or transferred so long as it is not cancelled, surrendered or transferred to another.

"infrastructure integrity" is defined to consist of the following:

(a) the ability of licence infrastructure to perform in accordance with its intended purpose; and

(b) the structural soundness, strength and stability of licence infrastructure; and

(c) the mechanical integrity and systems integrity (including the integrity of electrical, hydraulic and other systems) of licence infrastructure.

"licence" is defined to mean a feasibility licence, a commercial licence, a research and demonstration licence or a transmission and infrastructure licence.

"licence area" is defined as the area in respect of which the licence is granted, but does not include a vacated area.

"licence infrastructure" is defined to mean the offshore renewable energy infrastructure or offshore electricity transmission infrastructure that is, or is to be, constructed, installed, commissioned, operated, maintained or decommissioned in accordance with the licence.

"management plan" for a licence is defined to a management plan approved for the licence by the Regulator under the licensing scheme.

"master", is the person having command or charge of the vessel.

"OEI inspection" means an inspection conducted by an OEI inspector in the exercise of the inspector's powers under Part 2 or 3 of the Regulatory Powers Act, as it applies under Division 3 of Part 4 of Chapter 5 of this Bill.

"offshore infrastructure activity" is defined broadly to be the construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure or offshore electricity transmission infrastructure.

"offshore infrastructure project" is defined broadly to consist of the offshore renewable energy infrastructure or offshore electricity transmission infrastructure that is, or is to be, constructed, installed, commissioned, operated, maintained or decommissioned under the licence. It also includes any activities that are, or are to be, carried out under the licence in the licence area by or on behalf of the licence holder and any activities that this Bill requires to be carried out in the licence area by or on behalf of the licence holder.

"offshore premises" is defined to be offshore renewable energy infrastructure in the Commonwealth offshore area and offshore electricity transmission infrastructure in the Commonwealth offshore area. It also includes any vessel, or other premises, in the Commonwealth offshore area that is being used or is to be used, or that has been used, for carrying out an activity in connection with the exercise of a licence holder's rights, or the performance of a licence holder's obligations, under this Bill or the licence.

"own" is defined to include own jointly or own in part.

"Register" means the Register of Offshore Infrastructure Licences kept under clause 162.

"Registrar" means the Offshore Infrastructure Registrar, see clause 153.

"Regulator" is defined to mean NOPSEMA in accordance with clause 175.

"renewable energy product" is defined to mean either:

(a) electricity generated or obtained from one or more renewable energy resources; or

(b) anything that embodies or contains energy that was generated or obtained from one or more renewable energy resources, for the purpose of storing, transmitting or using the energy.

"vacated area" is defined to mean any area that was at any time part of the licence area and is no longer part of the licence area. In relation to a commercial licence that was granted on the basis of a particular feasibility licence, it includes an area that is a vacated area in relation to the feasibility licence and is not part of the licence area of the commercial licence.

"vessel" is defined broadly to be any kind of vessel used in navigation by water, however propelled or moved.

Clause 9 - Datum provisions

19. Subclause (1) refers to the different positioning on the surface of the earth as a point, line or area to be determined by reference to a geodetic datum. Subclause (1) also allows for the application of the Australian Geodetic Datum as defined in Gazette No. 84 of 6 October 1966, and available at legislation.gov.au (AGD66 geodetic data set), subject to any regulation in subclause (2), which may update the Australian Geodetic Datum referenced.

20. Despite subclause 9(1), subclause (2) provides that the method of referencing a spatial position, and which geodetic datum is utilised to determine spatial position, can be provided for by regulations. The AGD66 geodetic data set is a well-known and utilised datum, which is able to be utilised at passage of the Bill. However, geodetic datums are updated frequently as continents shift. This means that, over time, the AGD66 geodetic data set may become less suitable to use to determine spatial positioning as shifting land mass makes the datum less accurate. Instead, a new datum is likely to be more appropriate for use in future. Updating the spatial positioning determination process through regulations allows for more complex, fit for purpose

mapping processes (e.g. depth) to be used in the administration of the framework as the relevant technology advances.

21. Subclause (3) clarifies that the regulations cannot change the location of a point, line or area on the surface of the Earth. They are concerned with the *process* of determining the position of the line, point or area. This does not prevent a particular point being identified by a coordinate determined by reference to a particular datum. The use of a different datum will result in the same point being identified by a different coordinate.

22. Subclause (4) clarifies that regulations made under subclause (2) may apply, adopt or incorporate matters that are contained in an instrument, or other written materials at a particular time or as in force from time to time. This is to ensure that the regulations can utilise a range of written materials in order to provide how a spatial position is to be determined. It is appropriate that regulations made under subclause (2) could apply, adopt or incorporate such written materials, so as to ensure that spatial positions are specified as accurately as possible for the purposes of administering the framework.

Clause 10 - Meaning of offshore renewable energy infrastructure

23. This clause sets out the meaning of OREI. It refers to fixed or tethered infrastructure that has the primary purpose of engaging in exploring, assessing the feasibility of exploiting, or exploiting a renewable energy resource, or otherwise storing, transmitting or conveying a renewable energy product. Renewable energy resource is defined in clause 13.

24. Subclause (2) clarifies that OREI also includes infrastructure that meets the above definition and:

- is being constructed, installed or decommissioned; or
- has temporarily or accidentally ceased to be fixed or tethered.

25. Subclause (3) sets out exclusions to the definition of OREI. The following are not OREI for the purposes of the Bill:

- an infrastructure facility within the meaning of the OPGGS Act;

- a facility within the meaning of Schedule 3 to the OPGGS Act;
- fixed or tethered infrastructure for the purpose of exploring for minerals (within the meaning of the *Offshore Minerals Act 1994*) or recovery of minerals (within the meaning of that Act);
- a cable:
  - that is laid on or beneath the seabed that lies beneath the Commonwealth offshore area; and
  - that is not connected to any place in Australia; and
  - that is not connected to anything else in, or inside the inner limits of, the Commonwealth offshore area.

Clause 11 - Meaning of offshore electricity transmission infrastructure

26. This clause provides a definition of OETI. Infrastructure that is either fixed or tethered, but will have the primary purpose of storing, transmitting or otherwise conveying electricity, is OETI for the purposes of the Bill.

27. Subclause (1) clarifies that this definition will apply whether or not the electricity is generated from a renewable energy resource.

28. Subclause (2) clarifies that OETI also includes infrastructure that meets the above definition and:

- is being constructed, installed or decommissioned; or
- has temporarily or accidentally ceased to be fixed or tethered.

29. Subclause (3) sets out exclusions to the definition of OETI. The following are not OETI for the purposes of the Bill:

- an infrastructure facility within the meaning of the OPGGS Act;
- a facility within the meaning of Schedule 3 of the OPGGS Act;
- fixed or tethered infrastructure for the purpose of exploring for minerals (within the meaning of the *Offshore Minerals Act 1994*) or recovery of minerals (within the meaning of that Act); or
- a cable:

- that is laid on or beneath the seabed that lies beneath the Commonwealth offshore area; and
- that is not connected to any place in Australia; and
- that is not connected to anything else in, or inside the inner limits of, the Commonwealth offshore area.

Clause 12 - Offshore renewable energy infrastructure and offshore electricity transmission infrastructure

30. This provision is inserted to clarify that a single piece of infrastructure may be both OREI and OETI.

Clause 13 - Meaning of renewable energy resource

31. This clause outlines what is meant by a *renewable energy resource* under the Bill. It specifies that this phrase encapsulates any of the following from which energy may be obtained.

- wind and air flow;
- wind-generated waves;
- tides;
- ocean currents;
- light or heat from the sun;
- rain;
- geothermal heat;
- a resource, event or circumstance prescribed by the regulations for the purposes of this paragraph.

32. Subclause (2) provides that the regulations may provide that a resource, event or circumstance referred to in subclause (1) has the meaning prescribed by the regulations. Subclause (3) provides that the regulations may provide for and in relation to limiting the meaning of a resource, event or circumstance referred to in subclause (1).

33. The regulation making powers in subclauses (2) and (3) are essential, and will allow the framework established by this Bill to adapt to changing renewable energy technologies. Building in adaptability will ensure the framework remains fit for purpose as the offshore industry develops. The regulation making powers will also allow for clarification of types of renewable resources that are suitable under this regime. For example, future regulations may clarify that certain activities such as aquaculture are not considered renewable energy resources.

CHAPTER 2—REGULATION OF OFFSHORE INFRASTRUCTURE ACTIVITIES

Part 1—Prohibition of unauthorised offshore infrastructure activities

Clause 14 - Simplified outline of this Part

34. Clause 14 provides a simplified outline of Part 1 of Chapter 1 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Clause 15 - Prohibition of unauthorised offshore infrastructure activities in the Commonwealth offshore area

35. Subclause (1) is the touchstone provision underpinning the regulation of offshore infrastructure activities under the Bill. It provides the circumstances where an activity in the Commonwealth offshore area is unauthorised. It provides that a person contravenes the subclause if they construct, install, commission, operate, maintain or decommission fixed or tethered OREI in the Commonwealth offshore area.

36. Subclause (2) provides that the prohibition in subclause (1) does not apply if the conduct is authorised by a licence or is otherwise authorised or required by this Bill.

37. An example of conduct that is otherwise authorised is that the Bill will not prevent the carrying out of activities in the Commonwealth offshore area that are necessary for complying with the requirements of the EPBC Act (for example, conducting biological surveys to determine environmental impact levels of a proposed project). However, activities directly related to the development of OEI technology or resource exploitation (for example, exploration activities to measure offshore wind resources) must occur under the licensing scheme. As well, the Bill will not limit existing use of the marine environment that may be occurring under separate legislation – for example, fishing activities authorised under the *Fisheries Management Act 1991* or the maintenance of submarine cables regulated under the TA.

38. There is a note which provides that the defendant bears an evidential burden in relation to the exception created by subclause (2). This is in accordance with subsection 13.3(3) of the *Criminal Code Act 1995*. The fact that the defendant bears an evidential burden in relation to subclause (2) means that the person or company has the burden of adducing or pointing to evidence that suggests a reasonable possibility that the defendant is authorised to construct, install, commission, operate, maintain or decommission fixed or tethered OREI in the Commonwealth offshore area.

39. The reason for placing this burden of proof on the defendant is because it is peculiarly within the knowledge of the defendant, ie. the defendant is in a position to confirm whether or not a licence or other authorisation has been obtained prior to the relevant regulated activity.

40. Subclause (3) provides that a person commits an offence if they contravene subclause (1). The penalty for this offence is imprisonment for 5 years.

41. The offence provision in this clause does not specify a fault element. Under section 5.6 of the Criminal Code, if an offence provision does not specify a fault element and if the physical element of the offence consists only of conduct, the fault element is intention. In other words, for a person to be found guilty of contravening this clause, the prosecution would have to prove intent to contravene.

42. Subclause (4) provides that a person is liable for a civil penalty if the person contravenes subclause (1).

Part 2—Declaring areas for offshore renewable energy infrastructure

Division 1—Introduction

Clause 16 - Simplified outline of this Part

43. Clause 16 provides a simplified outline of Part 2 of Chapter 1 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Division 2—Declared areas

Clause 17 - Declared areas

44. This provision addresses the creation of *declared areas*. For the purposes of this Bill, the Minister may declare a specified area in the Commonwealth offshore area. This is the mechanism by which areas in the Commonwealth offshore area are determined to be suitable for licensing under the Bill.

45. Subclause (1) empowers the Minister to declare an area. The declaration is to be by legislative instrument. Subclause (2) provides that this area is known as a declared area under the Bill.

46. Subclause (3) requires the Minister to follow a specific process before declaring an area. It provides that the Minister may only declare an area if:

- a notice proposing to declare the area, required under clause 18, has been published; and
- the day which public submissions in relation to the proposed declared area may be made by, as specified in paragraph 18(d), has passed; and
- the Minister has consulted with the following persons:
  - the Defence Minister; and
  - the Minister administering section 1 of the *Navigation Act 2012*; and
- the Minister is satisfied that the area is suitable for OREI.

47. The Minister is not limited to consulting only the persons listed in subclause (3) and may decide to consult other relevant people in considering whether an area is suitable for OREI. For example, the Minister may decide to consult the Minister administering the EBPC Act.

48. In deciding if an area is suitable, the Minister must have regard to the factors in subclauses 19(1) and (2).

49. Subclause (4) provides that a declared area:

- does not need to be continuous; and
- may be all, or part, of the area that is specified, in accordance with paragraph 18(a), in the notice published under clause 18.

50. The declaration notice must set out the parameters of the declared area and any conditions attached to the declaration.

51. Subclause (6) clarifies that subsection 33(3) of the *Acts Interpretation Act 1901* (AIA) (which provides that a power to make an instrument includes the power to vary or revoke the instrument) does not apply in relation to a declaration. Revocation and variation powers with respect to a declaration are addressed in further provisions in the Bill (see clauses 22 - 26).

Clause 18 - Notice of proposal to declare an area

52. Clause 18 sets out requirements which apply in circumstances where the Minister proposes to declare an area. The Minister must publish the notice on the Department's website.

53. The notice must address the following:

- the proposed declaration area; and
- an invitation for submissions from the public on the proposed declaration area; and
- details on how submissions may be made; and
- the day by which submissions may be made (this must be at least 60 days after the day of publication of the notice).

54. The notice may include any other information that the Minister considers appropriate.

Clause 19 - Making a decision

55. Clause 19 addresses the decision making process and the matters which the Minister will have regard to in the course of assessing whether an area is suitable for OREI and making a declaration.

56. In deciding whether an area is suitable for OREI, the Minister must consider:

- the potential impacts of the construction, installation, commissioning, operation, maintenance or decommissioning of OREI in the area on other marine users and interests;
- any submissions received in accordance with the notice issued under clause 18;
- any advice received as a result of the consultation mentioned in paragraph 17(3)(c);
- Australia's international obligations in relation to the area.

57. In making this decision, the Minister may also have regard to other matters that the Minister considers relevant. As an example, these may be environmental matters.

58. Subclause (3) sets out the process to follow where the Minister is not satisfied the declared area is suitable for all kinds of OREI. It provides that the Minister may either decide not to make a declaration. Alternatively, the Minister may declare a part of the area as suitable for OREI, or declare the area subject to such conditions as the Minister considers will make the area, or part of the area, suitable for OREI.

Clause 20 - Conditions that apply to a declaration

59. This clause sets out the conditions that the Minister may attach to a declaration under subclause 17(1). It allows the Minister to control the kinds of offshore infrastructure activities permitted in a declared area and what if any licences can be granted in it under the Bill.

60. Subclause (2) provides that the declaration may specify that certain licence types may not be granted with respect to the declared area. This applies to feasibility licences, commercial licences, or research and demonstration licences (see Part 1 of Chapter 3).

61. Subclause (2) does not extend to transmission and infrastructure licences due to the different nature of this type of licence. A declaration will not be required prior to an application for a transmission and infrastructure licence due to the length of areas that may be covered by OETI and the lower impact these projects would have on other marine users. In lieu of the declaration, due diligence through assessment against merit criteria listed in clause 62 will be undertaken as part of a licence application assessment. Conditions placed on the transmission and infrastructure licences are intended to provide any necessary restrictions on the operation of associated OETI.

62. Subclause (3) provides that the declaration may provide that a licence, or a specified kind of licence, which is granted in respect of the declared area, may not authorise specified kinds of offshore infrastructure activities.

63. Subclause (4) provides that the declaration may provide that a licence, or a specified kind of licence, granted in respect of the area must be subject to conditions specified in the declaration, for

example a condition that a management plan for a licence must address matters specified in the declaration.

64. Subclause (5) makes it clear that subclauses (3) and (4) do not apply to transmission and infrastructure licences. This is for the same reasons as specified above in relation to subclause (2).

65. Subclause (6) allows the Minister to include in the declaration circumstances in which they may revoke the declaration under clause 26.

Clause 21 - Period for which a declaration remains in force

66. The purpose of this clause is to set out the period for which a declaration remains in force. Unless it contains a cessation date specified pursuant to subclause (2), the declaration is to remain in force until it is revoked in accordance with clause 26.

67. If a cessation date is not specified, then as a disallowable legislative instrument a declaration will ordinarily sunset on the first 1 April or 1 October falling on or after the tenth anniversary of the registration of the declaration (see subsection 50(1) of the *Legislation Act 2003*).

68. A declaration can be extended, under clause 22, prior to the day the declaration ceases to have effect (being either the sunsetting date for the declaration or the day specified in accordance with subclause 22(2)).

69. Subclause (3) addresses the effect of cessation or revocation of an existing licence. It provides that the cessation or revocation of a declaration does not cause a licence which is currently in force in respect of the declared area to cease to be in force.

70. There is a note to subclause (3) which explains that the end day of a licence (other than a transmission and infrastructure licence) may not be extended in respect of any area that is not a declared area at the time the extension is made. It directs the reader to clause 37 (extending the term of a feasibility licence), clause 47 (extending the term of a commercial licence) and clause 56 (extending the term of a research and demonstration licence).

71. A second explanatory note states that the granting of a commercial licence in relation to a feasibility licence also requires a declaration to be in force (see paragraph 42(1)(c)).

72. Subclause (4) is an avoidance of doubt provision. It states that nothing in clause 21, or clause 22, affects the operation of Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003*. The purpose is to ensure that there is no confusion in the operation of the sunsetting arrangements.

Division 3—Varying a declaration

Clause 22 - Variation to extend period or increase declared area

73. Subclause (1) provides that the Minister may vary a declaration to extend the period for which the declaration is to be in force or to increase the area by adding an area or areas. The variation is to be made by legislative instrument.

74. Subclause (2) provides that the Minister may only make a declaration under subclause (1) if a notice setting out the proposal to vary the declaration has been published in accordance with clause 24 and the day specified in the notice for submissions has passed. In addition, the Minister must be satisfied that the area in question is suitable for OREI. The Minister must also consult with the following persons:

- the Defence Minister; and
- the Minister administering section 1 of the *Navigation Act 2012*.

75. As with subclause 17(3), the Minister is not limited to consulting only the persons listed in subclause (2), and may decide to consult other people, including other Ministers.

76. Subclause (3) sets out the considerations which the Minister must have regard to in satisfying themselves that the area is suitable for OREI for the purposes of considering whether or not to make the variation. These include: any submissions received in accordance with the notice issued under clause 24, any advice received as a result of the consultation with the Defence Minister and the Minister administering section 1 of the *Navigation Act 2012*, and the potential impacts of the construction, installation, commissioning, operation, maintenance or de-commissioning of OREI in the area on other marine users and interests.

77. Subclause (4) provides that in deciding whether to make a variation the Minister may also have regard to any other matters that the Minister considers relevant.

Clause 23 - Variation of conditions, or to reduce declared area

78. This clause sets out the requirements for varying a declaration where the area is to be reduced or conditions applying to the declared area are varied. The Minister may vary the declaration by legislative instrument.

79. Subclause (1) sets out that the variation to the declaration can be made to: remove part of the declared area, to make the declaration subject to the conditions in clause 20, or to vary or omit a condition that the declaration is subject to under clause 20. Varying a declaration in this way is subject to any of the conditions set out by the Minister.

80. Subclause (2) provides that the Minister may only make a variation under subclause (1) if certain requirements are satisfied as follows:

- the notice proposing the changes must be published according to clause 24 of this Bill;
- the day for submissions must be specified in the notice has passed;
- the Minister has consulted with:
  - the Defence Minister; and
  - the Minister administering section 1 of the *Navigation Act 2012*; and
- the Minister is satisfied that the declaration area would be suitable for OREI if the variation were made.

81. As with subclause 17(3), the Minister is not limited to consulting only the persons listed in subclause (2), and may decide to consult other people, including other Ministers.

82. Subclause (3) sets out the decision making criteria that the Minister should have regard to in order to satisfy themselves that the area is suitable for OREI (paragraph 23(2)(d)). This includes the following:

- the potential impacts of the construction, installation, commissioning, operation, maintenance or decommissioning of OREI in the area on other marine users and interests;
- any submissions received in accordance with the notice under clause 24;
- any advice received as a result of the consultation mentioned in paragraph (2)(c) of this clause; and
- Australia's international obligations in relation to the area.

83. Subclause (4) allows the Minister to have regard to other matters in relation to varying a declaration if considered relevant. These may include information provided to the Minister by the Regulator, Register or Departmental Secretary, or if the Minister becomes aware of circumstances that justify a variation in another manner.

84. Subclause (5) provides that a variation of a declaration under this clause does not apply to a licence in force, at the time the variation is made, in respect of an area that is, or was, the declared area or a part of the declared area (a pre-existing licence).

85. Subclause (6) sets out some qualifications regarding the effect of the variation. It provides that the:

- the variation applies to an extension of the end day of a pre-existing licence in the same way as it applies to the granting of a licence; and
- the variation applies in relation to the granting, after the variation is made, of a commercial licence in respect of a feasibility licence that is a pre-existing licence; and
- subclause (5) does not prevent the Minister from varying a pre-existing licence under a provision of Chapter 3 of this Bill to impose, vary or revoke a condition of the licence in a way that is consistent with the variation of the declaration.

86. The note to paragraph (6)(c) refers readers to other licence term extension mechanisms in Chapter 3 of the Bill: ie, clause 37 (extending the term of a feasibility licence), clause 47 (extending the term of a commercial licence) and clause 56 (extending the term of a research and demonstration licence).

87. There is a second explanatory note to direct the reader to other variation mechanisms in clauses 38 (varying a feasibility licence), 48 (varying a commercial licence) and 57 (varying a research and demonstration licence).

Clause 24 - Consultation on proposed variation

88. This clause sets out the consultation process involved in the case where a declaration is to be varied.

89. Under subclause 24(1), the Minister must publish a notice on the Department's website. The notice must:

- identify the declaration proposed to be varied;
- specify the proposed variation;
- invite submissions from the public on the proposal;
- specify how submissions may be made;
- specify the day the submission may be made by (at least 30 days after the day the notice is published); and
- include other information the Minister considers appropriate.

90. Subclause (2) requires the Minister to give a copy of the notice to the holder of any licence (other than a transmission and infrastructure licence) that has a licence area that covers any part of the declared area.

Clause 25 - Varying a declaration to make minor and technical corrections

91. Clause 25 provides that the Minister may vary a declaration to make a minor change to that declaration. This includes the correction of a minor or technical error. The variation must be effected by legislative instrument.

Division 4—Revoking a declaration

Clause 26 - Revoking a declaration

92. This clause enables the Minister to revoke a declaration by legislative instrument.

93. The circumstances which allow for the Minister to revoke a declaration are set out in subclause (2). These are:

- a notice proposing to revoke the declaration has been published in accordance with clause 27 of this Bill;
- the day which the notice specifies as they day which submissions may be made by has passed; and
- in addition, one or more of the following must apply:
  - the Minister is aware of circumstances justifying the revocation;
  - the Minister is satisfied the declared area is no longer suitable for OREI, and could not be made suitable by a variation under clause 23;

- the Minister is satisfied that circumstances specified in the declaration under subclause 20(6) apply.

94. Subclause (3) provides for matters that the Minister must have regard to in deciding whether to revoke a declaration under subclause (1). These are as follows:

- any submissions received in accordance with the notice; and
- Australia's international obligations regarding the declared area.

95. The Minister may also have regard to any other matters that the Minister considers relevant.

Clause 27 - Revoking a declaration—consultation

96. This clause provides for the consultation process which is required when making a decision to revoke a declaration.

97. Under subclause 27(1), the Minister must, in accordance with paragraph 26(2)(a), publish a notice on the Department's website. The notice must:

- identify the declaration that is proposed to be revoked; and
- invite submissions from the public on the proposal; and
- specify how submissions may be made; and
- specify the day by which the submission may be made (this must be at least 30 days from publication of the notice); and
- include any other information that the Minister considers appropriate.

98. Subclause (2) specifies that the Minister must give a copy of the notice to the holder of any licence (other than a transmission and infrastructure licence) that has a licence area in the declared area.

CHAPTER 3—LICENSING

Part 1—Licences

Division 1—Introduction

99. This Part provides for a licensing scheme with three streams: commercial (including feasibility); transmission; and research and demonstration. This is intended to accommodate the types of projects that are anticipated to require approval under the legislation. The

scheme contains provisions for the application, grant, extension and variation, and condition-making powers for licences.

100. The Bill provides that further aspects of the licensing scheme will be set out in regulations. Important matters such as licence types, transfers, cancellations and other requirements and rights are set out in the Bill. Regulations are considered necessary as an appropriate and flexible way of setting out the detailed provisions of the scheme, allowing for the scheme to accommodate the development of a new industry, for example, to accommodate procedures for the administration of licences.

101. As the licensing scheme will be set out in a disallowable legislative instrument (regulations), the Senate will have an opportunity to scrutinise its details, and licensing decisions are to be reviewable on their merits in accordance with clause 297.

Clause 28 - Simplified outline of this Part

102. Clause 28 provides a simplified outline of Part 1 of Chapter 3 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Clause 29 - Licensing scheme

103. The purpose of this clause is to set up the framework for the licensing scheme which applies in relation to offshore electricity infrastructure licences.

104. Subclause (1) specifies that there is to be a licensing scheme which is to be prescribed by the regulations. This is to set out details in relation to:

- applications for licences;
- the offering and granting of licences;
- transfers of licences;
- changes in control of licence holders;
- management plans; and
- any other matters that the Bill provides for the licensing scheme to cover.

105. Subclause (2) provides that the licensing scheme may also include any other provision that may, under this Bill, be included in the regulations.

106. There are two explanatory notes relating to subclause (2). The first note provides an example of other provisions that may be included in the licensing scheme: it may include provisions about fees and levies of the kind mentioned in Part 3 of Chapter 5. The second note provides a further example, which is that under subsections 189(5) and 190(8) the regulations may provide that an application under this Bill is taken to have been made only if a fee or levy has been paid.

Division 2—Feasibility licences

107. In order to obtain a commercial licence, a feasibility licence must first be granted. A feasibility licence allows for scoping and exploratory activities to be undertaken within the prescribed area. A feasibility licence is granted for a period of no more than 7 years. However, the licensing scheme may allow for the term to be extended in certain circumstances.

108. Once the Minister declares an area as suitable for development, the Minister will issue a notification inviting eligible persons to apply for feasibility licences in respect of all or part of the declared area. It is intended for this to be a competitive process where applications will be assessed against suitability and merit criteria. This is because a feasibility licence cannot overlap another feasibility licence or commercial licence. The detail of the application process will be prescribed in the licensing scheme. The licensing scheme may allow for a financial offer to be considered in circumstances where applications for the same licence area are similarly meritorious.

109. The feasibility licence holder will need an approved management plan and to provide financial security before any OEI can be installed. Numerous feasibility licences can be granted within a declared area provided the licence areas do not overlap and each application meets the legislative criteria.

110. Once preparatory works have been completed under a feasibility licence, the licence holder can apply for a commercial licence to move the project forward to construction. Application for a commercial licence will not be a competitive process as only the holder of the feasibility licence can apply.

111. The applicant will need to have an approved management plan, provide financial security and meet the merit criteria before the Minister will grant a commercial licence. A commercial licence will have a term of no more than 40 years subject to the licence holder continuing to meet the requirements of this Bill, and can be extended. All OEI must be decommissioned and removed at the end of the licence term.

112. It is understood that in the course of assessing the feasibility of a commercial project, it may be necessary to make modifications to the proposed commercial project to ensure its viability. For a commercial licence to be granted, the project needs to be substantially similar to the project proposed under the feasibility licence, or if it is different the Minister will consider whether the proposed changes are appropriate and justified. Examples of substantial changes would include, changing the type of generation from fixed monopole wind to floating solar. If the Minister decides not to grant a commercial licence, the feasibility licence will remain in place until it reaches its end date, is surrendered by the licence holder, or is cancelled by the Minister (if there are grounds for cancellation). If the area is no longer covered by a feasibility licence, the Minister can issue a notification inviting eligible persons to apply for feasibility licences in respect of the area.

Clause 30 - Purpose of a feasibility licence

113. This clause sets out the purpose of a feasibility licence. Paragraph (a) specifies that a feasibility licence is to provide for the licence holder to assess the feasibility of an OEI project under a commercial licence (termed the proposed commercial offshore infrastructure project) and, if they choose to do so, subsequently apply for a commercial licence.

114. The intention is that feasibility studies would inform the design of a proposed OEI project and provide an overall assessment of whether a proposed OEI project would be feasible. If the feasibility studies indicate that a proposed OEI project is considered likely to be viable from a commercial point of view, then the licence holder can apply for a commercial licence.

Clause 31 - Activities authorised by a feasibility licence

115. Subclause (1) provides that a feasibility licence authorises the licence holder to construct, install, commission, operate, maintain and decommission OREI in the licence area, so long as:

- there is a management plan for the licence; and
- the construction, installation, commissioning, operation, maintenance or decommissioning is carried out in accordance with the management plan and the conditions of the licence; and
- the licence holder is in compliance with clause 117 and clause 118 (financial security).

116. Providing for installation of infrastructure is intended to allow for constructing and operating testing equipment such as a wind monitoring station, but not a wind farm. This should allow for exploration, but not exploitation, of a wind resource.

117. Subclause (2) provides that the rights conferred on the licence holder by this clause are subject to this Bill.

Clause 32 - Applications for feasibility licences

118. This sets out the process for the licensing scheme, which applies in relation to the issuing of a feasibility licence.

119. Subclause (1) outlines that the licensing scheme must prescribe procedures for:

- eligible persons to be invited to apply for feasibility licences; and
- eligible persons to apply for feasibility licences; and
- applications for feasibility licences to be considered; and
- the Minister to offer to grant feasibility licences.

120. It is important to note that only *eligible persons* may apply for a feasibility licence. The definition of 'eligible persons' is provided for in the clause 8.

121. Subclause (2) makes clear that an application for a feasibility licence is required and that an application for a feasibility licence should provide an outline of the proposed commercial project under consideration.

122. Subclause (3) sets out circumstances when *financial offers* may be required. The Minister may invite eligible persons to submit financial offers in relation to their applications for feasibility licences. This is an additional requirement which may or may not be required depending on the Minister's discretion. There may be a number of

interested parties wanting to develop in the same location, however only one feasibility licence can be issued for an area. A mechanism to allow the Minister to distinguish between similarly meritorious applications has been included, by way of financial offer. That is, where there are several feasibility licence applications submitted in relation to the same area with similar merits or for similar projects, financial offers will be available to allow the Minister to decide which application should be prioritised.

123. The specifics of a financial offer process are to be provided for in the licensing scheme, which will be set out in regulations.

124. The intention is that this is to be an additional tool for the Minister to make a decision in cases where there are multiple applications that are similarly meritorious against the merit criteria.

125. The Minister may decide whether to grant a licence based on the financial offer submitted. The licence would only be granted once the financial offer is paid to the Commonwealth.

Clause 33 - Grant of a feasibility licence

126. This clause outlines the provisions which apply to the granting of a feasibility licence.

127. Subclause (1) specifies that the Minister may grant a feasibility licence in respect of an area (the *licence area*) to an eligible person. This must be done by written notice.

128. There are certain criteria and necessary steps for the grant of the licence. These are that:

- an application must be made by an eligible person;
- the area is a declared area or part of a declared area under a declaration at the time that the licence is granted;
- the Minister needs to be satisfied that the grant is consistent with any conditions applying to the declaration;
- the area meets the requirements in subclause (4);
- the Minister is satisfied that the licence meets the merit criteria; and
- any other requirements prescribed by the licensing scheme are met.

129. Subclause (2) provides a description of the licence area. It clarifies that the licence area of a feasibility licence is the area in respect of which the licence is granted (other than any part of that area that becomes a vacated area). *Vacated area* is defined in clause 8.

130. Subclause (3) addresses the notice of the grant for a feasibility licence. It requires the notice to specify the following information:

- the licence area;
- the day on which the licence comes into force;
- state the end day of the licence;
- the day on which the licence ends;
- the conditions to apply; and
- any other matters prescribed by the licensing scheme.

131. The notice must be given in accordance with the licensing scheme.

132. Subclause (4) addresses the nature of the licence area. It must:

- be continuous;
- not include any part of the licence area of any other feasibility licence or commercial licence; and
- not exceed the maximum area prescribed by the licensing scheme; and
- be entirely within the Commonwealth offshore area at the time the licence is granted.

EXAMPLE: Granting a Feasibility licence

The Minister declares an area as suitable for offshore electricity infrastructure. Eligible persons are invited to apply for a feasibility licence. Company A and Company B both apply for a feasibility licence to assess the feasibility of constructing a 2GW floating windfarm to connect to the National Electricity Market. Company A and B propose the same licence area. Company A has secured financial funding for its project, while Company B is still in negotiation with investors. Both Company A and Company B have met the merit criteria to varying degrees. The Minister decides to grant the licence to Company A as the applicant demonstrated secured funding to meet the merit criteria of having the financial capability to carry out the project. Company A is awarded a feasibility licence for a term of 7 years. Company A receives approval under the EPBC Act and submits its management plan to the

Regulator. The Regulator is satisfied that the management plan meets the criteria for acceptance and approves the management plan. The Minister invites applications for feasibility licences for an area adjacent to Company A's licence area. Company B applies and is granted a feasibility licence.

Clause 34 - Merit criteria for a feasibility licence

133. This clause sets out the merit criteria for a feasibility licence. It clarifies the necessary requirements in order to meet the criteria. All requirements must be met as specified below:

- the eligible person is likely to have, or be able to arrange to have, the technical and financial capability to carry out the proposed commercial offshore infrastructure project for the feasibility licence; and
- the proposed commercial offshore infrastructure project is likely to be viable; and
- the eligible person is suitable to hold the licence; and
- any criteria prescribed by the licensing scheme are satisfied.

134. Subclause (2) explains that the licensing scheme may provide for:

- matters that may or must be considered in any decision under this Bill about whether a feasibility licence meets the merit criteria;
- the suitability of an eligible person to hold a feasibility licence to be assessed with regard to the suitability of other persons; and
- procedures for making decisions under this Bill about whether a feasibility licence meets the merit criteria.

Clause 35 - Conditions that apply to a feasibility licence

135. Clause 35 provides that a licence holder must comply with certain conditions that apply to a feasibility licence.

136. Subclause (1) sets out the conditions that apply:

- a condition that the licence holder must comply with any requirement to pay an amount of offshore electricity infrastructure levy;
- any conditions set out in the declaration for the licence area;
- any conditions prescribed by the licensing scheme;

- a condition that the licence holder and anyone carrying out activities on their behalf in the licence area must comply with any management plan for the licence; and
- any other conditions imposed on the licence under this Part of this Bill.

137. In addition, subclause (2) enables the Minister, when granting a feasibility licence, to impose such conditions on the licence as the Minister thinks fit.

138. Subclause (3) clarifies that the Minister may impose conditions on a feasibility licence that relate to the commercial licence that may be granted in relation to the feasibility licence.

139. Subclause (4) provides that the holder of a feasibility licence must comply with the conditions of the licence.

Clause 36 - Term of a feasibility licence

140. Clause 36 sets out the term of a feasibility licence.

141. Subclause (1) confirms that the Minister must determine the end day of the licence before it is granted.

142. Subclause (2) specifies that the 'end day' of a feasibility licence must not be later than the day after the period of 7 years. The 'end day' is where the licence ceases to authorise most offshore infrastructure activities not related to decommissioning of infrastructure, but the licence remains in force until it is cancelled or surrendered. This is to ensure a licence holder is still subject to licence conditions and regulatory powers, but is not incentivised to delay decommissioning as they will lose authorisation for ongoing operations regardless within the end of their period, and will still be subject to the regulatory regime. The licence term begins on the day the licence is granted, or alternatively it may begin on a later day specified in the notice which states these details about the licence.

143. Subclause (3) sets out that the licensing scheme may provide for how the end day is to be determined.

144. Subclause (4) addresses circumstances when transitioning from a feasibility licence to the commercial licence. If a commercial licence is granted in respect of the whole feasibility licence area, the feasibility licence ceases to have effect in the following cases:

- when the commercial licence takes effect; or
- in any other case—the end day of the feasibility licence is on the day the commercial licence comes into force.

145. This applies to the whole of the licence area of the feasibility licence.

146. There is an explanatory note to state that the feasibility licence remains in effect and may be surrendered if the conditions for surrender are satisfied.

147. Subclause (5) makes clear that subclause (4) has effect despite any extension of the feasibility licence under clause 37. Subclause (6) further provides that if there are different end days in respect to different parts of the licence area, then subclause (4) does not affect the end day that is before the day the commercial licence comes into force.

148. There is an explanatory note to state that there may be different end days for different parts of the licence area as a result of extensions to the term of a feasibility licence.

149. Subclause (7) clarifies the effect of the end day. It specifies that on or after the end day, the feasibility licence ceases to authorise most offshore infrastructure activities, not related to decommissioning of infrastructure, but the licence remains in force until it is cancelled or surrendered. This is to ensure a licence holder is still subject to licence conditions and regulatory powers, but is not incentivised to delay decommissioning as they will lose authorisation for constructing and operating equipment. A note is provided to clarify that the licence remains in force until cancelled or surrendered in accordance with this Bill.

Clause 37 - Extending the term of a feasibility licence

150. This clause provides for the extension of the term of a feasibility licence. The licensing scheme may provide for the Minister to extend the end day of a feasibility licence.

151. This may occur on application of the licence holder, or on the Minister's own initiative. The extension may be in respect of only part of the licence area (as long as this does not result in the part that has not reached the end day being non-continuous)..

152. There is an explanatory note in relation to a declaration. It provides that if the declaration that applies to the licence area has been varied, the variation may affect an extension of the end day of the licence (see clause 23).

153. The second explanatory note directs the reader to clause 297 for review of decisions.

154. Subclause (2) specifies that an extension for a feasibility licence can only be allowed for a period of no more than 7 years after the extension is made, and subclause (3) specifies that an extension must not apply to any part of a licence area that is not a declared area at the time the extension is granted. Limiting the term of an extension to a feasibility licence incentivises a licence holder to progress to installation of their OEI and not restrict other proposed OEI projects from emerging in that area, which would require a licence under this framework.

155. Subclause (4) provides that if an extension results in there being different end days for different parts of a licence area, subclause 36(7) applies separately in respect of each such part.

Clause 38 - Varying a feasibility licence

156. This clause outlines the process for varying feasibility licences.

157. Subclause (1) provides that the Minister may vary the licence in order to impose a condition on the licence or amend or revoke a condition on the licence; or remove one or more areas from the licence area. This must be done by providing written notice to the holder of a feasibility licence.

158. Subclause (2) specifies how a variation may be made. This may be done on the application of the holder of the licence in accordance with the licensing scheme.

159. Subclause (3) qualifies the circumstances where the variation may also be made on the Minister's own initiative. It specifies that a variation may only be made on the Minister's own initiative if one of the following apply:

- the variation is made at the same time as:
  - the Minister extends the end day of the licence on application by the licence holder; or

        - the Minister makes a decision to transfer the licence; or
        - the Minister makes another variation on application by the licence holder; or
    - the Minister becomes aware of a change in control and that variation is made in connection with that change in control.

160. Subclause (4) states that an area may be removed from the licence area only if:

    - the licence holder has not carried out any offshore infrastructure activities in the area; and
    - the Minister is satisfied that the licence holder does not intend to carry out any offshore infrastructure activities in the area; and
    - the removal does not result in the remaining licence area being non-continuous.

Division 3—Commercial licences

161. This Division sets out the purpose, process and other procedures in relation to commercial licences.

Clause 39 - Purpose of a commercial licence

162. This clause sets out the purpose of a commercial licence, which is to allow the holder of a commercial licence to carry out an offshore infrastructure project within the licence that exploits renewable energy resources.

Clause 40 - Activities authorised by a commercial licence

163. Subclause (1) specifies that a commercial licence authorises the licence holder to construct, install, commission, operate, maintain and decommission OREI in the licence area, so long as:

    - there is a management plan for the licence; and
    - the construction, installation, commissioning, operation, maintenance or decommissioning is carried out in accordance with the management plan and the conditions of the licence; and
    - the licence holder is in compliance with clause 117 and clause 118 (financial security).

164. Subclause (2) provides that a commercial licence does not authorise the licence holder to construct, install, commission, operate or maintain OETI that is not also OREI.

165. Subclause (3) provides that the rights conferred on the licence holder by this clause are subject to this Bill.

Clause 41 - Applications for commercial licences

166. This item sets out the details required in making an application for a commercial licence.

167. Subclause (1) specifies that an eligible person holding a feasibility licence may apply for the Minister for the grant of a commercial licence.

168. Subclause (2) states that the licensing scheme may prescribe procedures for a commercial licence application and the requirements for consideration of that application. It also provides that the Minister may offer to grant a commercial licence in response to such an application.

169. Subclause (3) specifies that the licensing scheme must require an application for a commercial licence to set out the offshore infrastructure project to be carried out under the licence.

Clause 42 - Grant of a commercial licence

170. This item outlines the process for the grant of a commercial licence.

171. Subclause (1) outlines that the Minister may, by written notice, grant a commercial licence in respect of an area, to an eligible person. The following initial requirements must be met:

- the eligible person holds a feasibility licence; and
- the eligible person applies for the commercial licence under the licensing scheme, and
- the area is a declared area, or part of a declared area, under a declaration at the time the licence is granted, and
- the area meets the requirements in subclause (4).

172. The Regulator must have approved a management plan for the commercial licence.

173. The Minister must also be satisfied of the following:

- granting the licence would be consistent with any conditions that apply to the declaration of the declared area;
- the licence meets the merit criteria;
- the Minister is satisfied that granting the licence would be consistent with any conditions of the feasibility licence that relate to the granting of a commercial licence;
- the offshore infrastructure project to be carried out under the licence is substantially similar to the proposed commercial offshore infrastructure project described, under subclause 32(2), or is appropriate, having regard to the matters in subsection (5);
- the licence meets the merit criteria; and
- any other requirements prescribed by the licensing scheme are met.

174. An explanatory note the subclause directs the reader to clause 297 for review of decisions.

175. Subclause (2) provides a description of the *licence area*. The licence area of a commercial licence is the area initially granted, minus, any vacated area.

176. An explanatory note to the clause directs the reader to the definition of vacated area in clause 8.

177. Subclause (3) provides that the notice of grant of a commercial licence must:

- specify the licence area;
- state the day on which the licence comes into force;
- state the end day of the licence;
- specify the conditions that are to apply to the licence;
- include any other matters prescribed by the licensing scheme; and
- be given in accordance with the licensing scheme.

178. Subclause (4) provides that the licence area must:

- be continuous;
- not include any part of the licence area of any other commercial licence or feasibility licence;
- not exceed the maximum area prescribed by the licensing scheme;

- be entirely within the Commonwealth offshore area at the time the licence is granted; and
- consist of, or be entirely within, the licence area of the feasibility licence referred to in paragraph (1)(a).

179. Subclause (5) provides that for subparagraph (1)(h)(ii), where a proposed commercial offshore infrastructure project is not substantially similar to the project described in the application for the feasibility licence, the Minister must have regard to the following:

- the nature and scale of the offshore infrastructure project to be carried out under the licence;
- any other activities that could be carried out in the licence area if the licence was not granted;
- any matters prescribed by the licensing scheme; and
- any other matters the Minister considers relevant.

Clause 43 - Minister may require applicant to consult etc.

180. The purpose of clause 43 is to allow the Minister to require an applicant to undertake actions to address any concerns that the Minister may have in relation to the granting of the commercial licence.

181. Subclause (1) provides that the Minister may require an eligible person to carry out consultation if it holds a feasibility licence and has applied for a commercial licence, and the Minister is considering whether or not to grant the licence.

182. Subclause (2) sets out the process by which the Minister can require the applicant for the commercial licence to do certain things. The Minister may require the eligible person to do any of the following:

- conduct specified consultations;
- prepare a revised management plan for the commercial licence and apply to the Regulator to approve the revised management plan;
- anything else in relation to the application that the Minister thinks fit.

183. Subclause (3) specifies that the Minister may cease considerations in relation to the licence grant until the requirement is complied with.

184. Subclauses (4), (5) and (6) address notice arrangements. The notice under subclause (2) is not a legislative instrument. The Minister must provide a copy of the notice to the Registrar who must include the notice in the Register in relation to the feasibility licence and any commercial licence granted as a result of the application.

Clause 44 - Merit criteria for a commercial licence

185. This clause sets out the merit criteria for a commercial licence. Subclause (1) outlines that a commercial licence held or applied for by an eligible person must meet the merit criteria.

186. They do so if the following requirements are met:

- the eligible person has the technical and financial capability to carry out the offshore renewable energy project that is to be carried out under the licence; and
- the offshore infrastructure project is viable; and
- the licence holder is suitable to hold the licence; and
- any criteria prescribed by the licensing scheme are satisfied.

187. Subclause (2) specifies that the licensing scheme may provide for further matters for consideration, licence holder suitability, making merit decisions for commercial licences, and how merit criteria will be applied to ongoing projects.

Clause 45 - Conditions that apply to a commercial licence

188. Subclause (1) provides that the licence holder must comply with the following conditions of this Bill:

- a condition that the licence holder must comply with any requirement to pay an amount of offshore electricity infrastructure levy;
- if the declaration that applies to the licence area requires the licence to be subject to conditions—those conditions;
- any conditions prescribed by the licensing scheme;
- a condition that the following people must comply with the management plan for the licence:
  - the licence holder;
  - any other person carrying out activities under the Bill or the licence on behalf of the licence holder;
- any conditions imposed on the licence under:
  - subclause (2); or

- subclause 48(1).

189. Subclause (2) allows the Minister, when granting a commercial licence, to impose such conditions on the licence as the Minister thinks fit.

190. Subclause (3) requires the holder of a commercial licence to comply with the conditions of the licence.

Clause 46 - Term of a commercial licence

191. This provision sets out the term of a commercial licence.

192. Subclause (1) requires the Minister to determine the end day of the licence before granting it.

193. According to subclause (2) the *end day* of the term is a day no later than 40 years after:

- the day on which the licence was granted; or
- if a later day was specified—that late day.

194. Subclause (3) provides for the licensing scheme to specify how the end day for commercial licences is determined.

195. The effect of the end day is set out in subclause (4). On or after the end day of a commercial licence, the licence will no longer authorise the construction, installation, operation or maintenance of OREI, except to the extent necessary for decommissioning.

196. The note to this subclause clarifies that the licence remains in force until cancelled or surrendered under this Bill.

Clause 47 - Extending the term of a commercial licence

197. This clause sets out the arrangements for extending the term of a commercial licence. The scheme may provide for the following:

- the holder of a commercial licence to apply to the Minister to extend the end day of the licence;
- procedures for the Minister to decide whether or not to grant an extension;
- an extension to be granted for the whole or part of a licence area (provided this does not cause the licence area that has not reached the end day to be non-continuous);

- more than one such extension to be granted in respect of a particular licence.

198. An explanatory note to the subclause explains that if the declaration that applies to the licence area has been varied, the variation may affect an extension of the end day of the licence (see clause 23). There is a second explanatory note referring the reader to clause 297 for review of decisions.

199. Subclause (2) provides that an application for extension made under the licensing scheme may only be made at least 5 years before the end day of the licence.

200. Subclause (3) sets out that an extension must not result in the end day of a commercial licence being beyond the end of 40 years after the extension is made.

201. Subclause (4) sets out that an extension must not apply to any part of a licence area that is not a declared area at the time the extension is granted.

202. Subclause (5) explains that if an extension results in there being different end days for different parts of a licence area, the restrictions on use of the area in subclause 46(4) apply separately in respect of each part.

Clause 48 - Varying a commercial licence

203. This clause sets out the process to be applied in the varying of conditions of a commercial licence.

204. Subclause (1) enables the Minister to vary a commercial licence to impose a condition on the licence; or amend or revoke a condition imposed on the licence; or remove one or more areas from the licence area. A variation to licence conditions may be required to ensure that the activities carried out under the licence remain appropriate with respect to the project and interactions with other marine users are appropriate. For example, a licence condition may include consultation requirements. The proposed variation is to be provided to the licence holder by written notice.

205. Subclause (2) specifies that a variation under subclause (1) may be made on the application of the holder of the licence, in accordance with the licensing scheme. Subclause (1) allows for the Minister to

consider the variation application and decide to impose new licence conditions; revoke or vary existing conditions; or remove an area as appropriate.

206. Subclause (3) provides that a variation under subclause (1) may also be made on the Minister's initiative. However that may only occur if:

- the variation is made at the same time as the Minister:
  - extends the end day of the licence as a result of an application by the licence holder; or
  - makes a decision to transfer the licence; or
  - makes another variation on the application of the licence holder; or
- the Minister becomes aware that there has been a change in control of the licence holder, and the variation is made in connection with that change in control.

207. Subclause (4) specifies that an area may be removed only if:

- the licence holder has not carried out any offshore infrastructure activities in the area; and
- the Minister is satisfied the licence holder does not intend to carry out any offshore infrastructure activities in the area; and
- the removal does not result in the remaining licence area being non-continuous.

EXAMPLE: Transitioning to a commercial licence

Company A undertakes feasibility work in its licence area over a period of five years and is ready to apply for a commercial licence. It has concluded the project would only be financially and technically viable with changes to its initial project concept. It proposes using larger turbines to generate electricity more efficiently given recent technological advancements. The project would be undertaken in a smaller project area as less turbines are required. Company A notifies the Regulator of its design change and develops its management plan accordingly. The management plan is approved by the Regulator. Company A submits its commercial licence application, under the licensing scheme to the Registrar and pays all fees associated with its application. The Minister determines that the proposed changes to the project are appropriate and grants Company A a commercial licence. Construction can now commence. The licence area is smaller than

what was granted under a feasibility licence. Company A decides to surrender its feasibility licence covering the area that is not covered by the commercial licence, allowing for the Minister to invite new applications for feasibility licences in the vacated area.

Division 4—Research and demonstration licences

208. Research and demonstration licences are intended for smaller-scale pilot projects to undertake research, or to test and demonstrate emerging technologies that are not yet commercial (such as wave, tidal or thermal electricity generation).

209. The duration of a research and demonstration licence is no more than 10 years, and these licences cannot directly lead to the grant of commercial licence without first obtaining a feasibility licence. Research and demonstration licences are granted through direct application and are subject to merit criteria.

210. A research and demonstration licence may overlap other licences if the Minister is satisfied the activities can coexist. The term of the licence can be extended. All OEI must be decommissioned and by the end of the licence term, prior to the end day.

Clause 49 - Purpose of a research and demonstration licence

211. This provision outlines the purpose of a research and demonstration licence. A research and demonstration licence enables the licence holder to carry out an offshore infrastructure project for any of the following purposes:

- to conduct research relating to the feasibility or capabilities of a technology, system or process;
- to demonstrate the capabilities of a technology, system or process;
- to conduct research relating to the exploitation of, or exploration for, renewable energy resources.

Clause 50 - Activities authorised by a research and demonstration licence

212. This provision authorises the licence holder to construct, install, commission, operate, maintain and decommission OREI in the licence area. This must be in accordance with the management plan for that licence and the conditions of that licence.

213. Subclause (1) provides that a research and demonstration licence authorises holders to construct, install, commission, operate, maintain and decommission OREI or OETI in the licence area, so long as:

- there is a management plan for the licence; and
- the construction, installation, commissioning, operation, maintenance or decommissioning is carried out in accordance with the management plan and the conditions of the licence; and
- the licence holder is in compliance with clauses 117 and 118 (financial security).

214. Subclause (2) provides that the rights conferred on the licence holder are subject to this Bill

215. Subclause (3) is a clarifying provision to state that electricity stored, transmitted or conveyed under a research and demonstration licence need not be a renewable energy product.

Clause 51 - Applications for research and demonstration licences

216. This item sets out the details required in making an application for a research and demonstration licence.

217. Subclause (1) specifies that the licensing scheme must prescribe procedures for eligible persons to apply for research and demonstration licences and for those applications for research and demonstration licences to be considered. It must also prescribe procedures for the Minister to offer the licences.

218. Subclause (2) states that the licensing scheme must require an application for a research and demonstration licence to set out the offshore infrastructure project to be carried out under the licence.

Clause 52 - Grant of a research and demonstration licence

219. This item sets out the process for the grant of a research and demonstration licence. The grant is to be made by written notice.

220. Subclause (1) provides that the Minister may grant a research and demonstration licence in respect of an area to an eligible person if all of the following elements are met:

- the eligible person applies for the licence under the licensing scheme; and

- the licence area is a declared area, or part of a declared area, under declaration at the time the licence is granted; and
- the Minister is satisfied that granting the licence would be consistent with any conditions that apply to the declaration of the declared area; and
- the area meets the requirements of subclause (4); and
- if the area includes any part of the licence area under another licence—the Minister is satisfied that any activities carried within the proposed licence would not unduly interfere with activities of the holder of the other licence; and
- the Minister is satisfied that the licence meets the merit criteria; and
- any other requirements prescribed by the licensing scheme are met.

221. A note to this subclause directs the reader to clause 297 for review of decisions.

222. Subclause (2) specifies that the licence area of a research and demonstration licence is the area in respect of which the licence is granted (other than any part of that area that becomes a vacated area).

223. A note to this subclause directs the reader to the definition of vacated area in clause 8.

224. Subclause (3) states that the notice of grant of a research and demonstration licence must:

- specify the licence area; and
- state the day on which the licence comes into force; and
- specify the conditions that are to apply to the licence; and
- include any other matters prescribed by the licensing scheme; and
- be given in accordance with the licensing scheme.

225. Subclause (4) specifies that the licence area:

- must be continuous; and
- must be entirely within the Commonwealth offshore area at the time the licence is granted.

Clause 53 - Merit criteria for a research and demonstration licence

226. This provision sets out the merit criteria for a research and demonstration licence.

227. Subclause (1) provides that a research and demonstration licence held or applied for by an eligible person will satisfy the merit criteria if all of the following matters are met:

- the eligible person has the technical and financial capability to carry out the offshore infrastructure project proposed; and
- the offshore infrastructure project is likely to be viable; and
- the eligible person is suitable to hold the licence; and
- any criteria prescribed by the licensing scheme are satisfied.

228. Subclause (2) enables the licensing scheme to set out how the Minister is to decide whether a research and demonstration licence meets the merit criteria. The scheme may provide for:

- matters that may or must be considered in any decision about whether a research and demonstration licence meets the merit criteria; and
- the suitability of an eligible person to hold a research and demonstration licence is to be assessed with regard to the suitability of other persons (including another person that controls the eligible person); and
- procedures for making decisions about whether a research and demonstration licence meets the merit criteria; and
- how subclause (1) is to be applied to an offshore infrastructure project that has begun to be, or is being, carried out.

Clause 54 - Conditions that apply to a research and demonstration licence

229. Subclause (1) provides that a research and demonstration licence is subject to the following conditions:

- the licence holder must comply with any requirement to pay an amount of offshore electricity infrastructure levy;
- if the declaration that applies to the licence area requires conditions to be imposed on the licence—those conditions;
- any conditions prescribed by the licensing scheme;
- a condition that the licence holder or another person carrying out activities under this Bill must comply with the

management plan for the licence, if there is a management plan; and

- any conditions imposed on the licence under subclause (2) or subclause 57(1).

230. Subclause (2) provides that the Minister may impose such conditions on the licence as the Minister thinks fit when granting a research and demonstration licence.

Licence holder must comply with licence conditions

231. Subclause (3) provides that the holder of a research and demonstration licence must comply with the conditions of the licence.

Clause 55 - Term of a research and demonstration licence

232. Subclause (1) stipulates that before grant of a research and demonstration licence the Minister must determine the end day.

233. Subclause (2) provides in establishing this time frame, the end day of a research and demonstration licence must not be later than the day after the period of 10 years beginning the day on when the licence is granted or if a later day is specified as the commencement date—that later day.

234. Subclause (3) provides that the licensing scheme may provide for the way the end day is determined.

235. Subclause (4) sets out the effect of the end day. It specifies that on or after the end day of a research and demonstration licence, the licence will no longer authorise the construction, installation, operation or maintenance of OREI or OETI except to the extent necessary to decommission infrastructure.

236. There is an explanatory note to also clarify that the licence remains in force until cancelled under clause 73 or surrendered under clause 74.

Clause 56 - Extending the term of a research and demonstration licence

237. This item provides for extending the term of a research and demonstration licence.

238. Subclause (1) outlines what the licensing scheme may provide for in relation to extensions of this type of licence. It may provide for the

Minister to extend the end day either on the application of the licence holder, or on the Minister's own initiative. It may provide that an extensions in relation to only part of the licence area (provided that this does not result in the part of the licence area that has not reached the end day being non-continuous). It may also provide for more than one such extension to be granted in respect of a particular licence.

239. There is a note to state that if the declaration that applies to the licence area has been varied (see clause 23), the variation may affect an extension of the end day of the licence. There is also a note directing the reader to clause 297 in relation to review of decisions.

240. Subclause (2) provides that an extension must not result in the end day of a research and demonstration licence being later than the day after the end of 10 years after the extension is made.

241. Subclause (3) provides that an extension must not apply to any part of a licence area that is not a declared area when the extension is granted.

242. Subclause (4) clarifies that if an extension results in there being different end days for different parts of a licence area, then subclause 55(4) applies separately in respect of each such part.

Clause 57 - Varying a research and demonstration licence

243. This item addresses varying a research and demonstration licence.

244. Subclause (1) states that the Minister may vary the licence. This is to be done by written notice to the holder of a research and demonstration licence. The purpose of the variation may be to:

- impose a condition on the licence; or
- amend or revoke a condition imposed on the licence, or
- remove one or more areas from the licence area.

245. Subclause (2) provides that a variation may be made on the application of the holder of the licence, in accordance with the licensing scheme.

246. Subclause (3) provides that a variation may also be made on the Minister's own initiative but only if:

- the variation is made at the same time as:

        - the Minister extends the end day of the licence under a provision of the licensing scheme if the extension is made on application by the licence holder; or
        - the Minister makes a decision to transfer the licence; or
        - the Minister makes another variation as a result of an application by the licence holder; or
    - the Minister becomes aware that there has been a change in control of the licence holder, and the variation is made in connection with that change in control.

247. Subclause (4) provides that an area may be removed under this clause only if:

    - the licence holder has not carried out any offshore infrastructure activities in the area; and
    - the Minister is satisfied that the licence holder does not intend to carry out any offshore infrastructure activities in the area; and
    - the removal does not result in the remaining licence area being non-continuous.

EXAMPLE: Granting a Research and demonstration licence and Transmission and infrastructure licence

Company A would like to undertake a demonstration wave power project in Commonwealth waters adjacent to Perth. Company A anticipates the project could generate 3MW of electricity and plans to connect it to the grid. Company A has been granted approval under the EPBC Act. The Minister has declared the area as suitable for undertaking offshore electricity infrastructure projects. There are no conditions on the declaration that would limit the licence types that can be issued in the area. Company A submits an application for a research and demonstration licence to demonstrate the technology. Company A also makes an application for a transmission and infrastructure licence and pays the required fees. The Minister is satisfied the applications meet the requirements of the licensing scheme and grants Company A a research and demonstration licence and a transmission infrastructure licence. As Company A intends to install infrastructure in the licence area the licence holder submits a management plan to the Regulator for assessment. The management

plan includes detail on how financial security will be provided. The management plan is approved and financial security is provided, allowing the licence holder to commence installation activities. The technology is subsequently proven in 6 years. This is within the 10 year licence term. Company A decommissions all infrastructure in line with its management plan. Company A applies to surrender its licences. The Minister grants the surrender and the financial security is returned. Company B would like to use this technology on a commercial scale. It may apply for a feasibility licence.

Division 5—Transmission and infrastructure licences

248. Transmission and infrastructure licences allow a licence holder to construct and operate OETI that will store, transmit or convey electricity or a renewable energy product, including within or through a licence area. These licences will allow offshore electricity generators to build transmission infrastructure up to the limits of the Commonwealth offshore area, necessary to connect to onshore grid infrastructure. Transmission and infrastructure licences can be issued for the term of the asset life and be extended if required. A declaration is not required to grant a transmission and infrastructure licence and the infrastructure can extend outside a declared area.

249. Transmission and infrastructure licences may overlap, but only if the Minister is satisfied that the activities undertaken under each licence will not interfere with each other.

Clause 58 - Purpose of a transmission and infrastructure

250. Subclause (1) outlines that a transmission and infrastructure licence enables the licence holder to carry out an offshore infrastructure project for any of the following purposes:

- to assess the feasibility of storing, transmitting or conveying electricity or a renewable energy product in the Commonwealth offshore area;
- to store, transmit or convey electricity or a renewable energy product in the Commonwealth offshore area.

Clause 59 - Activities authorised by a transmission and infrastructure licence

251. Subclause (1) provides that a transmission and infrastructure licence authorises the licence holder to construct, install, commission,

operate, maintain and decommission offshore renewable energy infrastructure or offshore electricity transmission infrastructure in the licence area, provided:

- there is an approved management plan for the infrastructure; and
- the activities comply with the management plan and any licence conditions; and
- the licence holder meets the financial security requirements in 117 and 118.

252. Subclause (2) specifies that the rights conferred on the licence holder are subject to this Bill.

253. Subclause (3) is an avoidance of doubt provision in relation to the meaning of the phrase *renewable energy product*. It makes clear that electricity stored, transmitted or conveyed under a transmission and infrastructure licence need not be a renewable energy product.

Clause 60 - Application for transmission and infrastructure licence

254. Subclause (1) provides that the licensing scheme must prescribe procedures for:

- eligible persons to apply for transmission and infrastructure licences; and
- applications for transmission and infrastructure licences to be considered; and
- the Minister to offer to grant transmission and infrastructure licences.

255. Subclause (2) states that the licensing scheme must require an application for a transmission and infrastructure licence to describe the offshore infrastructure project to be carried out under the licence.

Clause 61 - Grant of a transmission and infrastructure licence

256. This item provides for the grant of transmission and infrastructure licence.

257. Subclause (1) provides that the Minister may, by written notice, grant a transmission and infrastructure licence to an eligible person if all of the following are met:

- the eligible person applies for the licence under the licensing scheme; and
- if the licence would authorise activities in any part of the licence area of another licence—the Minister is satisfied that any activities carried out in accordance with the proposed licence would not unduly interfere with the activities of the holder of the other licence; and
- the Minister is satisfied that the licence meets the merit criteria; and
- any other requirements prescribed by the licensing scheme are met.

258. There is a note to the subclause in relation to review of decisions, directing the reader to clause 297.

259. Subclause (2) provides that a transmission and infrastructure licence may be granted in respect of one or more areas (which need not be continuous) within the Commonwealth offshore area at the time that the licence is granted.

260. There is a clarifying note at the end of this provision to state that the licence area of a transmission and infrastructure licence is not required to be within a declared area.

261. Subclause (3) states that the licence area of a transmission and infrastructure licence consists of the area or areas mentioned in subclause (2) other than any part of those areas that becomes a vacated area.

262. An explanatory note to the subclause refers to the definition of vacated area in clause 8.

263. Subclause (4) outlines that the notice of grant of a transmission and infrastructure licence must include all of the following:

- specify the licence area;
- state the day on which the licence comes into force;
- state the end day of the licence for the purposes of subclause 64(1);
- specify the conditions that are to apply to the licence;
- include any other matters prescribed by the licensing scheme; and
- be given in accordance with the licensing scheme.

Clause 62 - Merit criteria for a transmission and infrastructure licence

264. This item sets out the merit criteria for a transmission and infrastructure licence.

265. Subclause (1) provides that for the purposes of this Bill, a transmission and infrastructure licence held or applied for by an eligible person meets the merit criteria if they meet all of the following:

- the eligible person has the technical and financial capability to carry out the offshore infrastructure project that is proposed to be carried out under the licence;
- the offshore infrastructure project is likely to be viable;
- the licence holder is suitable to hold the licence; and
- criteria prescribed by the licensing scheme are satisfied.

266. Subclause (2) specifies that the licensing scheme may provide for how the Minister is to decide whether a transmission and infrastructure licence meets the merit criteria. The scheme may provide for the suitability of an eligible person to hold a licence to be assessed with regard to the suitability of other persons, including another person that controls the eligible person. The scheme may also provide for procedures for making decisions about whether a licence meets the merit criteria and how subclause (1) applies to ongoing offshore infrastructure projects.

Clause 63 - Conditions that apply to a transmission and infrastructure licence

267. This item specifies the conditions that apply to a transmission and infrastructure licence.

268. Subclause (1) provides that the licence has the following conditions:

- a condition that the licence holder must comply with any requirement to pay an amount of offshore electricity infrastructure levy;
- any conditions prescribed by the licensing scheme;
- a condition that the licence holder or any other person carrying out activities under the Bill must comply with the management plan for the licence, if there is a management plan;
- any conditions imposed on the licence under subclause (2) or subclause 66(1).

269. Subclause (2) gives the Minister the power to impose conditions when granting a transmission and infrastructure licence, as the Minister thinks fit.

270. Subclause (3) requires the hold of a licence to comply with the conditions of the licence.

Clause 64 - Term of a transmission and infrastructure licence

271. This item sets out the term of a transmission and infrastructure licence.

272. Subclause (1) specifies the end day of a transmission and infrastructure licence. This is the day stated in the licence under paragraph 61(4)(c).

273. Subclause (2) provides that the licensing scheme may provide for the way an end day of a transmission and infrastructure licence is to be determined. Transmission and infrastructure licences may be granted for the life of the asset, which may vary from project to project, rather than a fixed term. Setting out in the licensing scheme the procedure for determining the end day will ensure the scheme is responsive to improvements in technology.

274. Subclause (3) outlines the effect of the end day. It provides that on or after the end day of a transmission and infrastructure licence, the licence no longer authorises specified activities. These activities are: the construction, installation, operation or maintenance of OREI or OETI. An exception is provided for decommissioning infrastructure.

275. A note to this clause clarifies that the licence remains in force until cancelled under clause 73 or surrendered under clause 74.

Clause 65 - Extending the term of a transmission and infrastructure licence

276. This provision sets out the arrangements for extending the term of a transmission and infrastructure licence.

277. Subclause (1) provides that the licensing scheme may provide for the process to be followed for extending the term of the licence and the requirements and in particular permits the licensing scheme to provide for:

- the holder of a transmission and infrastructure licence to apply to the Minister to extend the end day of the licence;

- procedures for the Minister to decide whether or not to grant such an extension;
- such an extension to be granted in respect of the whole licence area, or a part of a licence area;
- more than one such extension to be granted in respect of a particular licence.

278. There is a note in relation to review of decisions, directing the reader to clause 297.

279. Subclause (2) makes clear that an extension must not apply to any part of a licence area that is not a Commonwealth offshore area at the time the extension is granted.

280. Subclause (3) states that if an extension results in there being different end days for different parts of a licence area, subclause 63(3) applies separately in respect of each such part.

Clause 66 - Varying a transmission and infrastructure licence

281. Subclause (1) states that the Minister may, by written notice to the holder of a transmission and infrastructure licence, vary the licence to:

- impose a condition on the licence; or
- amend or revoke a condition imposed on the licence; or
- remove one or more areas from the licence area.

282. A variation to licence conditions may be required to ensure that the activities carried out under the licence remain appropriate with respect to the project and interactions with other marine users are appropriate. For example, a licence condition may include consultation requirements. The proposed variation is to be provided to the licence holder by written notice.

283. Subclause (2) provides that a variation under subclause (1) may be made on the application of the holder of the licence, which must be made in accordance with the licensing scheme.

284. Subclause (3) provides that a variation may also be made on the Minister's own initiative but only if:

- the variation is made at the same time as:

- the Minister extends the end day of the licence under a provision of the licensing scheme if the extension is made on application by the licence holder; or
- the Minister makes a decision to transfer the licence; or
- the Minister makes another variation as a result of an application by the licence holder; or

– the Minister becomes aware that there has been a change in control of the licence holder, and the variation is made in connection with that change in control.

285. Subclause (4) states that an area may be removed from the licence area only if:

– the licence holder has not carried out any offshore infrastructure activities in the area; and
– the Minister is satisfied that the licence holder does not intend to carry out any offshore infrastructure activities in the area; and
– the removal does not result in the remaining licence area being non-continuous.

Part 2—General provisions about licences

Division 1—Introduction

Clause 67 - Simplified outline of this Part

286. Clause 67 provides a simplified outline of Part 2 of Chapter 3 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Division 2—Licence transfers

Clause 68 - Licences to be transferred only under this Division

287. This Division addresses the transfer arrangements for licences. It makes clear that a licence may only be transferred in accordance with this Division.

Clause 69 - Application for transfer

288. Subclause (1) addresses the arrangements for the approval of a transfer. It will apply in the case where a licence holder (the *transferor*) proposes to transfer the licence to another eligible person (the *transferee*).

289. Subclause (2) specifies that the transferor or the transferee may apply to the Registrar for the licence to be transferred from the transferor to the transferee.

290. Subclause (3) provides that the licensing scheme must prescribe procedures for how an application is to be made and for the Minister to consider the application.

291. Subclause (4) states that the transferor may only make an application under subclause (2) with the agreement of the transferee.

292. Subclause (5) provides that the transferee may only make an application under subclause (2) with the agreement of the transferor.

Clause 70 - Minister may transfer licence

293. Subclause (1) specifies that the Minister may transfer a licence held by a transferor to the transferee if all of the able are met:

- an application for the transfer is made under clause 69;
- the Minister is satisfied that the licence would meet the merit criteria if it were held by the transferee;
- the Minister is satisfied the transferee will be able to comply with financial security requirements for the licence with clauses 117 and 118 (financial security), subject to clause 72, in relation to the licence; and
- any other requirements prescribed by the licensing scheme are satisfied.

294. An explanatory note to the subclause refers the clause 297 for review of decisions.

295. Subclause (2) provides that the Minister must give written notice of a decision to transfer a licence to the transferor and the transferee.

296. Subclause (3) states that a transfer of a licence takes effect at the time specified in the notice. It clarifies that at that time:

- the transferor ceases to be the holder of the licence; and
- the transferee begins to be the holder of the licence.

Clause 71 - Licence transfer does not affect conditions or end day

297. Clause 71 addresses the conditions that apply when the transfer of licence takes effect.

298. Subclause (1) makes clear that the transfer of a licence does not affect any conditions that apply to the licence.

299. An explanatory note to the subclause clarifies that the Minister may amend or revoke the conditions that apply to a licence that is transferred, or impose further conditions—see clauses 38 (varying a feasibility licence), 48 (varying a commercial licence), 57 (varying a research and demonstration licence) and 66 (varying a transmission and infrastructure licence).

300. Subclause (2) provides that the transfer of a licence does not affect the end day of the licence.

Clause 72 - Financial security for a transferred licence

301. Clause 72 addresses the financial security arrangements for a transferred licence.

302. Subclause (1) outlines that this clause applies to a licence if:

- there is a management plan for the licence; and
- an application has been made under clause 69 for the licence to be transferred from the transferor to the transferee;
- any of the following apply:
  - the Minister is considering whether to approve the transfer;
  - the Minister has approved the transfer;
  - the transfer has occurred.

303. Subclause (2) specifies that the licensing scheme may require both the transferor and the transferee to comply with clauses 117 and 118 in relation to the licence.

304. Subclause (3) specifies that the licensing scheme may provide for the transferor's obligations under clauses 117 and 118:

- to cease, in whole or part, after the transferee has complied with equivalent obligations; or

- to continue, in whole or part, for any period during which the licence remains in force (including as a result of an extension of the end day of the licence under this Chapter).

Division 3—Cancelling and surrendering licences

Clause 73 - Cancellation of licence

305. Clause 73 addresses the circumstances when a licence may be cancelled. It deals with the actions and omissions of the licence holder that can lead to cancellation of a licence.

306. Cancellation is one of the sanctions available to the Minister – other sanctions could include criminal prosecution, or refusal to renew the licence if and when it reaches the end day.

307. The grounds for cancellation arise when the Minister is satisfied that:

- the licence holder has failed to comply with licence conditions;
- the licence holder has contravened a provision of this Bill, such as the applied work health and safety provisions;
- the licence does not meet the merit criteria;
- the licence holder has failed to commence licence activities within a reasonable time;
- the licence holder is not an eligible person; or
- a person has contravened subclause 91(1) (notification of change in circumstances), 95(1) (change in control must be approved by Registrar), 96(1) (notification of change in control without approval) or 108(1) (avoidance of change in control provisions) in relation to the licence.

308. There is an explanatory note directing the reader to clause 297 of this Bill which addresses review of decision provisions.

Consultation

309. Subclause (2) addresses the requirement of consultation. It provides that before deciding to cancel a licence under subclause (1), the Minister must:

- by written notice to the licence holder, give at least 30 days notice of the Minister's intention to make the decision; and

- give a copy of the notice to such other persons (if any) as the Minister thinks fit.

310. Subclause (3) outlines that notice must be given in the event of a proposed cancellation. The notice must set out the grounds for cancelling the licence and invite the affected person to make a written submission to the Minister about the proposal. A time limit must be specified for making that submission.

311. The notice requirements and consultation procedure must be undertaken before a licence may be cancelled. The third parties to whom the Minister may give a copy of the notice could include, for example, a contractor of the licence holder who has been involved in operations under the licence. Submissions from such parties could, in some cases, cause the Minister to come to a different view of whether the licence should be cancelled.

Making a decision on cancellation

312. Subclause (4) sets out the steps necessary in making a decision on whether to cancel a licence. The Minister must take into account any action taken by the licence holder to address the circumstances that give rise to the grounds for cancelling the licence or to prevent the recurrence of similar circumstances and any submissions made as mentioned in paragraph (3)(b).

Notice and effect of cancellation

313. Subclause (5) provides that the Registrar must, by notifiable instrument, give notice of the cancellation. The licence ceases to be in force when the notice under this subclause is registered on the Federal Register of Legislation.

314. There is an explanatory note in relation to remedial directions (including in relation to a licence that has been cancelled). The reader is directed to see clauses 126 and 127.

315. A notifiable instrument has been selected as the mechanism for the notice of cancellation rather than the use of a legislative one. In this case, the cancellation notification is applying a law made in exercise of a power which is given under this Bill. Cancellation of a licence will not determine or alter the content of the law. This bill provides for various non-legislative notifiable instruments as well as legislative instruments. In relation to this selection, due consideration

has been made at the time of drafting on which is the more applicable instrument form based on the circumstances. Under clause 217 the decision under clause 73 to cancel a licence is merits reviewable.

316. It is recognised that notifiable instruments are administrative in character (rather than legislative in character). Although they will not be registered as legislative instruments, public access and centralised management will still be made available through registration on the Federal Register of Legislation.

Clause 74 - Surrender of licence

317. Clause 74 sets out the arrangements for the surrender of a licence.

318. Subclause (1) provides that a licence holder may apply to the Minister to surrender a licence. The application must be in writing. The Minister's consent is required before the surrender takes effect. The surrendered area may relate to either a whole or a part of the licence area.

319. There is an explanatory note to state that the licence may or may not have reached the end day of the licence.

320. Subclause (2) requires the application to specify the surrender area. This must set out the reasons for the surrender and how each of the requirements in subclause (3) have been met.

321. Subclause (3) states that the Minister must, by written notice to the licence holder, consent to the surrender if:

- the licence holder has paid all fees and amounts payable under the Bill or the Offshore Electricity Infrastructure (Regulatory Levies) Bill 2021 once enacted, or has made arrangements for the payment of those fees and amounts that are satisfactory to:
  - for a fee charged by the Regulator on behalf of the Commonwealth—the Regulator; or
  - for any other amount—the Registrar; and
- the licence holder is in compliance with all of the conditions of the licence area; and
- the licence holder is in compliance with any obligations under this Bill in relation to the licence or the surrender area; and
- if there is a management plan for the licence—the licence holder is in compliance with any requirements that, under the

management plan, must be complied with for the licence to be surrendered; and

- the licence holder has either:
  - to the satisfaction of the Regulator, removed all equipment or other property in the surrender area by any person engaged or concerned in the activities authorised by the licence; or
  - made arrangements that are satisfactory to the Regulator for in relation to the equipment or property; and
- the Regulator is satisfied that the licence holder has made good any damage to the seabed or subsoil or any other environmental damage in the Commonwealth offshore area (whether inside or outside the surrender area) caused by any person engaged or concerned in the activities authorised by the licence; and
- if the surrender area is a part of the licence area, and the licence is not a transmission and infrastructure licence—the remaining licence area would be continuous.

322. There is an explanatory note directing the reader to clause 297 of this Bill for review of decision provisions.

323. Subclause (4) states that if the Minister gives consent to the surrender, the licence holder may surrender the licence in respect of the surrender area. This needs to be done by written notice to the Registrar accompanied by the notice of the Minister's consent.

324. Subclause (5) provides that the Registrar must give notice of the surrender. This must be done by notifiable instrument. The surrender takes effect when the notice under this subclause is registered on the Federal Register of Legislation.

325. Subclause (6) addresses the timing of the surrender and when this takes effect. This can relate to either a whole or a part of the licence area. The surrendered area will be that area as described and set out in the notice.

326. There is an explanatory note directing the reader in relation to remedial directions, (including in relation to a licence that has been surrendered), to refer to clauses 126 and 127.

Division 4—Other general provisions about licences

Clause 75 - False or misleading information

327. Clause 75 addresses the subject of false or misleading information. It provides that a person commits an offence if they give information in connection with an application under specified provisions in the Bill. There is a requirement that the person commits this offence knowing that the information is false or misleading in a material particular or if they omit any matter which would result in the information being misleading in a material particular.

328. There is a clarifying note to state that the same conduct may be an offence against both this clause and section 137.1 of the Criminal Code.

329. The penalty for this offence is 100 penalty units or imprisonment for 12 months, or both.

Clause 76 - False or misleading documents

330. Clause 76 provides that a person commits an offence if they produce a false or misleading document in connection with an application under this Bill or in relation to the requirement in the licensing scheme. There is a requirement of intention in that the person must do so knowing that the document is false or misleading in a material particular.

331. A note clarifies that the same conduct may be an offence against both this clause and section 137.2 of the Criminal Code.

332. The penalty for this offence is 100 penalty units or imprisonment for 12 months, or both.

Clause 77 - Interference with other activities by licence holder

333. Clause 77 creates an offence where the licence holder interferes with other activities.

334. Subclause (1) describes the nature of the offence. It occurs where a licence holder carries out activities in the Commonwealth offshore area under or for the purposes of the licence and those activities interfere with any of the following:

- navigation;

- exercise of native title rights and interests (under the *Native Title Act 1993*);
- fishing;
- conservation of resources of the sea or the seabed;
- activities that are being carried out in accordance with the OPGGS Act; or
- activities that someone else is lawfully carrying out,

and that interference is greater than is necessary for the reasonable exercise of their rights or obligations under the licence.

335. Subclause (2) sets out a strict liability offence with a penalty of 100 penalty units. Subclause (3) provides that a person is liable for a civil penalty if the person contravenes subclause (1). In that case, the civil penalty is 265 penalty units.

336. These penalties are based on section 280 of the OPGGS Act. They are considered to be 'like' offences to those detailed under that Act, due to the similar nature types of offences for infrastructure in dangerous marine environment, with similar marine users, similar harms and interests. The unusual and difficult circumstances which often present in enforcing offshore activities and the consequent risk to OEI or harm to lives is considered to warrant the higher penalties than would usually apply onshore.

337. The strict liability offence is appropriate to ensure the highest level of compliance with this obligation given the potential harm that might be caused by the conduct.

338. The justification for this approach in the Bill is set out further in the Statement of Compatibility with Human Rights.

<u>Clause 78 - Interference with other activities by other person carrying out activities under licence</u>

339. Clause 78 creates an offence where a person (other than the licence holder) interferes with other activities under the licence.

340. Interference arises when another person carries out activities on a licence holder's behalf which interferes with:

- navigation;
- exercise of native title rights and interests (under the *Native Title Act 1993*);

- fishing;
- conservation of the resources of the sea or the seabed;
- any activities being carried on by another person in accordance with the OPGGS Act; or
- any activities that someone else is lawfully carrying out.

341. To meet the offence criteria, there is the added requirement that the interference must be greater than is necessary for the reasonable exercise of the first person's rights or obligations under the licence under the licence or Bill.

342. Subclause (2) provides that a strict liability offence is committed if a person contravenes subclause (1). This attracts a penalty of 100 penalty units. Subclause (3) provides a civil penalty for the offence in subclause (1). In these circumstances a contravention will attract a civil penalty of 265 penalty units. It is considered appropriate that a contravention of subclause 78(1) is a strict liability offence given the seriousness of the interference with the activities of third parties. The nature of the offence will act to deter interference with activities of third parties which is greater than necessary to exercise a licence holder's rights or obligations under the Bill. Further, the seriousness of these kinds of interferences, combined with the potential harm that may result as a consequence of the contravention of 78(1), justify the amount of penalty units specified in the provisions.

343. The justification for the strict liability approach in the Bill is set out further in the Statement of Compatibility with Human Rights.

Clause 79 - No conditions about payment of money

344. This clause provides a qualification that the conditions on a licence must not include a condition requiring the payment of money to the Regulator, the Registrar or the Commonwealth.

345. Subclause (2) makes clear that the above provision does not apply to a payment made in accordance with:

- feasibility licences – requirement to pay an offshore electricity infrastructure levy;
- commercial licences – requirement to pay an offshore electricity infrastructure levy;
- research and demonstration licences – requirement to pay an offshore electricity infrastructure levy; or

- transmission and infrastructure licences – requirement to pay an offshore electricity infrastructure levy.

346. Subclause (3) makes clear that the above provision does not apply to a payment made in accordance with:

- clause 117 or 119 (which addresses financial security) or regulations made for the purposes of those provisions;
- a provision of a management plan that relates to the obligations of a licence holder under clause 117 or 118 or 119; or
- a provision of the licensing scheme made for the purposes of subclause 32(3) (financial offers for feasibility licences).

Clause 80 - Basis on which licences granted

347. This clause sets out the basis on which licences are granted. It provides the conditions and specifies that the licence may be cancelled, revoked, varied or terminated under the Bill or by or under later legislation. In addition, it makes clear that no compensation is payable if the licence is cancelled, revoked, terminated or varied.

Clause 81 - Changes to the boundaries of the Commonwealth offshore area

348. This clause addresses the addresses the circumstances where there are changes to the boundaries of the Commonwealth offshore area.

349. Subclause (1) provides that if there is a change to the boundary of the original area (described as the *first area*) where the licence has been granted, and this area ceases to be within the Commonwealth offshore area. If this area is now within the coastal waters of a State or Territory, then this Bill continues to apply as if the first area is still within the Commonwealth offshore area. This has the effect of keeping the status quo in terms of the original position at the time of the licence grant.

350. Subclause (2) makes clear that this applies in relation to the first area only and does not apply to any extension of the end day of the licence. In addition, if the licence is a feasibility licence, it does not apply in relation to an application for a commercial licence in that licence area.

Clause 82 - Licences etc. are not personal property for the purposes of the *Personal Property Securities Act 2009*

351. This clause provides that the following are not personal property for the purposes of the *Personal Property Securities Act 2009*:

- a licence;
- any interest or right in, or in relation to, a licence.

352. There is an explanatory note directing the reader to paragraph 8(1)(k) of the *Personal Property Securities Act 2009*.

353. The effect of this provision is to clarify beyond doubt that both licences and interests in licences are not in any way captured by other legislation where they may be considered as a property right.

Part 3—Change in Control of a licence holder

354. This Part requires persons who propose to begin or cease control of a licence holder to obtain approval from the Registrar, and creates offences and civil penalties for persons who begin or cease control of a licence holder without approval. This Part is crucial for the Registrar to be able to oversee transactions proposing to effect a change in control of a licence holder, in order to ensure that the licence holder's ability to comply with its obligations under the Bill will not be adversely impacted.

355. A person contracts a licence holder if the person (whether alone or together with one or more other persons with whom the person acts jointly with) either:

- holds the power to exercise, or control the exercise of, 20% or more of the voting rights in the licence holder; or
- holds, or holds an interest in, 20% or more of the issued securities in the licence holder.

356. The terms 'voting rights' and 'issued securities' are not defined, which means the ordinary meaning of these terms apply. These terms reflect, but do not necessarily rely on, similar concepts in other Commonwealth laws, notably:

- the definitions of 'voting power' in a body corporate in section 610 of the *Corporations Act 2001* (CA) and 'voting power' in an entity or unincorporated limited partnership in section 22 of the *Foreign Acquisitions and Takeovers Act 1975* (FATA), which means a percentage of votes that might be cast at a general meeting of the entity or partnership;

- the definition of 'control' in relation to control of the voting power in an entity in section 23 of the FATA, which applies whether the power is direct or indirect, and whether it is as a result or by means of agreements or practices that have legal or equitable force, or are based on legal or equitable rights; and
- the definition of 'securities' in section 92 of the CA, which includes shares in a body corporate.

357. The definition of control incorporates two key concepts: control and ownership. A change in control of a licence holder occurs not only when persons propose to be in a position to gain or relinquish control or influence over the licence holder, but also when persons propose to gain or relinquish a substantial interest in the licence holder but may not be able to exercise such control or influence.

358. For example, a person might propose to acquire 50% or more of the shares in a licence holder and thereby become a significant source of the financial resources available to the licence holder. However, the person may be unable to exercise control or influence over the licence holder because of the nature of those shares (that is, if those shares do not confer voting rights on the holder and therefore do not entitle them to exercise, or control the exercise of, a right to vote at a meeting of the shareholders and other members of the licence holder).

359. The 20% control threshold is consistent with similar acquisition thresholds in other Commonwealth laws, including:

- the '20% rule' for takeovers under Chapter 6 of the CA, which applies to the acquisition of a relevant interest in the voting power in a company that increases a person's voting power in the company from 20% or below to more than 20% (see sections 606, 608 and 609); and
- the definition of a 'substantial interest' (which is an interest of at least 20%) in an Australian entity in relation to a 'change in control' of the entity under section 54 of the FATA, which applies to an interest (including an interest in a 'security' or a share or shares in the corporation that is the Australian entity) regardless of whether the interest confers voting power on the holder of the interest (see section 4 for the definitions of 'interest', 'security' and 'share' and section 9 for an 'interest' in a security.

360. A person may act alone or jointly with one or more other persons to control a licence holder. A person acts jointly with another person if the person acts, or is accustomed to acting, in agreement or accordance with the wishes of the other person.

361. This captures agreements or practices in which a person acts jointly or in concert with other persons to control a licence holder. Such agreements or practices might include, for example, two or more related bodies corporate or joint venture partners acquiring or disposing of voting rights or issued securities in relation to a licence that, when taken collectively, trigger the definition of change in control of the licence holder, even if each body or partner individually holds or will hold a percentage of the voting rights or issued securities that is less than 20%.

362. A change in control of a licence holder occurs if one or more persons (described as an original controller) control the licence holder at a particular time and, after that time, either:

- one or more other persons begin to control the licence holder, which would involve the acquisition of voting rights or issued securities in the licence holder so that the person or persons (either alone or acting jointly) will begin to hold at least 20% of the voting rights or issued securities; or
- the original controller ceases to control the licence holder, which would involve the disposal of voting rights or issued securities in the licence holder so that the person or persons will cease to hold at least 20% of the voting rights or issued securities.

Division 1 — Introduction

Clause 83 - Simplified outline of this Part

363. Clause 83 provides a simplified outline of Part 3 of Chapter 3 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Clause 84 - Meaning of control and change in control of licence holder

364. Subclause (1) defines when a person controls a licence holder. It provides that a person controls a licence holder if the person (whether

alone or together with one or more other persons with whom the person acts jointly), either:

- holds the power to exercise, or control the exercise of, 20% or more of the voting rights in the licence holder; or
- holds, or holds an interest in, 20% or more of the issued securities in the licence holder.

365. Subclause (2) provides that a person acts jointly with another person if the person acts or is accustomed to acting in agreement with, or in accordance with the wishes of, the other person. This is intended to capture persons who act jointly by agreement or practice, such a related bodies corporate or joint venture partners.

366. Subclause (3) provides a power to prescribe in the licensing scheme a different percentage, or different percentages, to the percentage specified in subclause (1).

367. Subclause (4) outlines the circumstances where a change in control of a licence holder is taken to have occurred. These circumstances are where:

- one or more persons (an original controller) control the licence holder at a particular time; and either:
  - one or more other persons begin to control the licence holder (whether alone or together with one or more other persons the person acts jointly with) after that time; or
  - an original controller (whether alone or together with one or more other persons the person acts jointly with) ceases to control the licence holder after that time.

Clause 85 - Meaning of approval period

368. Clause 85 defines what the approval period is for the purposes of this Bill. This has implications for the application of the offence and civil penalty provisions in this Part. The clause defines the approval period as being the period:

- starting on the day the notice of approval for the change in control is given; and
- ending at the earliest of the following:
  - immediately after the change in control takes effect;

- if the approval of a change in control is revoked—when the notice of revocation is given;
- 9 months after the day the notice of approval is given.

Division 2—Application and approval of change in control of a licence holder

Clause 86 - Application for approval

369. Clause 86 provides that a person who proposes to begin to control a licence holder; or proposes to cease to control a licence holder may apply to the Registrar for approval of a change in control of the licence holder.

370. A note clarifies that a person who begins to control, or ceases to control, a licence holder where the change in control has not been approved may commit an offence or be liable to a civil penalty (see clause 95).

Clause 87 - Registrar must decide whether to approve change in control

Scope

371. Subclause (1) clarifies that this clause applies if an application is made for approval of a change in control of a licence holder under clause 86.

Decision

372. Subclause (2) specifies that the Registrar must decide:

- to approve the change in control; or
- to refuse to approve the change in control.

373. A note clarifies that the applicant must be notified of the decision (see clause 88).

374. Subclause (3) provides that before deciding whether to approve or refuse to approve a change in control, the Registrar may consult with:

- the Regulator; or
- the Minister.

375. Subclause (4) provides that in deciding whether to approve or refuse to approve a change in control, the Registrar:

- must have regard to whether the licence would, if the change in control occurred, meet the merit criteria;
- must have regard to any matters prescribed by the licensing scheme; and
- may have regard to the following matters:
  - matters raised in consultations (if any) under subclause (3);
  - any other matters the Registrar considers relevant.

376. Providing for the matters to which the Registrar must have regard to be prescribed in regulation will provide the Commonwealth with the flexibility to provide for other matters that may be necessary and appropriate for the Registrar to consider. Any additional matters prescribed in the licensing scheme will be subject to appropriate scrutiny through the regulation-making process, which includes consultation as required by the *Legislation Act 2003*, parliamentary tabling, scrutiny and potential disallowance.

Clause 88 - Notice of decision

Notice of approval

377. Subclause (1) provides that if the Registrar approves a change in control of a licence holder, the Registrar must give the applicant written notice of the approval.

Notice of refusal

378. Subclause (2) provides that if the Registrar refuses to approve the change in control of a licence holder, the Registrar must give the applicant written notice of the refusal.

Clause 89 - Retention and return of instrument

379. Clause 89 provides that if an application under clause 86 was accompanied by the original instrument or proposed instrument effecting a change in control of a licence holder, the Registrar must, after making a decision under subclause 87(2):

- make and retain a copy of the instrument or proposed instrument; and
- return the original instrument or proposed instrument to the applicant.

Clause 90 - Limit of effect of approval

380. Clause 90 clarifies that the approval of a change in control of a licence holder does not give the transaction or proposed transaction effecting the change in control any force, effect or validity that the transaction would not have had if this Part had not been enacted.

Clause 91 - Notification of change in circumstances before or during approval period

381. Subclause (1) provides that a person contravenes this subclause if:

- an application is made for approval of a change in control of a licence holder under clause 86; and
- the person proposes to:
  - begin to control the licence holder; or
  - cease to control the licence holder; and
- there is a change in circumstances in relation to the person that materially affects any of the matters the Registrar must have regard to under subclause 87(4); and
- the change in circumstances occurs either:
  - before the Registrar has made a decision to approve or refuse the change in control under subclause 87(2); or
  - if the change in control is approved, during the approval period for the change in control; and
- the person does not notify the Registrar of the change in circumstances as soon as practicable after the change in circumstances occurs.

382. The purpose of this subclause is to require persons, in relation to whom a change in circumstances occurs, to notify the Registrar of the change in circumstances as soon as practicable. It applies when the change of circumstances occurs while the Registrar is considering an application for approval of a change in control or has approved a change in control but it is still during the approval period for the change in control, and the change in circumstances would materially affect the matters the Registrar must have regard to when deciding to approve or reject the application for approval of a change in control.

383. Note 1 clarifies that under subclause 87(4), the Registrar must have regard to various matters when deciding whether to approve or refuse to approve a change in control of a licence holder.

384. Note 2 clarifies that a contravention of this subclause is also a ground for cancellation of a licence. It refers to subclause 73(1)(f).

Civil penalty provision

385. Subclause (2) provides that a person is liable to a civil penalty if the person contravenes subclause (1). The civil penalty is 480 penalty units.

Clause 92 - Revocation of approval

Revocation

386. Subclause (1) provides that the Registrar may revoke an approval of a change in control of a licence holder in the approval period for thechange in control. This applies where:

- there is a change in the circumstances of a person who is approved to begin to control the licence holder or cease to control the licence holder; and
- the Registrar considers it appropriate to revoke the approval.

Notice of revocation

387. Subclause (2) provides that if the Registrar revokes an approval of a change in control, the Registrar must give written notice of the revocation to the person given notice of the approval of the change in control.

Clause 93 - Notification of change in control

388. Subclause (1) provides that a person contravenes this subclause if:

- the Registrar approves a change in control of a licence holder; and
- the change in control takes effect within the approval period for the change in control; and
- the person given notice of the approval of the change in control does not notify the Registrar of the matter in subclause (b) within 10 days after the end of the approval period.

Civil penalty provision

389. Subclause (2) provides that a person is liable to a civil penalty if the person contravenes subclause (1). This carries a civil penalty of 480 penalty units.

390. Subclause (3) provides that the maximum civil penalty for each day that a contravention of subclause (2) continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

391. There is a note which clarifies that subclause (2) is a continuing civil penalty provision under section 93 of the RPA.

Clause 94 - Change in control information to be entered in Register

392. Subclause (1) provides that if the Registrar is notified of a change in control of a licence holder, the Registrar must make a notation of the matters set out in subclause (2) in the Register in the record for the licence.

393. Subclause (2) provides that the matters which the Registrar must take into account are the following:

- the date of any application made under clause 86;
- the date of any decision made under subclause 87(2);
- the date the change in control took effect.

394. Subclause (3) provides that the Registrar may make such other notation in the Register as the Registrar considers appropriate.

EXAMPLE: A transaction proposing to effect a change in control

A change of control licence holder may involve persons either beginning or ceasing to control a licence holder, or both. For example:

- Entity A holds 100% of the shares in a licence holder, but transfers all of its shares to Entity B. Entity A ceases to control the licence holder and Entity B begins to control the licence holder.

- Entity A holds 100% of the shares in a licence holder and wishes to retain control of the licence holder, but transfers 50% of its shares to Entity B. Entity A neither begins nor ceases to control the licence holder for the purposes of Chapter 2 (Entity A retains control), but Entity B begins to control the licence holder.

- Entity A and Entity B each hold 50% of the shares in a licence holder. Entity A transfers all of its shares to Entity B. Entity A ceases to control the licence holder, and Entity B retains control.

If a person controls a licence holder (for example, the person holds 20% or more of the shares in the licence holder) and proposes to increase its shareholding, the person will not be required to apply to the Regulator for approval of that increase.

This is because the person already controls the licence holder and therefore there will be no change in control. Similarly, a person who controls a licence holder may dispose of its shares in the licence holder without approval, provided that the person does not cease to control the licence holder by decreasing its shareholding to less than 20%.

Division 3—Change in control must be approved

Clause 95 - Change in control must be approved by Registrar

395. Subclause (1) provides that change in control must be approved by the Registrar. A person contravenes this subclause if the following provisions apply.

396. There is a change in control of a licence holder and the person begins to control the licence holder or ceases to control it; and either:

- the Registrar has not approved the change in control; or
- the Registrar has approved the change in control, but the change in control took effect after the end of the approval period for the change in control.

397. There is a note which clarifies that contravention of this subclause is also a ground for cancellation of a licence (see paragraph 73(1)(f)).

Fault-based offence

398. Subclause (2) provides that a person commits an offence if the person contravenes subclause (1). This carries a penalty of imprisonment for 5 years or 1,200 penalty units, or both.

Civil penalty provision

399. Subclause (3) provides that a person is liable to a civil penalty if the person contravenes subclause (1). This carries a civil penalty of 2,400 penalty units.

400. Subclause (4) provides that subclause (2) does not apply if the person did not know, and could not reasonably be expected to have known, that the person has begun to control, or ceased to control, the licence holder.

401. There is a note which clarifies that a defendant bears an evidential burden in relation to the matter in this subclause (section 96, RPA).

Clause 96 - Notification of change in control that takes effect without approval

402. Subclause (1) provides that a person contravenes this subclause if there is a change in control of a licence holder and the person either begins to control the licence holder or ceases to control the licence holder, and

- the Registrar has not approved the change in control; or
- the Registrar has approved the change in control, but the change in control took effect after the end of the approval period for the change in control; and
- the person does not notify the Registrar of the change in control within 30 days of the change taking effect.

403. There is a note which clarifies that contravention of this subclause is also a ground for cancellation of a licence (see clause 73(1)(f)).

Civil penalty provision

404. Subclause (2) provides that a person is liable to a civil penalty if the person contravenes subclause (1). This carries a civil penalty of 480 penalty units.

405. Subclause (3) provides that the maximum civil penalty for each day that a contravention of subclause (2) continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

406. There is a note which clarifies that subclause (2) is a continuing civil penalty provision under section 93 of the RPA.

407. Subclause (4) provides that subclause (2) does not apply if the person did not know, and could not reasonably be expected to have known, the person has begun to control, or ceased to control, the licence holder.

408. A note clarifies that a defendant bears an evidential burden in relation to the matter in this subclause (see section 96 of the RPA).

Clause 97 - Notification of change in control by licence holder

409. Subclause (1) provides that a person contravenes this clause if the person is a licence holder and there is a change in control of the licence holder and either of the following apply:

- the Registrar has not approved the change in control; or
- the Registrar has approved the change in control, but the change in control took effect after the end of the approval period for the change in control.

410. In addition, there is the requirement that the licence holder knows or ought reasonably to know the change in control has taken effect and the licence holder does not notify the Registrar of the change in control within 30 days of the change taking effect.

Civil penalty provision

411. Subclause (2) provides that a person is liable to a civil penalty if the person contravenes subclause (1). This carries a civil penalty of 480 penalty units.

412. Subclause (3) provides that section 93(2) of the RPA does not apply in relation to a contravention of subclause (2).

Division 4—Information gathering powers

Clause 98 - Registrar may obtain information and documents

Scope

413. This provision enables the Registrar to obtain information and documents in the following circumstances where:

- the Registrar believes on reasonable grounds that there has been or will be a change in control of a licence holder;
- an application is made for approval of a change in control of a licence holder;
- the approval period for the change in control of a licence holder has not ended and the Registrar believes on reasonable grounds that there has been, or will be, a change in the

circumstances of a person approved to begin to control the licence holder or cease to control the licence holder; and
- the Registrar believes on reasonable grounds that a person has information or a document, or is capable of giving evidence that is relevant to the matter above.

Requirement

414. Subclause (2) provides that the Registrar may give written notice to require a person to do the following:

- give the Registrar information in the notice in the period and manner specified;
- produce to the Registrar such documents within the period and manner specified;
- if the person is an individual—to appear before the Registrar at a time and place specified in the notice to give evidence or produce documents;
- if the person is a body corporate—to cause a competent officer of the body to appear before the Registrar at a time and place specified in the notice give evidence, either orally or in writing and produce any such documents.

415. Subclauses (3) and (4) set minimum time limits for the compliance with the notice. It provides that the period specified must not be shorter than 14 days after the notice is given. The purpose is to ensure that reasonable time is provided for that person to either produce the information or documents required or to attend in person to give evidence either orally or in writing.

416. Subclause (5) provides a notice under subclause (2) must set out the effect of the following provisions:

- clause 99 (about compliance with the notice);
- clause 104 (about giving false or misleading information);
- clause 105 (about giving false or misleading documents);
- clause 106 (about giving false or misleading evidence).

<u>Clause 99 - Complying with information-gathering notice</u>

417. This provision addresses the requirement to comply with an information gathering notice. If a person is given a notice and engages in conduct which breaches the notice they contravene the provision.

Fault based offence

418. Subclause (2) provides that a person commits an offence if the person contravenes subclause (1). This attracts a penalty of 100 penalty units.

Civil penalty provision

419. Subclause (3) also sets out a civil penalty provision for a person who contravenes subsection (1). This attracts a civil penalty of 150 penalty units.

Continuing offences and continuing contraventions of civil penalty provisions

420. Subclause (4) provides for continuing offences and contraventions of the civil penalty provisions. The maximum penalty for each day that an offence under subclause (1) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

421. There is an explanatory note to state that to the extent that subclause (6) provides, subclause (2) is a continuing offence under section 4K of the Crimes Act.

422. Subclause (5) provides that the maximum civil penalty for each day that a contravention of subclause (7) continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

423. There is a note which clarifies that to the extent that subclause (6) provides, subclause (3) is a continuing civil penalty provision under section 93 of the RPA.

424. Subclause (6) provides that subclauses (4) and (5) apply only in relation to a contravention of a requirement to which subclause 98(2)(a) or (b) applies.

Clause 100 - Power to examine on oath or affirmation

425. This clause provides that when a person is required to appear before the Registrar, the Registrar may administer an oath or affirmation. In addition, the Registrar may examine that person on oath or affirmation.

Clause 101 - Self-incrimination

426. Subclause (1) provides that an individual is not excused from giving information or evidence or producing a document under clause 98 on the ground that the information or evidence or the production of the document might tend to incriminate the individual in relation to an offence.

427. The effect is to provide that a person is not excused from giving information or evidence or producing a document on the ground that the information or evidence or the production of the document might tend to incriminate the person in relation to an offence. It mirrors the provisions in clause 566T of the OPGGS Titles Administration Bill 2021 currently before the Parliament and sections 702 and 728 of the OPGGS Act.

428. A note clarifies that a body corporate is not entitled to claim the privilege against self-incrimination.

429. Subclause (2) provides that certain things are not admissible in evidence against the individual in any criminal proceedings other than proceedings for an offence against subclause 99(2) or clauses 104, 105 or 106 or proceedings for an offence against section 137.1 or 137.2 of the Criminal Code that relates to this Division. The things that are not admissible in evidence against the individual in any criminal proceedings are:

- the information or evidence given or the document produced;
- the giving of the information or evidence or the production of the document;
- any information, document or thing obtained as a direct or indirect consequence of the giving of the information or evidence or the production of the document.

430. In effect, this means that the information or evidence given or document produced, the fact of giving or producing the information, evidence or document, or any information, document or thing obtained as a direct or indirect consequence of the giving or production, is not admissible in evidence against the person in any criminal proceedings, other than a proceeding in relation to an offence for the provision of false or misleading information, documents or evidence.

431. Subclause (3) provides that if, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a

penalty (other than a penalty for an offence) in relation to giving information or evidence or producing a document under clause 98, the individual is not excused from giving the information or evidence or producing the document under those provisions on that ground.

432. A note clarifies that a body corporate is not entitled to claim the privilege against self-exposure to a penalty.

433. The objective of these provisions is to ensure the Registrar can call on information or documents relevant to the proper administration of this Chapter. Where matters relating to the effective oversight of changes in control are concerned, it may occasionally be more important to establish the facts rather than to be able to use the facts in the prosecution of an offence. Maintaining a privilege against self-incrimination may significantly hamper the Registrar's ability to administer provisions relating to the oversight of changes in control of a licence holder, and thereby seriously undermine the effectiveness of the offshore regime.

434. Although this provision abrogates the privilege against self-incrimination, it also provides an immunity against the use or derivative use of the information, documents or evidence given in criminal proceedings, other than a proceeding in relation to an offence for the provision of false or misleading information, documents or evidence.

435. This ensures the Registrar has sufficiently broad information-gathering powers to establish facts, while protecting individuals from proceedings on the basis of providing the information evidence or documents. This safeguard ensures that this provision is reasonable and proportionate to meeting this objective, and therefore the provision meet Australia's human rights obligations to afford minimum guarantees in criminal proceedings.

Clause 102 - Copies of documents

436. The Registrar may inspect a document produced under this Division and may make and retain copies of, or take and retain extracts from, such a document.

437. This clause provides that, if a person is required to produce documents under this Part, including in relation to complying with a notice that requires the person to produce a document, the Registrar is able to inspect the document, and make and retain copies of, or

extracts from, such a document. This clause mirrors sections 703 and 729 of the OPGGS Act, and supports the proper administration of this Chapter by enabling the Registrar to make and retain copies of relevant documents for further consideration

Clause 103 - Registrar may retain documents

438. Subclause (1) provides that the Registrar may take possession of a document produced under this Division, and retain it for as long as is reasonably necessary.

439. Subclause (2) provides that the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Registrar to be a true copy.

440. Subclause (3) provides that the certified copy must be received in all courts and tribunals as evidence as if it were the original.

441. Subclause (4) provides that until a certified copy is supplied, the Registrar must provide the person otherwise entitled to possession of the document, or a person authorised by that person, reasonable access to the document for the purposes of inspecting and making copies of, or taking extracts from, the document.

442. If a person is required to produce a document under this Part, including complying with a notice that requires the person to produce a document, the Registrar is able to take possession of the document and retain it for as long as is reasonably necessary. This clause supports the proper administration of this Chapter by enabling the Registrar to possess and retain relevant documents for further consideration.

443. The intention in the above paragraphs is that where the Registrar takes possession of a document produced and a person is otherwise entitled to possession of the document, that the person is entitled to be supplied, as soon as reasonably practicable, with a copy certified by the Registrar to be a true copy. Until the certified copy is supplied, the Registrar must provide the person who is otherwise entitled to possession of the document, or persons authorised by that person, reasonable access to the document for the purposes of inspecting and making copies of, or taking extracts from, the document.

Clause 104 - False or misleading information

444. This clause addresses false or misleading information. It makes it an offence if a person knowingly provides false or misleading information. The intention of the provision is to deter persons so acting. Specifically, a person commits an office if they give information in compliance or purported compliance with these provisions but does so knowing that the information:

- is false or misleading in a material particular; or
- omits any matter or thing without which the information is misleading in a material particular.

445. A note clarifies that the same conduct may be an offence against both this clause and section 137.1 of the Criminal Code.

446. Committing an offence under this provision attracts a penalty of 100 penalty units. This penalty mirrors those provided in the OPGGS Titles Administration Bill 2021 that is currently before Parliament, and the similar offence provisions elsewhere in this Part.

Clause 105 - False or misleading documents

447. This clause makes it an offence to knowingly produce a false or misleading document in relation to a notice given to produce that information. It provides that a person commits an offence if the person produces a document in compliance or purported compliance with subclause 98(2); and the person does so knowing that the document is false or misleading in a material particular.

448. A note clarifies that the same conduct may be an offence against both this clause and section 137.2 of the Criminal Code.

449. Committing an offence under this provision attracts a penalty of 100 penalty units. This mirrors the offence provisions in section 706 of the OPGGS Act.

Clause 106 - False or misleading evidence

450. This clause makes it an offence to knowingly give false or misleading evidence in relation to complying with a notice that requires the person to give evidence under subclause 98(2). This clause is intended to deter the giving of false or misleading evidence in relation to changes in control of licence holders, including possible changes in control.

451. Specifically, a person commits an offence if:

- the person gives evidence in compliance or purported compliance with subclause 98(2); and
- the person does so knowing that the evidence is false or misleading in a material particular.

452. If a person is found guilty of the offence, the maximum criminal penalty will be 12 months imprisonment for an individual. This penalty mirrors section 707 of the OPGGS Act.

Division 5—Tracing and anti-avoidance

453. Proposed Division 5 introduces tracing and anti-avoidance provisions which are 'designed to catch changes of control 'up the chain' of ownership'.

Clause 107 - Tracing

454. Clause 107 establishes a tracing regime, which allows for a change in control of a licence holder to be traced to a change in control of the companies, trusts or partnerships which control the licence holder.

455. There are two purposes for the tracing regime:

- it is intended to provide for government oversight of changes in control of licence holders that involve a change to the 'real owners' of licence holders, which may be companies or other types of entities that are not an immediate holder of the licence (such as an immediate holding company);
- it also aims to prevent perverse behaviours as a consequence of only providing for oversight of changes in relation to the immediate holders of the licence holder, including, for example, setting up a shell company or companies to avoid the increased government oversight provided for in Chapter 3, Part 3 - Change in control of a licence holder.

456. Subclause (1) provides that the tracing regime applies in various circumstances discussed below and is applicable to a person who is either acting alone or jointly together with one or more other persons.

457. These circumstances arise where the person or persons:

- hold the power to exercise, or control the exercise of, 20% or more of the voting rights in a corporation (higher party) or a partnership (a general partner of which is a higher party); or
- holds, or holds an interest in, 20% or more of the issued securities in a corporation (higher party); or
- holds 20% or more of the interests in a trust (a trustee of which is a higher party) or a partnership (a general partner of which is a higher party);
- including because of one or more applications of this clause.

458. In addition, there is a requirement where:

- the higher party (whether alone or acts jointly with) holds the power to exercise, or control the exercise of, 20% or more of the voting rights in a corporation (lower party) or a partnership (lower party); or
- the higher party holds an interest in, 20% or more of the issued securities in a corporation (lower party); or
- the higher party holds 20% or more of the interests in a trust (lower party) or partnership (lower party).

459. The tracing provision may be applied multiple times so that a change in control of a licence holder may be traced to a change in control of a higher party, regardless of how 'high up' in the corporate group the higher party is (see the wording in subclauses (1) after subparagraph (1)(c)(ii)).

460. The terms 'voting rights' and 'issued securities' are not defined, which means the ordinary meaning of these terms apply. Despite this, these terms reflect, but do not necessarily rely on, similar concepts in other Commonwealth laws, notably:

- the definitions of 'voting power' in a body corporate in section 610 of the CA and 'voting power' in an entity or unincorporated limited partnership in section 22 of the FATA, which means a percentage of votes that might be cast at a general meeting of the entity or partnership;
- the definition of 'control' in relation to control of the voting power in an entity in section 23 of the FATA, which applies whether the power is direct or indirect, and whether it is as a result or by means of agreements or practices that have legal or equitable force, or are based on legal or equitable rights; and

- the definition of ‘securities’ in section 92 of the CA, which includes shares in a body corporate.

461. Subclause (2) clarifies what is meant by a person holding 20% or more of the interests in a trust (as described in subparagraphs (1)(c)(i) and (f)(i)), that is if the person holds 20% or more of:

- the beneficial interest in the income or property of the trust;
- the interest in units in a unit trust; or
- This definition mirrors the definition of an ‘interest’ in a trust under section 11 of the FATA.

462. Subclause (3) provides that a person holds 20% or more of the interests in a partnership (as described in subparagraphs (1)(c)(ii) and (f)(ii)), if the person is entitled to 20% or more of any of the distributions of capital, assets or profits of the partnership, either on dissolution of the partnership or otherwise. This definition mirrors the definition of an ‘interest’ in an unincorporated limited partnership under section 11A of the FATA.

463. Subclause (4) provides for the purposes of this Part. It specifies that:

- if paragraph (1)(d) applies, the person is taken to hold the power to exercise, or control the exercise of the voting rights in the lower party that the higher party holds the power to exercise or control; or
- if paragraph (1)(e) applies, the person is taken to hold, or hold an interest in, the issued securities in the lower party that the higher party holds or holds an interest in; or
- if paragraph (1)(f) applies, the person is taken to hold the interests in the lower party that the higher party holds.

464. Subclause (5) confers a power to prescribe in regulations a different percentage, or different percentages, to the percentage specified in the above provisions (1)(a) to (f) and subclause (2) or (3), which essentially provide for a 20% control threshold for the tracing provision. This power is commonly referred to as a ‘Henry VIII clause’ because it allows delegated legislation to modify the operation of an Act.

465. Exercising this power would entail a minor or technical modification to ensure that the control threshold for the tracing provision (along with the control threshold specified in subclause 84(1) (meaning of

control and change in control of licence holder) remains up to date, particularly if the percentage of what is considered to amount to effective control of a corporation, trust or partnership (including a licence holder that is a corporation) changes, or similar acquisition thresholds in other Commonwealth laws change.

466. This power will likely be exercised rarely and sparingly. Any such modification will also be subject to appropriate scrutiny through the regulation-making process, which includes parliamentary tabling, scrutiny and potential disallowance. The industry will also be notified of any such modification before it commences to reduce any potential increase in legislative complexity in having to understand and comply with a modified control threshold for the tracing provision that has been prescribed in the regulations.

467. This power will provide greater flexibility in addressing any potential over- or under-regulation of transactions that practically amount to a change in control of a licence holder, compared to pursuing a change to the 20% control threshold through an amendment to this Bill. Prescribing a different percentage or different percentages in the regulations will ensure a modification to the control threshold may be made in a timely, efficient and responsive manner, likely in a significantly shorter timeframe compared with making the changes within this Bill.

468. Subclause (6) provides a definition in this clause which means that general partner means a partner of a partnership whose liability in relation to the partnership is not limited. This definition mirrors the definition of a 'general partner' under section 4 of the FATA.

Clause 108 - Anti-avoidance

469. This clause provides for an anti-avoidance provision, which provides that a person commits an offence and is liable to a civil penalty if the person enters into or carries out a scheme to avoid the application of the penalty provisions in Division 3 (Change in control must be approved) of Chapter 3. Contravention of this clause is also a ground for cancellation of the licence or licences held by the licence holder.

470. The purpose of these sanctions is to deter perverse behaviours in relation to avoiding the application of the penalty provisions in Division 3 (Change in control must be approved) of Chapter 3 and thereby ensure (to the extent possible) that transactions proposing to

effect a change in control of a licence holder are subject to government oversight.

471. Subclause (1) provides that a person contravenes this subclause if:

- the person, either alone or with one or more other persons, enters into, begins to carry out or carries out a scheme; and
- the person does so for the sole or dominant purpose of avoiding the application of Division 3 in relation to any person or persons (whether or not those persons are the same persons mentioned in paragraph (a)); and
- as a result of that scheme or part of that scheme, a person avoided the application of Division 3.

472. A note clarifies that contravention of this subclause is also a ground for cancellation of a licence (see paragraph 73(1)(f)).

Fault-based offence

473. Subclause (2) provides that, if a person contravenes subclause (1), the person will commit a fault-based offence. The offence is subject to a maximum criminal penalty of 1,200 penalty units for an individual.

474. The maximum criminal penalty for a body corporate will be a fine of 6,000 penalty units because of the body corporate multiplier rule for an offence that imposes a pecuniary penalty in subsection 4B(3) of the Crimes Act.

475. The physical elements of the offence do not specify fault elements, which means that the default fault elements under section 5.6 of the Criminal Code apply.

Civil penalty provision

476. Subclause (3) provides that, if a person contravenes subclause (1), the person will be liable to a civil penalty. The maximum civil penalty for an individual will be a fine of 2,400 penalty units.

477. The maximum civil penalty for a body corporate will be a fine of 12,000 penalty units because of the body corporate multiplier rule in paragraph 82(5)(a) of the RPA. The rationale for the amount of these penalties includes:

- The maximum criminal penalty of a fine of 6,000 penalty units for a body corporate is the same penalty for a

corporation for an unauthorised takeover under subsection 606(4A) of the CA;

- The maximum civil penalties of a fine of 2,400 penalty units for an individual and a fine of 12,000 penalty units for a body corporate are double the amount of the maximum criminal penalties. This is to ensure that the penalties act as a deterrent for non-compliance, particularly for companies; and recognises that being found liable to a civil penalty does not attract imprisonment or a criminal conviction.

478. The penalties for the fault-based offence and the civil penalty provision reflect the consequences that beginning or ceasing to control a licence holder (as a consequence of entering into or carrying out a scheme to avoid the application of the penalty provisions in Division 3) may have on the suitability of the licence holder to operate in the offshore resources regime, and therefore the severity of these penalties (along with the grounds to cancel the licence or licences held by the licence holder) aims to deter non-compliance with subclause (1).

479. These consequences may include a potential adverse impact on the technical advice or financial resources available to the licence holder to carry out its activities in the licence area or areas and comply with legislative requirements, including decommissioning.

480. Conduct that contravenes these penalty provisions may cause the licence holder to experience significant financial distress and, as a consequence, result in the licence holder becoming insolvent and abandoning its licence or licences. This in turn may cascade into other adverse impacts, particularly in increasing the risks that abandoning the management or control of offshore electricity infrastructure poses to the safety of its workers and the surrounding marine environment.

481. While the severity of these penalties reflects the seriousness of any potential non-compliance, these amounts are lower than the highest penalty provided for in the OPGGS Act, which is a fine of 3,500 penalty units for an individual, and 17,500 penalty units for a body corporate, for recklessly breaching an occupational health and safety duty (see section 16B of Schedule 3 to the OPGGS Act).

482. Subclause (4) defines the term scheme for the purposes of this clause, which is intended to capture any way a person may intend to avoid

the application of the penalty provisions in Division 3 and may include:

- any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- any scheme, plan, proposal, action, course of action or course or conduct, whether unilateral or otherwise.

Division 6—Other provisions

Clause 109 - Registrar etc. not concerned with the effect of instrument lodged under this Part

483. Clause 109 clarifies that none of the parties listed in the clause are concerned with the effect in law (for example, in contract law) of an instrument lodged under this Part which may include, for example, an instrument or proposed instrument effecting a change in control of a licence holder.

484. The purpose is intended to relieve the Minister and the Registrar and any person acting under their direction or authority of any responsibility for verifying that the instrument has the effect in law that it purports to have.

485. It may be necessary for the Registrar to enquire into the legal effect of such an instrument to determine its effect in relation to a change in control of a licence holder. However, the legal effect of any particular instrument is a matter for the relevant court, and not for these parties to determine.

486. This clause mirrors sections 511 and 560 in the OPGGS Act in relation to the administration of transfers of and dealings in petroleum and GHG titles respectively.

Clause 110 - Falsified documents

487. This clause makes it an offence to produce or tender in evidence a document that falsely purposes to be a copy of, or an extract from, an instrument given to the Registrar. This clause is intended to deter the production of, or use in evidence, of forged or counterfeit documents in relation to changes in control of licence holders, including possible changes in control.

488. Specifically, a person commits an offence if the person produces or tenders in evidence a document and the document falsely purports to be a copy of extract from an instrument given to the Registrar.

489. The note included in this clause clarifies that the same conduct may be an offence against both this clause and section 137.2 of the Criminal Code.

490. If a person is found guilty of the offence, the maximum criminal penalty will be a fine of 50 penalty units.

Clause 111 - Inspection of instruments

491. This provision addresses the inspection process for instruments. It clarifies that the Registrar must ensure that all instruments, or copies of instruments which are to inspection are to be open for inspection at all convenient times.

492. It provides for access to all instruments, or copies of instrument, that are subject to inspection under this Chapter. The Registrar must ensure that all of these types of instruments are open for inspection at all convenient times by any person on payment of a fee calculated under the regulations.

493. The inspection is available to any person on payment of a fee calculated under the regulations. The applicable fee (if any) will enable the Registrar, as a fully cost-recovered entity, to recover the costs that it will incur in relation to enabling public access to the relevant instrument.

Clause 112 - Evidentiary provisions

494. This clause addresses evidentiary provisions. It facilitates proof of certain types of matters in relation to changes in control of licence holders, including possible changes in control, by enabling certain parties to proceedings to provide the relevant court with specified documents as evidence in relation to those matters.

495. Subclause (1) provides that the Registrar may, on payment of a fee calculated under the regulations, supply a copy of or extract from such an instrument, certified by the Registrar to be a true copy or true extract. Practically, certified copies will typically be photocopies, and certified extracts may include segments of text kept in an electronic form that are able to be printed.

496. The applicable fee will enable the Registrar, as a fully cost-recovered entity, to recover the costs that it will incur in relation to supplying and certifying the relevant copy or extract may, on payment of a fee calculated under the regulations, supply a copy of or extract from such an instrument, certified by the Registrar to be a true copy or true extract. Practically, certified copies will typically be photocopies, and certified extracts may include segments of text kept in an electronic form that are able to be printed.

497. Subclause (2) provides that the certified copy or extract is admissible in evidence in all courts and proceedings without further proof or production of the original.

498. Subclauses (3) to (8) apply to evidentiary certificates prepared and issued under this clause. The purpose of evidentiary certificates is to settle formal or technical matters of fact that would be difficult to prove by adducing admissible evidence. Evidentiary certificates promote efficiency by removing delays arising from obtaining evidence with more traditional methods, freeing up the court's time to consider the more serious issues related to the offence. The use of an evidentiary certificate for a 'formal' matter may include, for example, that an application made for the approval of a change in control of a licence holder has been made, including the date on which it was lodged with the Registrar.

499. Subclause (3) provides that the Registrar may issue a written certificate. The certificate should state that an entry, matter or thing that is required or permitted by or under this Part to be made or done, has been made or done. In addition, where something is required not to be made or done, it may state that that an entry, matter or thing has not been made or done.

500. Such a certificate may only be issued by the Registrar, or a person acting under their direction or authority who will be independent of the prosecution in any proceedings for an offence.

501. The applicable fee (if any) will only serve to enable the Registrar, as a fully cost-recovered entity, to recover the costs that it will incur in relation to preparing and issuing the relevant evidentiary certificate.

502. Subclause (4) provides that the certificate is to be received in all courts and proceedings as prima facie evidence of the statements in the certificate, meaning that any such certificate will establish prima facie evidence of the matters contained in the certificate, as opposed

to conclusive evidence. As such, the certificate creates a rebuttable presumption of the facts that the defendant may challenge during proceedings for an offence.

503. Subclause (5) addresses the evidentiary requirements for certificates in criminal proceedings. It makes clear that a certificate must not be admitted in evidence in an offence unless the person charged or their acting legal representative has at least 14 days before the certificate is sought to be admitted, been given a copy of the certificate. This must also be accompanied with notice of the intention to produce the certificate as evidence in the proceedings.

504. Subclause (6) provides that the person signing the certificate may be called to give evidence in the case where a certificate is so admitted. They may be called as a witness for the prosecution; and cross-examined as if the person who signed the certificate had given evidence of the matters stated in the certificate.

505. Subclause (7) gives a proviso. It does not entitle the person charged to require the person who signed the certificate to be called as a witness for the prosecution unless the following apply:

- the prosecutor has been given at least 4 days' notice of the person's intention to require the person who signed the certificate to be called; or
- the court, by order, allows the person charged to require the person who signed the certificate to be called.

506. Evidence in support, or in rebuttal, of matters in certificate to be considered on its merits.

507. Subclause (8) provides that any evidence given in support, or in rebuttal, of a matter stated in a certificate must be considered on its merits, and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this clause.

508. Additionally, subclause (8) clarifies that any evidence given in support, or in rebuttal, of a matter stated in an evidentiary certificate must be considered on its merits, and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this clause.

509. This clause therefore provides an opportunity for evidence of contrary matters to be adduced in any proceedings for an offence, and

allows the matters stated in the certificate to be tested through cross-examination and rebutted by the defendant (see subclauses (6) and (7)).

510. To provide defendants with a reasonable opportunity to offer evidence of contrary matters in any proceedings for an offence, subclause (5) sets out the procedure to be followed before admitting an evidentiary certificate. This subclause provides that an evidentiary certificate must not be admitted in evidence in such proceedings unless:

- the person charged with the offence; or
- a barrister or solicitor who has appeared for the person in those proceedings;
- has, at least 14 days before the certificate is sought to be admitted, been given a copy of the certificate together with notice of the intention to produce the certificate as evidence in the proceedings.

511. If the defendant, or a barrister or solicitor who is appearing for the defendant, is not provided with a copy of the certificate as required by subclause (5), the matters contained in the evidentiary certificate may not be treated as prima facie evidence and the person signing the certificate may need to give direct evidence of the matters that would otherwise have been covered in the certificate.

512. Subclause (6) provides that the person signing an evidentiary certificate may be called to give evidence as a witness for the prosecution and be cross-examined. This subclause provides that, if, under subclause (4), an evidentiary certificate is admitted in evidence in proceedings for an offence, the person charged with the offence may require the person who signed the certificate to be called as a witness for the prosecution and cross-examined as if the person who signed the certificate had given evidence of the matters stated in the certificate.

513. Subclause (7) clarifies that subclause (6) does not entitle the person charged with the offence to require the person who signed the certificate to be called as a witness for the prosecution, unless the prosecutor has been given at least four days' notice of the person's intention to require the person who signed the certificate to be so called, or the court makes an order allowing the person charged with

the offence to require the person who signed the certificate to be so called.

CHAPTER 4—MANAGEMENT AND PROTECTION OF INFRASTRUCTURE

Part 1—Management and operation of infrastructure

Division 1—Introduction

Clause 113 - Simplified outline of this Part

514. Clause 113 provides a simplified outline of Part 1 of Chapter 4 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Division 2—Management plans

515. Management plans will be prepared and submitted by an offshore renewable energy licence holder or a person authorised by a licence holder and will address the following matters;

- work health and safety including workforce participation;
- environmental management;
- OEI integrity;
- plans for decommissioning;
- calculation of decommissioning financial security and how this will be provided;
- consultation requirements with other marine users;
- implementation strategy including monitoring, audit, management and review; and
- emergency management.

516. Management plans will be assessed by the Regulator and a determination made on the acceptability of a management plan or otherwise. The requirements are intended to be objective-based and focussed on the highest order impacts and risks of offshore infrastructure activities. The onus will be placed on the licence holder to appropriately identify the impacts and risks of their activities, to evaluate these and, where significant, to put in place measures to reduce impacts and risks to as low as reasonably practicable.

517. A management plan will describe the safety and environmental management system that will be implemented to allow impacts and risks to be continuously identified and reduced over the life of an offshore infrastructure activity and for continuous improvement in management of the activity to be achieved.

518. Management plans are intended to be flexible in that they may cover one or multiple activities across one or multiple licences provided these licences are held by the same licence holder. They may be required across all licence types and must be in force prior to the commencement of any offshore infrastructure activity under a licence.

Clause 114 - Licensing scheme must provide for management plans

519. Clause 114 addresses the requirement for management plans. They form an integral part of the requirements to be placed on licence holders. This will be set out in the licensing scheme.

520. Subclause (1) provides that the licensing scheme must require the licence holder to prepare a plan in relation to offshore infrastructure activities and other activities that are to be carried out under licences. The scheme must also provide for procedures for a licence holder to apply for the Regulator to approve a management plan, and procedures or the Regulator to approve or refuse to approve such an application.

521. Feasibility, transmission and infrastructure and research and demonstration licences are able to be granted without first having to have a management plan accepted by the Regulator. However, a licence holder will not be permitted to construct or install OEI until the Regulator has approved the management plan for offshore infrastructure activities to be carried out under the licence.

522. A commercial licence may only be granted if the Regulator has approved a management plan for the commercial licence. A licence holder will be required to set out in the management plan the construction, installation, commissioning, operation, maintenance and decommissioning activities to be carried out under the licence. Depending on the nature and scale of an offshore electricity project all of the technical and operational details of the project, sufficient to comprehensively identify, assess and control impacts and risks, may not be known prior to the grant of a commercial licence. For this

reason flexibility will be built into the management plan process to allow for projects to be approved in a phased manner.

523. An explanatory note to subclause (1) explains that a plan for a licence approved by the Regulator under the licensing scheme is a 'management plan' for the licence. There is a second note to state that the holder of a licence must have a management plan for the licence in order to carry out offshore infrastructure activities under the licence.

524. Subclause (2) sets out that the licensing scheme may provide for any of the following:

- matters to which the Regulator may or must have regard when considering whether to approve a management plan;
- the revision of management plans, including requirements for a licence holder to revise a management plan and procedures for the Regulator to approve a revised management plan;
- requirements for consultation in relation to an application for approval of a management plan or a revised management plan;
- requirements for a licence holder to give notifications to the Regulator in relation to the design of OREI and OETI;
- the holder of a feasibility licence to apply for the Regulator to approve a management plan for a commercial licence that the holder has applied for, or proposes to apply for;
- requirements that the licence holder must comply with for the licence to be surrendered.

525. The above provisions are designed to set out procedures to ensure procedural fairness to licence holders and transparency to stakeholders on the management planning process and decision making.

526. Subclause (3) allows the licence scheme to provide for a management plan to provide for a matter by incorporating by reference any matter contained in an instrument or other writing as in force or existing from time to time. This is despite section 46AA of the AIA which addresses the issue of prescribing matters by reference to other instruments. In this case, the intention is that the management plan will be able to incorporate a range of external documents, and continue to adopt them as they change from time to time.

527. Management plans will be technical documents that will rely on external documents such as domestic and international standards to demonstrate compliance with regulatory requirements. For this reason it is considered imperative that management plans are able to refer to external sources of information and to ensure that changes to these external sources can be appropriately carried through to management of activities under a management plan on an ongoing basis.

528. The incorporation of matters by reference to the management plan is an integral part of the licensing scheme, as the management plan is intended to be a living document which will contain content such as a list of workers, subject to rapid change, and not suitable for legislative processes. Material, such as OEI condition and references to technical standards reports that may be incorporated, would be technical material, changing from time to time, but which management plans would need to refer to as in force for the regulatory scheme to work. There would not be sufficient functionality were this process be required to go through the legislation-making process for current information to be referenced. Where relevant, external information referred to would be readily ascertainable for a licence holder.

529. There is no requirement for management plans to be made public. However, it is intended the regulations will allow for publication of details within a management plan to enable public comment. This will facilitate transparency, compliance with conditions and stakeholder concerns, protecting any sensitive or personal information.

530. The Regulator will invite comments on the management plan during the period in relation to its content and relevant to any impacts of the proposed activity on stakeholders and the environment. Any comments received during the comment period will be provided to the licence holder for consideration and appropriate amendments to the management plan made before resubmission to the Regulator for assessment.

531. Subclause (4) states that a management plan is not a legislative instrument. The Regulator's decisions in relation to management plans will be subject to review under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act). However, it is proposed that the Regulator's decision to accept or refuse to accept a management

plan will not be subject to merits review as these decisions are to be automatic or mandatory in nature. It is proposed that in relation to management plans the licensing scheme will set out criteria against which a management plan must be assessed by the Regulator. These licensing scheme regulations will provide that where these criteria are met the Regulator must accept the management plan and where the criteria are not met the Regulator must refuse to accept the management plan.

532. Further information on the operation of these provisions and their interaction with merits review processes will be provided in the explanatory statement to regulations that prescribe the scheme. This approach is consistent with the guidance of the former Administrative Review Council and with analogous processes under the OPGGS Act and related regulations.

Clause 115 - Matters that a management plan must address

533. Clause 115 outlines what a management plan must address.

534. Subclause (1) sets out the matters that must be covered. The plan must address:

- how the licence holder is to carry out offshore infrastructure activities and other activities under the licence;
- any matters that the conditions of the licence require to be addressed in the plan;
- environmental management, including how the licence holder is to comply with EPBC Act obligations in relation to the licence activities;
- how the licence holder is complying with, or is to comply with, section 116 of the Bill (maintenance and removal of property etc.)
- how the licence holder is complying with, or is to comply with, clause 117 and 118 (financial security);
- other matters that this Bill requires to be addressed in a management plan;
- requirement to keep certain records;
- other matters prescribed by the licensing scheme; and
- other matters required by the Regulator under subclause (3) of this clause.

535. Subclause (2) sets out various important elements that the licensing scheme may require a management plan to cover. The scheme may require the plan to address any of the following:

- the design, integrity and maintenance of licence OEI;
- work health and safety;
- emergency management;
- the making and keeping of records;
- requirements to consultant with any person that may be affected by activities carried out under the licence, and the outcomes of any such consultation;
- monitoring, auditing, managing and reviewing the management plan and the licence holder's compliance with the management plan.

536. Subclause (3) provides that the Regulator may require a management plan for a licence to make any reasonable provision for any matters, or impose any reasonable requirements on the licence holder, in relation to the activities to be carried out under the licence, that the Regulator considers appropriate.

537. As set out above, management plans under the framework are intended to cover multiple issues – these are the core elements and any matters that are identified as appropriate and reasonable by the Regulator. Further details relating to elements of a management plan that the licensing scheme is expected to address are discussed in further detail below.

Design and Infrastructure integrity and maintenance

538. The Bill includes provisions requiring licence holders to ensure that OEI is appropriately maintained over its operational life. Once it is no longer in use, the OEI is either to be removed, or alternative arrangements for the OEI are to be made to the satisfaction of the Regulator.

539. It is anticipated that through the licensing scheme, a management plan will be required to demonstrate that appropriate measures are in place for the inspection, maintenance and repair of OEI to ensure that the integrity of the OEI is maintained in good order and such that it can perform its intended function.

540. The management plan will also need to set out how the licence holder intends to provide financial security to provide for the cost of decommissioning.

Work Health and Safety

541. It is anticipated that through the licensing scheme, the management plan will require a demonstration from the licence holder as to how safety risks to the workforce will be managed and how the workforce will be appropriately informed of hazards and risks to health and safety. Management plans will require licence holders to undertake a formal assessment of safety hazards where those hazards may present significant risks and how they will be suitably addressed. Other health and safety risks would be required to be addressed through a comprehensive safety management system documented under the management plan.

Emergency management

542. It is anticipated that through the licensing scheme, a management plan will need to set out how the licence holder intends to reduce the risk of emergency situations occurring and if an emergency was to arise, how it would be responded to.

Environmental management

543. Environmental approval for offshore electricity infrastructure projects are to be undertaken through the approvals and assessment processes under the EPBC Act.

544. The management plan will provide for licence holders to demonstrate how conditions of approval and environmental obligations set under the EPBC Act will be met and comply with other Bill provisions and any other additional environmental management requirements (e.g. remediation).

Consultation with other marine users and management of socioeconomic impacts

545. Consultation provisions are expected to be addressed in the development of a management plan to ensure that other users of the area in which an offshore infrastructure activity is to be undertaken have been appropriately considered and that these concerns have been taken into account.

Division 3—Operations

Clause 116 - Maintenance and removal of property etc. by licence holder

Maintenance of property etc.

546. This provision addresses the issues of maintenance and property held by the licence holder.

547. Subclause (1) provides that the holder of a licence must maintain in good condition and repair all structures and all equipment and other property in the licence area that is used in connection with the activities authorised by the licence.

Removal of property etc.

548. Subclause (2) addresses the requirement to remove property. This places an obligation on the licence holder to remove all structures, equipment and other property from the licence area that is not used, nor to be used, in connection with the licence activities.

Exception

549. Subclause (3) provides an exception to the above requirements. Those provisions do not apply in relation to any structure, equipment or other property where it has not been brought into the licence area by or with the authority of the licence holder.

550. There is a note to state that the defendant bears an evidential burden in relation to the matters mentioned in this subclause. The reader is directed to subsection 13.3(3) of the Criminal Code and section 96 of the RPA.

Strict liability offence

551. Subclause (4) creates a strict liability offence in relation to a failure to comply with subclauses (1) or (2). In this case, a person commits an offence of strict liability if they are subject to a requirement as above and fails to comply with the requirement. It is intended that the offence will deter licence holders from:

- failing to maintain structures, equipment and property used in connection with OEI activities; and

- leaving structure, equipment and other property that is not connected with the licence holder's activities in the Commonwealth offshore area.

552. To ensure the safety of sites within the Commonwealth offshore area, it is considered appropriate for a contravention of subclauses (1) or (2) to be a strict liability offence. The justification for this approach in the Bill is set out further in the Statement of Compatibility with Human Rights.

553. There is a specified maximum penalty of 100 penalty units for this offence.

Civil penalty provision

554. Subclause (5) creates a civil penalty for contravening the clause. The specified maximum civil penalty is 525 penalty units.

Section has effect subject to other provisions etc

555. Subclause (6) provides that this clause has effect subject to other provisions and matters under the Bill. The specified provisions and matters are:

- any other provision of the Bill;
- general directions given by the Regulator;
- remedial directions given by the Regulator or the Minister;
- the management plan for the licence, if there is one; and
- any other law.

Division 4—Financial security

Clause 117 - Requirement to provide financial security

556. These provisions have been developed taking into account approaches for financial security in the offshore electricity industry in leading international jurisdictions such as the United Kingdom. In addition learnings from the domestic offshore oil and gas sector have been considered to ensure that the financial security regime under the Bill is fit for purpose to effectively mitigate the risk that costs, expenses and liabilities associated with the activities of licence holders fall on the Australian taxpayer.

557. Reforms to enhance decommissioning requirements for offshore petroleum are being progressed but take into account the existing structure of the legislative regime under the OPPGS Act including the current mechanisms for financial assurances. As a new legislative regime, the drafted provisions are intended to simplify and enhance requirements for financial security to align with leading practice.

558. Subclause (1) provides that where there is a management plan, the holder of a licence must at all times provide the Commonwealth with financial security sufficient to pay any costs, expenses and liabilities that may arise in connection with the decommissioning of licensed OEI, including the removal of equipment and other property from the licence area or a vacated area, and remediation of the licence area and vacated areas.

559. Appropriate financial security will need to be agreed by the Regulator and in place before any OEI can be installed. The financial security required will be equal to the cost for Government to decommission the OEI installed, remove equipment and property and remediate affected areas. This approach ensures taxpayers are not left to pay for the removal of OEI and associated costs in the event that the licence holder is unable or unwilling to do so.

560. There is an explanatory note to state that for the purposes for which the financial security may be used are not limited to the matters in paragraphs (a), (b) and (c). The reader is directed to subclause 117(2).

561. Subclause (2) provides for regulations which allow the Regulator to refuse to approve either a management plan or a revised management plan unless the licence holder has provided the financial security required.

562. Subclause (3) provides for regulations to set out the details of the financial security arrangements. The regulations may set out how the financial security is to be provided in a form acceptable to the Regulator, and for it to be required at different times for particular licence infrastructure so long as the financial security is provided before that OEI is constructed or installed in the licence area. A range of financial instruments such as bonds, letters of credit, bank guarantees and other mechanisms may be considered appropriate to meet financial security requirements. The security amounts required and the timing of securities will vary and will be assessed by the

Regulator on a case-by-case basis taking into account the specific project or activity.

563. In addition the regulations may provide for the financial security to cease to be required. This would occur in circumstances where the Regulator is satisfied that no further costs, expenses or liabilities are likely to arise in relation to that OEI or property or those activities.

564. Subclause (4) allows for regulations to prescribe all of the following:

- arrangements that may be treated, and are not to be treated, as financial security for the purposes of this clause;
- methods for working out the financial security a licence holder must provide - (which may take into account costs, expenses and liabilities that might arise from emergencies or unexpected circumstances); and
- circumstances the Regulator may accept a reduced amount of financial security.

Clause 118 - Contravention of requirement to provide financial security

565. Subclause (1) states that a person contravenes this clause if the person is required to provide the Commonwealth with financial security in accordance with the provision and the person does not comply with the requirement. This is a fault-based offence.

566. Subclause (2) states that a person commits an offence if the person contravenes the above provision. There is a maximum penalty of 300 penalty units.

567. Subclause (3) provides for a civil penalty for contravening subclause (1). In that case, a person is liable to a civil penalty if the person contravenes the above provision. The specified maximum civil penalty is 480 penalty units.

Clause 119 - Recovery and application of financial security

568. Subclause (1) provides that the regulations may provide for specified kinds of costs, expenses and liabilities incurred by the Commonwealth or the Regulator in relation to a licence, or debts owed by a licence holder to the Commonwealth or the Regulator under this Bill, to be recovered by the Commonwealth from a financial security provided by the licence holder.

569. Subclause (2), which is included for the avoidance of doubt, clarifies that the costs, expenses and liabilities mentioned in subclause (1) are not limited to the costs, expenses and liabilities mentioned in subclause 117(1). It may include amounts of offshore electricity infrastructure levy that are due and payable to the Commonwealth by the licence holder.

570. Subclause (3) stipulates that an amount received or recovered under this clause is to be credited to the Offshore Infrastructure Registrar Special Account established under clause 171.

571. Subclause (4) provides that any credits received or recovered in relation to financial security under subclause (3) must be:

- applied to any cost, expense or liability incurred by the Commonwealth or debt owed to the Commonwealth, that may be recovered from the financial security as specified in the regulations; or
- paid to the Regulator for the purposes of:
  - applying the amount to any cost, expense or liability incurred by the Regulator, or debt owed to the Regulator, that may be recovered from the financial security under regulations made for the purposes of subclause (1); or
  - to the extent that the Regulator is satisfied the amount is no longer required—refunding the amount; or
- to the extent that the Regulator is satisfied that the amount is no longer required—refunded by the Commonwealth; or
- if none of the above—retained by the Commonwealth until it is:
  - applied as mentioned in paragraph (a); or
  - paid to the Regulator as mentioned in paragraph (b); or
  - refunded as mentioned in paragraph (c).

Part 2—Directions powers

Division 1—Introduction

Clause 120 - Simplified outline of this Part

572. Clause 120 provides a simplified outline of Part 2 of Chapter 4 of the Bill to help readers understand the substantive provisions. This

simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Division 2—General power to give directions

Clause 121 - General power to give directions—Regulator

Direction to licence holder

573. Subclause (1) provides that the Regulator may give a direction to a licence holder relating to

- how the licence holder is complying with any provision of the Bill, the applied work health and safety provisions, the conditions of licence or the management plan for the licence (if there is a plan).
- how offshore infrastructure activities are to be carried out under the licence;
- anything that, under the Bill or licensing scheme, a management plan may or must address.

574. Notices under subclause (1) must be given in writing.

575. An explanatory note to this subclause explains that a breach of a direction may attract a criminal or civil penalty under clause 123.

576. Subclause (2) sets out that the types of directions that may be given include directions:

- to carry out offshore infrastructure activities under the licence in a particular way;
- to make arrangements for another person to carry out offshore infrastructure activities under the licence on behalf of the licence holder;
- as to how the licence holder is to comply with a requirement under this Bill, the applied work health and safety provisions, the licence or any management plan for the licence;
- to require the licence holder to ensure that a requirement under this Bill, the applied work health and safety provisions, the licence or any management plan for the licence is not contravened;
- to require the licence holder to comply with this Bill, the applied work health and safety provisions, the licence or any

management plan for the licence in a specified manner or within a specified time;

- to require the licence holder to cease carrying out activities under the licence until a requirement under this Bill, the applied work health and safety provisions, the licence or any management plan for the licence is complied with.

Extended application of direction

577. Subclause (3) provides for an extended application of the direction to specified persons. It may be extended in certain circumstances and apply to the following two groups:

- a specified class of persons who are employees or agents of, the licence holder or performing work for the licence holder; or
- any person other than the licence holder who is:
  - in the offshore area for any reason touching, concerning, arising out of, or connected with, offshore infrastructure activities;
  - in, above, below or in the vicinity of a vessel, aircraft, structure or installation, or equipment or other property in the Commonwealth offshore area for a reason of that kind.

578. Subclause (4) provides that if a direction is given under subclause (3), it may be expressed to apply to each person in the specified class mentioned in paragraph (3)(a), or to each of the other persons mentioned in paragraph (3)(b), as the case may be.

Additional matters

579. Subclause (5) provides that a direction under this clause has effect, and must be complied with, despite any previous direction or anything in the regulations or the applied State and Territory provisions.

580. There is an explanatory note for the applied State and Territory provisions directing the reader to subclause 248(2).

581. Subclause (6) provides that a direction may unconditionally or conditionally prohibit the doing of an act or thing. If conditions apply

to the prohibition, they can include requiring the consent or approval of a person specified in the direction.

Revocation of direction

582. Subclause (6) addresses the revocation of a direction. It specifies that the Regulator must revoke the direction if the Regulator is satisfied that the direction is no longer required. That may occur because the direction has been complied with, or for any other reason. The revocation must be in writing and provided to the licence holder.

583. Subclause (7) makes clear that the revocation provisions in subclause (6) do not limit subsection 33(3) of the AIA, which also deals with revocation of instruments. That provision of the AIA provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character the power includes a power to repeal, rescind, revoke and amend that instrument which is exercisable in the same manner and subject to the same conditions.

Status of directions and notices

584. Subclause (8) addresses the status of directions and notices. It states that if paragraph (3)(b) applies to a direction under this clause then the direction and notice revoking the instrument is a legislative instrument. This is because the group of persons are not licence holders but are in some way less directly connected with offshore activities than the persons in paragraph (3)(b) (for example, they may be persons in, above, below or in the vicinity of a vessel, aircraft or other installation for a reason connected with offshore infrastructure activities). As the direction applies generally, it can be better characterised as being a rule of general application, and therefore more appropriately made by way of a legislative instrument.

585. Subclause (9) states that if paragraph (3)(b) does not apply to a direction under this clause then the direction and notice revoking the direction is not a legislative instrument. This is because the class of persons envisaged in paragraph (3)(a) are either a licence holder or persons connected with the licence holder. This direction does not have a general application, but relates only to the licence holder and others closely associated with the licence holder. The making of the direction is therefore more akin to an administrative decision that is not of legislative character.

<u>Clause 122 - Directions under clause 121 may extend outside of licence area</u>

586. Subclause (1) provides that directions may extend outside the licence area. A direction may require the licence holder to take an action or not anywhere in the Commonwealth offshore area, whether within or outside the licence area.

587. Subclause (2) provides that if a direction requires the holder to take an action in relation a related licence in another area, then the Regulator must give a copy of the direction to the holder of that related licence as soon as practicable after the first direction is given.

Clause 123 - Directions under clause 121—compliance

588. Clause 123 specifies consequences for breach of a direction issued under clause 121 by the Regulator. It is similar to section 576 of the OPGGS Act.

589. Subclause (1) provides that a person contravenes the clause if they are subject to a direction and engage in conduct that breaches the direction.

Fault-based offence

590. Subclause (2) creates a fault based offence. It provides that a person commits an offence if they contravene subclause (1). As this is not expressed to be a strict liability offence, it involves a fault element.

591. The offence attracts a maximum penalty of 5 years imprisonment or 2,000 penalty units, or both.

Strict liability offence

592. Subclause (3) creates a strict liability offence. It provides that a person commits an offence of strict liability if they contravene subclause (1).

593. A maximum penalty of 100 penalty units applies to this offence.

594. The strict liability offence is appropriate to ensure the highest level of compliance with directions given the potential harm that might be caused by the conduct in breach of directions. The justification for this approach in the Bill is set out further in the Statement of Compatibility with Human Rights.

Civil penalty provision

595. Subclause (4) creates a civil penalty provision. It states that a person is liable to a civil penalty if they are subject to a direction under clause 183 and do not comply with that direction. Where this occurs, the person is liable to a civil penalty of up to 525 penalty units.

Defences—breach of direction by person other than a licence holder

596. Subclause (5) provides for a defence where there is a breach of a direction under clause 121 by a person other than the licence holder. It applies if:

- a licence holder and another person are subject to a direction; and
- the other person is prosecuted or subject to civil penalty action; and
- the other person gives evidence that they did not know, and could not reasonably be expected to have known, of the existence of the direction.

597. Subclause (6) provides that in the circumstances covered by subclause (5), unless it is proved that the other person knew, or could reasonably be expected to have known, of the existence of the direction, then they are not to be convicted of an offence or made subject to a civil penalty under the provisions of this clause.

Continuing offences and continuing contraventions of civil penalty provisions

598. Subclause (7) establishes an offence for continuing breaches of a direction. It provides that a person who commits an offence against subclauses (2) or (3) commits a separate offence each day during which that the offence continues.

599. Subclause (8) sets the maximum penalty for each day for a continuing offence at 10% of the maximum penalty for that offence.

600. Subclause (9) provides that a person who contravenes subsection (4) commits a separate contravention each day during which the contravention continues.

601. Subclause (10) provides a maximum civil penalty for each day of the continuing contravention, being 10% of the maximum civil penalty that can be imposed in respect of that contravention.

Clause 124 - Regulator may take action if there is a breach of a direction under clause 121

602. Subclause (1) enables the Regulator to take action in the event of a breach of direction. It applies in the case where a person who is subject to that direction does not comply with the direction.

603. Subclause (2) gives the Regulator the authority to undertake any necessary action as required by the direction.

604. Subclause (3) enables the Regulator to recover any costs or expenses incurred in relation to the action. It becomes a debt due which is recoverable in a relevant court.

Exception—direction that has an extended application

605. Subclause (4) provides an exception to extend the application of the direction. It applies where a direction under clause 121 applies to a licence holder and another person.

606. If action to recover costs under subclause (3) is brought against the other person and they adduce evidence that they did not know and could not reasonably be expected know about the direction, they are not liable. The onus is on the plaintiff to prove that the other person knew or could reasonably be expected to have known, of the existence of the direction.

Division 3—Remedial directions

607. Under this Division, powers are provided to the Regulator and Minister to issue remedial directions similar to Part 6.4 of the OPGGS Act.

Clause 125 - Remedial directions—power to issue directions under different provisions

608. This clause addresses how the power to issue remedial directions under this Division affects the power of the Regulator or Minister to issue other directions.

609. It provides that the power to give a remedial direction does not limit the ability of the Regulator or the Minister to give a remedial direction to the person in relation to the same (or a different) matter. It also provides that the power to give a remedial direction does not limit the Regulator's power to give the person a direction in relation

to the same (or a different) matter under section 121 (general power to give directions).

Clause 126 - Remedial directions by the Regulator

610. This clause provides for the Regulator to issue remedial directions which can require a person to carry out a range of actions.

611. Subclause (1) provides that the provisions apply to a person who is a licence holders or who held a licence immediately before it was surrendered or cancelled.

612. Subclause (2) provides that the Regulator may issue a written notice directing a person mentioned in subclause (1) to undertake any of the actions specified in paragraphs (a)-(d).

Conservation and protection of natural resources and making good of environmental damage

613. Under paragraph (2)(a) the Regulator may direct the person to do, before a specified time and to the satisfaction of the Regulator, any or all of the following:

- provide for the conservation and protection of the natural resources in the area, or vacated area;
- make good any damage to the seabed or subsoil, or any other environmental damage, in the Commonwealth offshore area (whether inside or outside of the licence area or vacated area) caused by any person engaged or concerned in activities authorised by the licence.

Environmentally sensitive areas and other matters in vacated areas

614. Under paragraph (2)(b) the Regulator may direct the person to do, until a specified time, any or all of the following in relation to a vacated area in relation to a licence:

- assess and monitor environmentally sensitive areas within the area;
- give reports to the Regulator in relation to specified matters.

Licence holder obligations under Act, licence and management plan

615. Under paragraph (2)(c) the Regulator may direct a person that holds a licence to do any or all of the following things before the time specified in the notice:

- comply with any obligation of the licence holder under this Bill or the licence in connection with an offshore infrastructure activity;
- if there is a management plan for the licence—carry out any obligation of the licence holder under the management plan;
- make arrangements that are satisfactory to the Regulator in relation to an obligation referred to above.

Suspended or cancelled licences

616. Under paragraph (2)(d) if a licence has been cancelled or surrendered the Regulator may direct a person to do any or all of the following things before the time specified in the notice:

- comply with any obligation of the licence holder under this Bill or the licence, as the licence was immediately before it was cancelled or surrendered, in connection with an offshore infrastructure activity;
- if there was a management plan for the licence immediately before the licence was cancelled or surrendered—carry out any obligation of the licence holder under the management plan;
- make arrangements that are satisfactory to the Regulator in relation to an obligation referred to.

617. There is an explanatory note to provide that a direction under this clause has no effect to the extent of any inconsistency with a direction under clause 127. The reader is directed to subclause 127(5).

618. Subclause (3) provides that the time specified in the direction must be reasonable.

619. Subclause (4) provides that the person must comply with the direction.

<u>Clause 127 - Remedial directions by the Minister</u>

620. This clause provides for the Minister to issue remedial directions which can require a person to carry out a range of actions.

621. Subclause (1) provides that the provisions apply to a person who is a licence holders or who held a licence immediately before it was surrendered or cancelled.

622. Subclause (2) provides that the Minister may issue a written notice directing a person mentioned in subclause (1) to undertake any of the actions specified in paragraphs (a)-(d).

623. The actions that the Minister may direct a person to carry out under subclause (2) are the same as the actions that the Regulator can direct under subclause 126(2).

624. Subclause (3) provides that the time specified in the direction must be reasonable.

625. Subclause (4) provides that the person must comply with the direction.

626. Subclause 5 deals with inconsistency between remedial directions issued by the Minister and the Regulator. It provides that in the event of inconsistency, the direction by the Regulator has no effect to the extent of the inconsistency.

Clause 128 - Remedial directions—compliance

627. Clause 128 provides compliance provisions in relation to operation or remedial directions given to a person who fails to comply with those directions.

628. The provisions provide for civil penalties which have been aligned with the provisions in the OPGGS Act, see section 587B in particular. These accord with the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide to Framing Commonwealth Offences).

629. Subclause (1) provides that the clause is contravened if a person is subject to a direction by the Regulator or Minister and engages in conduct which breaches the direction.

630. Subclause (2) creates a fault-based offence for contravening subclause (1). In that case there is a specified maximum penalty of 5 years imprisonment or 2,000 penalty units, or both.

631. Subclause (3) provides for a strict liability offence for contravening subclause (1). It specifies a penalty of up to 100 penalty units.

632. It is considered appropriate for a contravention of subclause (1) to be a strict liability offence in order to deter persons from failing to undertake remedial actions in relation to that person's offshore infrastructure activities under this Bill. The requirement for remedial action is considered appropriate in light of the potential harm or other consequences that could result to the relevant area subject to a direction under clauses 126 and 127. The justification for this approach in the Bill is set out further in the Statement of Compatibility with Human Rights.

633. Subclause (4) provides for a civil penalty for contravening subclause (1). A person who contravenes subclause (1) is liable to a civil penalty of 525 penalty units.

634. Subclause (5) sets out the penalty provisions for continuing offences In this case, the maximum penalty for each day that an offence under subclauses (2) or (3) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

635. There is an explanatory note to explain that subclauses (2) and (3) are continuing offences under section 4K of the Crimes Act.

636. Subclause (6) sets out the maximum civil penalty for each day that a contravention of subclause (4) continues. This is set at 10% of the maximum civil penalty that can be imposed in respect of that contravention.

637. There is an explanatory note to indicate that clause (4) is a continuing civil penalty provision under section 93 of the RPA.

Daily Penalty – continuing offences

638. The purpose of introducing daily penalties for continuing contraventions of this Bill is to encourage persons to promptly rectify breaches and return to a position of compliance with their regulatory obligations. Given the high investment costs and potential profits associated with offshore operations, strong financial penalties are likely to be one of the most significant methods to deter non-compliance with this Bill. Where daily penalties are applied to continuing offences or civil penalty provisions, the cumulative impact of those penalties will provide an additional incentive for companies to comply with those provisions, and to quickly remedy any non-compliance. This in turn will reduce the potential safety,

environmental or resource risks that may be associated with the particular conduct.

639. Certain offence provisions in this Bill are automatically deemed to be continuing offences due to the operation and application of section 4K of the Crimes Act, which provides that where a person refuses or fails to comply with something that is required to be done within a particular period or before a particular time, the person is guilty of an offence in respect of each day during which the person continues to fail or refuse to comply with that requirement. A similar provision is included in section 96 of the RPA, in relation to continuing contraventions of civil penalty provisions. Where an offence or civil penalty provision in relation to which a daily penalty will be applied by this Bill is automatically a continuing offence or continuing civil penalty provision, this is made clear in notes inserted against those provisions by this Bill.

640. In some cases, provisions that are not automatically continuing offences by virtue of the Crimes Act or continuing civil penalty provisions by virtue of the RPA are specified to be continuing offences or continuing civil penalty provisions by the amendments in this Bill for the purpose of applying a daily penalty for continuing contraventions. These provisions are discussed further in the notes on items below.

641. A daily penalty of 10% of the global maximum is inserted by this Bill in relation to each continuing offence and continuing civil penalty provision. This is in accordance with the Guide to Framing Commonwealth Offences, which states that daily penalties for continuing offences should be significantly lower to reflect that a person may be liable for multiple contraventions. This is also in line with the daily penalties applied in the TA, which was considered during the development of this Bill.

642. It is acknowledged that that the Guide to Framing Commonwealth Offences recommends a 60 penalty unit maximum for strict liability offences in primary legislation or 50 penalty unit maximum for strict liability offences in regulations. With the application of a continuing offence provision to a number of existing strict liability offences in this item, an offender may conceivably face an amalgamated penalty which totals more than 60 penalty units in the Bill or more than 50 penalty units in the regulations.

643. Should the offence continue for a certain number of days, we consider that this is justified. Following the Guide to Framing Commonwealth Offences, in a high hazard regime such as this, the conduct and consequences associated with the offence are potentially extremely serious, particularly when related to work health and safety or environmental matters, and therefore warrant application of a penalty high enough to provide sufficient incentive to secure a swift return to compliance.

Clause 129 - Regulator may take action if a direction breached or arrangement not carried out

644. Clause 129 provides that the Regulator may take action if a direction has been breached.

645. Subclause (1) describes the circumstances in which this may occur. These are if a direction is given to a person, and the person does not comply with the direction. Alternatively the provision applies where a person makes an arrangement with the Regulator as mentioned in paragraphs 126(2)(c) and (d) and does not carry out the arrangement. In these circumstances the Regulator may undertake the action required by the direction or the arrangement.

646. Subclause (2) addresses the issue of reimbursement for work done by the Regulator. If the Regulator incurs costs or expenses in relation to the action taken in this subclause, these costs or expenses are a debt due by the person to the Regulator and recoverable in a relevant court.

647. Subclause (3) enables the Regulator to give a direction to the licence holder to remove any property. It arises where property has been brought into a vacated area by any person engaged in authorised activities. If the property is not removed as required by the direction or an arrangement made, the Regulator may direct the owner to remove or dispose of the property from the vacated area. This direction must be given in writing. The removal must be to the satisfaction of the Regulator and before the time specified in the instrument.

648. There is an explanatory note directing the reader to the provision on sanctions at clause 130.

649. Subclause (4) requires the time specified in the instrument to be reasonable.

650. Subclause (5) requires the Regulator to give a copy of the direction to each person whom the Regulator believes to be an owner of any part of the property.

Clause 130 - Removal, disposal or sale of property by Regulator—breach of direction

651. This clause addresses the circumstances where there is a breach of a direction of the requirement to remove, dispose of, or sell property.

652. Subclause (1) provides that if a direction under subclause 129(3) has been breached, the Regulator may do any or all of the following in the manner the Regulator sees fit:

- remove the property from the vacated area concerned;
- dispose of any or all of the property;
- sell any or all of the property that the Regulator believes to belong to a person to whom the Regulator has given a notice under subclause 129(5), by public auction or otherwise.

653. Subclause (2) allows for further deductions of costs and expenses from proceeds of sale of property. The Regulator may, on behalf of the Commonwealth, deduct from the proceeds:

- any costs and expenses incurred by the Regulator in carrying out the actions under subclause (1) in relation to the property;
- any costs and expenses incurred by the Regulator in relation to the doing of any thing required by a direction under clause 126 to be done by the owner of the property; and
- fees or amounts payable by the owner of the property to the Regulator under the Bill.

654. Subclause (3) provides that the Regulator may deduct from the proceeds of sale any fees or amounts due and payable by the owner of the property to the Commonwealth under the Bill. The Regulator may also deduct any amounts of offshore electricity infrastructure levy of a kind prescribed in the regulations for the purposes of paragraph (3)(b).

655. Subclause (4) provides that if the Regulator deducts an amount payable to the Commonwealth this must be remitted to the Commonwealth.

656. Subclause (5) addresses how the balance of proceeds of sale is to be treated. It is to be paid to owner of property less any deductions above.

657. Subclause (6) provides that if the Regulator incurs any costs or expenses in relation to the removal, disposal or sale of property, they are a debt due by the owner of the property to the Regulator. To the extent that the costs and expenses are not deducted from proceeds of sale in accordance with this clause, they are recoverable in a relevant court.

658. Subclause (7) states that if the Regulator incurs costs or expenses that are not otherwise recoverable above in relation to the doing of anything required by a remedial direction under clause 126 to be done by the holder of a licence, then the costs or expenses are a debt due licence holder to the Regulator and are recoverable in a relevant court.

Clause 131 - Removal, disposal or sale of property—limitation of action etc.

659. Clause 131 addresses the limitation of a person taking legal action where there has been a removal or disposal or sale of property. It refers to property that is removed, disposed of or sold by the Regulator where the licence holder has failed to meet their obligations to remove the property. This clause is intended to enable the removal of such property from the offshore area and to protect the Regulator from legal action for removing the property and other things done in conjunction with it. This provision is one that commonly appears in legislation relating to the functioning of a statutory authority.

660. Subclause (1) specifies that except as provided for by subclause 130(6) or clause 302, no action, suit or proceeding lies in relation to the removal, disposal or sale, or the purported removal, disposal or sale, of property under clause 130. This is a special provision, intended to prevail to the exclusion of the general provisions dealing with the liability of various office-holders for acts and omissions.

661. Subclause (2) provides that section 301 (which protects various officers and persons from liability for acts and omissions) does not apply to an act or matter to the extent to which subclause (1) of this clause applies to the act or matter. This gives effect to the intention, that the limitation of action in this clause is intended to govern these circumstances entirely.

662. Subclause (3) makes clear that this clause does not affect any rights conferred on a person by the ADJR Act to apply to a court in relation to a decision, conduct or failure to make a decision or any other rights that a person has to seek a review by a court or tribunal in that regard. It thereby preserves rights to administrative review of decisions. This means that if, for example, the owner of the property had information that the Regulator was preparing to remove and sell the property, the owner could seek review of that decision under the ADJR Act. Under section 16 of that Act, the Federal Court or the Federal Magistrates Court could make various orders about the case, for example an order to the Regulator to reconsider the matter.

663. Subclause (4) makes clear that expressions used in subclause (3) have the same meaning as in section 10 of the ADJR Act.

Clause 132 - Minister may take action if a direction breached or arrangement not carried out

664. Subclause (1) sets out that a Minister may take action in the event that a remedial direction has been breached or an arrangement between a person and the Minister under paragraph 127(2)(c) or (d) is not carried out. In such a case, the Minister, or a person engaged to act on their behalf, may do all or any of the actions required in that direction or arrangement.

665. Subclause (2) provides that if the Commonwealth incurs costs or expenses in relation to this rectification required above, then the costs or expenses are a debt due by the person to the Commonwealth and are recoverable in a relevant court.

Division 4—Defence of taking reasonable steps to comply with a direction

Clause 133 - Defence of taking reasonable steps to comply with a direction

666. This provides for a defence in the case of a prosecution for failing to comply with a direction that may be given to a person by the Minister or the Regulator under a number of provisions. It operates where that person has taken reasonable steps to comply with a direction.

667. Subclause (1) specifies that it is a defence in a prosecution for an offence, or in proceedings for a civil penalty order, for a breach of a direction in the case where the defendant is able to establish that they took all reasonable steps to comply with the direction.

668. The explanatory note makes clear that the onus is on the defendant to establish this. The defendant bears a legal burden in a prosecution or proceedings for a civil penalty. The reader is directed to section 13.4 of the Criminal Code.

669. Subclause (2) addresses the directions which are covered. These are:

- a direction given by the Regulator under:
  - a general direction; or
  - a remedial direction; or
  - a provision of the regulations; or
- a remedial direction given by the Minister.

Part 3—Protection of infrastructure

670. This Part provides for the protection of OEI. The intent is to provide for the protection of infrastructure, the safety of offshore workers and other marine users. This has been addressed by adopting measures to:

- minimise the risk of damage to infrastructure; and
- minimise the risk of harm to the workers for those engaged in offshore infrastructure activities and other users of the marine area.

671. This will be achieved through the creation of offences for interfering with infrastructure (Division 2) and the establishment of safety zones (Division 3) and protection zones (Division 4). Both are established by the making of a determination on the Regulator's initiative or in response to request.

672. There is a distinction between the role of a safety zone and a protection zone – each serving a different purpose and as a consequence attracting different methods for their establishment:

- a 'safety zone' prohibits entry to the specified area. This is done by notifiable instrument. The parameters for the creation of a 'safety zone' are clearly set out in the Bill enabling it to be created by notifiable instrument.
- a 'protection zone' will operate to limit or control activities in an area but not prohibit access. The intention is to provide a flexible alternative to a safety zone where a general prohibition is not required. It would allow certain activities to continue in the area although they may be of a limited nature.

This is to be done by legislative instrument, the reasons for which are explained below.

673. It will be an offence for a person to enter either a safety or protection zone unless they are authorised. The offence and penalty provisions are separately addressed in their respective subdivision. Separate offences and penalties apply in relation to the fault elements of intention, recklessness, negligence and strict liability. These offences will carry both criminal and civil penalties as appropriate. Exemptions will operate in relation to both safety and protection zones to provide access for the entry of specified vessels (e.g. emergency vessels, police, border protection, etc.).

674. These offences and penalties have been modelled off sections 616, 619 and 620 of the OPGGS Act and clause 40-41 of Schedule 3A of the TA. The rationale in keeping like offences and penalties in line with already existing legislation is that it would provide for consistency in this regime across activities in the offshore area.

Division 1—Introduction

Clause 134 - Simplified outline of this Part

675. Clause 134 provides a simplified outline of Part 3 of Chapter 4 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Division 2—Offence of interfering with infrastructure

Clause 135 - Interfering with infrastructure

676. This provision is based on section 603 of the OPGGS Act and addresses the offence of interfering with infrastructure.

677. Subclause (1) provides that a person commits an offence if they engage in conduct which results in damage or interference to the following:

- OREI or OETI in the Commonwealth offshore area;
- any structure or vessel in the Commonwealth offshore area that is, or is to be, used in offshore infrastructure activities;
- any equipment on, or attached to, such a structure or vessel; or

– any operations or activities being carried out, or any works in connection with, such a structure or vessel.

678. There is a maximum penalty of imprisonment for 10 years.

679. Subclause (2) provides a definition of 'structure' for the purposes of subclause (1), to mean any fixed, moveable or floating structure or installation.

Division 3—Safety zones

680. The intention of this Division is to provide for the establishment of safety zones which are intended to assure the safety of offshore workers and also to protect eligible safety zone infrastructure from potential damage caused by the actions of other marine users.

681. This will be achieved by prohibiting vessels or classes of vessels from entering or being present in a defined area for a period of time, minimising the risk of a vessel collision to ensure the safety of navigation and operations and the protection of assets (safety zones). However, the intent is that measures for the protection of offshore renewable energy projects should not restrict freedom of navigation more than necessary.

Subdivision A—Safety zones

682. This subdivision sets out the arrangements in relation to the operation of safety zones.

683. In order to minimise the risk to the safety of workers undertaking offshore infrastructure activities, it is intended that the Regulator be able to establish a 'safety zone'. A safety zone would prohibit, by written notice, certain vessels from entering or being present in a specified area surrounding specified infrastructure without written consent of the Regulator. The notice may prohibit access by all vessels, all vessels other than specified vessels, or all vessels other than the vessels included in a specified class of vessels.

684. A safety zone should encompass an area of water around the infrastructure. Infrastructure would include renewable energy installations, fixed structures or cables running between other items of infrastructure. To clarify, the intent here is that safety zones should be able to be declared in respect of infrastructure comprising

installations, structures, or cables running between other items of infrastructure.

685. A safety zone will extend up to a 500 metre radius from the outer edge of that installation of the infrastructure at sea level. In addition to fixed infrastructure, there are circumstances where protection may be required for rolling/mobile safety zones around a vessel or group of vessels that are progressively working on installing infrastructure like a cable.

686. While safety zones have the beneficial effect of protecting OREI, they can have an adverse effect on other marine uses and users. For safety zones around OREI, where the safety zone will be fixed for some period of time and more readily ascertainable, the advantages of safety zones outweigh the disadvantages.

Clause 136 - Safety zones

Eligible safety zone infrastructure

687. Subclause (1) provides a definition of *eligible safety zone infrastructure* to mean any of the following:

- OREI (other than a cable resting on the seabed);
- OETI (other than a cable resting on the seabed);
- a cable resting on the seabed that:
  - is OREI or OETI; and
  - connects two or more pieces of OREI all within the same licence area; and
  - that meets any requirements in relation to the length of the cable or the distance between points connected by the cable that are prescribed by the regulations for the purposes of the provisions.

688. The power to prescribe requirements for cables is intended to manage the eligibility of certain cables within a licence area, which may be protected under a safety zone. Safety zones exclude vessels from entering or transiting through specified areas in order to protect infrastructure. However, to be consistent with international obligations, safety zones should not unnecessarily impede freedom of navigation. Therefore, it is necessary to ensure that the regulations can place appropriate limitations on the length of cables that may fall within the definition of eligible safety zone infrastructure to ensure

offshore infrastructure is appropriately protected without unreasonably restricting the movements of transiting vessels.

689. The explanatory note clarifies what is not regarded as eligible safety zone infrastructure, i.e. a cable that transmits electricity from OREI to the shore, or between the shore and a place outside the Commonwealth offshore area, or between different licence areas. This underlines the intention to avoid safety zones unreasonably impeding freedom of navigation.

Determination

690. Subclause (2) provides that a determination may be made for the purpose of protecting eligible safety zone infrastructure. The Regulator may determine that a specified area surrounding the eligible safety zone infrastructure is a *safety zone*.

691. The establishment of a safety zone is to be done by notifiable instrument. The reason for this is that the parameters for the creation of a safety zone are clearly set out in the Bill, which satisfies the requirement for it to be created as a notifiable instrument. The determination is not legislative in character, and as such, need not be made subject to Parliamentary scrutiny or sunsetting. The Bill, in clause 139, creates offences of being present in a safety zone. A determination under clause 136, by specifying that a specified area is a safety zone, determines the particular circumstances in which the law as set out in clause 136 is to apply.

692. A determination under clause 136 cannot itself determine the law nor alter its content. However, public accessibility and centralised management of determinations of safety zones is desirable, given their effect on other marine users, and hence the Bill provides that they are notifiable instruments.

693. In addition, it is important for the Regulator to be able to declare a safety zone and do so quickly such that the safety of people can be protected by prohibiting vessels from entering a particular area in an emergency. A notifiable instrument enables the process to be swiftly implemented without a lengthier process requiring legislative scrutiny or being subject to disallowance.

694. Subclause (3) specifies the requirements of the determination. It must state that all vessels are prohibited from entering or being present in the safety zone without the written consent of the Regulator unless

they are specified vessels or vessels included in specified classes of vessels.

695. Subclause (4) provides that the determination must also include any other information prescribed by the regulations.

696. Subclause (5) gives the details of the safety zone limits. This is described as a distance of 500 metres around the eligible safety zone infrastructure. The distance is measured from each point of the outer edge of the infrastructure and must be entirely within the Commonwealth offshore area. These limits are consistent with international obligations under the *United Nations Convention on the Law of the Sea*.

Clause 137 - Determination on Regulator's initiative or in response to application

697. This clause addresses the way a determination in relation to a safety zone may be made.

698. Subclause (1) specifies that a determination may be made on the Regulator's own initiative or at the request of a person under regulations made for these purposes as described below.

699. Subclause (2) sets out that the regulations may prescribe procedures in relation to the making of a determination regarding a safety zone. A person will be able to make a request to the Regulator who should then consider the request, require further information if necessary, and then make or refuse to make a determination.

700. Regulations made under this provision will provide the necessary flexibility for the details of the scheme that is outlined in the Bill. It is appropriate that such details be prescribed by regulation, rather than set out in full in primary legislation because:

- this is a new field of regulation, and it is not possible to predict with certainty all new issues that the regulatory scheme might face over time;
- this is a new technological field, and it is not possible to predict with confidence at this stage what kinds of OEI might be used, and what safety issues it might give rise to;
- matters such as safety zones might need to be dealt with relatively urgently, therefore it is appropriate to have a power

to make regulation amendments to respond as quickly as possible to issues as they arise.

Clause 138 - When a determination takes effect

701. Subclause (1) clarifies that a determination takes effect at the time specified in the Determination.

702. Subclause (2) provides that where infrastructure is not yet installed, the Regulator must not specify a time before the time that the regulator is satisfied installation of the relevant infrastructure will commence.

Clause 139 - Offences of entering or being present in a safety zone

703. This item addresses offences of entering or being present in a safety zone. The fault elements are different in each case and this is reflected by the penalty that applies.

704. Subclauses (1) and (3) create offence provisions with the same physical elements, in relation to a person who, being the owner or master of vessel, is subject to a determination and breaches that determination. The breach of the determination occurs if that vessel enters or is present in the safety zone specified in the determination.

Offence – intentional breach

705. For an offence under subclause (1), where the fault element is intention, the maximum penalty is imprisonment for 15 years.

Offence – reckless breach

706. For an offence under subclause (3), where the fault element above is recklessness, the maximum penalty is imprisonment for 12.5 years.

707. These penalties align with sections 616 and 617 of the OPGGS Act. In the main, these require a strong fault element - hence the offences of intention and reckless breach, attracting higher penalties commensurate with the risk and danger that could arise.

Offence – negligent breach

708. There may also be a case where a person who breaches a determination was not aware of relevant risks or circumstances and therefore does not fall within these categories. As such, the fault

element of negligence may be a suitable standard in these circumstances. While this is less serious than the above offences, it is nonetheless conduct carrying culpability, and considerable harm and risk to life could result from a failure to comply of this kind. Criminal consequences are therefore appropriate.

709. Accordingly, subclause (5) creates an offence provision for negligent breach. It creates an offence in relation to a person who, being the owner or master of vessel, is subject to a determination and breaches that determination. The breach of the determination occurs if that vessel enters or is present in the safety zone specified in the determination. Subclause (6) provides that where the fault element for the physical element of breach of the determination is negligence, the maximum penalty is imprisonment for 10 years.

710. The fault element of negligence has been employed in the above provisions. In providing for this offence and penalty where the fault element is negligence, the Guide to Framing Commonwealth Offences has been considered, and also the policy as expressed in the explanatory memorandum to the original Offshore Petroleum Bill 2005. The fault element of negligence for this physical element is appropriate in this instance for the following reasons:

- negligence has become a well-established indication of liability in an offence of this nature. For example, there are similar provisions in sections 616 and 617 of the OPGGS Act, which deal with petroleum safety zones and greenhouse gas safety zones respectively. Those provisions have offences with this fault element for a similar physical element, and with a similar maximum penalty. Further, this offence provision is directed towards protecting the safety of workers who are in a safety zone. Workplace health and safety legislation is a category for which it is acknowledged that negligence is a well-established fault element for offence provisions;
- due to the serious and considerable harm and risk to life and property that could result from contravention of the physical elements of this offence, it should be possible to find a person criminally liable even in circumstances where intention or recklessness cannot be made out. Third, this fault element is important to deter persons from committing acts of negligent navigation which could place at risk the lives of persons

working on infrastructure in a safety zone, and could place at risk the infrastructure itself.

711. The Guide to Framing Commonwealth Offences provides that where negligence is specified it should be applied to a 'circumstance' or 'result' rather than to 'conduct'. The considerations as set out in the guide have been applied in determining whether negligence is a suitable fault element. In particular, WHS is a context where negligence is a well-established indication of liability which supports its use. In the above circumstances, entering or being present in a safety zone create considerable potential for harm to a worker.

Offence – strict liability

712. Subclause (7) creates an offence of strict liability. It creates an offence in relation to a person who, being the owner or master of vessel, is subject to a determination and breaches that determination. The breach of the determination occurs if that vessel enters or is present in the safety zone specified in the determination. The specified maximum penalty is imprisonment for 5 years.

713. This penalty is relatively high for a strict liability offence. However, this is in the context of the seriousness of the breach and also the much higher penalties that would apply where there is a fault element attached.

714. The justification for the strict liability approach in the Bill is set out further in the Statement of Compatibility with Human Rights.

Defence

715. Subclause (8) provides a defence in a prosecution for an offence against subclauses (1), (3), (5) or (7).

716. In these circumstances, it is a defence if the defendant proves that:

- an unforeseen emergency rendered it necessary for the vessel to enter or be present in the safety zone in order to attempt to secure the safety of:
  - a vessel, offshore renewable energy or electricity transmission infrastructure or any other structure or equipment or human life; or

- the vessel entered or was present in the safety zone in circumstances not under the control of the person who was in charge of the navigational watch of the vessel.

717. An explanatory note to this subclause explains that a defendant bears a legal burden in relation to the matter in subclause (8). The reader is referred to section 13.4 of the Criminal Code.

718. The reason that there is a burden placed on the defendant in this matter is because the prosecution would not be in a position to know if there is an unforeseen emergency which has caused the person to need to enter the safety zone – i.e. either to secure the safety of a vessel or to preserve human life.

Subdivision B—Authorised safety zone officials and powers in relation to safety zones

Clause 140 - Authorised safety zone officials

719. This clause provides a definition of an *authorised safety zone official* for the purposes of this Bill. It is:

- a member or special member of the Australian Federal Police; or
- a member of the Defence Force; or
- an officer of Customs within the meaning of the *Customs Act 1901*; or
- a person who is an authorised person because of a declaration under subclause (2).

720. The term authorised safety zone official has been used to avoid confusion with other uses of the term "authorised person" in the provisions applying the RPA.

721. Subclause (2) enables the Regulator, by notifiable instrument determine that a person, or a person included in a specified class of persons, is an authorised safety zone official for the purposes of this Bill.

State and Territory officials

722. Subclause (3) provides that an employee of a State or Territory must not be determined to be an authorised safety zone official under subclause (2) without the agreement of the State or Territory.

723. These decisions are considered to be of an administrative character, as the authorisation instrument does not determine the content of the law, but rather, merely indicates who the law applies to, by reference to a class of persons, and is more in the nature of an appointment

Clause 141 - Requirement to move vessel etc.

724. Clause 141 provides that an authorised safety zone official may require the movement of a vessel. The requirement to move a vessel away from a safety zone is based on section 620 of the OPGGS Act.

725. Subclause (1) specifies that an authorised person may require the master of a vessel to take the vessel outside the safety zone. The vessel must satisfy all of the following conditions:

- the vessel is in the safety zone;
- it is not vessel specified in the determination of the safety zone;
- it is not in a class of vessels specified in the determination of the safety zone;
- no written consent of the Regulator is in force in relation to the safety zone which allows the vessel to be in the zone and the vessel.

726. In addition, the authorised person may require the master of a disabled vessel to permit the vessel to be towed away from the safety zone, or to accept the giving of such other assistance to the vessel as the authorised safety zone official considers necessary, where the vessel satisfies any of the following conditions:

- the vessel is in a safety zone; or
- the authorised safety zone official has reasonably believes that the vessel is likely to cause damage to any OREI, OETI, structure or equipment in a safety zone.

727. In terms of international law obligations, this provision is only intended to apply to foreign vessels when the vessels are used in the carrying out of a licence holder's rights or obligations. It is not intended that these laws apply to ships engaged in innocent passage through Australia's Exclusive Economic Zone.

728. Subclause (2) provides that a person contravenes this subclause if:

- the person is subject to a requirement under subclause (1); and

- the person engages in conduct; and
- the conduct breaches the requirement.

729. Subclause (3) provides that a person contravenes this subclause if:

- the person engages in conduct; and
- the conduct obstructs or hinders an authorised person who is acting under subclause (1).

Offences – fault-based

730. Subclause (4) specifies that a person commits an offence if they contravene subsection (2). In that case, the offence attracts a maximum penalty of 50 penalty units.

731. Subclause (5) provides that a person commits an offence if they contravene subsection (3).

732. There is an explanatory note to state that the same conduct may be an offence against both subclause (5) of this clause and section 149.1 of the Criminal Code. This provision addresses the offence of obstruction of Commonwealth officials in the course of carrying out their functions and it carries a penalty of imprisonment of 2 years.

733. The specified maximum penalty is 50 penalty units.

Civil penalty provision

734. Subclause (6) specifies that a person is liable to a civil penalty if the person contravenes a requirement under subclause (2). In that case, a civil penalty of up to 350 penalty units will apply.

735. Subclause (7) provides that a person is liable to a civil penalty if the person obstructs or hinders an authorised person who is acting under subclause (3). In that case, a maximum civil penalty of 350 penalty units shall apply.

Division 4—Protection zones

Subdivision A—Determinations

736. This Division provides for the determination of *protection zones*. A protection zone is different from a safety zone, as it is of a more permanent nature. A safety zone is created to manage interactions between OEI and vessels on a shorter term basis, for example by

preventing entry during construction activities or to prevent entry to address an urgent safety issue, ie: fallen or broken OEI likely to cause a hazard. In contrast, a protection zone addresses issues that are more long term in nature by prohibiting or restricting vessels from conducting certain activities which may result in the risk of damage to OEI.

Clause 142 - Regulator may determine a protection zone

737. Subclause (1) provides that the Regulator may, by legislative instrument, determine that a specified area in the Commonwealth offshore area is a protection zone in relation to OREI or OETI that is, or is proposed to be, installed in the area under a specified licence.

738. Unlike a determination that a specified area is a safety zone, a determination that a specified area is a protection zone must be made by legislative instrument. This is because a determination that a specified area is a protection zone is able to set out the activities that are prohibited in the protection zone, and the restrictions that apply to specified activities in the protection zone (clause 145). Accordingly, such a determination alters the content of the law, and is therefore of legislative character. It is therefore appropriate that it be subject to Parliamentary scrutiny, disallowance and sunsetting. The lengthier process for making a legislative instrument as compared to a notifiable instrument will limit the Regulator's flexibility in an emergency situation. However, it is appropriate that the determination of a protection zone will attract the rigour of Parliamentary scrutiny.

739. Subclause (2) sets out the circumstances for making a determination. It provides that the Regulator may make a determination under subclause (1) if the Regulator is satisfied that there is a risk to human safety or to OREI in the protection zone. A determination may be made where there is a likelihood of risk if such activities were carried out in the protection zone in accordance with an approved management plan from the Regulator. The Regulator must also be satisfied that the determination would avoid or reduce that risk.

740. Subclause (3) states that a determination of a protection zone must identify the area covered by the protection zone, which will be in accordance with regulations made for this purpose. The determination must also include any other prescribed information.

741. Subclause (4) specifies that a determination of a protection zone may set out the activities that are prohibited and the restrictions that apply to specified activities in the protection zone.

Clause 143 - Determination on Regulator's initiative or in response to application

742. Subclause (1) specifies that a determination of a protection zone may be made on the Regulator's own initiative or at the request of a person as prescribed under regulations.

743. Subclause (2) enables the regulations to prescribe procedures for a person to make a request for the Regulator to determine a protection zone. The Regulator may consider the request, require further information in relation to the request and then make, or refuse to make, a determination in relation to the request.

Clause 144 - Prohibited activities

744. Subclause (1) describes the activities that may be prohibited in a protection zone for the purposes of making a determination under clause 142. They are:

- any activity that involves a serious risk to human safety; or
- any activity that involves a serious risk of damaging OREI or OETI; or
- an activity specified in the regulations.

745. Although the activities are not outlined specifically, the types of prohibited activities would be those of a kind that are likely to cause serious risk of damage or injury and thereby justify the taking of necessary action to avoid that risk.

746. Subclause (2) specifies that the regulations may prescribe activities that may not be prohibited in a determination of a protection zone.

Clause 145 - Restricted activities

747. Subclause (1) specifies that activities on which restrictions may be imposed in a determination of a protection zone comprise the following:

- any activity that involves a serious risk to human safety; or
- any activity that involves a serious risk of damaging OREI or OETI; or
- an activity specified in the regulations.

748. As is the case with prohibited activities, the criteria for restricted activities is the same, ie. the key determinant would be whether they are of a kind that is likely to cause serious risk of damage or injury and thereby justifying the taking of necessary action to avoid that risk.

749. Subclause (2) provides for the regulations to prescribe activities on which restrictions may not be imposed in a protection zone.

Clause 146 - When a determination takes effect

750. Subclause (1) clarifies that a determination of a protection zone takes effect at the time specified by the Regulator. This is a departure from the default rule for commencement of legislative instruments (ie. the day after registration) set out in section 12 of the *Legislation Act 2003*. However it is subject to the limitation in subclause (2).

751. Subclause (2) places restrictions on the Regulator specifying a time that a determination comes into effect. It provides for the case where OREI or OETI is not yet installed. The Regulator must not specify a time before the time that the Regulator is satisfied that installation of the infrastructure will begin.

Clause 147 - Determination continues in effect even if infrastructure ceases to operate

752. Subclause (1) addresses the time frame for the duration of a determination. It specifies that it remains in effect until it is revoked.

753. There is an explanatory note that refers the reader to subsection 33(3) AIA, which pertains to revocation.

754. There is a second explanatory note providing that the determination may also be repealed under Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003.*

755. Subclause (2) is an avoidance of doubt provision, which provides that a determination continues in effect even if the OREI or OETI in the protection zone has ceased to operate. This is to ensure that the protections continue to apply until the reasons for the determination of the protection zone, including any serious risks, no longer exist.

Subdivision B—Offences in relation to protection zones

756. This Subdivision addresses offences in relation to protection zones.

757. The offences and penalties applicable have been considered taking into account like provisions and the defences in sections 616, 619 and 620 of the OPGGS Act and clause 40-41 of Schedule 3A of the TA. The rationale in keeping like offences and penalties in line with already existing legislation is that it would provide for consistency in this regime across activities in the offshore area.

758. The nature and severity of these offences have similar outcomes. The intent is to create consistency across both regimes, also taking into account that the Regulator will be enforcing the scheme.

Clause 148 - Engaging in prohibited or restricted activities

759. Clause (1) provides for the offence of engaging in prohibited or restricted activities. An offence is committed by a person in the following circumstances if:

- the person engages in conduct;
- the conduct occurs in the protection zone; and
- the conduct is either;
  - prohibited in the protection zone; or
  - it contravenes a restriction imposed on an activity in the protection zone; and
- the conduct is not engaged in by either a licence holder, or a person acting on behalf of a licence holder according to the licence or a management plan.

760. In the above circumstances, the maximum penalty for such offence is imprisonment for 5 years or 300 penalty units, or both.

Clause 149 - Defences to offence of engaging in prohibited or restricted activities

761. This clause provides defences which apply in relation to the offence of engaging in prohibited or restricted activities.

762. It provides a defence, making clear that the offence provision does not apply if the conduct was necessary to save a life or vessel, or prevent pollution, or the defendant took all reasonable steps to avoid engaging in the conduct.

763. There is an explanatory note for the reader that the defendant bears an evidential burden in relation to the matters in this clause. A cross-reference is made to subsection 13.3(3) of the Criminal Code. This

relates to evidentiary burden that must be borne by the defendant in these circumstances.

Clause 150 - Master or owner of vessel used in offence of engaging in prohibited or restricted activities

764. This item addresses the position of the owner or master of a vessel where a vessel is used in prohibited or restricted activities.

765. Subclause (1) provides that the owner or master of a vessel commits an offence if they permit another person to use the vessel, that other person commits an offence under clause 148, and the vessel is used in committing the offence. There is also a requirement that the owner or master is reckless as to that fact that the vessel is used in the offence. The maximum penalty is imprisonment for 5 years or 300 penalty units, or both.

766. Subclause (2) provides that strict liability applies for one aspect of this offence, namely whether the other person has committed an offence against section 148. Strict liability is appropriate in relation to this aspect to ensure the highest level of compliance with this obligation given the potential harm that might be caused by the conduct. The justification for this approach in the Bill is set out further in the Statement of Compatibility with Human Rights.

Clause 151 - Foreign nationals and foreign vessels

Foreign nationals – no involvement of vessel

767. Subclause (1) makes clear that Subdivision B (Offences in relation to protection zones) does not apply to anything done, or omitted to be done, in the following circumstances.

- the thing is done, or omitted to be done, by a foreign national; and
- the thing is done, or omitted to be done in, on, or beneath the seabed that lies beneath the waters of the Exclusive Economic Zone; and
- the thing done, or omitted does not involve a vessel;

unless it concerns, touches, concerns, arises out of or is connected with:

- the exploration of the continental shelf of Australia; or

- the exploitation of the resources of the continental shelf of Australia (including the exploitation of the resources of the waters of the Exclusive Economic Zone); or
- the operations of artificial islands, installations or structures that are under Australia's jurisdiction.

Foreign nationals – involvement of foreign vessel

768. Subclause (2) provides that Subdivision B does not apply to anything done, or omitted to be done, if:

- the thing is done, or omitted to be done, by a foreign national; and
- the thing is done, or omitted to be done, in the waters of the Exclusive Economic Zone; and
- the thing done, or omitted involves a foreign vessel;

unless the thing done, or omitted to be done, touches, concerns, arises out of or is connected with:

- the exploration of the continental shelf of Australia; or
- the exploitation of the resources of the continental shelf of Australia (including the exploitation of the resources of the waters of the Exclusive Economic Zone); or
- the operations of artificial islands, installations or structures that are under Australia's jurisdiction.

CHAPTER 5—ADMINISTRATION

Part 1—Offshore Infrastructure Registrar

Division 1—Introduction

Clause 152 - Simplified outline

769. Clause 152 provides a simplified outline of Part 1 of Chapter 5 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Division 2—Offshore Infrastructure Registrar

Clause 153 - Offshore Infrastructure Registrar

770. This clause provides for the establishment of the Offshore Infrastructure Registrar.

771. Subclause (1) establishes the Offshore Infrastructure Registrar (referred to as the *Registrar*).

772. Subclause (2) provides that the Registrar is to be a person who is:

- an SES employee in the Department; and
- appointed in a written instrument made by the Secretary.

773. Subclause (3) provides that the Secretary may appoint the National Offshore Petroleum Titles Administrator (established by section 695A of the OPGGS Act) to be the Registrar.

774. Subclause (4) provides that if the Secretary appoints the National Offshore Petroleum Titles Administrator as the Registrar, the functions or powers of the National Offshore Petroleum Titles Administrator under the OPGGS Act do not include the functions or powers of the Registrar. Also, the functions or powers of the Registrar under this Bill do not include the functions or powers of the National Offshore Petroleum Titles Administrator.

Clause 154 - Functions of the Registrar

775. This clause sets out the functions of the Registrar under the Bill.

776. The Registrar has the following functions:

- to provide information, assessments, analysis, reports, advice and recommendations to the Minister regarding the performance of the Minister's functions or the exercise of the Minister's powers under the Bill;
- to cooperate with the Regulator in regard to the administration and enforcement of the Bill and the applied work health and safety provisions;
- to cooperate with other Commonwealth agencies and authorities having functions in relation to the regulation of offshore infrastructure activities;
- such other functions conferred on the Registrar by or under the Bill; and
- to do anything incidental to or conductive to the performance of any of the above functions.

Clause 155 - Powers of the Registrar

777. This clause sets out the powers of the Registrar under the Bill.

778. The Registrar has the power to do all things necessary or convenient to be done for or in connection with the performance of the Registrar's functions.

Clause 156 - Delegation by the Registrar

779. Subclause (1) provides that the Registrar may delegate all or any of the Registrar's functions or powers to:

- an SES employee, or acting SES employee, in the Department; or
- an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent position or higher position, in the Department; or
- a person prescribed by the regulations.

780. This provision is similar to section 695D of the OPGGS Act and reflects an intention to maintain a consistent approach between the framework in the Bill and the OPGGS framework, where appropriate.

781. Subclause (2) provides that the delegate must comply with any written directions of the Registrar.

782. Subclause (3) provides that the Register cannot delegate the power to make, vary or revoke a legislative instrument.

Clause 157 - Consultants

783. Subclause (1) provides that the Registrar may engage consultants to assist in the performance of the Registrar's functions.

784. Subclause (2) provides that consultants are to be engaged on the terms and conditions determined by the Registrar in writing.

Clause 158 - Registrar to be assisted by APS employees in the Department

785. The Registrar is to be assisted by APS employees in the Department who are made available by the Secretary.

Clause 159 - Annual report

786. This clause provides for the Registrar to provide an annual report to the Minister after the end of each financial year for presentation to the Parliament, detailing the Registrar's activities under this Bill during that year.

Clause 160 - Reviews of activities of Registrar

787. This clause provides for the Minister to cause certain reviews of the activities undertaken by the Registrar to be conducted. These reviews of activities will consider the Registrar's performance of its functions under this Bill over a certain time interval, and may provide information on whether these functions remain relevant and appropriate. It may provide information on the cost recovery outcomes of the Registrar, resourcing and effectiveness of the Registrar's functions under this Act.

788. Subclause (1) requires the Minister to cause to be conducted various reviews of the activities of the Registrar.

789. Subclause (2) provides that the Minister must cause a report of a review conducted under subclause (1) to be prepared.

790. Subclause (3) provides that the Minister must cause copies of each report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is made available to the Minister.

791. Subclause (4) provides for the first review. This is to relate to the 3-year period beginning on the commencement of this clause. The review is to be completed and the report given to the Minister within 6 months, or such longer period as the Minister allows, after the end of that 3-year period.

792. Subclause (5) provides for subsequent reviews relating to successive 5-year periods. The reviews are to be completed and reports provided to the Minister within 6 months, or such longer period as the Minister allows, after the end of the 5-year period to which each review relates.

Clause 161 - Judicial notice of signature of the Registrar

793. Subclause (1) provides that all courts take judicial notice of:

- the signature of a person who is, or has been, the Registrar or a delegate of the Registrar; and

- the fact that a person is, or was at a particular time, the Register or a delegate of the Registrar.

794. Subclause (2) provides that, for the purposes of clause 161, the word 'court' includes a person authorised to receive evidence by law, or by consent of the parties.

Division 3—The Register of Offshore Infrastructure Licences

Clause 162 - Register to be kept

795. Subclause (1) provides that the Registrar must keep a Register of Offshore Infrastructure Licences for the purposes of this Bill.

796. Subclause (2) provides that the Register is to be available for public inspection on the internet.

797. Subclause (3) provides that the Register is not a legislative instrument.

Clause 163 - Records to be made in Register

798. Subclause (1) provides that the Registrar must enter a record in the Register for each licence granted under this Bill.

799. Subclause (2) provides that a record for a licence must include the information set out in a table in subclause 163(2) to this Bill. The following details of the licence holder are required to be included in a record:

- name;
- if the licence holder has an ACN (within the meaning of the CA)—the ACN; and
- if the licence holder has an ARBN (within the meaning of the CA) the ARBN.

800. Details in relation to the licence are also required. A record must state whether the licence is:

- a feasibility licence; or
- a commercial licence; or
- a research and demonstration licence; or
- a transmission and infrastructure licence.

801. Other details to be included in a record include:

- details of the licence area (it may include a map);
- the day on which the licence was granted;
- the day on which the licence comes into force;
- the end day of the licence or, if there are different end days for different parts of the licence area, each such end day and details of each such part of the licence area (which may include a map);
- conditions that apply to the licence;
- any other matters that the Registrar thinks appropriate; and
- any other matters prescribed by the regulations.

Clause 164 - Entry in Register—events affecting a licence

802. This clause provides that the Registrar must record in the record for a licence in the Register certain events affecting the licence. These are as listed in a table in subclause (1).

803. Subclause (1) sets out a list of events which if they occur in relation to a licence must be recorded, including:

- the licence is varied;
- the licence is transferred;
- the name of the licence holder changes;
- the Registrar is required by subclause 43(6) to include a notice under subclause 43(2) (requirements relating to applications for commercial licences) in the Register in relation to the licence;
- the Registrar is required by subclause 94(1) (change in control of licence holder) to make a notation in the Register in relation to the licence;
- the licence reaches the end day in respect of the whole or part of the licence area;
- the end day of the licence is extended in respect of the whole of a part of the licence area;
- the licence is surrendered in respect of the whole or a part of the licence area; and
- the licence is cancelled.

804. Subclause (2) provides that the regulations may prescribe details that must be included in the record in the Register.

805. Subclause (3) provides that the record for a licence is to remain on the Register. This is the case even if the licence has been surrendered or cancelled, or has otherwise ceased to be in effect.

Clause 165 - Other instruments or notices to be included in register

806. This clause provides that the regulations may require copies of specified kinds of notices or instruments which affect a licence or a licence holder to be included in the record for the licence.

Clause 166 - Notation in Register—applicable datum

807. The clause provides that the Registrar may make a notation in the Register about the applicable datum for a licence, notice or instrument. Clause 9 deals with datum.

Clause 167 - Material that must not be included in a record for a licence

808. Clause 167 provides that the regulations may prescribe information that must not be included in a record for a licence. This may be done despite anything in Division 3 of Part 1 of Chapter 5 of the Bill. This clause is intended to permit regulations to be made to protect the interests of licence holders or other marine users, where publishing certain details may have a detrimental effect.

Clause 168 - Notification requirements—licence holder

809. This clause deals with the notification requirements for a licence holder.

810. Subclause (1) provides that the licence holder is required to give the Registrar written notice of a change in any of the following matters before the end of 30 days after the change occurs:

- a detail mentioned in item 1 of the table in subclause 163(2);
- the address of:
  - if the licence holder has a registered office (within the meaning of the CA)—the registered office; or
  - otherwise—the head office or principal office of the licence holder;
- the licence holder's telephone number;
- the licence holder's fax number (if the licence holder has a fax number);
- the licence holder's email address.

811. There are both criminal and civil sanctions that can apply if a person fails to comply with the notice requirements in subclause (1).

812. Subclauses (2) creates an offence of strict liability if a person fails to give notice as required under subclause (1).

813. Subclause (3) provides that a person is liable to a civil penalty if a person fails to give notice as required under subclause (1).

814. Subclause (4) provides that the maximum penalty for each day that an offence under subclause (2) continues is 10% of the maximum penalty for that offence.

815. Subclause (5) provides that the maximum civil penalty for each day that a contravention under subclause (3) continues is 10% of the maximum civil penalty for that contravention.

816. It is considered reasonable and appropriate to prescribe non-compliance with subclause 168(1) as a strict liability offence. This is because the matters a licence holder is required to notify the Registrar of under that subclause go to the effective administration of the licencing scheme and, in particular, to ensure the safety of sites within the Commonwealth offshore area. The Registrar, or other persons performing functions or exercising powers under the Bill, will need to be able to contact licence holders using the correct contact information, in particular, if a site within the Commonwealth offshore area is unmanned, in order to limit any safety risks or generally to ensure incidents are immediately dealt with.

817. Accordingly, the strict liability offence will act to deter licence holders from not updating their contact details, and ensure that the scheme can be administered using the current contact information. The justification for this approach in the Bill is set out further in the Statement of Compatibility with Human Rights.

Clause 169 - Evidentiary provisions

818. This clause addresses the evidentiary provisions associated with the Register.

819. Subclause (1) provides that the Register is to be received in all courts as prima facie evidence of all matters required or authorised by this Part/Bill to be entered in the Register.

820. Subclause (2) addresses the issue of certified copies and extracts. It provides that the Registrar may, supply to a person:

- a copy of or extract from a record in the Register; or
- a copy of or extract from any instrument lodged with the Registrar under this Act.

821. The copy or extract is to be certified by the Registrar to be a true copy or true extract, as the case may be.

822. Subclause (3) provides that the certified copy or extract is admissible in evidence in all courts and proceedings without further proof or production of the original.

Clause 170 - Corrections of clerical errors or obvious defects

823. This clause provides that the Registrar may alter the Register for the purposes of correcting a clerical error or an obvious defect in the Register. This is to ensure the integrity of the Register, particularly given the long duration of licences.

Division 4—Offshore Infrastructure Registrar Special Account

Clause 171 - Offshore Infrastructure Registrar Special Account

824. This Division provides for the establishment of the Offshore Infrastructure Registrar Special Account.

825. Fees, levies, financial offers, and financial securities collected through the licensing scheme will be deposited into the special account. These funds will be used to pay for the Commonwealth's costs associated with administering this Bill and the regulations. This includes remuneration for staff and consultants. The special account also allows for funds to be debited to refund financial securities after decommissioning work is completed or to fund decommissioning work where the licence holder is unable or unwilling to complete decommissioning works. The special account will also allow for refunding amounts deposited in error.

826. Subclause (1) establishes the Offshore Infrastructure Registrar Special Account.

827. Subclause (2) provides that the Offshore Infrastructure Registrar Special Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

Clause 172 - Credits to the Offshore Infrastructure Registrar Special Account

828. Subclause (1) provides for amounts that must be credited to the Offshore Infrastructure Registrar Special Account. It specifies that there must be credited to the account amounts equal to the following:

- fees paid to the Registrar under this Act;
- offshore electricity infrastructure levy amounts paid to the Registrar;
- late payment penalties, subclause 190(3), paid to the Registrar;
- financial security amounts received, or financial security amounts recovered, required to be credited under subclause 119(3); and
- any other amounts paid to the Registrar under this Act.

829. Subclause (2) provides that certain amounts are not to be credited to the special account, namely an amount of a financial offer paid in accordance with a provision of a licencing scheme made for the purposes of subclause 32(3) (financial offers for feasibility licence applications).

Clause 173 - Purposes of the Offshore Infrastructure Registrar Special Account

830. This clause sets out the purposes of the Offshore Infrastructure Registrar Special Account:

- paying or reimbursing the Commonwealth's costs associated with the administration of this Bill and the applied work health and safety provisions;
- paying any remuneration or allowances payable to the Registrar, APS employees assisting the Registrar under clause 158 or consultants engaged under clause 157;
- paying amounts in respects of financial securities to the Regulator under paragraph 119(4)(b), for the purposes of applying those amounts to the costs, expenses, liabilities or debts referred to in that paragraph;
- refunding amounts in respects of financial securities under paragraph 119(4)(c);
- refunding an amount received by the Commonwealth as mentioned in clause 172 and credited to the special account, to the extent that the refund is required or permitted:
    - by and order of a court; or

- by an order under an Act.

Part 2—Offshore Infrastructure Regulator

Division 1—Introduction

Clause 174 - Simplified outline of this Part

831. Clause 174 provides a simplified outline of Part 2 of Chapter 5 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Division 2—The Regulator

Clause 175 - The Regulator

832. Subclause (1) addresses the office of the Regulator. It provides that a reference in this Bill to the Regulator is a reference to NOPSEMA.

833. NOPSEMA has significant experience and specialist expertise in regulating a similar offshore licensing and infrastructure regime for the petroleum and greenhouse gas injection and storage industries. Leveraging NOPSEMA's existing expertise, systems and capabilities will offer significant cost and time efficiencies.

Clause 176 - The CEO of the Regulator

834. Subclause (1) provides that a reference in this Bill to the CEO is a reference to the Chief Executive Officer of NOPSEMA.

835. Subclause (2) states that anything done by the CEO in the name of the Regulator or on the Regulator's behalf is taken to have been done by the Regulator.

Clause 177 - Functions of the Regulator

836. Subclause (1) sets out the functions of the Regulator. The Regulator has the following functions:

- to promote the work health and safety of persons engaged in offshore infrastructure activities;
- to develop and implement effective monitoring and enforcement strategies ensuring compliance with obligations under this Bill and regulations in relation to work health and

safety, environment management, and the infrastructure integrity of OREI and OETI;

- to investigate accidents, occurrences and circumstances;
  - affecting work health and safety of persons engaged in offshore infrastructure activities; or
  - involving deficiencies in environmental management; or
  - deficiencies in the infrastructure integrity of OEI;
- to report on investigations covered above;
- to advise persons on matters of work health and safety, environmental protection and infrastructure integrity in connection with offshore infrastructure activities;
- to make reports, including recommendations, to the Minister on issues relating to work health and safety, environmental protection and infrastructure integrity in connection with infrastructure activities;
- to provide information, assessments, analysis, reports, advice and recommendations to the Minister in relation to the administration and functioning of this Bill and the regulations;
- to cooperate with the Registrar in matters relating to the administration and enforcement of this Bill;
- to cooperate with other Commonwealth, State or Territory agencies and authorities having functions relating to the regulation of offshore infrastructure activities;
- such other functions as are conferred on the Regulator by or under this Bill;
- to do anything incidental to or conducive to the performance of any of the above functions.

837. Subclause (2) provides that the functions of the Regulator may be performed within or outside Australia.

Clause 178 - Powers of the Regulator

838. Subclause (1) provides that the Regulator has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

839. Subclause (2) makes it clear (without limiting the powers of Regulator) that the Regulator has all the powers and functions of an OEI inspector under this Bill.

840. Subclause (3) provides that the powers of the Regulator may be exercised within or outside Australia.

Clause 179 - Delegation by the Regulator

841. Subclause (1) provides that the Regulator may, in writing, delegate all or any of its functions or powers to a member of the staff of the Regulator (ie an employee of NOPSEMA); an Executive Level 2 APS employee in the Department; or a person by prescribed by the regulations.

842. Subclause (2) requires delegates to comply with any written directions of the Regulator when performing a delegated function or exercising a delegated power.

843. Subclause (3) provides that subclause (1) does not apply to the Regulator's power to make, vary or revoke a legislative instrument.

Clause 180 - Consultants and persons seconded to the Regulator

844. Subclause (1) provides that the CEO may engage consultants to perform services for the Regulator in connection with the performance of any of its functions or the exercise of any of its powers.

845. Subclause (2) provides that officers and employees of the APS, a Commonwealth authority, a State or Territory, or of an agency or authority of a State or Territory may be seconded to the Regulator to assist with the performance of its functions or powers.

Clause 181 - Minister may require the Regulator to prepare reports or give information

846. Subclause (1) provides that the Minister may, by written notice to the Regulator, require it to prepare a report about one or more specified matters relating to the performance of its functions, or exercise of its powers. A copy of this report must be given to the Minister within the period specified in the notice.

847. Subclause (2) provides that the Minister may, by written notice given to the Regulator, require it to prepare a document setting out specified information relating to the performance of the Regulator's functions or the exercise of the Regulator's powers. A copy of this document must be given to the Minister within the period specified in the notice.

848. Subclause (3) states that the Regulator must comply with a Minister's request for a report or information made under subclause (1) and (2).

849. The ability for the Minister to require the Regulator to provide reports on the exercise of powers and performance of functions is intended to provide the Minister with information. It is not intended that the reports or documents will be tabled in Parliament or made publicly available. The Regulator is required to publish certain enforcement actions under the Bill, to submit Annual Reports and to be subject to periodic reviews of the performance of its functions and the exercise of its powers. Both Annual Reports and review reports must be tabled or otherwise published.

Clause 182 - Minister may give directions to the Regulator

850. Subclause (1) provides that the Minister may, by legislative instrument, give written directions to the Regulator about the performance of its functions under this Bill.

851. There is an explanatory note to indicate that the provisions of the *Legislation Act 2003* (section 42 and Part 4 of Chapter 3 respectively) relating to disallowance and sunsetting of legislative instruments do not apply to the directions. Directions of this nature are ordinarily exempt from these requirements, by the operation of the Legislation Act and the *Legislation (Exemptions and Other Matters) Regulation 2015*. They are administrative in character as they do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances. In addition, they are intended to remain in force until revoked by the Minister.

852. Subclause (2) provides that a direction under subclause (1) must be of a general nature only.

853. Subclause (3) makes clear that subclause (2) does not prevent the Minister from directing the Regulator to investigate a particular occurrence in relation to particular OREI or OETI.

854. Subclause (4) provides that the Regulator must comply with a direction under subclause (1).

Clause 183 - Additional functions and powers

855. The clause states that the Regulator may, under contract, provide services to a State, the Australian Capital Territory, the Northern Territory and Foreign countries.

856. The Regulator is not authorised to provide these services if it would impede its capacity to perform its functions, or impede NOPSEMA to perform any of its other functions.

States and Territories

857. Subclause (1) authorises the Regulator to provide services under a contract to a State, the Australian Capital Territory and the Northern Territory.

858. The services must concern the regulation of exploring, exploiting, or storing, transmitting or conveying electricity or a renewable energy product on land or waters within the limits of the State or Territory; or the coastal waters of the State or Territory.

859. If the services are to be provided on land or in waters within the limits of the State or Territory, they must relate to the regulation of activities carried on by a constitutional corporation, or to the regulation of vessels, structures or other things owned or controlled, or that are being constructed, operated or decommissioned, by a constitutional corporation.

860. In all cases the contract for services by the Regulator must be approved by the Minister.

Foreign countries

861. Subclause (2) authorises the Regulator to provide services under a contract to the government of foreign country (or part of foreign country), or an agency or authority of a foreign country (or part of a foreign country). The services must relate to the regulation of exploring for, or exploiting, renewable energy resources, or the storing, transmitting or conveying electricity or a renewable energy product outside Australia.

862. Subclause (2) also requires that the contract entered into by Regulator must be approved in writing by the Minister, and subclause (3) provides that before giving this approval the Minister must consult the Foreign Affairs Minister.

Provision of services not to impede other functions

863. Subclause (4) makes it clear that this clause 183 of the Bill does not authorise the Regulator to provide a service if this would impede the Regulator's capacity to perform other functions under this Bill or impede the capacity of NOPSEMA to perform other functions of NOPSEMA including under the OPGGS Act.

Certain governance provisions do not apply

864. Subclause (5) specifies that certain governance provisions do not apply in relation to a power conferred by subclause (1) or (2). It refers to clauses 182, 184 and 189 of this Bill and Division 5 of Part 6.9 and section 690 of the OPGGS Act.

865. Subclause (6) provides that the annual report for NOPSEMA under section 46 of the *Public Governance, Performance and Accountability Act 2013* is not required to include information about a service provided under an abovementioned contract.

Definitions

866. Subclause (7) sets out two definitions of terms used in this Part:

- *Foreign Affairs Minister* means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.
- *regulation* includes investigation.

Clause 184 - Annual reports

867. This provides that the annual report for NOPSEMA under section 46 of the *Public Governance, Performance and Accountability Act 2013* must include any matters prescribed by the regulations.

Division 3—Other financial matters

Clause 185 - Money received by the Regulator

868. This provides that monies which are paid to the Regulator, other than by the Commonwealth, are taken as received for and on behalf of the Commonwealth.

Clause 186 - Commonwealth payments to the Regulator

869. This clause addresses how the Commonwealth is to make payments to the Regulator and outlines the source of those payments. It clarifies that the Commonwealth must pay to the Regulator all of the following monies and amounts:

- money appropriated by the Parliament for the Regulator;
- amounts equal to fees paid to the Regulator under this Bill or regulations;
- amounts equal to the offshore electricity infrastructure levy;
- amounts debited from the Offshore Infrastructure Registrar Special Account under subclause 194(2) (about OEI inspectors);
- amounts equal to amounts of late payment penalty under subclause 190(3) paid to the Regulator; and
- amounts equal to any other amounts paid to the Regulator by parties other than the Commonwealth.

870. Subclause (2) states that amounts payable under paragraphs (1)(b) to (f) are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

Clause 187 - Application of money of the Regulator

871. This provides for the application of money held by the Regulator. It addresses how it may be spent. Subclause (1) sets out that this applies to any money paid to the Regulator.

872. Subclause (2) provides that the money is to be applied only in the following manner:

- in payment or discharge of costs, expenses and other obligations incurred by the Regulator to perform its functions and powers under this Bill; and
- in payment of remuneration or allowances payable under this Bill.

873. Subclause (3) specifies that this does not prevent investment of those monies which are not immediately required by the Regulator for the purposes under this Bill. This provision is enabled by section 59 of the *Public Governance, Performance and Accountability Act 2013*.

Part 3—Fees and offshore electricity infrastructure levy

Clause 188 - Simplified outline of this Part

874. Clause 188 provides a simplified outline of Part 3 of Chapter 5 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

875. As noted in the financial impact statement, the objective of the fees and levy charged is to recover the costs associated with implementing the Bill.

Clause 189 - Fees

876. This clause provides for the charging of fees as prescribed for specified services by the Regulator or Registrar. These are cost-recovery fees such as application fees or fees in relation to the performance or exercise of any other function or power under this Bill or the regulations and must not be such as to amount to taxation. These kinds of fees allow costs to be recovered from those directly benefiting from particular services provided under the Bill.

877. Subclause (1) sets out that the Commonwealth, or the Regulator, or the Registrar on behalf of the Commonwealth, may charge a fee for:

- dealing with an application made under this Bill or the applied work health and safety provisions; or
- performing or exercising any other function or power under this Bill or the applied work health and safety provisions.

878. Subclause (2) provides for the fee amount. This is to be either prescribed by the regulations or worked out in accordance with a method prescribed by the regulations. These regulations would be a disallowable legislative instrument and developed after consultation consistent with the *Legislation Act 2003*.

879. Subclause (3) notes that the fee must not be such as to amount to taxation. Only fees for services would be prescribed.

880. Subclause (4) provides that the fee is a debt due to the Commonwealth and is recoverable in the court of competent jurisdiction. This allows for the enforcement of any fees imposed and not paid.

Clause 190 - Offshore electricity infrastructure levy

881. Subclause (1) provides for the collection of the offshore electricity infrastructure levy imposed by the Offshore Electricity Infrastructure (Regulatory Levies) Bill 2021 once enacted. It provides that the levy will become due and payable in accordance with the regulations.

882. An explanatory note to this subclause explains that the offshore electricity infrastructure levy is to be imposed by the Offshore Electricity Infrastructure (Regulatory Levies) Bill 2021 once enacted. It also provides that regulations under that proposed Act may prescribe different kinds of offshore electricity infrastructure levy.

883. Subclause (2) states that the regulations may provide for the remittal or refund of all or part of an amount of levy. This is to clarify the scope of the regulation making power should remittals or refunds be necessary.

884. Subclauses (3) and (4) provide for a late payment penalty to be payable where a levy remains wholly or partly unpaid after the date it becomes due and payable.

885. Subclause (5) provides that the person to whom a levy is paid may remit a late payment penalty (to apply to the whole or part levy), if the person considers there is a good reason for doing so. Reasonable justification could include a technical error, or error outside of their reasonable control. For example, the person providing incorrect instructions to the licence holder which results in payment not being received in time.

886. Subclause (6) provides that each levy amount, and each amount in respect of any late payment penalties, is a debt due to the person to whom the levy is payable and is recoverable in a court of competent jurisdiction. The penalty is not cost recovery or taxation, it is a penalty designed to ensure that levies are paid on time. Given the importance of the Registrar and Regulator's functions, and the fact they are funded through levies, it is critical that functions are adequately resourced through the timely payment of levies by industry.

887. Subclause (7) provides that if the levy is payable to a person other than the Commonwealth, the levy is recoverable by the person on behalf of the Commonwealth.

888. Subclause (8) allows for regulations to specify an application to only have been made if an amount of levy has been paid in relation to the application, and to reject an application if the payment is not made. This allows the regulations to provide additional disincentives to not paying the levy if this is necessary to enhance compliance.

Part 4—Compliance and enforcement

889. This Part introduces four enforcement mechanisms into the Bill:

- infringement notices;
- injunctions;
- adverse publicity orders; and
- cumulative penalties for continuing offences.

890. These provisions are modelled on the current enforcement provisions in the OPGGS Act, which has a similar regulatory regime. These enforcement mechanisms, sanctions and penalties are necessary to provide an effective and meaningful deterrent against non-compliance.

891. A graduated range of enforcement mechanisms is provided as a supplement or alternative to the criminal regime, in order to encourage compliance outcomes. The Regulator and inspectors will be enforcing these requirements. This Bill will be applying the same regulatory powers.

892. Regulators are best able to secure compliance when they have a range of graduated sanctions that can be imposed, depending upon the severity of the misconduct or breach of statutory requirements in a given set of circumstances. The ability to apply a range of enforcement tools can ensure a more targeted enforcement response, which can also be directed at achieving future behavioural change, rather than serving a purely punitive function.

893. Non-monetary enforcement mechanisms, such as injunctions and adverse publicity orders have been incorporated into a regulatory regime in addition to direct financial penalties in order to provide a graduated range of compliance tools. The benefits of implementing non-monetary enforcement mechanisms include the ability for the Regulator to tailor the application of enforcement measures to suit the particular circumstances of non-compliance, the ability to better align the penalty with its purpose, and to enable the Regulator to seek an outcome directed towards future behavioural change to bring persons

into a position of compliance. The potential for application of non-monetary enforcement mechanisms in the context of a well-resourced industry is also useful as a means to further encourage compliance, given that the level of financial penalties that can be applied may in itself provide an insufficient deterrent.

894. These enforcement tools will ensure that the Regulator and the courts have the capacity to apply an appropriate and proportionate response to incidents of non-compliance with this Bill, in order to encourage improved compliance outcomes.

895. In considering the penalty provisions throughout the Bill, it is acknowledged that in aligning with the OPGGS Act, these penalties exceed that provided in the Guide to Framing Commonwealth Offences. The guide recommends a 60 penalty unit maximum for strict liability offences in primary legislation or 50 penalty unit maximum for strict liability offences in regulations. With the application of a continuing offence provision to a number of existing strict liability offences in this item, an offender may conceivably face an amalgamated penalty which totals more than 60 penalty units in this Bill or more than 50 penalty units in the regulations.

896. A potential departure, should the offence continue for a certain number of days, from the Guide to Framing Commonwealth Offences is justified on the grounds that in a high hazard regime such as this the conduct and consequences associated with the offence are potentially extremely serious (particularly when related to WHS or environmental matters). A penalty high enough to provide sufficient disincentive to promote and secure swift compliance is therefore warranted.

Division 1—Introduction

Clause 191 - Simplified outline of this Part

897. Clause 191 provides a simplified outline of Part 4 of Chapter 5 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Division 2—OEI inspectors

Clause 192 - OEI inspectors—appointment

898. Subclause (1) provides for the appointment of OEI inspectors. This may be done by the Regulator in writing. The person to be appointed must be one of the following:

- a member of the staff of the Regulator;
- an employee of the Commonwealth or of a Commonwealth authority or agency;
- an employee of a State or Territory, or of an authority or agency of a State or Territory.

899. Generally, the persons who may be appointed as an OEI inspector are members of the staff of the Regulator, employees of the Commonwealth or a Commonwealth authority, or employees of a State or Territory or an authority of a State or Territory.

900. Subclause (2) gives an exception to the above. Despite the list of qualified personnel in subclause (1), the Regulator may appoint as OEI inspectors persons who are not described above if the appointment is for a period, and for the performance of functions, stated in the instrument of appointment.

901. It is acknowledged that there may be circumstances where a person who is not a member of the staff of Regulator, an APS employee or an officer of a State or Territory may be appointed as a NOPSEMA inspector. However, such appointments are only able to be made for limited periods and limited functions, specified in the instrument of appointment, to enable persons with particular expertise to assist during inspections where required. Accordingly, this power may not be widely used. For example, it is unlikely that such persons would be appointed to perform the functions of an infringement officer. This power reflects the potential need for specialist expertise in assisting with relevant powers for the relevant infrastructure and is subject to the constraints of subclause (3).

902. Subclause (3) addresses the requirement of the Regulator to be satisfied that the person to be appointed has the knowledge or experience necessary to properly exercise the powers of an OEI inspector. There is a qualification that any limitations as to powers or functions may be set out in an instrument under subclause (2) or a direction under clause 193. This ensures persons covered by

subclauses (1) and (2) who lack relevant competencies are not appointed.

903. Subclause (4) outlines that the Regulator if an employee of a State or Territory or an authority of a State or Territory is to be considered as an OEI inspector, the appointment may not be made without the agreement of the State or Territory.

904. Subclause (5) provides that an identity card issued to an OEI inspector under the RPA must:

- state that the inspector is an OEI inspector for the purposes of this Bill and the applied work health and safety provisions; and
- if the inspector is appointed subject to any limitations as to powers or functions stated in the instrument of appointment, state that limitation.

905. This allows for persons interacting with OEI inspectors to be able to verify their role.

Clause 193 - OEI inspectors—directions by Regulator

906. Subclause (1) provides for the Regulator to give directions to OEI inspectors. It states that the Regulator state the conditions under which an OEI inspector's powers may be exercised. This must be for the purposes of this Bill and the applied work health and safety provisions. This must be in writing. The inspector's powers must be exercised in accordance with those directions.

907. Subclause (2) provides that the Regulator may impose conditions on the exercise of powers, or the performance of functions, by a particular OEI inspector. This must be done in writing and those directions must not be inconsistent with this Bill and the applied work health and safety provisions. If such conditions are given, the inspector's powers and functions are to be exercised or performed subject to those conditions.

908. Subclauses (3), (4) and (5) make clear the status of directions and notices as legislative instruments. If a direction under subclause (1) is of general application, the direction is a legislative instrument. If a direction is not of general application, the direction is not a legislative instrument. A notice under subclause (2) is not a legislative instrument because it is an administrative decision and not of

legislative character. Accordingly, these provisions dealing with the status of each instrument are declaratory of the law and not intended to change the outcome under the *Legislation Act 2003*.

Clause 194 - OEI inspectors—reimbursement for exercise of powers relating to the Registrar

909. Clause 194 sets out the scope for reimbursement of monies due to an OEI inspector in conducting activities.

910. Subclause (1) clarifies that the clause applies if an OEI inspector:

- engages in activities that are preparatory to the exercise, or the possible exercise, of a power for a purpose that relates to the powers or functions of the Registrar; or
- exercises a power for a purpose that relates to the powers or functions of the Registrar.

911. Subclause (2) provides that the Regulator and the Registrar may make a determination that an amount is to be debited from the Offshore Infrastructure Registrar Special Account. This must be done with the agreement of the Minister and by notifiable instrument. This ensures transparency with the process.

912. There is an explanatory note to state that the Commonwealth must pay a corresponding amount to the Regulator as a debit from the Offshore Infrastructure Registrar Special Account.

Division 3—Monitoring and investigation powers

913. Division 3 applies the monitoring and investigation powers in the RPA to this Bill.

914. The purpose of the RPA is to simplify the law by creating a standard set of provisions to deal with monitoring, investigation and the use of civil penalties, infringement notices, enforceable undertakings and injunctions in the enforcement of legal obligations. The RPA conforms with the Guide to Framing Commonwealth Offences.

915. The approach in this Division has been taken after consideration of *Office of Parliamentary Counsel Drafting Direction No 3.5A* on Regulatory Powers (available at: https://www.opc.gov.au/drafting-resources/drafting-directions%20).

916. The purpose of triggering the relevant provisions in the RPA in this Bill is to allow access for OEI inspectors to the standardised suite of compliance monitoring and investigation powers as well as graduated enforcement mechanisms under that Act and to avoid duplication of powers across Commonwealth legislation.

917. Modifications have been made in some circumstances to the standard operation of RPA powers to ensure that they are fit for purpose to facilitate a timely and effective regulatory response to incidents and non-compliance in remote offshore locations. These modifications are addressed in subsequent provisions and the reasons for modifications discussed there.

Clause 195 - Monitoring powers (general)

918. Clause 195 addresses monitoring powers in general.

919. It provides for the application of Part 2 of the RPA to provisions of the Bill if those provisions are: a provision under this Bill, work health and safety provisions or offence provisions under the Crimes Act or the Criminal Code as specified above.

920. There is an explanatory note which states that Part 2 of the RPA creates a framework for monitoring to determine whether this Bill has been complied with. It includes powers of entry and inspection.

Information subject to monitoring

921. Subclause (2) provides for information which is subject to monitoring. It states that information which is given in compliance or purported compliance with a provision of this Bill or the applied work health and safety regulations is subject to monitoring under Part 2 of the RPA.

922. As provided for after subclause (1), there is an explanatory note to state that Part 2 of the RPA creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

923. Subclause (3) provides that there are no related provisions.

Authorised applicant

924. Subclause (4) addresses the authorised applicant. It provides that an OEI inspector is an authorised applicant in relation to the following:

- the provisions of this Bill and the regulations; and
- the information mentioned in subclause (2).

Authorised person

925. Subclause (5) provides that for the purposes of Part 2 of the RPA, an OEI inspector is an authorised person in relation to the following:

- the provisions of this Bill and the regulations; and
- the information mentioned in subclause (2).

Issuing officer

926. Subclause (6) clarifies that a magistrate is an issuing officer for the RPA in relation to the following:

- the provisions of this Bill and the regulations; and
- the information mentioned in subclause (2).

Relevant chief executive

927. Subclause (7) specifies that for the purposes of Part 2 of the RPA, the CEO is the relevant chief executive in relation to the following:

- the provisions of this Bill and the regulations; and
- the information mentioned in subclause (2).

928. Subclause (8) empowers the CEO to delegate their powers to an SES employee, or acting SES employee, in the Regulator. These powers are described in subclause (9).

929. Subclause (9) outlines the powers and functions that may be delegated by the CEO. These are:

- powers and functions under Part 2 of the RPA in relation to:
  - the provisions of this Bill and the regulations;
  - the information mentioned in subclause (2); and
- powers and functions under the RPA that are incidental to a power or function mentioned in paragraph (a).

930. Subclause (10) provides that a person exercising powers or performing functions under a delegation under subclause (8) must comply with any directions of the relevant chief executive.

Relevant court

931. Subclause (11) describes a relevant court in relation to this Bill and the regulations and the information mentioned in subclause (2) as follows:

- the Federal Court;
- the Federal Circuit Court and Family Court of Australia;
- the Supreme Court of a State or Territory.

932. Prescribing these courts as the 'relevant courts' is in keeping with the Attorney-General's Department's policy that jurisdiction should, wherever possible, be conferred as widely as appropriate to ensure that disputes can be resolved in the lowest level of court, and allows the workload resulting from new legislation to be distributed fairly. There is not a justifiable reason in this instance for limiting the jurisdiction of this Bill to a particular court.

Person assisting

933. Subclause (12) provides that an authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the RPA. This refers to the provisions mentioned in subclause (1).

Use of force in executing a monitoring warrant

934. Subclause (13) addresses the use of force in executing a monitoring warrant under Part 2 of RPA and the limits of force to being in the following manner:

- an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
- a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

935. This clarification is considered necessary because of the nature of the offshore infrastructure involved. It is equivalent to subsection 602D(9) of the OPGGS Act.

Extension to Commonwealth offshore area

936. Subclause (14) addresses the operation of Part 2 of the RPA specifying that it extends to the Commonwealth offshore area.

Extension to external Territories

937. Subclause (15) addresses the operation of Part 2 of the RPA specifying that it extends to every external Territory mentioned in clause 5.

Clause 196 - Investigation powers (general)

Provisions subject to investigation

938. Subclause (1) addresses the investigation powers under Part 3 of the RPA. A provision is subject to this investigation if it is:

- a provision of this Bill or the regulations; or
- a provision of the work health and safety provisions; or
- an offence provision of the Crimes Act or the Criminal Code, to the extent that it relates to one or more of the provisions mentioned in paragraph (a) or (b).

939. There is an explanatory note to provide that Part 3 of the RPA creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

940. Subclause (2) provides that there are no related provisions.

Authorised applicant

941. Subclause (3) addresses the authorised applicant. It provides that an OEI inspector is an authorised applicant in relation to evidential material that relates to a provision mentioned in subclause (1).

Authorised person

942. Subclause (4) provides that for the purposes of Part 3 of the RPA, an OEI inspector is an authorised person in relation to evidential material that relates to a provision mentioned in subclause (1).

Issuing officer

943. Subclause (5) provides that a magistrate is an issuing officer in relation to evidential material mentioned in subclause (1).

Relevant chief executive

944. Subclause (6) specifies that the CEO is the relevant chief executive for the purposes of evidential material in subclause (1).

945. Subclause (7) provides a power of delegation. The CEO may delegate the powers and functions mentioned in subclause (8) to an SES employee, or acting SES employee, in the Regulator. This must be made in writing.

946. Subclause (8) describes the nature of the powers and functions that may be delegated. These are:

- powers and functions under Part 3 of the RPA in relation to evidential material that relates to a provision mentioned in subclause (1); and
- powers and functions under the RPA that are incidental to a power or function mentioned in paragraph (a).

947. Subclause (9) makes clear that a person exercising powers or performing functions under a delegation under subclause (7) must comply with any directions of the relevant chief executive.

Relevant court

948. Subclause (10) defines 'relevant court' for the purposes of Part 3 of the RPA. The following courts are so described:

- the Federal Court;
- the Federal Circuit Court and Family Court of Australia;
- the Supreme Court of a State or Territory.

Person assisting

949. Subclause (11) enables an authorised person to be assisted exercising powers or functions under Part 3 of the RPA. The scope of these activities relates to evidential material mentioned in subclause (1).

Use of force in executing a warrant

950. Subclause (12) provides for the use of force in executing an investigation warrant. It enables the use of force by the following persons if necessary and reasonable as follows:

- an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
- a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

214. This clarification is considered necessary because of the nature of the offshore infrastructure involved. It is equivalent to subsection 602D(9) of the OPGGS Act.

Extension to Commonwealth offshore area

951. Subclause (13) provides for the extension of application of Part 3 of the RPA to the Commonwealth offshore area.

Extension to external Territories

952. Subclause (14) provides for the extension of application of Part 3 of the RPA to every external Territory mentioned in clause 5.

Clause 197 - Monitoring and investigation powers (special provisions)

Scope

953. Subclause (1) addresses the scope of clause 197 which gives special provisions for monitoring and investigation powers. It provides for extended or alternative meanings of terms used in Part 2 or 3 of the RPA in the application of that Part under this Division.

Premises

954. 'Premises' is defined in clause 6 to have the same meaning as in the RPA. Subclause (2) addresses the term 'premises' in the application of Part 2 or 3 of the RPA and applies this to include offshore premises.

Occupiers of premises located offshore

955. Subclause (3) addresses the situation of occupiers of premises which are located offshore.

956. It provides a definition of 'occupier' as this relates to the exercise of powers by an OEI inspector at premises that are located in the Commonwealth offshore area. For these purposes an occupier means:

- at OREI, the occupier is the licence holder's representative (if any) at the premises; or
- if this does not apply, and the premises are a vessel under the command or charge of a master—the master; or
- if there is no occupier at the premises, then this is the person at the premises (if any) who appears to be in overall control of the premises.

957. There is an explanatory note to state that, in the case of premises that are not located in the Commonwealth offshore area, the term 'occupier' would have its ordinary meaning as applied under the RPA. This subclause is similar to subsection 602F(3) of the OPGGS Act.

Clause 198 - Monitoring powers (entering offshore premises without warrant)

958. The Bill provides that under urgent circumstances warrant-free entry to defined premises and access to certain monitoring and investigation powers under the RPA necessary for the effective oversight of offshore infrastructure activities is available to OEI inspectors. It is acknowledged that this is a divergence from the usual application of the RPA (subsection 18(2)). Details for this have been addressed below.

959. Subclauses 169(1) and (3) allow for an 'authorised person' to enter premises without consent of the occupier or a monitoring/investigation warrant. It is noted that the Guide to Framing Commonwealth Offences advises that this should only be provided in certain limited circumstances, such as entry by an inspector for the purposes for ensuring compliance with conditions for a licensed premises, or other legislative requirements (page 85). The guide also advises that legislation should only authorise entry without consent or a warrant in 'situations of emergency, serious danger to public health, or where national security is involved'.

960. The provision of warrant-free entry for OEI inspectors is considered necessary and appropriate in urgent circumstances or where significant incidents have occurred which require an emergency

response. Warrant free entry will ensure the Regulator is able to respond rapidly to offshore incidents which may involve serious injuries and even fatalities.

961. Given the difficulty in accessing offshore facilities in remote locations and the risks associated with undertaking offshore inspections where the OEI may be unoccupied, and the attendance difficulties in easily securing a warrant in some circumstances, the requirement to obtain a warrant or consent can significantly impede the timeliness and effectiveness of compliance monitoring inspections and investigations.

962. The use of warrant-free access powers is intended to allow OEI inspectors the necessary scope to rapidly respond to significant offshore incidents to secure the safety of these offshore sites for both workers and other marine users and to protect evidential material of potential contravention of legislative requirements.

963. A similar approach has been taken to such serious circumstances in the regulation of offshore petroleum and greenhouse gas storage activities. See for example section 623 of the OPGGS Act.

Monitoring powers

964. Subclause (1) addresses monitoring powers. It enables the entry of an authorised person to premises located in the Commonwealth offshore area. This entry may be effected without:

- the consent of the occupier despite subsection 18(2) of the RPA; or
- a monitoring warrant (within the meaning of the RPA).

965. The circumstances permitting such entry are set out. There must be a belief by the authorised person that, because of urgent circumstances, it is necessary and reasonable to exercise these monitoring powers.

966. Subclause (2) specifies that the authorised person must announce that they are so authorised to enter these premises. If an authorised person enters premises as above, the following provisions of the RPA apply as if the entry was authorised by a monitoring warrant:

- section 21 (securing electronic equipment to obtain expert assistance);

- section 24 (asking questions and seeking production of documents);
- section 26 (announcement before entry under warrant).

967. The authorised person must announce that they are authorised to enter the premises and adhere to the following:

- paragraph 28(2)(b) (details of warrant etc. to be given to occupier);
- section 30 (right to observe execution of warrant);
- section 31 (responsibility to provide facilities and assistance).

Clause 199 - Investigation powers (entering offshore premises without warrant)

968. Subclause (1) addresses the investigatory powers which apply to entering offshore premises without a warrant in a similar way to how clause 198 deals with monitoring powers and for the same reasons.

969. This provision operates despite subsection 48(2) of the RPA. Subsection 48(2) of the RPA states that an authorised person is not authorised to enter the premises unless the occupier of the premises has consented to the entry or the entry is made under an investigation warrant. Notwithstanding this, these RPA powers are overridden by the operation of this Part.

970. It enables an authorised person to enter offshore premises under subsection 48(1) of the RPA without the consent of the occupier of the premises or an investigation warrant. This is permitted where the authorised person believes it is necessary and reasonable to enter and investigate the premises without consent powers or an investigation warrant because of the circumstances. Three of the circumstances are potentially applicable in the context of the OEI Bill:

- ***Licensed Premises*** – All OEI that is proposed to be subject to warrant free entry would be non-residential premises where a licensed activity happens. Inspectors would be entering these premises to monitor compliance with both licence conditions and legislative requirements. If necessary this could be included as a condition of all licences.
- ***Funding or Levy*** – All licence holders under the OEI will be required to pay a levy for any activity connected with premises and therefore can be taken to accept entry by an

inspector for the purpose of ensuring compliance with legislative requirements. If required, the entry power could be explained by a plain English written notice when the licence holder becomes liable to pay the levy.

- ***Conveyances*** – There may be circumstances where vessels that are undertaking offshore renewable energy activities or offshore electricity activities under the OEI Bill may need to be accessed for the purposes of compliance monitoring and enforcement and the inherent mobility of the particular conveyance means that there may not be time, or it would be impractical, to obtain a warrant.

971. Due to the remote location of OEI it will be essential that reasonable facilities and assistance as provided for under the RPA and the OEI frameworks are provided to inspectors in all circumstances. In particular this includes means of transportation to and from the premises and means of subsistence while at the premises. This means that it would not be feasible to conduct inspections in relation to these premises under consent. Warrant free compliance monitoring powers would also include provisions for reasonable facilities and assistance including transport to and from OEI and a means of subsistence.

972. In addition the remote locations of OEI, the need to ensure that the safety of the offshore workforce in a high hazard environment is protected, the limited range of premises to which warrant free access would apply, consistency with other maritime and work health and safety frameworks, the burden and costs to government, the courts and the industry in warrants in all circumstances (noting that regulation of the industry is proposed to be fully cost recovered) contributes to the justification of warrant free compliance monitoring provisions under the OEI Bill.

973. Subclause (2) specifies that if an authorised person enters offshore premises under subclause (1), the following provisions of the RPA apply as if the entry were authorised by an investigation warrant that specifies the evidential material that the authorised person suspects on reasonable grounds may be on the premises:

- section 49 (general investigation powers);
- section 50 (operating electronic equipment);
- section 51 (securing electronic equipment to obtain expert assistance);

- section 54 (asking questions and seeking production of documents);
- section 56 (announcement before entry under warrant), except that the authorised person must announce that the authorised person is authorised to enter the premises under this clause, unless subclause 56(2) applies;
- paragraph 58(2)(b) (details of warrant etc. to be given to occupier);
- section 62 (right to observe execution of warrant);
- section 63 (responsibility to provide facilities and assistance);
- section 64 (copies of seized things to be provided).

Clause 200 - Monitoring and investigation powers (reasonable facilities and assistance)

Scope

974. Clause 200 addresses monitoring and investigation powers and the provision of reasonable facilities and assistance.

975. Subclause (1) addresses the RPA powers to be exercised by an OEI inspector under this Division as it relates to premises in the offshore premises.

Reasonable facilities and assistance

976. Subclause (2) sets out the obligation to provide reasonable facilities and assistance to an OEI inspector. It refers to the application of section 31 or 63 of the RPA. It states that the responsible person must provide:

- appropriate transport to or from the premises for OEI inspector and any person assisting the inspector;
- any equipment required by the inspector;
- anything which the inspector has taken possession; and
- reasonable accommodation and means of subsistence for the OEI inspector and any person assisting the inspector, while the inspector is at the premises.

977. There is an explanatory note to state that an OEI inspector may be assisted by another person (see subclauses 195(12) and 196(11)). It also states that any assistance must be necessary and reasonable. It directs the reader to sections 23 and 53 of the RPA.

978. Subclause (3) provides that the responsible person means the holder of a licence in relation to which the powers are to be exercised.

Clause 201 - OEI inspections—licence holder's representative

Scope

979. Subclause (1) provides the scope of this clause. It applies in relation to an OEI inspection that relates to a licence.

Meaning of licence holder's representative

980. Subclause (2) clarifies what is meant by the licence holder's representative. It is a person nominated by the licence holder who is present at the offshore premises in compliance with a requirement imposed on the licence holder by paragraph (4)(b).

Nomination of licence holder's representative

981. Subclause (3) addresses the issue of nominating a representative. The OEI inspector may require the licence holder to nominate a representative to be present at offshore premises during an inspection. This notice should be given in writing and state the time for inspection in the notice.

982. Subclause (4) specifies details of the notice. The licence holder must:

- by written notice to the OEI inspector, nominate a representative; and
- take all reasonably practicable steps to ensure the nominated representative is present at the offshore premises at the time stated in the notice.

983. The nominated representative must remain at the offshore premises after the stated time until no longer required for the OEI inspection.

Strict liability offence

984. Subclause (5) provides for a strict liability offence. It creates an offence where a person is subject to the requirement to attend (as above) and fails to comply with that requirement. In that case, the maximum penalty is 50 penalty units.

985. The strict liability offence is appropriate to ensure the highest level of compliance with this obligation given the inherent difficulties with

inspections in the offshore area. The justification for this approach in the Bill is set out further in the Statement of Compatibility with Human Rights.

Civil penalty

986. Subclause (6) provides for the imposition of a civil penalty where a person who is subject to a requirement to attend must comply. The maximum civil penalty is 135 penalty units.

Clause 202 - Monitoring and investigation powers (relationship with other powers)

987. This clause addresses the monitoring and investigation powers as they relate to other persons.

988. An OEI inspector or another person is not prevented from exercising a power or function under any provision of this Bill or the regulations or any of the applied work health and safety provisions.

989. In addition, an OEI inspector or another person is not prevented by the exercise or performance by another OEI inspector (or any other person) of a power or function under any provision of this Bill or the regulations or any of the applied work health and safety provisions.

Clause 203 - Obstructing or hindering OEI inspector

Fault-based offence

990. Clause 204 provides for fault based offence of obstructing or hindering an OEI inspector. An offence is committed where a person engages in conduct that obstructs or hinders an OEI Inspector in the exercise of their powers under this Bill.

991. A maximum penalty of 60 penalty units is prescribed by subclause (2).

992. There is an explanatory note to state that the same conduct may be an offence against both subclause (1) of this clause and section 149.1 of the Criminal Code.

Civil penalty

993. Subclause (3) adds a civil penalty for this offence where appropriate. The specified maximum penalty is 135 penalty units.

Exception—reasonable excuse

994. Subclause (4) provides for reasonable excuse. In that case the above penalties will not apply.

995. There is an explanatory note to state that the defendant bears an evidential burden in relation to these offences and refers the reader to subsection 13.3(3) of the Criminal Code and section 96 of the RPA.

Clause 204 - OEI inspections—reports

Scope

996. Subclause (1) addresses the reporting requirements from OEI inspectors.

Report to be given to Regulator

997. Subclauses (2) and (3) provide that the OEI inspector must prepare a written report relating to the inspection and give the report to the Regulator. This must be done as soon as practicable. The detail of what must be included in the report is also set out. This must include:

- the OEI inspector's conclusions from conducting the inspection and the reasons; and
- any recommendations the OEI inspector wishes to make as a result of inspection; and
- other matters as prescribed by regulation.

Copies of report to be given to licence holder

998. Subclause (4) specifies that the Regulator must give a copy of the report to the licence holder. This must be done as soon as possible. The report should include any written comments it wishes to make.

Details of remedial action etc.

999. Subclause (5) addresses the issue of remedial action. The Regulator may request the licence holder to provide details of action proposed in relation to the recommendations in the report.

1000. Subclause (6) requires the licence holder to comply with the above request under subclause (5).

Division 4—Compliance powers

Clause 205 - Do not disturb notices—issue

Scope

1001. Subclause (1) provides that this clause applies where an OEI inspector is conducting an OEI inspection in relation to offshore premises.

When a notice may be issued

1002. Subclause (2) provides that an OEI inspector may issue a notice (a *do not disturb notice*) to a licence holder. This must be in writing. The inspector must be satisfied on reasonable grounds that it is reasonably necessary to issue the notice for the inspection.

1003. The notice may be issued for the purposes removing an immediate threat to the health or safety of any person.

1004. Alternatively, the notice may also be for the purposes of allowing the inspection, examination or measurement of, or the conducting of tests concerning:

- the OEI or related premises; or
- particular plant, or a particular substance or thing, at the OEI or related premises.

1005. Decisions to issue these notices are administrative in nature, and they are not made subject to merits review because this is a procedural decision, made in the context of an inspection. The decision is of a law enforcement nature, and to make this decision subject to administrative review would not be appropriate as it could conceivably jeopardise the inspection.

Issue of notice

1006. Subclause (3) provides that the notice may be issued to the licence holder by being given to the licence holder's representative at the premises. The representative is the person who is nominated for the inspection.

Contents of notice

1007. Subclause (4) addresses the contents of the notice. It must direct the licence holder to take reasonable steps to ensure that certain items are not disturbed for a period specified in the notice.

1008. This includes the particular plant, substance or thing, at the offshore premises. The reasons for the OEI inspector's decision to issue the notice must also be set out in the notice.

1009. Subclause (5) outlines that the period specified in the notice must be a period considered necessary by the OEI inspector to allow the inspection, examination, measuring or testing. The decision by the OEI inspector must be made on reasonable grounds.

Renewal of notice

1010. Subclause (6) states that the notice may be renewed by another notice in the same terms.

Fault-based offence

1011. Subclause (7) creates an offence provision. It provides that a person commits an offence if they are subject to a do not disturb notice containing a direction and the person engages in conduct and that conduct breaches the direction. The specified maximum penalty for contravention of subclause (7) is 300 penalty units.

Clause 206 - Do not disturb notices—notification and display

1012. This provision further addresses do not disturb notices.

Notice to interested persons

1013. Subclause (1) provides for a do not disturb notice to be issued to interested persons. The OEI inspector must take reasonable steps as soon as practicable to give a copy of the notice to the either: if the offshore premises to which the notice relates is a vessel - to the master of the vessel; or if the offshore premises, plant, substance or a thing to which the notice relates is owned by a person other than the licence holder – to that owner.

Display of notice

1014. Subclause (2) sets out the requirements for the display of the do not disturb notice. It must be displayed in a prominent place at the

offshore premises by the licence holder's representative or the licence holder.

Clause 207 - Prohibition notices—issue

Scope

1015. Subclause (1) addresses prohibition notices. It applies if an OEI inspector is conducting an OEI inspection in relation to offshore premises.

When notice may be issued

1016. Subclause (2) describes the circumstances where a prohibition notice may be issued by an OEI inspector. This must be given in writing to a licence holder if on conducting the inspection the inspector is satisfied of certain matters. This degree of satisfaction must be on reasonable grounds.

1017. The issues that give rise to the notice are described as an activity occurring, or which may occur, at the premises that involves:

- an immediate and significant threat to the environment;
- an immediate and significant threat to the health and safety of workers;
- an immediate and significant threat to the integrity of OEI.

1018. In addition it must be reasonably necessary to issue the notice in order to remove the threat.

1019. There is an explanatory note to state that the notice will be published on the Regulator's website. It directs the reader to clause 212.

How notice may be issued

1020. Subclause (3) outlines how a notice may be issues. This must be given to the licence holder or their representative at the premises nominated for the inspection.

Contents of notice

1021. Subclause (4) addresses the contents of the notice. It must provide the following: notice:

- the OEI inspector must be satisfied on reasonable grounds that a specified circumstance applies and outline the grounds;
- the activity must be specified that involves a threat to the environment, the health and safety of workers or the structural integrity of OREI.

1022. In addition, the notice must describe the nature of the threat directing the licence holder to cease the activity or conduct the activity in a specified manner.

1023. Subclause (5) states that the notice may specify action to be taken which would satisfy an OEI inspector that the threat is removed.

Fault-based offence

1024. Subclause (6) creates an offence provision. A person commits an offence if they are subject to a prohibition notice containing a direction and that person engages in conduct which breaches the direction. The specified maximum penalty is 600 penalty units.

Continuing offences

1025. Subclause (7) provides for continuing offences. The intention is to give a deterrent in the case of continuing non-compliance. It provides that this becomes a separate offence for each day during which the offence continues.

1026. Subclause (8) sets the maximum penalty for each day for a continuing offence at 10% of the maximum penalty for that offence.

Definition

1027. Subclause (9) sets out the definition of *premises* to include a particular part of the premises and plant or equipment, or a substance or thing at the premises.

Clause 208 - Prohibition notices—notification

Scope

1028. Clause 208 addresses the notification requirements for prohibition notices.

1029. Subclause (1) applies if a notice is issued addressing a threat to the environment, the health and safety of workers or the integrity of OEI. The scope of the possible threat is provided for in clause 207.

Notice to interested persons

1030. Subclause (2) addresses the requirement of a notice to be issued to interested persons. After issuing the notice, the OEI inspector must take reasonable steps as soon as practicable to give a copy of the notice to interested persons. These persons are either the master of a vessel or if premises are involved, the owner of the premises/affected property.

Display of notice

1031. Subclause (3) outlines that the notice must be displayed by the licence holder in a prominent place at the premises.

Inadequate action in response to notice

1032. Subclause (4) addresses the circumstances where an OEI inspector considers that the action the licence holder to remove the threat is not adequate and provides that the inspector must inform the licence holder of that fact.

1033. Subclause (5) allows the OEI inspector to conduct an inspection in order to determine the status of compliance in relation to the threat.

When notice ceases to have effect

1034. Subclause (6) addresses the circumstances when a notice ceases to have effect. This occurs when an OEI inspector notifies the licence holder that they are satisfied that adequate action has been taken to remove the threat.

Definition

1035. Subclause (7) sets out the definition of *premises* to include a particular part of the premises and plant or equipment, or a substance or thing at the premises. This is the same definition provided for other notices.

Clause 209 - Improvement notices—issue

Scope

1036. Clause 209 addresses the issuance of improvement notices.

1037. Subclause (1) states that it may be applied where an OEI inspector is conducting an OEI inspection of the offshore premises.

When notice may be issued

1038. Subclause (2) enables an OEI inspector to issue an improvement notice to a licence holder. This must be given in writing. The occasion for such notice may arise during an inspection where the inspector is satisfied that there has been a contravention of this Bill or regulations or this is likely to continue. The contravention must pose a threat to the environment, the health and safety of workers or the integrity of OEI. There must be reasonable grounds on the part of the inspector for making this assessment.

1039. There is an explanatory note to state that the notice will be published on the Regulator's website and directs the reader to clause 212 of this Bill.

How notice may be issued

1040. Subclause (3) addresses how a notice may be issued. This may be given to the licence holder or their representative at the premises who is nominated for the inspection.

Contents of notice

1041. Subclause (4) addresses the contents of the notice. It must provide all of the following:

- state that the OEI inspector is satisfied on reasonable grounds that a specified contravention of this Bill or the applied work health and safety provisions is occurring, or has occurred and is likely to occur again, and set out those grounds; and
- state that the OEI inspector is satisfied on reasonable grounds that as a result of the contravention, there is, or may be a significant threat to any of the following, and set out those grounds:
  - the environment;
  - the health and safety of workers;
  - the infrastructure integrity of OREI or OETI; and
- describe the nature of the threat; and

- direct the licence holder to take the action mentioned as specified in the notice; and
- specify a period within which the licence holder is to take the action.

Period of notice

1042. In addition, the notice must describe the nature of the threat directing the licence holder to cease the activity or conduct the activity in a specified manner.

Period of notice and action to be taken

1043. Subclause (5) provides that the period specified in the notice must be reasonable.

1044. Subclause (6) enables the OEI inspector on reasonable grounds to extend the period specified in the notice. This must be given in writing.

Notice to interested parties

1045. Subclause (7) provides as soon as practicable after issuing the notice, the OEI inspector must take reasonable steps to give a copy of the notice to the appropriate person.

Display of notice

1046. Subclause (8) provides that the licence holder must cause a copy of the notice to be displayed in a prominent place at the offshore premises.

Clause 210 - Improvement notices—compliance

1047. Clause 210 provides for improvement notices and sets out the compliance and notification arrangements.

1048. Subclause (1) addresses the case where an OEI inspector has issued an improvement notice for inspection of OEI or related premises. It applies in circumstances where the OEI inspector has concerns that there is a contravention or a likely contravention of a provision of this Bill or the regulations or an applied work health and safety provision.

Fault-based offence

1049. Subclause (2) creates an offence for non-compliance. An offence is committed where a person is subject to a requirement and omits to do an act thereby breaching the requirement. There is a specified maximum penalty of 300 penalty units.

Civil penalty provisions

1050. Subclause (3) provides a civil penalty for this offence. The specified maximum civil penalty is 400 penalty units.

Continuing offences and continuing contraventions of civil penalty provisions

1051. Subclause (4) provides for continuing offences and contraventions of the penalty provisions. In this event, it prescribes a maximum penalty for each day that an offence continues at 10% of the maximum penalty imposed for the offence.

1052. There is an explanatory note which states that subclause (2) is a continuing offence under section 4K of the Crimes Act.

1053. Subclause (5) outlines a maximum civil penalty for each day that a contravention of subclause (3) continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

1054. There is an explanatory note which states that subclause (3) is a continuing civil penalty provision under section 93 of the RPA.

Clause 211 - Tampering with and removing notices

Tampering with notice

1055. Subclause (1) specifies that a person must not tamper with any notice displayed during the period that the notice is so displayed.

Removal of notice

1056. Subclause (2) provides that a person must not remove the notice before the notice has ceased to have effect.

Strict liability offence

1057. Subclause (3) creates an offence of strict liability where the person fails to comply with the requirement not to tamper or remove a notice under this Bill. The specified maximum penalty is set at 50 penalty units.

1058. Subclause (4) provides that the strict liability offence does not apply if the person has a reasonable excuse.

1059. There is an explanatory note which states that the defendant bears an evidential burden in relation to the matter in subclause (4). It directs the reader to subsection 13.3(3) of the Criminal Code.

1060. The strict liability offence is appropriate to ensure the notices are not tampered with given the potential harm that might be caused by such conduct. The justification for this approach in the Bill is set out further in the Statement of Compatibility with Human Rights.

Clause 212 - Publishing prohibition notices and improvement notices

1061. Subclause (1) provides that the Regulator must publish a prohibition notice or an improvement notice on its website. This must be done within 21 days after the notice is issued. This will assist with transparency for the enforcement regime and further encourage compliance.

1062. Subclause (2) provides that publication should not occur where the Regulator is aware that the decision to issue a notice is the subject of an application for review by a court.

1063. Subclause (3) provides that if the publication has occurred but the Regulator subsequently becomes aware of an application for review, then the notice must be removed as soon as practicable.

1064. Subclause (4) addresses review rights. If all rights for judicial review have been exhausted and the decision to issue the notice has been upheld, the Regulator must publish the notice on its website. This must be done within 21 days after becoming so aware.

1065. Subclause (5) states that if a notice contains personal information (within the meaning of the Privacy Act), the Regulator must take reasonable steps to de-identify this information before the notice is published.

Division 5—Civil penalties

1066. This Division addresses the civil penalties which are applicable under this Bill. They have been modelled closely on the provisions in the OPGGS Act, namely, sections 611A to 611Q.

1067. Appropriate modifications have been made to reflect the specific measures required for this Bill.

Clause 213 - Civil penalty provisions

Enforceable civil penalty provisions

1068. Subclause (1) provides that each civil penalty provision is enforceable under Part 4 of the RPA.

1069. The explanatory note accompanying this provision provides that Part 4 of the RPA allows a civil penalty provision to be enforced. This is achieved by obtaining an order which requires a person to pay a pecuniary penalty in relation to the provision of this Bill which has been contravened.

Authorised applicant

1070. The 'authorised applicant' for the purposes of enforcing the civil penalty under Part 4 of the RPA is described in a table set out below in subclause (2). These persons are the Regulator through the CEO and the Registrar.

1071. Authorised applicants in relation to specific offence provisions set out in the table at subclause (2) have been determined on the basis of the functions and powers of those persons under the Bill and the ability of those persons to enforce compliance with the provisions to which the relevant offences relate.

1072. These are as follows:

Authorised applicants

Item	Column 1 Authorised applicant	Column 2 Provisions
1	The CEO	(a) subclause 15(4); (b) subclause 77(3); (c) subclause 78(3); (d) subclause 116(5); (e) subclause 118(3); (f) subclause 123(4); (g) subclause 128(4); (h) subclauses 141(6) and (7); (i) subclause 168(3);

Authorised applicants		
Item	Column 1 Authorised applicant	Column 2 Provisions
		(j) subclause 201(7); (k) subclause 203(3); (l) subclause 210(3); (m) subclause 267(3); (n) subclause 270(3).
2	The Registrar	(a) subclause 91(2); (b) subclause 93(2); (c) subclause 95(3); (d) subclause 96(2); (e) subclause 97(2); (f) subclause 99(3); (g) subclause 108(3); (h) subclause 168(3); (i) subclause 267(3); (j) subclause 270(3).

No time limit for certain applications

1073. Subclause (3) provides for the 6 year time limit in subsection 82(2) of the RPA to not apply to an application made under section 82 of that Act in relation to an alleged contravention of certain provisions of this Bill. These provisions relate to change in control of a licence holder and are as follows:

- subclause 91(2);
- subclause 93(2);
- subclause 95(3);
- subclause 96(2);
- subclause 97(2);
- subclause 99(3);
- subclause 108(3).

1074. It is important that these provisions can continue to be enforced given potential information asymmetries faced by the Regulator.

Relevant court

1075. Subclause (4) defines 'relevant court' in relation to the civil penalty provisions of this Bill. The following courts are so described:

- the Federal Court;
- the Federal Circuit Court;
- the Supreme Court of a State or Territory.

Extension to Commonwealth offshore area

1076. Subclause (5) provides for the extension of Part 4 of the RPA to the Commonwealth offshore area.

Extension to external Territories

1077. Subclause (6) provides for the extension of Part 4 of the RPA to the external Territories.

1078. There is a note to direct the reader to clause 5 to determine which offshore area external Territories to which this Bill extends.

Clause 214 - Contravening civil penalty provisions

Scope

1079. Subclause (1) gives the scope of the civil penalty provisions. A person is liable for a civil penalty where they have contravened a requirement under a civil penalty provision of this Bill or the regulations.

References to contraventions

1080. Subclause (2) explains that a person contravenes the civil penalty provision if they contravene or breach the requirement of the provision.

Division 6—Infringement notices

1081. The Bill provides for infringement notices under this Bill to be issued and enforced in accordance with Part 5 of the RPA. Under that Act an infringement officer is able to issue an infringement notice for contraventions of strict liability offences that are made enforceable under that Act by the provisions in this Bill.

1082. In accordance with the principles in the Guide to Framing Commonwealth Offences, infringement notices are proposed to be applied by this Bill in relation to minor offences with strict liability only. They accord with the provisions in the OPGGS Act.

1083. It is understood that it is appropriate that more serious offences should be prosecuted in court, and such offences are not suitable for inclusion in an infringement notice scheme. Fault-based offences are also not suitable, as proof of fault is often not a straightforward, objective assessment.

1084. To determine the provisions in this Bill that would be enforceable by an infringement notice, each strict liability offence provision has been examined to ascertain whether it would be appropriate to apply an infringement notice in relation to a breach, based on the above principles. An additional key criterion is that an enforcement officer, such as an OEI inspector, is easily able to make an assessment of innocence or guilt based on straightforward and objective criteria.

1085. The right of a person to a fair and public hearing by a competent, independent and impartial tribunal is preserved by the Bill in its application of the RPA, as the provisions of that Act allow a person to elect to have the matter heard by a court rather than pay the amount specified in the notice. Additionally, the RPA provides that this right must be stated in an infringement notice issued to a person, ensuring that a person issued with an infringement notice is aware of their right to have the matter heard by a court.

1086. The selection of offences that may be enforced by an infringement notice and the additional safeguards described above ensure that the power to issue an infringement notice is reasonable, necessary and proportionate. The Bill ensures that relevant courts have sufficient oversight to ensure against arbitrariness or abuses of power. Regulatory functions and powers in the issuing of infringement notices are limited to government officers and a person can elect to have the matter heard by a court.

1087. The RPA also sets out the penalty to be applied in an infringement notice. The penalty must be the lesser of: (a) one-fifth of the maximum penalty that a court could impose for a contravention of the relevant provision and (b) 12 penalty units for an individual or 60 penalty units for a body corporate. This is in accordance with the principles set out in the Guide to Framing Commonwealth Offences,

and as such this Bill will not provide for any alternative penalties for breaches of infringement notice provisions.

1088. In addition, the RPA provides for an infringement notice to be given in relation to continuing offences. An infringement officer will have the ability to give an infringement notice relating to multiple contraventions of a single provision if the provision requires the person to do a thing within a particular period or before a particular time, the person fails or refuses to do so, and the failure or refusal occurs on more than one day. Further provisions relating to cumulative penalties for continuing offences are also provided.

1089. The RPA also provides for matters including: the period of time following an alleged contravention within which an infringement notice must be given; the matters that must be dealt with in an infringement notice; extension of time to pay an amount; and the process for withdrawal of an infringement notice.

Clause 215 - Infringement notices

Provisions subject to an infringement notice

1090. Subclause (1) itemises the provisions that are subject to an infringement notice under Part 5 of the RPA:

- subclause 168(2) and (3);
- subclauses 201(6) and (7);
- subclause 203(2);
- subclauses 267(2) and (3).

1091. There is an explanatory note to provide that Part 5 of the RPA creates a framework for using infringement notices in relation to provisions.

Infringement officer

1092. Subclause (2) specifies those persons who are identified as Infringement officers in accordance with Part 5 of the RPA. They are provided in a table at column 1. The corresponding provision is set out column 2.

Infringement officers		
Item	**Column 1** **Infringement officer**	**Column 2** **Provisions**
1	The Registrar	(a) subclauses 168(2) and (3);

Infringement officers		
Item	Column 1 Infringement officer	Column 2 Provisions
		(b) subclauses 267(2) and (3).
2	An OEI inspector	(a) subclauses 201(6) and (7); (b) subclauses 203(3); (c) subclauses 267(2) and (3).

Relevant chief executive

1093. Subclause (3) describes the relevant chief executive for the purposes of Part 5 of the RPA. This is as follows:

- if an OEI inspector is the infringement officer under subclause (2)—the CEO;
- if the Registrar is the infringement officer under subclause (2)—the Secretary.

1094. Subclause (4) provides a delegation power. The CEO may delegate these powers and functions under Part 5 of the RPA to any of the following persons:

- a member of the staff of the Regulator; or
- an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department; or
- a person prescribed by the regulations.

1095. Subclause (5) enables the Secretary to delegate the relevant chief executive's powers and functions under Part 5 of the RPA for which the Secretary is the relevant chief executive to an SES employee, or acting SES employee, in the Department.

1096. Subclause (6) makes clear that a person exercising powers or performing functions under a delegation under subclause (4) or (5) must comply with any directions of the relevant chief executive. These delegation powers from the CEO as outlined above are necessary to enable the proper functioning of this regime. They are commonly employed in the Australian Public Service in order to effectively administer responsibilities. Although delegated, ultimately, the responsibility still rests with the CEO. In particular the powers employed here for NOPSEMA and NOPTA mirror those delegation powers in the OPGGS Act.

Single infringement notice may deal with more than one contravention

1097. Subclause (7) makes clear that a single infringement notice may deal with more than one contravention. It allows a single infringement notice to be given to a person in respect of 2 or more alleged contraventions of a provision mentioned in subclause (1). It qualifies that the notice must not require the person to pay more than one amount in respect of the same conduct.

1098. This subclause gives an infringement officer the ability to give a single infringement notice relating to multiple contraventions of a single provision if the provision requires the person to do a thing within a particular period or before a particular time, the person fails or refuses to do so, and the failure or refusal occurs on more than one day. A single infringement notice may also be given in relation to alleged contraventions of 2 or more provisions.

1099. This is necessary despite subsection 103(3) of the RPA. The reason for the departure from the standard being that the remoteness of offshore operations makes it a virtual impossibility to attend on consecutive days in order to issue individual infringement notices for each day that the offence continues. OEI inspectors will only attend on offshore facilities or premises, for the purposes of an inspection, as a result of well-planned arrangements with licence holders. The same policy reasoning applies in relation to the NOPSEMA Inspectors operating under the OPGGS Act.

1100. As is similarly provided in the OPGGS Act, the 'relevant chief executive' is defined as the CEO of NOPSEMA or the Secretary for notices issued in relation to NOPSEMA or NOPTA functions respectively.

1101. The relevant chief executive is defined for the purposes of standard provisions in Part 5 of the RPA which provide for requests to be made for extensions of time to make infringement notice payments or consideration of withdrawal of the infringement notice.

1102. In the case of the Secretary, delegation of these functions is permitted on the policy basis that there are SES officials within the Department in possession of the relevant expertise necessary and seniority required to make such decisions.

1103. Noting that regulatory functions in issuing infringement notices may be conceivably performed by non-public servants (in that there may be OEI inspectors appointed who are not Commonwealth or State/Northern Territory employees), this ability is provided on the basis that the delegation is legislatively restricted to persons of suitable seniority and expertise and the person outside the Australian Public Service is subject to full public sector accountability. Paragraph 6.4.2 of the Guide to Framing Commonwealth Offences is noted, which sets out the relevant legislation, to which any infringement officers should be made subject either through legislation or the terms of the contract for service.

1104. Experience in the offshore petroleum industry has shown that delegation in the offshore regime occurs in limited circumstances and the non-public servant officer is appointed for a specified limited period and limited to performing express functions. The OEI inspector appointment arrangements will be subject to the CEO's satisfaction that the person in question has suitable training or experience to properly exercise the powers of an OEI inspector.

Regulations may set out other matters to be included

1105. Subclause (8) provides for the regulations to prescribe other matters to be included in an infringement notice given in contravention of a provision.

Extension to Commonwealth offshore area

1106. Subclause (9) provides for the extension of Part 5 of the RPA to the Commonwealth offshore area.

Extension to external Territories

1107. Subclause (10) provides for the extension of Part 5 of the RPA to the external Territories. There is a note to direct the reader to subclause 5 to determine which offshore area external Territories this Bill extends.

Clause 216 - Evidentiary matters

1108. Clause 216 addresses matters of evidence. It will allow the CEO to issue a signed certificate stating that they did not allow further time for a person to pay a penalty stated in an infringement notice given to the person, and that the penalty has not been paid within 28 days after the notice was given, or that they did allow further time to pay the penalty and the penalty was not paid within that further time period. In addition, the relevant chief executive may issue a signed certificate stating that a specified infringement notice was withdrawn on a day specified in the certificate. For the purposes of all proceedings, including criminal proceedings, a document purporting to be a certificate must, unless the contrary is established, to be taken to be such a certificate and to have been properly given. In addition, a certificate is taken to be prima facie evidence of the matters stated in the certificate.

1109. Subclause (1) provides for the relevant chief executive to issue a signed certificate which states that they did not allow for further time for the payment of a penalty for an offence in an infringement notice and that penalty has not been paid within the prescribed period.

1110. Subclause (2) provides for the relevant chief executive to issue a signed certificate which states that they allowed further time for the payment of a penalty for an offence in an infringement notice and that penalty has not been paid within the prescribed period.

1111. Subclause (3) allows the relevant chief executive to issue a signed certificate stating that a specified infringement notice was withdrawn on a specified day.

1112. Subclause (4) provides a certificate under subclause (1), (2) or (3) must be signed by the relevant chief executive.

1113. Subclause (5) makes clear that a document purporting to be a certificate under subclauses (1), (2) or (3) be taken to be such a certificate and to have been properly given. This is to apply unless there is anything to the contrary and applies for all purposes and in all proceedings.

1114. Subclause (6) establishes that a certificate so described above is prima facie evidence of the matters stated in the certificate.

1115. The purpose of this provision is to facilitate proof of the matters stated in the evidentiary certificate, given that these relate to formal or technical matters of fact that would be difficult to prove by adducing admissible evidence. This will ensure that evidence of a failure to pay an amount stated in an infringement notice or of withdrawal of the notice can be efficiently presented to the court in any criminal proceedings for an alleged contravention of the offence provision that was the subject of the unpaid or withdrawn notice.

1116. The provision enables an evidentiary certificate to be issued by a relevant chief executive, that is, the Secretary of the relevant Department, or the CEO. Given the level of responsibility that needs to be exercised by persons in those positions, there would be a very low risk in relation to the reliability and credibility of the witness giving the certificate.

1117. As an additional safeguard, the certificate is prima facie evidence of the matters stated in the certificate only, and is not conclusive. This allows an opportunity for evidence of contrary matters to be adduced, and there is nothing to prevent the relevant chief executive appearing as a witness at trial to give further evidence if necessary. These safeguards ensure that the ability for the relevant chief executive to issue an evidentiary certificate in relation to the matters discussed above is reasonable, necessary and proportionate.

Division 7—Injunctions

1118. Division 7 provides the ability for a court to grant an injunction, on application by an authorised person, to restrain a person from contravening certain provisions of this Bill, or to compel compliance with those provisions.

1119. The issue of injunctions to enforce compliance with this Bill, relies on the framework set out in Part 7 of the RPA.

1120. The introduction of the ability for a court to grant an injunction in relation to contraventions of certain provisions of this Bill will ensure that persons who are failing to meet their regulatory obligations can be required to return to a position of compliance, in addition or as an alternative to the application of any financial penalty for the contravention. This measure thereby also aims to encourage future behavioural change; for example, an injunction against a company whose breach is due to poor compliance programs and internal

controls will encourage that company to address those internal deficiencies, and thereby reduce the risk of future non-compliance.

1121. This Bill provides for injunctions to be granted in relation to all offence and civil penalty provisions under this Bill.

1122. Part 7 of the RPA provides for a court to grant an injunction, on application by an authorised person, to restrain a person from contravening a provision that is enforceable under that Part, or to compel compliance with such a provision. Part 7 of the RPA, among other things, provides for the grant of interim injunctions, in addition to the grant of "final" injunctions.

1123. To ensure the broadest possible application, the amendments are drafted such that an injunction can be granted in relation to any conduct or omission that would constitute an offence or contravention of a civil penalty provision under this Bill. The ability to grant an injunction in relation to each of these provisions will ensure that persons who are failing to meet the requirements of this Bill can be compelled to comply with their legislative obligations, whether or not a failure to comply is an offence or contravention of a civil penalty provision.

Clause 217 - Injunctions

Enforceable provisions

1124. Subclause (1) provides for enforceable injunctions. The following clauses are enforceable under Part 7 of the RPA:

- subclauses 15(3) and (4);
- subclauses 77(2) and (3);
- subclauses 78(2) and (3);
- subclauses 116(4) and (5);
- subclause 118(2) and (3);
- subclauses 123(2), (3) and (4);
- subclauses 128(2), (3) and (4);
- subclause 135(1);
- subclauses 139(1), (3), (5) and (7);
- subclauses 141(4), (5), (6) and (7);
- clause 148;
- subclause 150(1);
- subclauses 168(2) and (3);

- subclauses 201(6) and (7);
- subclauses 203(2) and (3);
- subclause 205(7);
- subclause 207(6);
- subclauses 210(2) and (3);
- subclause 211(3);
- subclauses 267(2) and (3);
- subclauses 270(2) and (3);
- clause 276;
- clause 277;
- clause 278.

1125. An explanatory note outlined that Part 7 of the RPA creates a framework for using injunctions to enforce provisions.

Authorised person

1126. Subclause (2) sets out the 'authorised person' in a table for the purposes of Part 7 of the RPA. These are named in column 1 and the appropriate provision is set out in Column 2. The persons so named are: the Regulator through the CEO and the Registrar.

1127. The provisions are set out in the table:

Authorised person		
	Column 1	**Column 2**
Item	**Authorised person**	**Provisions**
1	The CEO	(a) subclauses 15(3) and (4); (b) subclauses 77(2) and (3); (c) subclauses 78(2) and (3); (d) subclauses 116(4) and (5); (e) subclauses 118(2) and (3); (f) subclauses 123(2), (3) and (4); (g) subclauses 128(2), (3) and (4); (h) subclause 135(1); (i) subclauses 139(1), (3), (5) and (7); (j) subclauses 141(4), (5), (6) and (7); (k) clause 148; (l) subclause 150(1); (m) subclauses 201(6) and (7); (n) subclauses 203(2) and (3);

Authorised person		
	Column 1	**Column 2**
Item	**Authorised person**	**Provisions**
		(o) subclause 205(7); (p) subclause 207(6); (q) subclauses 210(2) and (3); (r) subclause 211(3).
2	The Registrar	(a) subclauses 168(2) and (3); (b) subclauses 267(2) and (3); (c) subclauses 270(2) and (3); (d) clause 276; (e) clause 277; (f) clause 278.

Relevant court

1128. Subclause (3) defines 'relevant court' for the purposes of Part 7 of the RPA. The following courts are so described:

- the Federal Court;
- the Federal Circuit Court;
- the Supreme Court of a State or Territory.

Consent injunctions

1129. Subclause (4) states that a relevant court may grant an injunction under Part 7 of the RPA. This relates to a provision in subclause (1). This must be by consent of all the parties to proceedings and whether or not the court is satisfied that section 121 of that Act applies.

Extension to Commonwealth offshore area

1130. Subclause (5) provides for the extension of Part 7 of the RPA to the Commonwealth offshore area.

Extension to external Territories

1131. Subclause (6) provides for the extension of Part 7 of the RPA to the external Territories.

1132. There is a note to direct the reader to clause 5 to determine to which external Territories this Bill extends.

Division 8—Enforceable undertakings

1133. It is recognised that in addition to infringement notices and civil penalties the use of an enforceable undertaking provides an alternative option for taking action against a person for contravening a statutory requirement. The intention that the inclusion of this option will provide an effective deterrent in addressing breaches of legislation.

1134. It is noted that the Guide to Framing Commonwealth Offences also refers to these options and quotes the ALRC Report 95: *Principled Regulation: Federal Civil and Administrative Penalties in Australia* as is a useful resource for Ministers and agencies considering different options for imposing liability under legislation. In particular, Chapters 2 and 3 of the ALRC report examine sanctions that are alternatives to criminal offences, including infringement notice schemes, civil penalties and enforceable undertakings.

1135. This Division provides for the acceptance of enforceable undertakings relating to compliance with this Bill, relying on the framework set out in Part 6 of the RPA. The provisions are modelled on Division 8 (sections 611M to 611Q) of the OPGGS Act.

Clause 218 - Enforceable undertakings

Enforceable provisions

1136. Subclause (1) provides details of the provisions that are enforceable under Part 6 of the RPA. This includes the following provisions of the Bill:

- subclauses 77(2) and (3);
- subclauses 78(2) and (3);
- subclauses 95(2) and (3);
- clause 110;
- subclauses 116(4) and (5);
- subclauses 118(2) and (3);
- subclauses 123(2), (3) and (4);
- subclauses 128(2), (3) and (4);
- subclause 135(1);
- subclauses 141(4), (5), (6) and (7);
- clause 148;
- subclause 150(1);

- subclauses 168(2) and (3);
- subclauses 201(6) and (7);
- subclauses 203(2) and (3);
- subclause 205(7);
- subclause 207(6);
- subclause 210(2) and (3);
- subclause 211(3);
- subclauses 267(2) and (3);
- subclauses 270(2) and (3);
- clause 276;
- clause 277;
- clause 278;

1137. The following provisions of the WHS Act, as applied by Part 1 of Chapter 6 of this Bill, are also included:

- subsection 31(1);
- section 32;
- section 33;
- subsections 38(1) and (7);
- subsection 39(1);
- section 273.

1138. There is an explanatory note to state that Part 6 of the RPA creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

1139. Subclause (2) lists the Regulator through the CEO and the Registrar as authorised persons for the purposes of Part 6 of the RPA.

1140. The provisions are set out in a table which specifies the authorised person and the relevant corresponding provision.

Authorised person		
	Column 1	**Column 2**
Item	**Authorised person**	**Provisions**
1	The CEO	(a) subclauses 77(2) and (3); (b) subclauses 78(2) and (3); (c) subclauses 116(4) and (5); (d) subclause 118(2) and (3);

Authorised person		
Item	Column 1 Authorised person	Column 2 Provisions
		(e) subclauses 123(2), (3) and (4); (f) subclauses 128(2), (3) and (4); (g) subclause 135(1); (h) subclauses 141(4), (5), (6) and (7); (i) clause 148; (j) subclause 150(1); subclauses 201(6) and (7); (l) subclauses 203(2) and (3); (m) subclause 205(7); (n) subclause 207(6); (o) subclause 210(2) and (3); (p) subclause 211(3); (q) the provisions mentioned in paragraph (1)(y) of this clause.
2	The Registrar	(a) subclauses 95(2) and (3); (b) clause 110; (c) subclauses 168(2) and (3); (d) subclauses 267(2) and (3); (e) subclauses 270(2) and (3); (f) clause 276; (g) clause 277; (h) clause 278.

Relevant court

1141. Subclause (3) defines 'relevant court' for the purposes of Part 6 of the RPA. The following courts are so described:

- the Federal Court;
- the Federal Circuit Court;
- the Supreme Court of a State or Territory.

When undertaking must not be accepted

1142. Subclause (4) outlines the circumstances when an undertaking must not be accepted. An authorised person must not accept an undertaking that was given by a person (the first person) under

section 114 of the RPA in response to an alleged contravention of a listed WHS law in certain circumstances.

1143. This occurs if:

- the alleged contravention contributed, or may have contributed, to the death of another person; or
- the alleged contravention involved recklessness (within the meaning of the Criminal Code); or
- during the previous 5 years, the first person has been convicted of an WHS offence that contributed to the death of another person; or
- both:
  - during the previous 10 years, the first person has been convicted of 2 or more WHS offences; and
  - at least 2 of those convictions arose from separate investigations.

1144. Subclause (5) allows for the disapplication of subclause (4) in exceptional circumstances.

1145. Subclause (6) specifies that for the purposes of subclause (4), WHS offence means an offence against a listed WHS law.

Extension to Commonwealth offshore area

1146. Subclause (7) provides for the extension of Part 6 of the RPA, to the Commonwealth offshore area.

Extension to external Territories

1147. Subclause (8) provides for the extension of Part 6 of the RPA to the external Territories.

1148. There is a note to direct the reader to clause 5 to determine which offshore area external Territories to which this Bill extends.

Clause 219 - Publication of enforceable undertakings

CEO

1149. Subclause (1) addresses the publication requirements of an enforceable undertaking where the CEO is the authorised person. It provides that if the CEO is an authorised person in relation to a provision and a person has given an undertaking under section 114 of

the RPA which has been accepted by the CEO and it not been withdrawn or cancelled, the CEO must publish the undertaking on the Department's website.

1150. Subclause (2) makes clear that if an undertaking contains personal information (within the meaning of the Privacy Act), the CEO must take such steps as are reasonable in the circumstances to ensure that the information is de-identified before the undertaking is published under subclause (1).

Registrar

1151. Subclause (3) provides that if the Registrar is an authorised person in relation to a provision above, and a person has given an undertaking under section 114 of the RPA which has been accepted by the Registrar and not withdrawn or cancelled, the Regulator must publish the undertaking on the Department's website.

1152. Subclause (4) outlines that if an undertaking contains personal information (within the meaning of the Privacy Act), the Registrar must take such steps as are reasonable in the circumstances to ensure that the information is de-identified before the undertaking is published under subclause (3).

Clause 220 - Compliance with enforceable undertaking

1153. This provision addresses the requirement to comply with an enforceable undertaking. It creates an offence in the following circumstances below.

1154. A person commits an offence if:

- the person has given an undertaking as described above; and
- the undertaking has been accepted; and
- the undertaking has not been withdrawn or cancelled; and
- the person engages in conduct; and
- the person's conduct breaches the undertaking.

1155. The maximum penalty for the offence of 250 penalty units.

1156. The availability of this penalty is necessary because of the serious issues which such undertakings may concern. The same obligation and penalty applies in relation to the OPGGS Act under section 611Q of that Act.

Clause 221 - Listed WHS laws

1157. Subclause (1) sets out the listed WHS laws for the purposes of this Bill. These are:

- clause 135 or 139, to the extent to which the conduct prohibited by that clause results in:
  - damage to, or interference with, OREI or OETI; or
  - interference with any operations or activities being carried out, or any works being executed, on, by means of, or in connection with, OREI or OETI;
- where the damage or interference, as the case may be, affects, or has the potential to affect, the health or safety of members of the workforce at OREI or OETI;
- prescribed regulations, or a prescribed provision of regulations, made under this Bill;
- the WHS Act as it applies under Part 1 of Chapter 6 of this Bill;
- prescribed regulations, or a prescribed provision of regulations, made under the WHS Act as it applies under Part 1 of Chapter 6 of this Bill.

1158. Subclause (2) provides that a listed WHS law includes a requirement made under a provision listed in subclause (1).

Division 9—Adverse publicity orders

1159. Division 9 provides for adverse publicity orders to be made by a court.

1160. The potential for an adverse publicity order to be granted in addition or as an alternative to a financial penalty is to encourage compliance by corporations with their regulatory obligations. This is intended to have a deterrent effect. There is likely to be future corporations operating within this new industry which are international and publicly listed companies. They highly value their business reputation and social licence to operate and the availability of adverse publicity orders can have a significant impact in terms of encouraging compliance.

1161. The ability to seek an adverse publicity order will also enable the regulator to seek a penalty that is tailored to the nature of the contravention, particularly where there are broader social or environmental impacts of incidents of non-compliance.

1162. The enabling provision which enables a court to make an adverse publicity order is based largely on similar provisions in other Commonwealth legislation, such as the OPGGS Act section 611L and the *Competition and Consumer Act 2010* and the WHS Act.

1163. A court will be able to make an adverse publicity order if it finds a body corporate guilty of an offence against this Bill or regulations (whether or not the court convicts the body corporate of the offence), or an offence against section 6 of the Crimes Act (in other words, whether or not the court convicts the body corporate of the offence) in relation to an offence against this Bill or regulations, or if it orders a body corporate to pay a civil penalty for a contravention of a provision of this Bill or regulations.

Clause 222 - Adverse publicity orders

Scope

1164. Subclause (1) sets out the scope of the provisions dealing with adverse publicity orders. Clause 222 applies in the case where a court finds a body corporate guilty of an offence against this Bill, whether or not the court convicts the body corporate. The clause also applies where the court finds a body corporate guilty of an offence against section 6 of the Crimes Act, which deals with being an accessory after the fact, in relation to an offence under the Bill. The clause also applies in the event that a court orders a body corporate to pay a civil penalty for a contravention of the Bill.

1165. An adverse publicity order may only be made in relation to a body corporate. This is in accordance with the Guide to Framing Commonwealth Offences, which states that non-monetary penalties such as adverse publicity orders may be more effective in the context of corporate crime. In most cases, the requirements of this Bill apply in relation to large corporations which jealously guard their reputation and for whom social licence to operate is important. This makes it appropriate for adverse publicity orders to be available under the Bill in relation to bodies corporate.

Order by court

1166. Subclause (2) outlines the circumstances in which an adverse publicity order may be made by a court.

1167. The adverse publicity order would be able to be made on application of the person prosecuting the offence or taking the action to obtain a civil penalty order, and could be made in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence or contravention. A time limit of six years after the commission of the offence or contravention of the civil penalty provision would be imposed on the ability to apply for an adverse publicity order.

1168. Subclause (3) sets out the requirements that may be included in an adverse publicity order. It may require the body to take certain actions within the period specified in the order.

1169. An order may require the publication of the offence or civil penalty order, its consequences, the penalty imposed and any other related matter. An order may require the notification to a specified person or class of persons of the offence or civil penalty order, its consequences, the penalty imposed and any other related matter.

1170. In addition, the order can require the subject to give either the Regulator or the Registrar evidence that the action or actions were taken by the body in accordance with the order. This must be done within 7 days of the end of the period specified in the order.

1171. Whether the evidence will be given to the Regulator or the Registrar will depend on the nature of the breach or contravention in relation to which the adverse publicity order is made; for example, if an adverse publicity order is made in relation to a breach of a WHS requirement, the order would be expected to specify the Regulator, as the regulator of WHS under this Bill.

Failing to give evidence

1172. Subclause (4) addresses the failure to provide evidence of compliance with the order to the Regulator or Registrar. In such a case the Regulator or the Registrar (as the case requires) may take the action or actions specified in the order.

Action not in accordance with order

1173. Subclauses (5), (6) and (7) address the situations where action has not been taken in accordance with the order.

1174. Subclause (5) provides that either the Regulator or the Registrar (as relevant) may apply to a court for an order authorising them to take certain action. These circumstances may arise where the subject of the order gives evidence as required by paragraph (3)(b), but the Regulator or Registrar is not satisfied that the required action has been taken by the body in accordance with the order.

1175. If the Regulator or Registrar does take such action, subclauses (6) and (7) provide that they will be entitled to recover through the court process, an amount in relation to the reasonable expenses of taking the actions as a debt due to either the Regulator or to the Registrar on behalf of the Commonwealth.

Division 10—Miscellaneous

Clause 223 - Physical elements of offences

1176. This clause sets out the physical elements of offences under the Bill. Subclause (1) applies if a provision of this Bill provides that a person contravening another provision of this Bill commits an offence (the *conduct rule provision*).

1177. Subclause (2) makes clear that for the purposes of applying Chapter 2 of the Criminal Code to the offence, the physical elements of the offence are set out in the conduct rule provision.

1178. There is an explanatory note which provides that Chapter 2 of the Criminal Code sets out general principles of criminal responsibility.

Clause 224 - Contravening offence and civil penalty provisions

1179. Subclause (1) applies if a provision of this Bill provides that a person contravening another provision of this Bill (the *conduct provision*) commits an offence or is liable to a civil penalty.

1180. Subclause (2) states that for the purposes of this Bill, and the RPA (to the extent it relates to this Bill), a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

CHAPTER 6—APPLICATION OF WORK HEALTH AND SAFETY LAWS AND OTHER LAWS

1181. Chapter 6 of the Bill sets out the application of the WHS Act and other laws in relation to activities covered by this Bill.

Part 1—Work Health and Safety

1182. Part 1 sets out the arrangements in relation to work health and safety. The framework will apply the national model WHS Act to secure the health and safety of workers and workplaces, including in the Commonwealth offshore area. The Bill makes modifications to the application of the WHS Act where it is not appropriate for regulating OEI in the Commonwealth offshore area.

1183. Referencing the WHS Act in this Bill allows for the consistent application of WHS laws and the automatic application of any future amendments to the WHS Act (unless excluded). Without this approach there may be gaps in coverage and uncertainty as to which laws would apply under different circumstances and in relation to different activities.

Workplace health and safety – Right of entry

1184. The WHS Act allows for an official of a union to seek permits to undertake 'independent' inquiries into suspected workplace WHS contraventions, and to consult and advise workplace members.

Onshore right of entry

1185. The Bill preserves State and Territory WHS laws as they apply, including any right of entry for a nominated WHS union official to enter relevant onshore premises to investigate any suspected breaches occurring at an associated offshore facility.

1186. In the Bill, WHS entry permit holders will be able to investigate contraventions and consult with workers in connection to an OEI activity by access to relevant onshore premises only. WHS entry permits will not be extended to OEI as:

- There are significant safety risks associated with accessing remote and high-hazard OEI;
- OEI will not normally be manned and operations are only conducted periodically by trained and qualified technicians;
- There are significant logistical and cost implications of facilitating access to OEI for officials holding WHS entry permits; and
- Documents and other information relating to suspected contraventions will typically be held at an onshore premises, rather than offshore.

1187. There are separate powers allowing for 'health and safety representatives' at offshore workplaces to represent workers in WHS matters, and to monitor, investigate and inquire into WHS matters on behalf of the workforce.

- 'Health and safety representatives' may cease, or direct the cessation of, work where serious safety risks at OEI exist.
- 'Health and safety representatives' may issue provisional improvement notices in relation to breaches of work health and safety requirements.

1188. This approach balances safety with a range of existing appropriate powers and protections.

Division 1—Introduction

Clause 225 - Simplified outline of this Part

1189. Clause 225 provides a simplified outline of Part 1 of Chapter 6 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

1190. Division 1 applies the WHS Act to this Bill. This approach is different from the OPGGS Act, which sets out a bespoke occupational health and safety regime for offshore petroleum operations.

1191. These WHS provisions cover facilities and vessels conducting activities on OEI. Vessels navigating to and from these remote sites will continue to be covered under other existing legislation and WHS regimes, such as the *Occupational Health and Safety (Maritime Industry) Act 1993* and state government laws.

1192. Once vessels or structures reach the site where offshore infrastructure activities are to be undertaken and commence any activities, or activities necessary for operations to commence while at the site, the workplace health and safety provisions of this Bill will apply. An example might be where a vessel arrives at a site, and commences preparation of a jackup rig. In this case, while at the site and preparing the equipment for the legs to be jacked down to the sea floor, the workplace health and safety provisions of this Bill will apply.

1193. This approach aligns with other offshore regimes for maritime and large scale offshore infrastructure activities where offshore entry is not provided, and has been agreed in consultation with the Attorney-General's Department.

Division 2—Application of the *Work Health and Safety Act 2011*

Clause 226 - Application of the *Work Health and Safety Act 2011*

1194. Clause 226 provides for the application of the WHS Act to the Bill. The effect is to apply the WHS Act as modified by the other clauses in this Part to adapt to the offshore infrastructure activities as regulated under the bill.

1195. The clause applies the WHS Act in relation to any of the following activities carried out in the Commonwealth offshore area:

- work in the nature of offshore infrastructure activities;
- any other work carried out, or purportedly carried out, under a licence;
- any other work carried out, or purportedly carried out, in accordance with a requirement under this Bill or the regulations.

1196. There is an explanatory note to state that the provisions of the WHS Act, and regulations made under that Act, as applied by this Part are the *applied work health and safety provisions* (see clause 8).

Clause 227 - References to Comcare

1197. Clause 227 modifies references to Comcare by providing that they are to be read as if they are references to the Regulator (within the meaning of this Bill). The effect of this provision is to substitute the Regulator in place of Comcare in relation to the activities listed in clause 226.

1198. Subclause (2) explains that a reference in this Bill to the Regulator's functions or powers under this Bill includes a reference to any functions or powers of the Regulator under the WHS Act as applied by this Part.

Clause 228 - Section 4 (definitions)

1199. This provision modifies section 4 of the WHS Act by inserting additional definitions as follows:

Commonwealth offshore area *has the same meaning as in the Offshore Electricity Infrastructure Act 2021.*

management plan *has the same meaning as in the Offshore Electricity Infrastructure Act 2021.*

regulated offshore activities *means any of the following carried out in the Commonwealth offshore area:*

- *work in the nature of offshore infrastructure activities (within the meaning of the Offshore Electricity Infrastructure Act 2021);*
- *any other work carried out, or purportedly carried out, under a licence in force under the Offshore Electricity Infrastructure Act 2021;*
- *any other work carried out, or purportedly carried out, in accordance with a requirement under the Offshore Electricity Infrastructure Act 2021 or regulations made for the purposes of that Act.*

Clause 229 - Section 4 (definition of inspector)

1200. Clause 229 ensures that an OEI inspector is an 'inspector' for the purposes of applying the WHS Act. It modifies the term 'inspector' in section 4 of the WHS Act as if the definition of inspector were substituted with the following definition:

inspector means an OEI inspector (within the meaning of the *Offshore Electricity Infrastructure Act 2021*).

Clause 230 - Section 12 (scope)

1201. This clause modifies section 12 of the WHS Act by inserting the following provisions after subsection 12 (9):

Regulated offshore activities

(9A) This Act also applies in relation to regulated offshore activities.

(9B) However, section (9A) does not apply this Act in relation to work carried out on, or from, a vehicle, vessel, aircraft or other mobile structure:

(a) before it arrives at a site where it is to be used for regulated offshore activities, and any activities necessary to make it operational at the site have begun; or

(b) after regulated offshore activities cease, and the vehicle, vessel, aircraft or other mobile structure is returned to a form in which it can be moved to another place.

Clause 231 - Section 12A (Act does not apply to certain vessels, structures and facilities)

1202. This clause modifies the application of section 12A of the WHS Act, by applying it as if subsection (1) of that section had not been enacted.

Clause 232 - Division 3 of Part 2 (further duties of persons conducting businesses or undertakings)

1203. This clause provides that Division 3 of Part 2 of the WHS Act applies to a person in relation to a workplace in the Commonwealth offshore area, whether or not the person is in the Commonwealth offshore area.

Clause 233 - Section 37 (what is a dangerous incident)

1204. Clause 233 modifies the definition of a 'dangerous incident' within the meaning of section 37 of the WHS Act by substituting paragraph (g) of that section with the following:

(g) the collapse, overturning, failure or malfunction of, or damage to, any plant; or

Clause 234 - Section 90 (provisional improvement notices)

1205. Clause 234 modifies section 90 of the WHS Act, which addresses provisional improvement notices by adding a new subsection (1A) after subsection (1) as follows:

(1A) This section also applies if:
(a) a health and safety representative reasonably believes that a person:
(i) is contravening a requirement of a management plan; or
(ii) has contravened a requirement of a management plan in circumstances that make it likely that the contravention will or be repeated; and
(b) either:
(i) the requirement is in connection with the health and safety of any person; or

(ii) the contravention involves a risk to the health and safety of any person.

Clause 235 - Section 92 (contents of provisional improvement notice)

1206. Clause 235 modifies section 92 of the WHS Act as if it were substituted with the following section:

92 Contents of provisional improvement notice

A provisional improvement notice must state:
(a) that the health and safety representative believes the person:
(i) is contravening a provision of this Act, or a requirement of a management plan; or
(ii) has contravened a provision of this Act, or a requirement of a management plan, in circumstances that make it likely that the contravention will continue or be repeated; and
(b) the provision or requirement the representative believes is being, or has been, contravened; and
(c) briefly, how the provision or requirement is being, or has been contravened; and
(d) the day, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention.

Clause 236 - Section 102 (decision of inspector on review of provisional improvement notice)

1207. Clause 236 modifies section 102 of the WHS Act as if:

- paragraph 102(1)(b) were omitted; and
- subsection 102(3) were substituted with the following subsection:

(3) If the inspector confirms the provisional improvement notice:
(a) the provisional improvement notice ceases to be in force; and
(b) the inspector must consider whether to issue an improvement notice under section 209 of the Offshore Electricity Infrastructure Act 2021.

1208. Clauses 235 and 236 are intended to provide a clear pathway for a provisional improvement notice under the WHS Act, initiated by a

health and safety representative, to be actioned under OEI inspector provisions.

Clause 237 - Part 7 (workplace entry by WHS entry permit holders)

1209. This clause allows for access under Part 7 of the WHS Act for onshore premises.

1210. Subclause (1) provides that the related Part 7 applies only in relation to workplace that is a related onshore premises for particular regulated offshore activities under a licence.

1211. Subclause (2) substitutes a definition of *relevant worker* for the purposes of applying section 116 of the WHS Act to the workplace. The substituted definition provides appropriate linkages between the relevant worker, their union representation, and works in a relevant workplace in the Commonwealth offshore area.

1212. Subclause (3) provides that Part 7 of the WHS Act does not otherwise apply to related onshore premises or in relation to regulated offshore activities.

Clause 238 - Parts 8 to 11

1213. Clause 238 modifies various Parts of the WHS Act. It states that it applies as if the following Parts of that Act had not been enacted:

- Part 8 (the regulator);
- Part 9 (securing compliance);
- Part 10 (enforcement measures); and
- Part 11 (enforceable undertakings).

Clause 239 - Division 1 of Part 14 (general provisions)

1214. Clause 239 disapplies the following provisions of the WHS Act:

- section 270 (immunity from liability);
- section 271 (confidentiality of information); and
- paragraphs 273A(1)(c) and (d).

Clause 240 - Section 274 (approved codes of practice)

1215. Clause 204 modifies section 274 of the WHS Act so that it applies as if it were substituted with the following section:

274 - Approved codes of practice

(1) The regulations may prescribe codes of practice in relation to persons conducting businesses or undertakings that involve work in the nature of offshore infrastructure activities that is carried out in the Commonwealth offshore area.

(2) A code of practice prescribed for the purposes of subsection (1) is taken to be an approved code of practice for the purposes of this Act.

(3) A person is not liable to any civil or criminal proceedings for contravening a code of practice.

Clause 241 - Schedule 2 (the regulator and local tripartite consultation arrangements and other local arrangements)

1216. Clause 241 states that Schedule 2 of the WHS Act, which deals with a range of matters concerning the operations of Comcare, does not apply to this Bill.

Clause 242 - Schedule 3 (regulation-making powers)

1217. Clause 242 addresses regulation making powers. It provides that Schedule 3 of the WHS Act, which deals with WHS entry permits, applies as if clause 11 of that Schedule had not been enacted.

Clause 243 - Regulations under the Work Health and Safety Act

1218. Clause 243 addresses the various regulations made under the WHS Act and their application to this Bill. The regulations under the WHS Act do not apply as a result of this Part applying the WHS Act. However regulations made under the Bill may prescribe provisions of regulations made under the WHS Act as applying for the purposes of applying the WHS Act under this Part. Further the regulations may prescribe modifications of WHS Act regulations as they apply for the purposes of applying that Act through the provisions in this Part of the Bill. In addition, the regulations may make provision for matters under the WHS Act that may be provided for by regulations made under that Act.

1219. In summary the effect of this clause is to enable regulations to be made that will adopt or modify the operation of relevant regulations under the WHS Act as appropriate from time to time to support the operation of the Bill.

Division 3—Other work health and safety provisions

Clause 244 - Functions and powers of OEI inspectors

1220. This clause sets out the functions and powers of an OEI inspector under this Bill. They include assisting to resolve work health and safety issues at workplaces and issues related to access to a workplace by an assistant to a health and safety representative. These apply within the meaning of the applied work health and safety provisions. In addition, these powers include the review of disputed provisional improvement notices.

Part 2—Application of State and Territory laws in Commonwealth offshore area

Division 1—Introduction

Clause 245 - Simplified outline of this Part

1221. Clause 245 provides a simplified outline of Part 2 of Chapter 6 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Clause 246 - Laws that this Part applies to

1222. Clause 246 outlines the laws to which this Part of the Bill applies. This includes written laws, unwritten laws (for example, the common law) and instruments having effect under laws.

Clause 247 - Meaning of included offshore area of a State or Territory

1223. Clause 247 defines the phrase *included offshore area* of a State or Territory for the purposes of the Bill, in particular the provisions of this Part which deal with application of laws.

1224. The clause defines the included offshore area of a State or Territory to be the 'offshore area' of the State or Territory under the OPGGS Act to the extent that that area is within the Commonwealth offshore area.

1225. ‘Commonwealth offshore area’ is defined in clause 8 of the Bill to mean the territorial sea of Australia and the exclusive economic zone, and the seabed and subsoil of those areas, but not including the coastal waters of a State or the Northern Territory.

1226. The definition of offshore area of each State or Territory under the OPGGS Act is specified in section 8 of that Act. Section 8 contains a table specifying the extent of the offshore area for each relevant State or Territory. For most States, these areas are the waters beyond the outer limits of the coastal waters and within the outer limits of the continental shelf.

Division 2—Application of State and Territory laws

Clause 248 - Application of State and Territory laws in offshore areas

1227. Clause 248 addresses the application of State and Territory laws in the offshore areas.

1228. Subclause (1) provides that the laws in force in a State or Territory apply as laws of the Commonwealth in the included offshore area of that State or Territory, as if that area were a part of that State or Territory and part of the Commonwealth.

1229. There is an explanatory note directing the reader to clauses 249 to 256, which make further provision in relation to the application of laws.

1230. Subclause (2) provides that the provisions of laws that apply to the included offshore area by virtue of subclause (1) are called the *applied State and Territory provisions*.

1231. Subclause (3) provides that subclause (1) has effect subject to the Bill. This recognises the other provisions that deal with the application of laws.

1232. Subclause(4) specifies that the laws referred to in subclause (1) apply in relation to acts, omissions, matters, circumstances arising out of or connected with:

- offshore infrastructure activities in the included offshore area;
- any other activities in the included offshore area under a licence; or

- any other activities the Bill requires to be carried out in the included offshore area.

1233. Subclause (5) specifies that the laws referred to in subclause (1) apply in three sets of circumstances provided for in paragraphs (a), (b) and (c).

1234. In the first scenario, which is set out in paragraph (a), the laws apply to, and in relation to, an act or omission that takes place in, on, above, below or in the vicinity of, and a matter, circumstance or thing that exists or arises in connection with:

- a vessel, aircraft, structure or installation, or equipment or other property, in the included offshore area for any reason touching, concerning, arising out of or connected with:
  - offshore infrastructure activities in the included offshore area; or
  - any other activities carried out in the included offshore area under a licence; or
  - any other activities that the Bill requires to be carried out in the included offshore area.

1235. In the second scenario, which is set out in paragraph (b), the laws apply to, and in relation to, a person who:

- is in the included offshore area for a reason of the kind referred to above; or
- is in, on, above, below or in the vicinity of a vessel, aircraft, structure or installation, or equipment or other property, in the included offshore area for a reason of the kind referred to in paragraph (a).

1236. In the third scenario, which is set out in paragraph (b), the laws apply to, and in relation to, a person in relation to:

- carrying on by the person of any operation, or
- the doing of any work by the person, in the included offshore area for a reason of the kind referred to in paragraph (a).

1237. Subclause (6) provides that subclause (5) does not limit subclause (4).

1238. Subclause (7) makes clear that for the purposes of this clause, a law is taken to be a law in force in a State or Territory even though that law applies to part only of that State or Territory.

Clause 249 - Disapplication and modification of laws

1239. Clause 249 addresses the disapplication and modification of laws.

1240. Subclause (1) states that the regulations may provide that a law does or does not apply by reason of clause 248 in an included offshore area. The regulations can specify modifications (ie, additions, omissions and substitutions) to the laws that are prescribed to apply in an included offshore area.

1241. Including this mechanism in regulations is a suitably flexible and efficient way of identifying and tailoring the application of laws to the particular offshore electricity infrastructure activities and related activities. It allows the Minister to bring forward regulations to specify particular acts, omissions, matters, circumstances and things that are relevant to OEI and activities in an included offshore area.

1242. A disapplication and modification function assists to allow applicable State and Territory laws to be tailored to the OEI industry as it develops. This is a similar approach to that taken under the OPGGS Act, in order to confine its application of State and Territory legislation to acts, omissions, matters, circumstances and things that are relevant to offshore petroleum and greenhouse gas storage. The modification mechanism can also be used where a State or Territory law may be appropriately applied to an activity that occurs onshore, but that may lead to an inappropriate or anomalous result were it to be imposed on persons working offshore.

1243. Further, this function in subclause (1) will provide adaptability to respond to the breadth in the range of laws that could be applicable in the Commonwealth offshore area, the newness of this area of regulation, the wide variety of types of OEI, the impossibility of setting out in the principal Act every possible modification that might be needed, and the impracticality of returning to Parliament in each case for modifications for particular pieces of OEI to be dealt with in primary legislation.

1244. Subclause (2) provides that for the purposes of subclause (1), modifications includes additions, omissions and substitutions.

1245. Subclause (3) specifies that regulations made for the purposes of subclause (1) may make provision for, and in relation to:

- investing a court of a State with federal jurisdiction; or

– conferring jurisdiction on a court of a Territory.

Clause 250 - Limit on application of laws

1246. Clause 250 limits the application of laws as provided for in clause 248. It makes clear that clause 248, which provides for the application of State and Territory laws, does not give to those laws an operation as a law of the Commonwealth that they would not otherwise have in the coastal waters of their original State or Territory.

Clause 251 - Inconsistent law not applied

1247. Clause 251 makes clear that clause 248 does not apply to a law to the extent that is would cause an inconsistency with any Commonwealth law.

Clause 252 - Criminal laws not applied

1248. This clause addresses the status of criminal laws in the application of laws mechanism in the Bill. It makes clear that clause 248 does not apply to laws that are substantive criminal laws, or laws of criminal investigation, procedure and evidence, within the meaning of Schedule 1 to the *Crimes at Sea Act 2000* (Crimes at Sea Act).

1249. The Crimes at Sea Act provides for the application of Australian criminal law on a territorial basis and is the principal law in relation to crimes at sea. This clause provides that the Bill does not detract from the operation of the Crimes at Sea Act, including the operation of the substantive criminal law of the relevant state and the relevant procedural law of that state.

Clause 253 - Tax laws not applied

1250. Clause 253 makes clear that tax laws are not applied. Clause 248 does not operate so as to impose a tax.

Clause 254 - Appropriation law not applied

1251. Clause 254 makes clear that appropriation laws are not applied.

Clause 255 - Applied laws not to confer Commonwealth judicial power

1252. Clause 255 makes clear that applied laws do not operate to confer the judicial power of the Commonwealth on a court, tribunal, authority or officer of a State or Territory.

Clause 256 - Applied laws not to contravene constitutional restrictions on conferral of powers on courts

1253. Clause 256 provides that the applied laws are not to contravene any constitutional restrictions on the conferred powers of the specified courts.

Clause 257 - No limits on ordinary operation of law

1254. Clause 257 specifies that this Part does not limit the operation that a law has apart from this Part.

Clause 258 - Jurisdiction of State courts

1255. Subclause (1) provides for the jurisdiction of the State courts in relation to laws applied under clause 248. It specifies that the State courts are invested with federal jurisdiction in all matters arising under those laws in the included offshore area of the State.

1256. Subclause (2) provides that jurisdiction is invested under subclause (1) only within the limits (other than the limits of locality) of the jurisdiction of the court (whether those limits are limits as to subject matter or otherwise). In other words, clause 258 serves only to expand the Court's jurisdiction in relation to locality and not in any other regard.

Clause 259 - Jurisdiction of Territory courts

1257. Subclause (1) provides for the jurisdiction of Territory courts in relation to laws applied under clause 248. It specifies that the Territory courts will have jurisdiction in the included offshore area of the Territory for all matters arising out of those in the included offshore area of the territory.

1258. Subclause (2) operates in the same way as subclause 258(2), which is described above.

Clause 260 - Validation of certain acts

1259. Clause 260 addresses the validation of certain acts. It covers the scenario where a person or a court purports to exercise a power, or

perform a function, under a law of a State or Territory and that act could have been done in the exercise of a power, or performance of a function, under the applied State and Territory provisions. In that case, the act is taken to have been done in the exercise of the power, or performance of the function, under the applied provisions.

Clause 261 - Certain provisions not affected by this Part

1260. Clause 261 clarifies that the other provisions of the Bill have effect despite anything in this Part. This is to make it clear that those other provisions in the Bill do not rely on the provisions of this part in order to be effective.

CHAPTER 7—INFORMATION RELATING TO OFFSHORE INFRASTRUCTURE

Part 1—Managing Data and Gathering Information

Division 1—Introduction

1261. This Part addresses the management of data and gathering of information. The provisions are largely taken from the OPGGS Act, Chapter 7, Part 7 - Data management and gathering of information. It has been adopted with the appropriate modifications to reflect the type of activities that are proposed to be covered under this Bill.

Clause 262 - Simplified outline of this Part

1262. Clause 262 provides a simplified outline of Part 1 of Chapter 7 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Division 2—Data management

Clause 263 - Data management directions – offshore infrastructure activities

1263. Subclause (1) sets the scope of this provision, which deals with the giving of data management directions. The provision applies to a person who is involved, has been involved, or intends to be involved, in offshore infrastructure activities or other activities carried out under the Bill in the Commonwealth offshore area.

1264. Subclause (2) provides that the Registrar may give the person a *data management direction*, requiring them to carry out activities related

to data management including keeping accounts and records in connection with activities specified in the notice. The data management direction may also require the person to provide to the Registrar, or another specified person, the reports, returns and other documents that are specified in the notice.

1265. Where documents are given to the Registrar or another Commonwealth employee and they include personal information, this will attract the protections in the Privacy Act.

Clause 264 - Data management directions—merit criteria

1266. Subclause (1) provides that this provision applies to a person who holds, has held, or is intending to hold a licence.

1267. Subclause (2) provides that the Registrar may give the person a data management direction requiring them to keep accounts, records and other documents in connection with whether the licence meets the merit criteria as are specified in the notice. The direction can also require the person to provide to the Registrar, or another specified person, the reports, returns and other documents that are specified in the notice.

Clause 265 - Data management directions—giving a data management direction

1268. Subclause (1) provides that where a data management direction imposes a requirement on a person, that it must be given to the person in writing. In addition, if the direction is to give reports, returns or other documents, it must specify the manner in which they must be given.

1269. Subclause (2) provides that a data management direction is not a legislative instrument.

Clause 266 - Minister may give directions to Registrar

1270. Subclause (1) empowers the Minister to give certain directions to the Registrar in relation to the exercise of the Registrar's power to issue data management directions.

1271. Subclause (2) and (3) provide that the legislative character of the Minister's direction will depend on its content. If the direction is of general application then it is a legislative instrument, and if it relates to a particular case then it is not a legislative instrument.

Clause 267 - Complying with data management directions

1272. Clause 267 specifies offences and penalties for failing to comply with data management directions. This is to ensure that directions are observed in order to ensure the integrity of the legislative scheme.

1273. Subclause (1) provides the basic obligation that a person who is subject to a data management direction must comply with the direction.

Strict liability offence

1274. Subclause (2) creates a strict lability offence for failure to comply with the direction. The specified maximum penalty is 100 penalty units.

1275. The strict liability offence is appropriate to ensure the highest level of compliance with this obligation given the potential harm that might be caused by the conduct. The justification for this approach in the Bill is set out further in the Statement of Compatibility with Human Rights.

Civil penalty

1276. Subclause (3) creates a civil penalty for failing to comply with the direction. The specified maximum civil penalty is 150 penalty units.

Continuous offences and continuing contravention of civil penalty provisions

1277. Subclause (4) addresses continuing contraventions of the strict liability offence in subclause (2). If a person commits an offence under subclause (2) by failing to give reports, returns or other documents, they commit a separate offence each day during which they continue to fail to do so. Subclause (5) then provides that they are liable to a penalty for each day that the offence continues, calculated at 10% of the maximum penalty that can be imposed in respect of that offence.

1278. Subclause (6) provides for continuing contraventions of the civil penalty provision in subclause (3). If a person contravenes subclause (3) by failing to give reports, returns or other documents, they commit a separate contravention each day during which they continue to fail to do so. According to subclause (7), this carries a penalty for each day that the contravention continues calculated at

10% of the maximum civil penalty that can be imposed in respect of that contravention.

Clause 268 - Regulations about data management

1279. Subclause (1) enables regulations to be made in relation to:

- the keeping of accounts, records and other documents in connection with offshore infrastructure activities and other activities carried out under the Bill in the Commonwealth offshore area;
- the keeping of accounts, records and other documents in connection with whether a licence meets the merit criteria; and
- the giving of reports, returns and other documents in connection with the above matters to the Registrar or a specified person.

1280. Subclause (2) clarifies that the effect of this provision is additional to clauses 263 and 264 (which relate to data management directions).

Division 3—Information-gathering

Clause 269 - Information-gathering notices

1281. This clause provides for information gathering notices to be issued in order to assist in the administration of the Bill. The notice can require a person to provide a range of assistance, including the provision of documents and other information. The powers set out in this clause could be used by the Registrar or an OEI inspector to monitor or investigate compliance with the requirements of the Bill.

1282. Subclause (1) provides that a notice can be issued to a person where the Registrar or an OEI inspector forms a reasonable belief that the person has information or a document, or is capable of giving evidence, regarding specified matters. Those matters are:

- offshore infrastructure activities or other activities carried out under the Bill in the Commonwealth offshore area; or
- whether a licence meets the merit criteria; or
- whether a person has complied with the Bill or the applicant work health and safety provisions.

1283. Subclause (2) provides that the Registrar or the OEI inspector may require the person to give to them certain requested information. This must occur within the time period and in the manner specified in the notice. The person may also be required to produce or make copies of documents and produce them within a specified time.

1284. If evidence is required and the person is an individual, they may be required in person to appear before either the Registrar or OEI inspector at a time and place specified in the notice to give any such evidence orally or in writing and produce the required documents.

1285. If evidence is required and the person is a body corporate, the notice can require a competent officer of the body to appear before either the Registrar or OEI inspector to give any such evidence orally or in writing and produce the required documents. This must be at a time and place specified in the notice.

1286. Subclause (3) and (4) set out minimum time periods for complying with notices. The period must not be shorter than 14 days after the notice is given.

Notice must set out effect of offence and civil penalty provisions

1287. Subclause (5) provides that the notice must set out the effect of non-compliance and providing false or misleading information, documents and evidence. It must do this by setting out the effect of the following provisions of the Bill:

- clause 270 (complying with information gathering notices);
- clause 276 (false or misleading information);
- clause 277 (false or misleading documents);
- clause 278 (false or misleading evidence).

Clause 270 - Complying with information gathering notices

1288. Clause 270 is an offence provision in relation to non-compliance with information gathering notices.

1289. Subclause (1) provides the circumstances in which a person is taken to have contravened a notice for the purposes of the provisions. This occurs where a person is given a notice which requires them to provide information or who has been given a notice under subclause 269(2) requiring them to carry out a particular action, and the person engages in conduct which breaches the requirement.

Fault-based offence

1290. Subclause (2) creates a fault-based offence for a contravention of subclause (1) which carries a maximum penalty of 100 penalty units.

Civil penalty

1291. Subclause (3) creates a civil penalty for a contravention of subclause (1) which carries a maximum civil penalty of 150 penalty units.

Continuous offences and continuing contravention of civil penalty provisions

1292. Subclauses (4) and (5) provide for continuing offences and contraventions of the above provisions. Where a person commits an offence under subclause (2) or contravenes subclause (3), the maximum penalty for each day on which the offence continues is 10% of the maximum penalty that can be imposed in respect of that offence or contravention.

1293. The offence provisions in this clause do not specify a fault element. Under section 5.6 of the Criminal Code, if an offence provision does not specify a fault element and if the physical element of the offence consists only of conduct, the fault element is intention. In other words, for a person to be found guilty of contravening this clause, the prosecution would have to prove intention.

Clause 271 - Copying documents—reasonable compensation

1294. Clause 271 provides that a person is entitled to be paid reasonable compensation for complying with a notice requirement under paragraph 269(2)(c) to make copies of documents and provide them to the Registrar or OEI Inspector.

1295. An equivalent provisions to this clause is set out in section 409 of the OPGGS Act.

Clause 272 - Power to examine on oath or affirmation

1296. This clause is enables the Registrar or an OEI inspector to administer an oath or affirmation to a person for the purposes of this Bill and then examine that person on oath or affirmation.

1297. Similar powers are provided for in the OPGGS Act and also the *Petroleum (Submerged Lands) Act 1967*. Examination of a witness on

oath or affirmation could be appropriate, for example, in the course of an investigation into damage to OEI to ascertain whether charges could be laid against a person.

Clause 273 - Self-incrimination

1298. This clause provides a system for obtaining information, documents or other evidence under clause 269 in circumstances where the person providing it might otherwise be concerned about self-incrimination and self-exposure to penalty. It does so by precluding self-incrimination and self-exposure claims so that individuals are obliged to comply with information-gathering notices, but then rendering the information, documents or other evidence inadmissible in proceedings against the individual.

1299. This partial immunity from legal consequences has the obvious benefit that it increases the likelihood of a successful investigation. Where incidents related to renewable offshore activities are concerned, it may occasionally be more important to establish the facts than to be able to use the facts in a prosecution or legal action.

1300. The provisions then provide some exceptions to inadmissibility, in order to ensure that individuals who respond to notices do not provide false and misleading information and then seek to rely on the protections in this clause.

1301. The combination of these provisions provides similar protection to the privileges against self-incrimination and self-exposure while also maximising the effectiveness of the information-gathering process under the Bill.

1302. These provisions are modelled on similar provisions in Part 7.1 of the OPGGS Act section 705 and in Division 6 of the *Petroleum (Submerged Lands) Act 1967*.

1303. Subclause (1) provides that an individual is not excused from giving information or evidence or producing a document on the grounds that this might tend to incriminate them in relation to an offence.

1304. The note to this subclause clarifies that a body corporate is not entitled to claim the privilege against self-incrimination.

1305. Subclause (2) provides that if at general law, an individual would otherwise be able to claim the privilege against self-exposure to a

penalty (other than a penalty for an offence) in relation to giving information or evidence or producing a document under clause 269, the individual is not excused from giving the information or evidence or producing the document under that provisions on that ground.

1306. Again, a note to this subclause clarifies that a body corporate is not entitled to claim the privilege against self-exposure to a penalty.

1307. Subclause (3) qualifies the application of this provision. It explains that the information or evidence given or the document produced or obtained, (whether as a direct or indirect consequence) is not admissible in evidence against the individual in any civil proceedings or criminal proceedings. This protects the person providing information or a document from any threat of civil proceedings on the basis of that information or document.

1308. However, these provisions should not be available to an individual who provides false or misleading information or false or misleading documents in response to an information-gathering notice. In those circumstances, individuals should be exposed to penalty and not protected by these provisions. Accordingly, there is an exception for proceedings for an offence against subclause 270(2) or clauses 276, 277 or 278; or proceedings for an offence against section 137.1 or 137.2 of the Criminal Code that relates to this Division.

Clause 274 - Copies of documents

1309. The Registrar or an OEI inspector may inspect a document produced under this Division and may make and retain copies of, or take and retain extracts from, such a document.

1310. An equivalent provision is provided in section 413 of the OPGGS Act. It clarifies what the Registrar or OEI inspector may then do with the document.

Clause 275 - Registrar or OEI inspector may retain documents

1311. Clause 275 enables the Registrar or an OEI inspector to retain documents. They may be kept for as long as is reasonably necessary. The person providing the document is entitled to be supplied with a copy certified by the Registrar or an OEI inspector as a true copy. This must be done as soon as practicable. This certified copy must be received in all courts and tribunals as evidence as if it were the original. Further until a certified copy is supplied, the Registrar or an

OEI inspector must provide the person otherwise entitled to possession of the document, or a person authorised by that person, reasonable access to the document for the purposes of inspecting and making copies of, or taking extracts from, the document.

1312. This provision is modelled from similar provisions in the OPGGS Act and is a usual provision in Commonwealth Acts.

Clause 276 - False or misleading information

1313. This clause establishes an offence for providing false or misleading information. An offence is committed if in response to an information-gathering notice from the Registrar or OEI inspector, a person knowingly provides false or misleading information. The specified maximum penalty for this offence is 100 penalty units.

1314. This replicates a provision in the OPGGS Act and is included to maintain uniformity with the provisions in State and Northern Territory "mirror" Acts.

1315. An explanatory note provides that this same conduct may be an offence against both this clause and section 137.1 of the Criminal Code, which deals with knowingly providing false or misleading information to a person exercising powers or performing functions under, or in connection with, a law of the Commonwealth.

Clause 277 - False or misleading documents

1316. Clause 277 establishes an offence for providing false or misleading documents in response to an information-gathering notice. The offence is committed if in response to the notice the person knowingly produces a document which is false or misleading in a material particular. The penalty for this offence is up to 100 penalty units.

1317. This replicates a provision in the OPGGS Act and is included to maintain uniformity with the provisions in State and Northern Territory "mirror" Acts.

1318. An explanatory note provides that this same conduct may be an offence against both this clause and section 137.2 of the Criminal Code, which deals with knowingly providing false or misleading documents in compliance, or purported compliance, with a Commonwealth law.

Clause 278 - False or misleading evidence

1319. Clause 278 establishes an offence for giving false or misleading evidence. The offence is committed where a person gives evidence to another person in response to an information-gathering notice knowing that the evidence is false or misleading in a material particular. The maximum penalty for this offence is imprisonment for 12 months.

1320. This clause complements the requirements where the Registrar or inspector may require a person to appear and give evidence either orally or in writing.

1321. The note states that the same conduct may be an offence against both this clause and section 137.1 or 137.2 of the Criminal Code.

Clause 279 - Directions by Registrar

1322. Clause 279 empowers the Registrar to issue directions to an OEI inspector in relation to the exercise of the inspector's information gathering powers. The OEI inspector must comply with the direction.

1323. Subclauses (3) and (4) provide that if the direction is of general application, it is a legislative instrument, and if the direction relates to a particular case, it is not a legislative instrument.

Part 2—Release of regulatory information

Clause 280 - Simplified outline of this Part

1324. Clause 280 provides a simplified outline of Part 2 of Chapter 7 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Clause 281 - Registrar to make documents available to the Minister

1325. This provision obliges the Registrar to make available to the Minister, if the Minister requires it, copies of certain documents.

1326. The documents to which the provision applies are documents received or issued by the Registrar under Chapter 3 (Licensing), Chapter 4 (Management and protection of infrastructure) and Chapter 7 (Information relating to offshore infrastructure).

Part 3—Release of information given to Registrar

Division 1—Introduction

Clause 282 - Simplified outline of this Part

1327. Clause 282 provides a simplified outline of Part 3 of Chapter 7 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

1328. This Part is based on Chapter 7, Part 7 - Data management and gathering of information in the OPGGS Act.

1329. NOPTA may be appointed as the Registrar. Due to the close alignment of the role of Registrar with the functions of the Title Administrator under the OPGGS Act, a similar approach has been taken in the Part of the Bill with some modifications to reflect the type of activities that will be covered.

Division 2—Protection of confidentiality of information

Subdivision A—Documentary information obtained by the Registrar

Clause 283 - Protection of confidentiality of documentary information obtained by the Registrar

1330. Clause 283 provides for the protection of confidential documentary information which is obtained by the Registrar and sets out circumstances in which it may be made known or available. It is based on section 712 and 713 of the OPGGS Act.

1331. Essentially it is intended that information contained in documents provided to the Registrar (documentary information) will not be made publicly known or made available to a person unless it falls within an exception. Such documentary information may be provided to the Registrar in the course of submitting an application under the Bill. The position of Registrar will be occupied by an SES officer in the Department that administers the Bill – the Secretary may appoint NOPTA to be the Registrar.

1332. As a practical matter, an exception to the limitation on release by the Registrar will apply in relation to a Commonwealth Minister or a Minister of a State or Territory. However, the protection of confidentiality of information remains. Where this information is on

forwarded to a recipient Minister, the provisions restricting public release continue to apply, unless such release is done so in accordance with the regulations or the purposes of administration of the Bill.

1333. Subclause (1) sets out the scope stating that it restricts what can be done or not done with documentary information by the Registrar.

1334. Subclause (2) restricts the use of this information. The Registrar must not make the information publicly known or available to a person. The exception is that it may be provided to a Minister, a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory.

1335. Subclause (3) does not apply if the Registrar makes the information known or available in accordance with regulations made for the purposes of this paragraph or for the purposes of the administration of the Bill. This is the only mechanism by which the Registrar may make available this documentary information.

1336. It is intended that the regulations will be made to specify what kind of documentary information may be made available and the circumstances in which disclosure of that information is permitted.

Clause 284 - Registrar may make information available to a Minister, a State Minister or a Territory Minister

1337. Clause 284 is based on section 714 of the OPGGS Act and provides that the Registrar may make documentary information available to a Minister, a Minister of a State or a Minister of the Australian Capital Territory or the Northern Territory. The Minister may require the Registrar to make documentary information available to the Minister and the Registrar must comply with the requirement.

1338. The Registrar may release any information to any Commonwealth Minister, for example, the Minister administering the Bill or the Minister administering relevant Commonwealth legislation. Equally, the Registrar may release information to any State Minister (including a Minister of another State) or a Northern Territory Minister. This is to ensure proper coordination of programs in the various government agencies that are concerned with Australia's offshore electricity infrastructure regime.

1339. There is an explanatory note to direct the reader to clause 285 which provides for the protection of the confidentiality of information obtained by a recipient Minister.

Subdivision B—Documentary information obtained by a Minister

Clause 285 - Protection of confidentiality

1340. Clause 285 addresses the issue of protection of confidential information obtained by Ministers. It is modelled on section 715 of the OPGGS Act. The information in question will generally include commercial/business-related information. This provision is intended to protect documentary information from disclosure by Ministers, but permit disclosure of information from the Registrar to a Minister.

1341. Subclause (1) restricts what a Minister (including a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory) may do with documentary information which has been made available as above.

1342. Subclause (2) prevents the Minister from publicly releasing this information to any other person except those who fall in the category of a Minister, Minister of a State, a Minister of the Australian Capital Territory or Northern Territory.

1343. Subclause (3) provides for the case where this information is made available as above. In that case, the receiving Minister must not make the information publicly known or to available to a person.

1344. Subclause (4) makes clear that the above provisions do not apply if this information is known or available in accordance with the regulations or for the purposes of administration of the Bill.

Subdivision C—Miscellaneous

Clause 286 - Fees

1345. Clause 286 creates a regulation-making power to prescribe fees associated with making information available. This is an appropriately flexible mechanism for setting fees and adjusting them as required over time.

Clause 287 - Review by Minister

1346. Clause 287 enables the making of regulations providing for the Minister to review a decision of the Registrar, which is associated with the release of information as described above. This includes the power to make a decision, confirm a decision or revoke a decision and substitute another one.

1347. Decision on issues of this type can occasionally be disputed, and it is therefore desirable to provide for their review. By providing for the review mechanism to be prescribed in regulations, the Parliament will have the opportunity to scrutinise it.

Clause 288 - Privacy Act

1348. Clause 288 is modelled on section 719 of the OPGGS Act. It ensures that the provisions in this Part do not override any requirements of the Privacy Act. The Privacy Act deals with personal information about an individual. Relatively little information of this type would be in the possession of the Registrar. However, to the extent that information held by the Registrar is personal information, this clause makes it clear that the Privacy Act principles would apply and the provisions of the Part do not require or authorise disclosure of the information.

Division 3—Copyright

Clause 289 - Publishing or making copies of applicable documents not an infringement of copyright

1349. Clause 289 addresses copyright infringement issues associated with actions taken by or with the authority of the Registrar or Minister, or for the purpose of the exercise of their powers under this Part of the Bill.

1350. This clause is intended to clarify that the Registrar or the Minister, or a person acting with their authority, is able to do anything for the purposes of exercising the Registrar or Minister's powers under this Part of the Bill without in any way infringing copyright.

1351. The information published would be in the document granting the 'licence' (e.g. a licence instrument) under the licensing scheme noting also that it may be made public for the purpose of

administration of this Bill. The application (applicable document) is not made public.

Part 4—Using and sharing offshore infrastructure information and things

Division 1—Introduction

Clause 290 - Simplified outline of this Part

1352. Clause 290 provides a simplified outline of Part 4 of Chapter 7 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

1353. The outline provides that this Part deals with using and making available certain information, documents and things obtained for the purposes of this Bill. The information, documents and things may be:

- used by the Regulator for the purpose of exercising any of its powers or performing any of its functions; and
- shared between the Minister, Secretary, Regulator and the Registrar; and
- shared between the Regulator and certain other agencies, including law enforcement agencies and State and Territory Government agencies.

Clause 291 - Scope of Part

1354. Clause 291 sets out the scope of this Part as it relates to the use and sharing of offshore infrastructure information and things.

1355. This Part applies to information, a document, a copy or an extract of a document (the *offshore infrastructure information*), or a thing, obtained in the course of the exercise of a power, or the performance of a function or duty, under the Bill. The Part also applies to offshore infrastructure information or things obtained in the course of administration of the Bill or the applied work health and safety provisions. Also covered are offshore infrastructure information or things obtained in the course of the exercise of powers or the performance of function and duties in relation to the RPA in so far as that Act applies in relation to a provision of the Bill or the applied work health and safety provisions.

1356. Subclause (2) describes 'offshore infrastructure information' to include personal information (within the meaning of the Privacy Act). After this is an explanatory note to state that the use or disclosure of personal information is regulated under that Act.

1357. Subclause (3) provides that without limiting subclause (1), this Part applies in relation to offshore infrastructure information or a thing obtained by the Regulator. This includes anything obtained by an OEI inspector whether under a warrant issued for the purposes of this Bill or otherwise.

1358. In stating the scope, subclause (4) makes clear that this Part does not limit the use of, or making available, offshore infrastructure information or a thing otherwise than in accordance with this Part.

Part does not apply in relation to Part 3 of this Chapter

1359. Subclause (5) makes clear that this Part (Part 4) does not apply to offshore infrastructure information, or a thing, covered by Part 3 or a legislative instrument made for the purposes of that Part.

Division 2—Regulator's use of offshore infrastructure information or things

Clause 292 - Purposes for which Regulator may use offshore infrastructure information or things

1360. Clause 292 addresses the purposes for which the Regulator may use offshore infrastructure or things.

1361. It provides that if the Regulator obtains offshore infrastructure information or a thing while exercising a power under the Bill, or performing a function or duty under it, then the Regulator may use that information or thing to exercise any power or performing any function or duty under the Bill.

Division 3—Sharing offshore infrastructure information or things

Clause 293 - Sharing offshore infrastructure information or things for the purposes of this Bill

1362. Subclause (1) permits the sharing, for specified purposes, of offshore infrastructure information, or a thing, between the Minister, the Secretary, the Regulator and the Registrar.

1363. Subclause (2) provides that the above persons may use the information or thing in the exercise of powers, or the performance of functions or duties under the Bill or the applied work health and safety provisions. The information or thing may also be used in the administration of the Bill or the applied provisions.

Clause 294 - Regulator may share offshore infrastructure information or things with other agencies

1364. Subclause (1) allows for the Regulator to make offshore infrastructure information or a thing available to the agencies described below:

- the Australian Maritime Safety Authority;
- the Civil Aviation Safety Authority;
- the Australian Defence Force;
- the Australian Federal Police;
- the Department administered by the Minister administering Part XII of the Customs Act 1901;
- the police force of a State or Territory;
- the Director of Public Prosecutions of the Commonwealth or a State or Territory;
- the coroner of a State, the Australian Capital Territory or the Northern Territory;
- an agency of the Commonwealth, or of a State or Territory, that is responsible for administering or implementing laws relating to occupational health and safety;
- an agency of the Commonwealth, or of a State or Territory, that is responsible for administering or implementing laws relating to the protection of the environment;
- any other agency of the Commonwealth, or of a State or Territory, responsible for investigating contraventions of laws, or administering or ensuring compliance with laws.

1365. This list is similar to the agencies as identified in section 695X of the OPGGS Act.

1366. Subclause (2) describes the ambit of use. It enables the agency to use the information or thing in the course of the exercise of the agency's powers, or the performance of the agency's functions or duties, under or for the purposes of a law. These agencies have been identified as those likely to require such information or a thing for the purposes of performing their agency functions or duties.

1367. Subclause (3) provides for the setting of conditions by the Regulator in order to regulate an agency's use and further distribution of the information or thing. These conditions are to be contained in a written notice, and can be imposed at any time.

1368. Subclause (4) specifies that the notice under subclause (3) is not a legislative instrument. This is because it is not of a legislative character.

Clause 295 - Personal information

1369. Subclause (1) addresses personal information. The application is to offshore infrastructure information to the extent that it is personal information.

1370. Subclause (2) states that before the information is made available or used as mentioned in this Division, the person or agency making the information available, or using the information, must take such steps as are reasonable in the circumstances to ensure that the information is de-identified.

CHAPTER 8—MISCELLANEOUS

Part 1—Miscellaneous provisions

Clause 296 - Simplified outline of this Part

1371. Clause 296 provides a simplified outline of Part 1 of Chapter 8 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

Clause 297 - Review of decisions

1372. Clause 297 addresses arrangements for the review of decisions under this Bill. It specifies what decisions are reviewable.

1373. Applications may be made to the Administrative Appeals Tribunal for review of the a decision by the Minister not to grant:

- a commercial licence; or
- a research and demonstration licence; or
- a transmission and infrastructure licence.

1374. Granting a feasibility licence is not specified as a reviewable decision because the competitive nature of the process renders it unsuitable for external merits review.

1375. An application can also be made for review of:

- a decision not to extend the end day of a licence, in respect of all or only part of the licence area, on the application of the licence holder under a provision of the licensing scheme made for the purposes of:
  - clause 37 (feasibility licences); or
  - clause 47 (commercial licences); or
  - clause 56 (research and demonstration licences); or
  - clause 65 (transmission and infrastructure licence);
- a decision under the following provisions:
  - subclause 70 (licence transfer); or
  - subclause 73 (licence cancellation); or
  - subclause 74 (refusing content to surrender a licence).

Clause 298 - Application of the *Lands Acquisition Act 1989*

1376. Subclause (1) addresses the status of the *Lands Acquisition Act 1989* (LAA) in relation to this Bill. It makes clear that the Bill has effect despite anything contained in the LAA, and that the LAA does not apply to anything done under the Bill.

1377. Subclause (2) does make clear that subsection (1) does not prevent the LAA applying to anything done by the Commonwealth or the Regulator in relation to interests in land (within the meaning of that Act). This applies whether they are occupied or to be occupied by the Commonwealth or the Regulator for the purposes of administering:

- the Bill; or
- the Offshore Electricity Infrastructure (Regulatory Levies) Bill 2021 once enacted, and regulations made under that Bill.

Clause 299 - Jurisdiction of State courts

1378. This clause invests State courts with federal jurisdiction in relation to the law created by the Bill and the applied work health and safety provisions.

1379. As an example, there could arise an incident which is in contravention of the Bill and occurs in the included offshore area of a

particular State. In that case, a prosecution could proceed in a court of that State.

1380. Subclause (2) refers to the fact that clause 258 separately invests State courts with federal jurisdiction in respect of the applied State provisions (ie, State laws that are by this Bill given an extended geographic coverage in the Commonwealth marine jurisdiction).

Clause 300 - Jurisdiction of Territory courts

1381. This clause makes similar provisions in respect of Territory courts as does the provision in respect of State courts. Territory courts would include Northern Territory courts and a court like the Supreme Court of Norfolk Island.

Clause 301 - Liability for acts and omissions

1382. Clause 301 provides a statutory good faith immunity for specified persons in relation to acts and omissions relating to the operation of the Bill.

1383. Subclause (1) addresses the scope of the provision and states that it applies to the following bodies and people:

- the Minister;
- the Registrar;
- the Regulator;
- the CEO;
- an OEI inspector;
- a person acting under the direction or authority of the Minister or the Registrar;
- a person acting under the direction or authority of the Regulator or the CEO;
- a person engaged by the Minister under paragraph 132(1)(d);
- a person engaged by the Regulator under paragraph 124(2)(b) or 129(1)(d).

1384. Subclause (2) states that the provision does not apply to a person or body merely because they are acting in accordance with a proposal or plan accepted by or on behalf of the Minister, the Registrar or the Regulator, or a general or remedial direction.

Extent of liability

1385. Subclause (3) sets out the circumstances where a person or body is not liable to an action, suit or proceeding. This occurs where they have acted or omitted to do an act, but this has been in good faith, and in the exercise, or purported exercise, of any power or authority conferred by the Bill, by a direction under it, or by the applied work health and safety provisions.

Judicial review

1386. Subclause (4) preserves judicial review rights by making clear that the protection in subclause (3) does not affect:

- rights conferred on a person by the ADJR Act to apply to a court in relation to:
  - a decision; or
  - conduct engaged in for the purpose of making a decision; or
  - a failure to make a decision; or
- any other rights that a person has to seek a review by a court or tribunal in relation to:
  - a decision; or
  - conduct engaged in for the purpose of making a decision; or
  - a failure to make a decision.

1387. Subclause (5) provides that the above expressions have the same meaning as in section 10 of the ADJR Act.

Clause 302 - Compensation for acquisition of property

1388. This clause addresses the issue of compensation for the acquisition of property. Similar provision appear in other Commonwealth legislation in order to address paragraph 51(xxxi) of the Constitution, which permits the Commonwealth to make laws with respect to the acquisition of property on just terms.

1389. Subclause (1) provides that if the operation of this Bill or the regulations would result in an acquisition of property from a person otherwise than on just terms, then the Commonwealth is liable to pay a reasonable amount of compensation to the person.

1390. Subclause (2) sets out the circumstances where the Commonwealth and the person do not agree on the amount of the compensation. In that case the affected person may institute proceedings in the Federal

Court of Australia or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

1391. The effect of these provisions is to provide compensation to a person whose property has been acquired otherwise than on just terms and ensure that relevant provisions in the Bill would not operate in a manner contrary to paragraph 51(xxxi) of the Constitution.

Clause 303 - Delegation by Minister

1392. Clause 303 of the Bill deals with the delegation of Ministerial functions and powers to specified officials. Subclause (1) provides that the Minister may delegate all or any of their functions or powers under the Bill to certain persons. This delegation must be in writing. The persons to whom a delegation may be made are:

- the CEO; or
- the Secretary; or
- an SES employee, or acting SES employee, in the Department.

1393. Explanatory notes to this provision refer to applicable provisions of the AIA that define SES employee and acting SES employee, and address matters relating to delegations. A note also explains that the Registrar is included in the category created by subclause (1)(c).

1394. Subclause (2) requires the delegate to comply with any written directions of the Minister.

Sub-delegation

1395. Subclause (3) expressly permits sub-delegation by the CEO. It specifies that if a function or power is delegated to the CEO under subclause (1), the CEO may sub-delegate the function or power to an SES employee, or acting SES employee, in the Regulator. This must be done in writing.

1396. Subclause (4) provides that sections 34AA, 34AB and 34A of the AIA apply in relation to the sub-delegation in a corresponding way to the way in which they apply in relation to a delegation.

1397. Subclause (5) requires the sub-delegate to comply with any directions of the Minister in performing functions or exercising powers under a sub-delegation.

Part 2—Regulations

Clause 304 - Simplified outline of this Part

1398. Clause 304 provides a simplified outline of Part 2 of Chapter 8 of the Bill to help readers understand the substantive provisions. This simplified outline should not be taken as complete and readers should rely on the substantive provisions in the Bill.

1399. OPC Drafting Direction No. 3.8 – Subordinate Legislation - notes considerations and standard wording for the drafting of legislation dealing with matters of subordinate legislation. That Drafting Direction states that "If legislation is to provide for the making of legislative instruments, OPC's starting point is that the instruments should not be regulations unless there is a good reason for regulations to be used."

1400. However, the Drafting Direction states that matters such as compliance and enforcement, and modifying the operation of an Act, should be included in regulations unless there is a strong justification otherwise. The Bill reflects this and does not enable legislative instruments other than regulations to provide for any of these matters. Consistently with paragraph of the Drafting Direction, the ability to use regulations to modify the operation of an Act (such as in the case of the Bill), the RPA is used sparingly and in the main is dealt with by provisions of the Bill itself.

Clause 305 - Regulations

1401. Clause 305 is a regulation making power. It authorises the Governor-General to make regulations prescribing matters:

- required or permitted by this Bill to be prescribed by the regulations; or
- necessary or convenient to be prescribed for carrying out or giving effect to this Bill.

1402. The regulations are a legislative instrument subject to the usual disallowance and sunsetting arrangements in the *Legislation Act 2003*.

Clause 306 - Regulations may provide for offences

1403. This clause enables regulations to create offences against regulations made under the Bill. The penalties for offences against the regulations must not exceed:

- a fine of 100 penalty units; or
- a fine of 100 penalty units for each day on which the offence occurs.

1404. This has been included to allow for the creation of a suitable enforcement mechanism to underpin the regulations.

1405. Offences under regulations will usually carry a lower maximum penalty for individuals, in the order of 50 penalty units. However, this scheme governs a high hazard activity with potentially very serious health and safety or environmental consequences attaching to contraventions of obligations. Accordingly, a more significant deterrent than usual is appropriate. This penalty amount aligns with section 790 of the OPGGS Act, which resides in a scheme with a similar risk profile.

Clause 307 - Regulations may provide for approved forms

1406. Subclause (1) sets out that the regulations may require that an application, notice or other instrument given to the Minister, Registrar or Regulator is to be made or given in an approved manner and in the approved form. In addition, it must be accompanied by any information or documents required by the form.

1407. The explanatory note to this clause explains that regulations made under another provision of the Bill may also require a fee to be paid in relation to an application.

1408. Subclause (2) provides that the Minister, Registrar or Regulator may approve a manner and form for the purposes of subclause (1).

Clause 308 - Regulations dealing with the Regulatory Powers Act

1409. Clause 308 is a regulation making power. It sets out the operation of regulations made under the Bill for the purposes of the RPA. It is based on s790A of the OPGGS Act and outlines the way that the clause modifies the operation of the RPA for this Bill.

1410. It is considered necessary to extend the operation of the graduated enforcement mechanisms provided for under the RPA to offences under regulations made under the Bill. Regulations under the Bill will go to matters including the work health and safety of offshore workers, environmental management and the integrity of OEI. Regulations may impose additional requirements on duty holders under the framework in relation to these matters including relevant offences and penalties associated with a failure by a duty holder to comply with regulatory requirements.

1411. It is considered necessary and appropriate that a broad range of enforcement tools be available to the Regulator and OEI inspectors in relation to regulatory provisions to ensure that sufficient incentive is provided for a duty holder to return to compliance and to ensure that enforcement actions can be targeted, proportionate and effective in protecting workers, the environment and the integrity of OEI.

1412. For the purposes of various Parts of the RPA, subclause (1) allows the regulations made under the Bill to do a range of things. These are to:

- make a provision in the regulations a civil penalty provision for the purposes of Part 4 of the RPA;
- provide that a civil penalty provision in the regulations may be enforced under Part 4 of the RPA. In addition it provides that the regulations may:
- provide that a person is an authorised applicant in relation to one or more civil penalty provisions of the regulations for the purposes of Part 4 of the RPA;
- provide that a court is a relevant court in relation to one or more civil penalty provisions of the regulations for the purposes of Part 4 of the RPA;
- provide that an offence provision or a civil penalty provision in a provision of the regulations is subject to an infringement notice for the purposes of Part 5 of the RPA;
- provide that a person is an infringement officer in relation to one or more provisions of the regulations for the purposes of Part 5 of the RPA;
- provide that a person is the relevant chief executive in relation to one or more provisions of the regulations for the purposes of Part 5 of the RPA.

- make a provision of the regulations is enforceable under Part 6 of the RPA (which deals with enforceable undertakings);
- provide that a person is an authorised person in relation to one or more provisions of the regulations for the purposes of Part 6 of the RPA;
- provide that a court is a relevant court in relation to one or more provisions of the regulations for the purposes of Part 6 of the RPA;
- provide that a provision of an OEI legislative instrument is enforceable under Part 7 of the RPA (which deals with injunctions);
- provide that a person is an authorised person in relation to one or more provisions of an OEI legislative instrument for the purposes of Part 7 of the RPA; and
- provide that a court is a relevant court in relation to one or more provisions of an OEI legislative instrument for the purposes of Part 7 of the RPA.

1413. Paragraph (1)(n) allows the modification of the RPA as it applies in relation to a provision of the regulations. This general provision is necessary in order to ensure that the RPA regime can be adapted to operate effectively in concert with the regulations and to manage complexity arising from the concurrent operation of three regulatory schemes (the Bill, WHS Act and RPA).

Continuing contravention

1414. Subclause (2) addresses the circumstances where there is a continuing contravention. It provides that if a contravention of a civil penalty provision in the regulations is a continuing contravention, the regulations may provide that the maximum civil penalty for each day that the contravention continues is 10% of the maximum civil penalty that could be imposed in respect of that contravention.

Extension to the Commonwealth offshore area

1415. Subclauses (3), (4) (5) and (6) extend to Commonwealth offshore area the operation of Parts 4, 5, 6 and 7 of the RPA respectively as they apply in relation to regulations made for the purposes of the specified paragraphs in subclause (1).

Extension to external Territories etc.

1416. Subclauses (7), (8) (9) and (10) extend to the external Territories the operation of Parts 4, 5, 6 and 7 of the RPA respectively as they apply in relation to regulations made for the purposes of the specified paragraphs in subclause (1).

Application of the Regulatory Powers Act

1417. Subclause (11) addresses the application of the RPA and states that in determining the meaning of the expression "an Act provides", when used in Part 4, 5, 6 or 7 of the RPA, it should be assumed that the regulations made for the purposes of subclause (1) are an Act.

Clause 309 - Pre-existing infrastructure

1418. Clause 309 addresses pre-existing infrastructure. The purpose of this clause is to make allowance for pre-existing infrastructure, which at the time of the enactment of this legislation is already in place. It is considered that there could be a disadvantage to owners or operators of pre-existing arrangements if they were made subject to new terms and conditions which had not previously been in place. It is appropriate for matters of a detailed transitional nature to be dealt with in delegated instruments to ensure the result is fair and appropriate in particular circumstances.

1419. Subclause (1) sets out the ambit of the provisions in relation to fixed or tethered infrastructure (termed pre-existing infrastructure) that falls within the following category:

- is in the Commonwealth offshore area at the time this Bill commences; and
- is being operated at the application time or was operated at any time before the application time; and
- would be OREI or OETI if this clause were disregarded.

1420. Subclause (2) makes clear that pre-existing infrastructure is not OREI or OETI for the purposes of this Bill. This is subject to the regulations made in subsection (3).

1421. There is an explanatory note. This explains that the effect of this clause is that a licence is not required to construct, install, commission, operate, maintain or decommission the infrastructure, and that offshore electricity infrastructure levy is not payable in respect of the pre-existing infrastructure.

1422. Subclause (3) provides for regulations under this provision. The regulations may do any of the following:

- provide that specified provisions of this Bill or regulations apply or not to pre-existing infrastructure;
- provide that OREI or OETI constructed, installed or commissioned in connection with the operation or maintenance (including the replacement) of pre-existing infrastructure is also to be treated as pre-existing infrastructure;
- provide that this clause ceases to apply in relation to specified pre-existing infrastructure (and that such pre-existing infrastructure is to be treated as OREI or OETI):
  - at the end of a specified period after this Bill commences (which may be the entire life of a project that involves pre-existing infrastructure); or
  - in specified circumstances;
- provide for an eligible person to apply for a licence in relation to pre-existing infrastructure;
- prescribe any other matters of a transitional nature (including prescribing any saving or application provisions) relating to pre-existing infrastructure.

Regulatory Impact Statement

OBPR Reference 42703

Offshore Electricity Infrastructure Regulatory Framework

April 2021

Contents

1 Summary

What technologies could the offshore electricity infrastructure legislative framework facilitate?

- Offshore electricity infrastructure includes offshore transmission infrastructure, wind, wave and tidal power, and emerging technologies such as ocean thermal energy. The framework would apply in Commonwealth waters beyond three nautical miles from the coast to the outer limit of Australia's Exclusive Economic Zone.

Why implement this legislation now?

- Offshore electricity infrastructure requires long-term planning: the time between pre-assessment and project commissioning may be in the order of 10 years.
- A relatively modest investment from government to develop the legislative framework may enable billions of dollars of new investment.
- If even one of the projects proposed below were to proceed, this would more than cover the relatively limited regulatory development costs for government, and on the basis of basic national cost-benefit assessment, create a strong case for this investment off-setting any costs to affected industries.

What projects could this legislation enable?

- The most high profile projects potentially enabled by this legislation are:
    - Marinus Link transmission infrastructure between Tasmania and Victoria, being managed by TasNetworks. It is estimated to cost in the order of $3.5 billion to construct.
        - Marinus Link will provide the additional interconnection needed to export the electricity generated by the Battery of the Nation projects to the mainland. In doing so, it will unlock a pipeline of new

renewable energy investment, including pumped hydro energy storage.

- Marinus Link will enable the export of an additional 1,500 megawatts (MW) of capacity to the mainland.
- The economic benefits of Marinus Link for Tasmania and Victoria are estimated at $2.9 billion.

- The installation of the Basslink interconnector was enabled under the *Sea Installation Act 1987*, though the permitting elements of that Act were repealed in 2014.
- Star of the South offshore wind farm proposal by Copenhagen Infrastructure Partners, with development costs in the order of $8-10 billion and an installed capacity of 2 gigawatts (GW).

- To date, the Australian Government has been approached with nine further large scale offshore wind proposals in locations around Australia, including the recently announced 1.1 GW offshore off Geraldton in Western Australia by Pilot Energy.
  - Due to commercial confidentiality, other projects cannot be publically identified at this stage.
- Without a regulatory framework in place, these transmission and generation proposals may only be possible with highly uncertain, protracted and complex bespoke licensing arrangements.

What has changed for the offshore electricity sector?

- A number of new subsea transmission links have been built or proposed to support improved reliability and access to generation. In Australia Marinus Link will help share reliable energy resources between Tasmania and the mainland so as to better manage the impact and rapid uptake of variable wind and solar technologies.
  - Marinus Link was identified by the Australian Energy Market Operator (AEMO) in its 2020 Integrated System Plan (ISP) as a critical part of addressing long-term cost, security and reliability issues within the National Electricity Market (NEM).

  - The Australian Government has committed to supporting early works for major transmission projects, including Marinus Link.

- There has been in recent years growing investment in offshore wind farms and undersea transmission links, including between different countries or energy markets.
- The International Energy Agency (IEA) 2019 Offshore Wind Outlook highlighted the rapidly changing nature of the offshore wind sector.
  - The report noted the sector is expected to grow “15 fold by 2040 into a USD 1 trillion business”.
  - This would see installed global capacity rise from around 25 GW in 2019 to
    375 GW by 2040.
- There are positive cost implications for Australia, with much of the new growth expected to be in Asia. China is forecast to overtake the UK as holding the highest number of offshore wind installations.
  - Japan, India, Taiwan, and Korea are also developing local offshore wind sectors, which could further encourage the regional supply chain for components and logistics, creating a more competitive market, and potentially reduce local costs.
  - The United States is expecting the offshore wind sector to expand significantly by the end of the decade, with around 15 GW of capacity installed. This could also put price pressure on the cost of new offshore wind technologies and installation.

What benefits could offshore electricity infrastructure provide Australia?

- Greater NEM system security and reliability through the construction of the Marinus Link transmission interconnector between Tasmania and Victoria
- Further market competition for new generation capacity, creating downward pressure on wholesale prices
- Regional jobs

- Significant new investment
- Evolving technology providing greater, more cost effective opportunities over time
- Greater diversification in energy generation.

2 Background and context

2.1 Offshore Electricity Infrastructure - The Opportunity

Offshore electricity transmission infrastructure such as shore-to-shore cabling, substations, support platforms and transmission cables to support offshore generation are essential elements of the sector. Offshore electricity generation covers a range of technology types including offshore wind, wave and tidal generation, and the potential for new offshore electricity generation technologies in the longer term.

The development of the offshore electricity sector supports the government's objective to deliver a reliable, secure and affordable energy system by:

- facilitating the growth of new sources of energy supply;
- delivering reliability and improved grid security
- providing clean and efficient technology; and
- ensuring the energy sector is well regulated.

Offshore electricity transmission infrastructure that connects regions of the national electricity market, such as the Marinus Link interconnector between Tasmania and Victoria, offer a number of benefits:

- Better management of the impact and rapid uptake of variable wind and solar technologies by providing another source of dispatchable power between regions when needed.
- Enhancing competition between generators in the NEM.
- Unlocking additional renewable energy investments.
    - Combined with the Battery of the Nation projects, Marinus Link will provide dispatchable generation capacity to Victoria of up to 1500 MW. This will include allowing 400 MW of existing dispatchable generation to be transmitted to Victoria, which, due to limited Basslink capacity, is currently unavailable.

Broadly, offshore electricity generation can:

- offer large, year-round generation capacity;
- provide benefits to the electricity network;
- have less impact on the landscape than other onshore energy generation options;
- establish new employment opportunities; and
- attract significant investment in Australia's coastal economies.

Offshore wind is the most commercially prospective offshore electricity technology and has a range of specific benefits and opportunities:

- Diversity of sources of wind resources
    - Offshore wind allows new wind resources to be exploited.
    - Larger capacity factors than onshore wind.
    - Less hourly variation and better alignment with demand.
- Utilisation of existing transmission infrastructure
    - Forecast transmission infrastructure capacity in the Latrobe Valley infrastructure could be utilised for offshore wind projects in the Gippsland region as well as the Marinus Link project.
- Evolving technology
    - Very large turbine capacity, currently up to 12 MW but expected to expand in coming decades. Offshore wind towers are not limited by the noise and transport limitations of onshore wind generation.
    - The potential for floating offshore wind to dramatically expand capacity as deeper water sites become accessible.
- Significant investment
    - This legislation could enable projects worth between $3-20 billion by 2030.
- The offshore electricity infrastructure sector – transmission and generation - offers significant employment opportunities, particularly in our regions.
    - Currently, there are three projects that are adequately progressed to provide job estimates:

- Marinus Link: In the construction phase there is the potential for 503 direct jobs and 2,283 indirect jobs (2,786 total).The vast majority of jobs would be in regional areas (Tasmania and Gippsland).
- Star of the South wind farm: In the construction phase potentially 2,280 direct and 5,970 indirect jobs (8,250 total). Ongoing operations may create 300 direct and 880 indirect jobs (1,180 total). The vast majority of jobs would be located or deployed in regional areas (Gippsland).
- Sun Cable: In the construction phase 1,500 direct Australian jobs could be created. Ongoing employment opportunities could create 350 direct and 12,000 indirect jobs (12,350 total) in Australia. The vast majority of jobs would be located or deployed in regional areas (Tennant Creek NT and Darwin).

- In total these projects would enable 4,933 direct jobs and 21,133 indirect jobs, with a total of 26,066 construction jobs.

2.2 International context

Compared to many other countries, the Australian offshore electricity sector is at an early stage of development.

Offshore wind is relatively mature technology internationally, with around 150 projects underway world-wide and 29 GW of installed capacity at the end of 2019.[2] Much of this capacity is in Europe, particularly countries close to the North Sea, where high quality wind resources, shallow water depth and long term policy support has driven the sector. More recently, China has increased capacity significantly, with 6 GW now installed.

Recent reports have highlight the long term potential for the sector. The IEA's Offshore Wind Outlook 2019 estimated the sector is expected to grow 15 fold by 2040 and be worth USD 1 trillion.

Importantly for potential price reductions in the Australian market, much of the new growth will be in Asia, with China forecast to overtake the UK as

[2] Global Wind Energy Council, Global Offshore Wind Report 2020. Source: https://gwec.net/global-offshore-wind-report-2020/

holding the highest number of installations. Japan, India, Taiwan, and Korea are also developing local offshore wind sectors, which will further encourage regional supply chains for components and manufacturing, create a more competitive market and reduce local costs.

2.3 Australian Market

Marinus Link as a critical part of addressing long-term cost, security and reliability issues within the NEM. The project will facilitate greater energy transmission between Tasmania and Victoria, and has been identified as an Actionable Integrated System Plan (ISP) project by the Australian Energy Market Operator (AEMO). The economic benefits of Marinus Link for Tasmania and Victoria are estimated at $2.9 billion, with 2,786 direct and indirect jobs.

In December 2020, the Australian and Tasmanian Governments signed the Commonwealth-Tasmania Bilateral Energy and Emissions Reduction Agreement, committing both to complete Marinus Link's Design and Approvals phase (early project works) by 2024.

There is currently no offshore wind generation in Australia. Australia has a range of commercially competitive onshore renewable energy technologies, as well as non-renewable energy sources that will compete with offshore renewable energy. The commerciality of offshore wind energy in Australia is not yet proven, although the costs are expected to fall dramatically by the end of the decade.

Beyond offshore wind, other offshore electricity generation technologies have received development support from government, and are still in the early stage development. For example, a number of wave and tidal based technologies have been developed to prototype stage (noting tidal energy typically occurs closer to shore and subsequently falls within State waters). Other emerging forms of offshore electricity technology, such as floating solar, would be enabled by the legislation even though they are currently less prospective in Australia.

2.4 Role of the Commonwealth

The Commonwealth's broad policy intent is to remove regulatory barriers to new entrants to the market. In the short term it is anticipated the sector would consist of strong commercial interest from a limited number of large scale offshore wind proposals and critical transmission projects. There are a similar number of smaller scale operators undertaking exploration focused activities or seeking to deploy experimental devices, and a comparable number of transmission focused projects.

The establishment of an offshore electricity sector in Australia could offer broader opportunities in the 'national interest', including employment, regional development, manufacturing and economic development of the offshore environment.

The Australian Government's interest in a regulatory framework relates to:

- Oversight of the offshore environment beyond three nautical miles.
- Management of existing rights and infrastructure in the maritime area, including shipping, fisheries, petroleum and the defence.
- Protection of the environment, workers health and safety, and construction and operation.

State and territory governments have permitted small scale offshore electricity infrastructure in state coastal waters (up to three nautical miles from the low water mark). Larger, commercial scale projects such as offshore wind farms or offshore transmission infrastructure will need significant areas of maritime waters that are not available in the coastal zone, or will extend beyond state coastal waters.

Enabling legislation for offshore electricity infrastructure projects in the Commonwealth waters beyond the three nautical mile zone is necessary to reduce the complexity and risk faced in the establishment of new large projects. That is, legislation will provide a consistent and transparent framework for offshore electricity infrastructure developers, and a process for acknowledging and working with existing approvals in place for other offshore electricity users.

State and territory governments are likely to be closely involved in approving and supporting large scale projects, including for coastal and onshore aspects of projects. This may also include developing legislation

complementing Commonwealth legislation to support construction, operation and decommissioning of projects in state waters.

2.5 Stakeholders

Key parties involved in developing an offshore electricity infrastructure proposal include:

- Electricity networks and transmission operators.
- Project proponents encompassing a range of potential organisations to lead development of a project. This may include financiers, government agencies, infrastructure managers, academics, generation businesses or entrepreneurs exploring early stage technology.
- Local communities including those using marine areas recreationally and sites around project areas and transmission lines.
- Non-government environmental protection and nature conservation organisations.
- Electricity sector workforce participants both onshore in infrastructure manufacturing, and offshore working on electricity infrastructure facilities.
- Existing offshore maritime sectors such as shipping operators, fishers, defence, petroleum industries and environmental interests would have a range of existing approved and potential activities to consider in the offshore region.

2.6 Previous work

This Regulatory Impact Statement draws on related work undertaken when considering the development of a regulatory framework for offshore electricity infrastructure, including:

- The Offshore Clean Energy Framework Discussion Paper released in January 2020 as part of the initial phase of external consultation.
- Mr Stuart Smith's report "To identify leading global practice in offshore renewable regulation for adoption in Australia" as part of his Winston Churchill Memorial Trust Fellowship.

ANNEXURE A

3 Problem definition

Australia's current regulatory environment does not provide a clear and secure setting to support an efficient and effective offshore electricity undertaking, throughout construction, operation and decommissioning.

- Commonwealth waters are the offshore area beyond coastal waters, between 3 and approximately 200 nautical miles from shore.

As a result, there are no defined approvals pathway or protections for proponents looking to establish offshore electricity infrastructure facilities in Commonwealth waters, leading to a number of risks:

- The loss of potential investment in offshore electricity infrastructure in Australia with corresponding impacts to broader economic opportunities, employment as well as energy diversity:
    - As highlighted in section 1, the government is aware of two large scale, offshore transmission infrastructure proposals, Marinus Link and Sun Cable, and the proposed offshore wind farm, Star of the South that would be enabled by this legislation.
    - Combined, these three proposals are conservatively estimated to be worth over $10 billion and could create over 10,000 direct and indirect job opportunities during construction as well as ongoing employment in operation and maintenance of infrastructure.
    - The Department of Industry, Science, Energy and Resources is aware of nine further large scale offshore wind proposals being developed in Australia with a nominal target of beginning construction before 2030.
    - These proposals have not provided public costing or employment estimates, though Pilot Energy Limited's proposal off Geraldton in Western Australia has been announced as having a 1.1 GW capacity.
- Alternative approaches create a patchwork of inconsistent, ad hoc measures with potential safety and protection issues:
    - The existing regulatory environment does not cover the extent of protections needed to support development of an offshore infrastructure, which would need to be addressed on a case by case basis.

- As outlined in section 3.1, the current regulatory approach has facilitated the issuance of a deed of licence, though this deed does not support development of an offshore infrastructure.

A legislated scheme would provide a defined, predictable and certain regime to allow investment to occur, as it would give clear legal protection for development and provide stakeholders with certainty over the approval process. For these reasons, conducting offshore infrastructure development without legislated approvals may be considered by proponents not to be commercially viable. Further, a legislated regime would provide a robust mechanism for allocating development licences between competing prospective proponents.

3.1 Current regulatory experience

The current regulatory environment does not provide a clear regulatory path to allow the construction, operation and decommissioning of offshore electricity infrastructure in Commonwealth waters.

Limited regulatory bespoke approaches may be possible. A highly bespoke, small-scale, short-term licence was issued to Carnegie Wave Energy for a project off the coast of Fremantle in 2016. This licence was a pilot project to test deployment of the CETO 6 wave energy technology.

The issuance of this licence required consultation, negotiation and an approval process across multiple Commonwealth agencies. This was both resource intensive and uncertain for government and industry.

A similar licencing approach was undertaken to provide an exploration licence to Star of the South to facilitate assessment of conditions for an offshore wind farm off the coast of Gippsland, Victoria. The government undertook broad consultation across the Commonwealth and the wider public to assess potential risks of the proposed activities and consider terms for a licence. Consultation was important due to the significant size of the licence area, which covered an area used by fishers, defence, petroleum operators, shipping operators, and the broader community. The environmental impacts of the exploration activities were also considered.

The exploration licence was issued to Star of the South in March 2019, for five years with a potential two year extension. Licence activities include assessing wind resources and sea bed conditions to inform a wind farm

proposal. The licence area is located in Australian Commonwealth waters about 8 to 13 kilometres off the Gippsland coast in Victoria. The licence is valid for 5 years with the potential to extend for an additional 2 years.

The licence requires further approvals (including environmental approvals) and consultation with the community and industry before each exploration activity can commence. The licence does not override existing common law and statutory rights of third parties, or grant rights to construct or operate an offshore wind farm.

Assessing this proposal and developing the bespoke exploration licence took over two years. Aspects of this process were lengthier than might otherwise be expected, as an exploration licence of this nature for an offshore wind farm had never been undertaken previously in Australia. This process required extensive consultation across the Commonwealth to consider:

- Existing infrastructure such as communication cables;
- Licences in operation for fishing and petroleum related activities;
- Commonwealth on water activities such as defence;
- Shipping;
- Maritime safety;
- Environmental management considerations;
- Existing legislative arrangement such as Native Title; and
- The response from the broader public, industry and other developers through a public notice process.

Such a resource intensive one-off assessment is not a sustainable undertaking for government, or developers. It is uncertain and does not ultimately provide a commercial pathway for development.

Though not directly analogous, in contrast to the two year process outlined above, the assessment process for exploration licences under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* is between 3-4 months. This process is being revised to reduce this processing time further.

As already noted, beyond the Star of the South, Marinus Link and Sun Cable proposals, nine other proponents have approached government expressing interest in opportunities for large scale offshore electricity infrastructure developments in Australia. A number of leading international

developers have also expressed interest in the Australian market, although they are waiting until a regulatory model is implemented, due to the risks associated with operating in an unregulated environment.

In aggregate these proposals represent billions of dollars in potentially lost investment and employment opportunities, noting not all proposals would proceed to development.

3.2 Uncertainties in this Regulatory Impact Statement

The offshore electricity sector is at an early stage of development in Australia and so there are a range of uncertainties in developing this Regulatory Impact Statement.

- Limited experience of managing large scale offshore electricity infrastructure - Australia does not have specific experience in managing offshore electricity infrastructure. There are regulatory regimes currently in place that allow management of large scale offshore energy infrastructure, chiefly the Offshore Petroleum and Greenhouse Gas Storage Act 2006, which provide a valuable model to draw on for the development of a new regime. Other international offshore electricity regimes are also useful models in designing elements of Australia's approach, although many aspects are not directly comparable (for example, environmental provisions).
- Timeframes for analysis - The analysis for this Regulatory Impact Statement takes place over the period 2020-2030. Applying a shorter period may not give due consideration to the full potential of the sector, especially considering the significant growth forecast by the IEA for global offshore wind markets out to 2040.
- Future growth - As the size of the sector in the short-term is difficult to determine, the timing of its potential growth and associated social and economic benefits are difficult to consider. International growth models for the sector do not necessarily reflect growth in the Australian market.
- Flexible regulatory environment - The regulatory approach for this emerging sector will inevitably adapt and evolve as the regulatory environment matures and technology evolves.

- Future technologies - In the longer term, the deployment of future technologies, including floating offshore wind farms, will affect the capacity of the Australian market by allowing exploitation of deeper water with different wind conditions. These considerations make forecasting beyond 2030 challenging, and while the floating offshore wind sector may be commercially prospective, this is beyond the timeframe chosen for this assessment.

3.3 Objective of government action

The objective of the government action is to enable the development of an offshore electricity industry in Australia that would:

- help facilitate investment and employment opportunities;
- provide cost competitive energy options; and
- make use of economic resources, including the marine environment.

The establishment of a regulatory model would provide certainty and reduce the investment risk for large scale offshore electricity infrastructure projects, making Australia a more attractive investment destination.

3.4 Principles guiding development of this regulatory framework

In keeping with existing government regulations and policy, any regulatory framework should aim to:

- Be technology neutral, allowing for research and demonstration projects, and commercial projects for wind and other offshore electricity generation technologies.
- Take a risk-based approach to regulation of activities, focussing on higher risk aspects of the industry without unnecessary regulation for low risk activities that have minimal impact on other users or the environment. This will keep implementation costs to a minimum.
- Uphold the existing principle of shared use of Commonwealth waters, and advance coexistence with other users, including safety of navigation and the fisheries.

- Ensure that all environmental impacts and risks are appropriately assessed and managed and that the requirements of the Environment Protection and Biodiversity Conservation Act 1999 are met.
- Ensure the protection of the offshore workforce and other users in Commonwealth waters, requiring specific consideration and management of safety risks in accordance with international leading practice.

The proposed policy framework would require licences to be awarded on a competitive basis, and costs incurred by the Australian Government recovered through appropriate fees and levies.

Any framework should also:

- be developed swiftly by government to provide appropriate investment signals to the evolving sector,
- be developed in conjunction with stakeholders to ensure framework is fit for purpose, and
- ensure long term flexibility to accommodate rapidly evolving technologies and the need to work within a maturing local market.

3.5 Stakeholder interests

Offshore electricity stakeholders have a range of differing needs to be considered when determining government action:

- Project developers seek an accessible, practical, commercial pathway to obtaining approval to undertake project development.
- Engineering and supply chain providers require long term regulatory certainty to establish a sector in a new market
- Electricity networks and transmission operators function in a highly regulated market and any new legislation will need to consider the existing market.
- States and territories will need to assess regulatory options to allow offshore electricity technology in offshore waters to intersect with coastal waters, particularly transmission infrastructure.

- Existing offshore maritime sectors will have ongoing and future commercial approvals that would be given appropriate standing, including for offshore oil and gas developers and licence holders, commercial fishers, shipping activities, managers of existing infrastructure such as Basslink and gas pipelines, and tourism interests.
- Non-government environmental protection and nature conservation organisations are strong advocates for clean energy and wildlife conservation measures.
- Local communities may be impacted by the visual amenity offshore electricity infrastructure or by restrictions to recreational marine sites.
- The offshore electricity workforce requires clear and effective safety regimes, supported by retraining where required.

3.6 The need for government intervention

The case for government intervention is driven by:

- Early certainty to enable long term planning and investment decisions,
- Opportunities for parties affected by proposed offshore electricity developments, including open consultation and appropriate standing for approvals, and
- A clear decision-making framework to ensure fairness, transparency and consistency throughout the life cycle of a project.

4 Policy options and likely net benefit

The purpose of this section is to present the options considered for the design of this regulatory framework, and discuss the key advantages and disadvantages of each option.

4.1 Summary of options

In assessing options for allowing the efficient and effective development of offshore electricity infrastructure projects, two clear options are presented:

- Option 1: No legislation and allow the continuation of the status quo. This would not support the construction, operation and decommissioning or ongoing management of projects, nor would this establish a framework for the long-term allocation of licences for prospective development.
- Option 2: Develop a legislative regulatory framework that would address issues outlined above, noting the significant variation possible in implementing such a framework.

4.2 Option 1: No regulatory framework introduced (current situation)

4.2.1 Description of the option

The first option is maintaining the status quo and not progressing regulatory reform.

Under this option, proponents would not be supported to initiate critical activities associated with developing offshore electricity projects – including construction, operation, or decommissioning – in Commonwealth marine areas.

If the status quo was maintained, exploration could take place without a deed of licence being issued, and exploration activities approved within existing regulatory powers available such as *Environmental Protection and Biodiversity Act 1999* and *Navigation Act 2012*.

This would allow environmental site surveys including the use of FLIDAR (floating light detection and ranging) devices to capture meteorological conditions, as well as geophysical and geotechnical studies to assess the technical viability of a project.

Current experience indicates this approach would not be taken up by developers as they desire a clear, legislated pathway toward investment on the site where surveys have been undertaken. Without this, the significant

investment in site assessment, estimated to be in the order of $20 - $30 million, is too great a risk.

4.2.2 How it would work – advantages and disadvantages

As previously noted section 4.2.1, assuming developers wished to pursue projects without a regulated pathway to development, the ad hoc, unregulated environment would:

- Not create a commercial environment in which an offshore electricity industry could be fostered.
- Increase costs to project proponents through delays caused by uncertainty and a lack of clarity, in relation to environmental and safety conditions and interaction with parties with existing, regulated rights (such as fishers, shipping sector and offshore petroleum).
- Deter further investment in offshore electricity generation in Australia due to the uncertain environment.

In practical terms, that would see the projects outlined in section 1, not proceeding. That is, significantly limited or no further investment in exploration and development taking place as a minimum, or proposed projects not being constructed and operated (noting not all proposals would proceed to development even in a regulated environment).

Developers would need to independently negotiate a range of regulations and operations, including:

- Protection of existing infrastructure such as communication cables
- Licences in operation for fishing and petroleum related activities
- Commonwealth on water activities such as defence
- Shipping navigation routes
- Maritime safety
- Environmental management considerations and approval, including Environmental Protection and Biodiversity Act 1999 approvals
- Existing legislative arrangements such as Native Title
- Offshore electricity workforce

- Local communities.

Furthermore, consultation with other maritime users would have less oversight from government than in a regulated environment.

4.3 Option 2: Implementation of an offshore electricity infrastructure regulatory framework

4.3.1 Description of the option

The second option is to introduce a regulatory framework for offshore electricity infrastructure.

Under this option, a core legislative package would be introduced to Parliament, with subordinate regulations, rules, and policy developed and introduced following the initial passage of head of powers legislation.

Introducing core legislation as soon as possible, followed by subordinate legislation later, would assist in providing investment certainty and provide additional time to develop detailed and considered regulations, rules and policy.

Licensing approach

Under Option 2, the regulatory framework proposes approvals to allow:

- commercial licences for larger scale, generation focused activities such as large scale offshore wind;
- research and demonstration licences for site testing and early stage technology assessment; and
- transmission and other infrastructure licences for offshore generation and shore-to-shore transmission as well as infrastructure used for transmission.

Before allowing any of the proposed licences to be offered, it is proposed the Minister for Energy would be required to consult over an area that may be potentially “declared” suitable for offshore electricity infrastructure development. This is designed to identify and mitigate potential conflicts in competing interests, and set conditions before any project could progress,

such as identifying stakeholders and consultation requirements, constraints on types of activities, and other conditions the Minister for Energy considers appropriate. For example, the fishing sector may identify specific fishing activities, such as trawl fishing, that offshore electricity infrastructure developers need to consider in developing a proposal.

The Minister for Energy would also engage with other ministers with relevant policy authority, such as the ministers with responsibility for the environment, fisheries management, resources and infrastructure in considering a declaration.

Commercial activities are proposed to be subject to a two-step approvals pathway. Firstly, following a competitive process, a *Feasibility Licence* would be awarded over some or all of a declared area to provide the developer an exclusive opportunity to seek a Commercial Licence over the licence area, subject to any conditions and requirements. The Feasibility Licence provides the proponent a period of up to seven years to demonstrate their ability to manage safety and environmental risks and impacts, and to ensure that the interests of other users of the area are taken into account.

During this period a developer would be required to complete exploration activities, finalise project design, and undertake detailed consultation with other users and regulators. Where appropriate, developers would reach agreement in relation to plans for interaction with the environment and other users in managing the potential impacts of offshore electricity infrastructure.

If the Minister for Energy is satisfied that all conditions and requirements have been met – including the requirement to have a plan to manage risks accepted by the regulator – the proponent can apply for a Commercial Licence.

A *Commercial Licence* would provide rights to undertake a commercial offshore electricity activity for an initial term of up to 40 years and possible renewal for a further 40 years. The Commercial Licence entitles the holder to apply to the regulator to (a) construct, test and commission, (b) operate, and (c) decommission the project. Recognising both international best practice for offshore electricity infrastructure and lessons from the Northern Endeavour floating production storage and offtake facility, the approval of a decommissioning management plan would be a critical element of project approval.

Research and Demonstration Licences would provide a lower-cost pathway to support pre-commercial seismic exploration or genuinely innovative

offshore electricity demonstration projects (such as wave or tidal projects). This is to ensure that these activities are regulated for safety and environmental matters, and appropriately decommissioned once they cease. The term of a Research and Demonstration Licence is limited to 10 years and does not lead to a Commercial Licence.

A non-exclusive *Transmission and Infrastructure Licence* for construction and operation of transmission or other infrastructure (e.g. offshore electricity sub-stations) is proposed. The licence would typically be granted in conjunction with commercial or research and development licences. The Minister for Energy would also have the power to award a Transmission and Infrastructure Licence for the purpose of transmitting energy generated onshore through the offshore environment.

- Existing regulation in relation to offshore cable infrastructure is insufficient for the development of offshore electricity as, in the case of the Telecommunication Act 1997, it is principally intended to regulate communications infrastructure not energy transmission, or in the case of Submarine Cables and Pipelines Protection Act 1963, is aimed at protection of cables in international waters.
- Greater investor certainty is provided through providing a single licensing regime that is designed specifically for the offshore electricity sector.

Regulatory features

Where appropriate, the key features of the regulatory framework would be consistent with existing regulations in place for the development of offshore infrastructure in other industries, such as the offshore petroleum and telecommunication industries. This will minimise risks and deliver an effective regime by leveraging existing arrangements and utilising experienced regulators and administrators to provide regulatory oversight.

Legislative structure

The regulatory framework would provide high level powers in its Act, with the ability to create subordinate legislation and policy for detailed settings. This approach is designed to meet a changing industry profile, while provide business certainty for long term investment. The approach of providing for heads of power in the Act, and sufficient subordinate legislation and policy matters is consistent with current best practices for legislative structure.

Existing rights

Offshore electricity exploration is already being undertaken, and offshore transmission assets are being operated. These rights would be recognised and continue to operate under current arrangements. Any successive or new exploration or development activity or new transmission projects would be subject to the framework.

Co-existence and existing rights

The Australian Government promotes shared use of Commonwealth waters, balancing competing interests while pursuing the economically efficient use of the offshore area and its resources. Consistent with this approach, the proposed regulatory framework would require comprehensive and detailed consultation throughout the regulatory process (from site identification through to decommissioning) for each development.

More specifically, consultation would include but not be limited to:

- Shipping industry and regulatory authorities
- Defence
- Fishers
- Managers of communications and transmission infrastructure
- Managers of Native Title matters
- State and territory governments
- General public
- Environmental managers and regulators
- Local community
- Offshore electricity workforce.

The framework would incentivise project design, consultation and operation of offshore electricity technology, to maximise commercial, co-existence and existing rights and interests. The multiple consultation points ahead of a commercial licence being issued aim to ensure potential conflicts can be addressed in the design or operation of the offshore electricity infrastructure. The effectiveness of consultation would be further assessed as part of management plan reviews.

For any rights conferred by a licence, the department proposes to include a requirement similar to section 280 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, which provides that activities under a

licence must not interfere with other rights to a greater extent than is necessary for the reasonable exercise of the rights.

Asset protection, offences and penalties

This option would establish penalties to protect against interference with offshore electricity infrastructure, operations and works. Offshore electricity infrastructure licence holders would be able to apply to the regulator for safety zones to be established to protect infrastructure, workers and other assets during the construction phase, and easements for ongoing protection of assets where required.

Environmental approvals

Environmental approval would be undertaken through existing *Environment Protection and Biodiversity Conservation Act 1999* approvals and assessment processes. The regulator would monitor compliance with approvals under this Act and ensure that continuous improvement in environmental management performance is achieved through periodic revision of management plans to ensure impacts and risks are being managed to as low as reasonably practicable.

Work, health and Safety (WHS) and structural integrity

The design of the WHS component of the framework aims to address the range of WHS laws applying in the maritime region and any gaps of existing WHS laws. The proposed regulatory framework would provide WHS coverage for vessels and other facilities conducting offshore electricity activities. WHS coverage would include constructing, installing, operating or decommissioning offshore electricity infrastructure or conducting operations and works in connection with those activities. WHS for all other vessel based activities would continue to be covered under the *Occupational Health and Safety (Maritime Industry) Act 1993* and other relevant legislation (e.g. *Navigation Act 2012*).

The regulatory regime would apply the Commonwealth *Work Health and Safety Act 2011* (WHS Act), to the greatest extent possible. As the existing WHS Act does not provide appropriate measures (e.g. structural integrity), the WHS Act provisions would be applied where possible and modifications or new provisions drafted within the regulatory framework as necessary. Regulations under the regulatory framework would lay out requirements in relation to management plans that would provide a framework for the management of hazards and risks including as they relate to WHS.

Providing WHS coverage under the framework would make the Minister for Energy the responsible minister for WHS matters. This is consistent with analogous regimes, such as the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

Regulatory oversight

It is proposed for National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and the National Offshore Petroleum Titles Administrator (NOPTA) to act as the regulator and registrar respectively. These agencies provide existing expertise in regulating offshore infrastructure and using them would avoid additional costs that would otherwise be involved in the establishment of new agencies.

The Regulator would be provided with sufficient powers and enforcement tools to effectively monitor and enforce compliance with the requirements of the offshore electricity infrastructure regulatory framework, including the ability to appoint inspectors. The inspectors would be given necessary powers to conduct inspections and investigations to determine whether licence holders are complying with requirements. The Regulator would also be provided with enforcement tools, including the power to issue notices, financial penalties and directions and to seek prosecutions for offences.

The Registrar would undertake a range of functions including advising and supporting the Minister for Energy in relation to licence administration; administering licences and maintaining a register of licences and collecting and managing data, reports and information in relation these licences.

4.3.2 How it would work – advantages and disadvantages

An advantage of option 2 is that it creates a legislative framework to allow investment to be made in offshore electricity, the associated advantages to the economy, employment and our energy sector. As outlined in section 1, these benefits include:

- Timely delivery of critical transmission infrastructure.
- Starting to implement a regulatory framework now allows industry time to develop projects for the Australian market, noting the long timeframe for developing large scale projects such as offshore transmission infrastructure and offshore wind farms.

- The framework is flexible to accommodate ongoing learning and refinement as the sector grows.
- Providing investor confidence.
- The management costs are met on a cost recovery basis once the framework is implemented.

Potential disadvantages and risks of this option include:

- An argument can be made that is may be preferable to delay or further stagger development of a regulatory framework until the sector is further matured in Australia. However, in the absence of an established framework, it may frustrate development of an offshore electricity infrastructure sector. Considering the enabling nature of this framework, the critical nature of projects like Marinus link the relatively low cost to develop, the need to provide investor confidence early, and the potential for significant delay costs, earlier action is needed support an emerging industry.
- Estimating specific impacts to affected industries is uncertain, and while coexistence through consultation and negotiation is the intended outcome, some costs to affected parties may result. The pre-declaration processes can be calibrated to better consider site assessment and project assessment criteria consultation requirements during project development. Management plans can also be reviewed to ensure impacts on affected industries are as low as reasonably practical.

Alternative options considered

Within option 2, broad alternative design approaches were considered but early analysis indicated they were not sufficiently robust as long term options:

- Amendments to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*: As part of initial planning consideration was given to amending the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* to incorporate offshore electricity. However, as this could require amendments to a number of core elements of the Act such as definitions, this option was not practical. Establishing new, bespoke legislation was determined to be more cost effective for government and would pose less impost on existing operators.

- Staggered implementation of the legislative package: In order to develop industry confidence in the proposed framework, early consideration was given to introducing the legislation in stages such as an initial simple head of power bill to allow a declaration to be made, a second bill containing more technically complex matters, and later the rules and regulations. However, this approach does not provide value to developers as licences would not be able to be issued any earlier.

5 Impact analysis

This section details the expected impact of each policy option on stakeholders. New regulation can typically incur costs through compliance burdens, lost time, inconvenience and threats to competitiveness. In contrast, the current lack of regulation has inhibited the development of an offshore electricity industry, as relevant stakeholders have been unwilling to invest in an unregulated environment. Introducing a regulatory framework would encourage investment from offshore electricity project developers, providing critical commercial, environmental and safety assurance.

- Organisations likely to be impacted by the regulation proposed under option 2 include:
- Commonwealth and state governments
- Offshore electricity project developers
- Other affected stakeholders and broader community.

5.1 Cost-benefit analysis (CBA)

Challenges in undertaking the CBA

There are significant challenges in undertaking a quantitative CBA of the offshore electricity sector at this time in Australia as previously outlined in section 3.2.

Estimates of the sector's growth are based on indicative, reasonable and transparent assessment of the opportunity.

Identifying the impacts

Noting the limitations outlined above, the department has attempted to describe costs and benefits across government, business and the broader community and economy.

Note: For the sake of consistency, labour costs have been assumed to be administrative costs. All non-labour costs such as consultancies or business impacts are captured as substantive compliance costs.

- Government

- Cost of establishing laws: The cost of establishing law would include the costs attributable to establishing a policy team to design the regulatory framework, undertaken consultation and draft legislation.
- Maintaining laws, including cost recovery processes for the new regulatory regime: Offshore regulators would have a greater scope of responsibility as the number of parties undertaking offshore electricity activities increase. For example, more parties are likely to require environmental approvals for exploration activities.

- Developers' costs can be grouped into administrative costs, including general compliance costs such as record keeping and reporting, and substantiative costs that are new costs to address the requirements of regulation. This could include new operational costs (such as fuel costs to circumnavigate offshore electricity infrastructure), training for employees to meet regulatory requirements (such as reporting) or the costs for professional services (such a legal or tax advice).
- Affected industry costs and benefits can be captured similarly to developers' costs above. While the regulatory framework prioritises consultation to mitigate potential impacts, existing industries would incur some costs through the operations of the new regulated sector, as well as broader administrative costs associated with consultation and education.
- The cost and benefits to the broader community and economy can be assessed at a higher level. For example, aggregated benefits including improved economic opportunities of the maritime environment, further foreign investment, consumer savings from energy and potential for broader environmental benefits.

5.2 Option 1: No regulatory framework introduced (current situation)

Under this option, the offshore electricity industry would be highly limited or curtailed altogether in Australia. It is challenging to quantitatively estimate the potential cost of an industry that does not currently exist in Australia as

outlined in section 3.2, however a broad estimate of costs and benefits is provided below.

Government

Should the current situation be maintained, government costs are limited. This is largely because many existing proposals would not seek to undertake on-water exploration without a development pathway in place.

In the absence of the development of a regulated framework, ongoing government costs would be attributable to:

- Management of existing proposals, including the Star of the South proposal, or those parties interested in seeking exploration licences are currently undertaking a range of development activities in the absence of a regulatory framework.
- Other proponents outlined in section 1 would continue to consult with government to understand opportunities for progressing their proposals in the current operational environment.
- This consultation would be across government agencies at the Commonwealth and State level.

Additionally, not pursing development of a regulatory framework means the costs of that development would not be incurred by government.

Developers

Developers' costs would include:

- The cost of undertaking initial, precompetitive work for developing a project proposal that may not proceed in the current regulatory environment. This would include costs for legal interpretation of the regulatory environment, preparation of precompetitive technical reports and consultation with government and the community.
- Broader opportunity and business costs in not realising new business prospects.
- A range specialist service providers such as engineering, energy and technical consultants, environmental surveyors, and communications specialists would benefit from the current limited number of early stage development activities undertaken.
- Very early stage pre-competitive assessment could cost proponents in order of $200,000-$500,000 for project development.

Affected Industries

As noted above, potential affected industries include offshore oil and gas developers and licence holders, commercial fishers (including current licence holders), shipping activities, managers of existing infrastructure (such as Basslink and gas pipelines) and tourism interests.

The costs and benefits of industries potentially affected by the development of the offshore electricity sector are limited under this option, as the current activities are relatively discrete and limited to resource exploration which has limited impacts on current operators. Potential costs arise from limited demands on engagement from potential developers and government in considering the new sector, such as risks and planning, investment in education, consultation and assessment of proposals (such as formal submissions). Other costs may arise from the lack of government oversight, which may mean licenced, regulated sectors such as fishers, are not appropriately accommodated.

Affected industries may see benefits in the framework not proceeding as their current operations would not be as impacted by co-existence arrangements with a new sector. Benefits may include no requirements to curtail operations to consider the new sector, no impacts in negotiating such arrangements including on education, legal, communication and engagement costs.

Broader community and economy

The direct costs of the current approach to the broader economy are relatively minor due to the minor impacts of the actions.

However, the opportunity costs of even one proposal referred to in section 1 not proceeding due to the absence of a regulatory framework are significant; billions of dollars in lost investment, under-utilisation of the maritime sector, under engagement of new technologies, and thousands of regional jobs.

A very broad attempt to quantify the opportunity cost of lost investment can be estimated by reviewing the success of the industry in other countries that have introduced regulatory frameworks, and evaluating this as a proportion of the missed opportunity cost to Australia. Spending in offshore wind power reached $20 billion globally in 2018. The International Energy Agency projects the cumulative investments in offshore wind to reach $350 billion by 2030 and $1.47 trillion by 2050.

While the scale of investment in Australia is difficult to quantity, by 2030 it is conceivable one large scale project could be developed. Three high profile projects at early stage development include:

- Marinus Link transmission infrastructure between Tasmania and Victoria being managed by TasNetworks. It is estimated to cost in the order of $3.5 billion and could enable a further $5.7 billion investment in generation in Tasmania.
    - AEMO's 2020 ISP modelling identifies that the economic benefits of Marinus Link for Tasmania and Victoria are estimated at $2.9 billion.
- Star of the South offshore wind farm proposal development by Copenhagen Infrastructure Partners, valued in the order of $8-10 billion with an installed capacity of 2 gigawatts.
- Sun Cable transmission infrastructure to allow export of renewable energy from Australia to Singapore has an anticipated value of $20 billion.

It is possible that further projects of varying scale could be developed by the end of 2040. This could lead to a further $5 - $25 billion in additional investment. A similar investment profile could be expected to continue to 2050 and beyond.

Assessment of costs and benefits for option 1

The direct costs for option 1 are estimated not to be substantial, mainly arising for administrative costs for government and engagement costs for industry. However, opportunity costs have the potential to be very significant, in the magnitude billions of dollars and thousands of regional jobs, though the precise value is difficult to definitively assess.

The benefits are related to savings from government not investing in the development of the regulatory framework, less impacts to parties potentially affected by the development of the regulatory framework and business providing service to enable early stage project development. On this basis, the net costs significantly outweigh the potential benefits of not proceeding with a regulatory framework to enable investment.

5.3 Option 2: Introduction of regulatory framework

Under this approach, the development of the proposed regulatory framework would allow industry to commence planning and development of offshore electricity infrastructure in a timely manner. This would provide investment security, while also ensuring the development of protections and an effective management system to negotiate the multi-use nature of the Commonwealth marine environment.

The regulatory framework would be designed to mitigate any unnecessary or damaging intervention with industry, following a number of principles:

- Technology neutral, light tough regulation – avoiding prescription given the current industry uncertainty and rapid technology change, while also allowing research and demonstration projects, as well as commercial projects without unnecessary regulation for low risk or impact activities.
- Shared and efficient use of Commonwealth resources – upholding the existing principles of multi-use access to the marine environment.
- Protection of the marine environment – ensuring environmental protections are a central consideration for any project.
- Competitive access to renewable resources – ensuring commercial generation projects are subject to a thorough assessment process.
- Cost recovery – recovering costs associated with regulation from project developers.

5.3.1 Identifying impacts

Broader community and economy

Significant potential benefits of the proposed regulatory framework to the broader economy are through:

Employment, particularly regional employment

As noted in section 2.1, there are three projects that are adequately progressed to provide job estimates, noting these estimates are provided publicly by the proposed developers of these projects:

- Marinus Link: In the construction has potential for 2,786 jobs. The vast majority of jobs will be in regional areas (Tasmania and Gippsland).
- Star of the South wind farm: Potentially 8,250 jobs in total. Ongoing operations may and additional 1,180 total direct and indirect jobs. The vast majority of jobs will be located or deployed in regional areas Gippsland.
- Sun Cable: In the construction phase 1,500 direct Australian jobs could be created. Ongoing employment opportunities could create 12,350 direct and indirect jobs in Australia. The vast majority of jobs will be located or deployed in regional areas (Tennant Creek NT and Darwin).
- In total these projects could enable 4,933 direct jobs and 21,133 indirect jobs, with a total of 26,066 jobs.

These jobs will be distributed across a variety of sectors including engineering, transport and logistics and manufacturing.

Importantly, as noted in section 1, the department is aware of nine further proposals, which create additional employment opportunities, noting some of these projects could be in competition, and it is unlikely that all could proceed.

Greater energy market competition

Additional energy options for generation could create more competition for potential support, leading to lower prices.

Marinus Link will also enable expansion of Tasmania's hydro capacity and unlock additional renewable energy investment in Tasmania. To firm up the inherently variable nature of distributed and large-scale renewable generation, the NEM requires new flexible, dispatchable resources, including utility-scale pumped hydro.

Marinus Link will allow over 400 MW of existing dispatchable generation to be transmitted to Victoria, which, due to limited Basslink capacity, is currently unavailable. This would power up to 400,000 homes and help manage the impact of variable wind and solar, unplanned outages and

extreme weather events. The economic benefits of Marinus Link for Tasmania and Victoria are estimated at $2.9 billion.

Trade and foreign investment

Very large scale projects such as offshore wind or transmission infrastructure create significant new foreign investment opportunities. In the longer term, export opportunities could be created through utilising offshore wind to produce green hydrogen or green steel.

Greater utilisation of maritime environment

Enabling renewable energy generation in the offshore environment opens up a new, multi-billion dollar source of investment for this region of Australia.

Efficient utilisation of existing infrastructure

Offshore electricity infrastructure proposals can utilise existing transmission infrastructure as existing generation is phased out. Making use of existing infrastructure continues to place downward pressure on electricity prices and reduce developer costs. The Marinus Link interconnector and the Star of the South offshore wind farm proposal plans to connect to the existing transmission capacity in the La Trobe Valley.

Public health and safety effects

Key principles of the proposed regulatory framework's approach to WHS matters are to: ensure protection of workers where risks are present, continuous improvement in risk management practice over time and minimise regulatory burden and administrative complexity.

By applying an industry specific WHS scheme as proposed in section 4.3.1 to protect workers in the offshore electricity sector, a targeted, fit for purpose, objective based regulatory approach can be applied. This allows an appropriate level of control and flexibility in approaches, specific to individual projects and activities.

The proposed regulatory framework lends itself to objective based regulation due to the evolving nature of the industry and new technology practices. It is impractical, expensive and undesirable to set a 'step by step' prescriptive safety regime. Continuous improvement in WHS management can also be driven through this approach as well as integrating with industry specific structural integrity requirements.

Development of an industry specific regime which aligns with the provisions of the model WHS laws would provide a contemporary WHS framework for the sector.

Environment

Projects made possible under the regulatory framework would enable significant new sources of emissions reduction. For example, the Marinus Link and supporting transmission can enable 45 million tonnes of carbon dioxide emissions by 2050 through improved access to reliable pumped hydro.

Government

Should an offshore electricity infrastructure regulatory framework be developed, the costs for the Commonwealth government would include:

- The initial development of the legislative framework - This would be managed by a small team of policy advisors and legal advisors. Key tasks would include undertaking project management, policy work and required consultation. It is estimated this work will take in the order of eighteen months to develop primary legislation. Subsequent development of subordinate regulations. Delivery of enabling regulations for offshore electricity infrastructure will require funding for legal services, and contractors to provide technical drafting and legal advice. Overlapping this process would be the development of guidance material and further policy advice to enable industry to apply for licences.
- Ongoing management over regulatory process, including establishment of the regulator and registrar, and maintaining compliance – Funds have been committed for NOPSEMA and NOPTA to develop their new roles, ensure suitable upskilling and provide separation from their existing cost-recovered functions. NOPSEMA is proposed to provide regulatory input into processes and providing technical experts for engagement activities and input into technical drafting or regulations, rules and policy. NOPTA is proposed to act as registrar and manage data and licence administration, as well as input into technical drafting or regulations, rules and policy.

The Australian Government has committed $4.8 million dollars to assist in timely delivery of the regulatory framework and supporting regulations, policy, regulatory functions and initial licence application processes. In the

long term there may be minimal impact on the budget if regulated activities are appropriately cost recovered.

Substantial cost savings would be found through the appointment of NOPTA and NOPSEMA in their respective roles as they can draw on their extensive existing experience and licensing management systems. As part of this work a cost recovery impact statement (CRIS) would be developed, with input from NOPTA and NOPSEMA.

States and territory governments may also need to introduce complementary legislation to allow infrastructure to be installed across state waters (such as transmission infrastructure).

Benefits for government would include facilitating further economic value from the maritime environment and a regime to coordinate and manage coexistence of the maritime sector to ensure minimise operational risks.

Developers

Developer costs would largely be through:

- Administrative costs:
    - The costs of making an application for a licences,
    - Processing times to meet associated with taxes, fees, charges and levies,
    - Notifying government that activities have started.
- Substantive costs would consist of:
    - Provision of training to employees to meet regulatory requirements of the new regulatory regime,
    - Providing information for third parties, affected by proposals as part of due diligence and consultation measures required by the proposed legislative framework,
    - Costs of professional services needed to meet regulatory requirements such as legal costs for interpreting the regulatory framework and tax implications.

Developers would potentially receive the greatest benefit from the development of the regulatory framework through the new business opportunities provided and the potential for new investment opportunities, noting these benefits have broader flow-on impacts through the economy.

Affected Industries

The framework would recognise the multi-use nature of Commonwealth marine areas, and seek to balance competing interests while pursuing the most efficient use of these areas and marine resources. Similar to the existing expectations for oil and gas activities, regulated offshore electricity project developers would be required not to interfere with the rights of other users of the marine area to an extent that is greater than necessary.

Consideration of, and consultation with, other marine users would also be built in to relevant decision points. For example, consultation would be undertaken ahead of a site declaration being announced by a Minister, during the assessment of feasibility licence applications, and on an ongoing basis as described in a management plan. Developers working with other users of Commonwealth marine areas would be required to limit impacts to as low as practicable.

Noting this approach aims to limit potential costs for offshore electricity project developers, stakeholders and government alike, it does generate 'substantive' costs for existing marine operators including fisheries, shipping operators and petroleum developers:

- legal fees in interpreting regulatory environment such as safety zones and penalties,
- education for persons operating with new infrastructure such as offshore wind turbines and new navigation protocols,
- development of technical advice to engage with the new sector,
- consultation costs for engaging with government and the community as part of establishing the proposed regulatory framework or as part of licence conditions on developers,
- costs for limitations on access to maritime areas resulting from exploration activities, construction, operation or decommissioning of offshore electricity infrastructure. While it is expected that these costs would minimised through careful negotiation, some level of impact would be inevitable. Such costs could include:
    - additional transport costs for shipping operators to navigate around a wind farm installation, noting effective wind farm design would minimise disruption to shipping activities, or

- loss of fishing opportunities for fishing operators at stages of construction, such as where a safety zone is required and following installation of the offshore wind farm, changes to the types of fishing that can be undertaken or loss of fishing ground.

Administrative impacts incurred by affected parties are expected to be limited and may include reporting requirements sought by government on potential impacts such as maritime incidents.

Total costs and benefits for option 2

The benefits for option 2 indicate the potential significant, multi-billion economic returns from a relatively minor investment from government.

6 Consultation

The department undertook public consultation on concepts for a proposed regulatory framework between 3 January and 28 February 2020. The online consultation materials were complemented by face-to-face public information sessions in Perth and Melbourne.

Approximately 300 people attended the information sessions and 48 written submissions were received. Overall, submissions were supportive of the proposed framework.

Many of the submissions sought further detail relating to the operation of the proposed framework – much of this detail would be determined and consulted on through the process of developing regulations and guidelines in 2021. The following key themes raised through consultation were relevant to the overall structure of the framework and in some cases have led to re-shaping of the policy.

Decommissioning bonds

Policy presented: a bond equal to the cost for government to decommission infrastructure in the licence area must be held prior to installation activities commencing. Details of this approach will be outlined further during consultation on regulatory design.

Feedback: Several developers and a number of other organisations from industry and research sectors agree with the decommissioning bond principle.

A number of non-government organisations (NGOs) are concerned that a bond system could be seen as a disincentive noting that a similar financial expectation is not currently placed on offshore petroleum.

The department notes that recent issues in offshore petroleum have led to a review of decommissioning and financial assurance requirements and there may be additional requirements placed on petroleum titleholders in future.

Other developers believe that decommissioning bonds should not apply to Transmission and Infrastructure Permits.

The department notes that decommissioning bonds would be scalable depending on the mode of decommissioning accepted by the regulator. For example, some buried transmission infrastructure may be able to be left in place, with a very low decommissioning cost and associated bond.

Outcome: The department notes a need to engage closely with stakeholders as the department develops further public guidance around this issue in 2021. A decommissioning bond as regarded as best international practice.

Feasibility licence term

Policy presented: at the time of consultation, a feasibility licence was proposed as a five-year licence term in which a developer has an exclusive right to seek a Commercial Licence over the Feasibility Licence area. Before a Commercial Licence could be sought, the licence holder must be 'shovel-ready', with an accepted management plan, bond agreement and final investment decision in place.

Feedback: While there was some support for the five-year term, a number of submissions indicated that this timeframe could be too short, noting the expectation to undertake several significant tasks in order to be ready.

Outcomes: The department has amended the proposed term to seven years. To avoid inactivity in a licence area, holders of a feasibility licence would be expected to meet work program milestones at advertised points during the term of the licence. Failure to meet milestones may be grounds for cancellation of the licence.

Commercial licence term

Policy presented: at the time of consultation, a commercial licence was proposed as a 30-year licence term in which a developer can construct, operate and decommission offshore electricity infrastructure.

Feedback: A number of submissions advised that a 30-year term is too short to cover the complete lifecycle of construction, operation and decommissioning. Parties suggested 40-50-year term would be appropriate or an automatic licence renewal should be implemented.

Outcome: The department is now proposing that the standard commercial licence term be 40 years, with possible renewal of another 40 year term. The licence period for transmission infrastructure will be determined by the life of the assets.

The department does not intend to offer automatic renewal terms. Instead licence holders would be able to apply for a renewal well in advance of the licence expiry. The renewal decision would take into account the operation of the assets (i.e. in relation to contracts, maintenance schedules, equipment improvements and decommissioning plans). The Minister's decision to renew would provide an opportunity to consider the merit of continuing the operations and provide an opportunity to update licence conditions etc.

Pre-qualification

Policy presented: at the time of issuing the discussion paper, pre-qualification was expressed as a base threshold for participation in the regime and would include an assessment of a party's technical and financial capability as well as consideration of past performance.

Feedback: Submissions showed broad support for a pre-qualification process, however there were some concerns that pre-qualification thresholds if set too high, could limit participation of new or start-up companies and by doing so limit innovation.

Outcome: The department considers that this kind of threshold qualification process is most meaningful when a proponent's qualifications can be tested against the requirements of a particular project. For this reason this assessment would be best undertaken as part of the licence application process rather than as a standalone pre-qualification. In line with this, the working title for this assessment is now a suitability test, rather than pre-qualification.

The suitability test would also likely feature as part of the process to approve transfers of licences to ensure that entities taking over ongoing licences and/or operational assets have the required capabilities to maintain standards in line with the management plan.

The department is continuing to mature and finesse the policy around the fit-and-proper test and working with NOPTA to draw on their experience from the petroleum industry.

Work health safety (WHS)

Policy presented: As the discussion paper was silent on what WHS provisions would be applied, several stakeholders made assumptions that the provisions from the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGS Act) would apply.

Feedback: There was some support for extending the objective-based principles of the OPGGS Act to the regulation of health and safety for offshore electricity infrastructure activities in Australia.

Other parties suggested that it would be preferable to apply the model WHS legislation and provided detailed advice about the potential risks that can arise in this space, including in relation to disapplication of maritime safety legislation.

Outcome: The regulatory framework proposes developing an industry specific WHS regime drawing on the model WHS laws. Where the model WHS do not sufficiently cover an activity, modifications or new provisions would be drafted as required.

NOPSEMA as the offshore electricity regulator

Policy presented: The offshore electricity regulator would be responsible for overseeing health and safety, structural integrity and environmental management compliance for offshore electricity infrastructure activities. The discussion paper proposed that this role be fulfilled by NOPSEMA.

Feedback: Many stakeholders supported NOPSEMA as the regulator for offshore electricity sector, based on their technical expertise and experience in regulating activities in the offshore environment. A key benefit noted was the ability to undertake the work without the costs and time delay associated with establishing a new regulator with similar functions to an existing independent body.

Some stakeholders highlighted the need for specialist skills specific to the renewable energy sector and that the regulator will need to recognise and understand the differences between the offshore petroleum and offshore renewable energy industries.

Conversely, some stakeholders did not support NOPSEMA as the regulator based on a perceived conflict of interest in regulating competing industries as well as a misconception that NOPSEMA would have a role in regulating the broader electricity grid.

Outcome: No change. Noting there was a mix of views on this topic, the matters raised were generally not related to the competency of NOPSEMA as a regulator, but to specific issues around jurisdictional complexity, electrical regulation and the potential need for upskilling. The department maintains its view that installing NOPSEMA as the regulator is the most viable option and would avoid unnecessary duplication of functions and offer continuity in the regulation of offshore industries. The department notes that overseas, offshore petroleum regulators are also taking on the responsibility for regulating offshore wind farms.

Other matters raised

Application processes and assessment criteria

Many stakeholders highlighted the importance of having clear guidance around application processes and assessment criteria. There was a mix of ideas presented about competitive assessment process and subsequent criteria, but there was broad support for a merit-based process that considers social, environmental and economic factors.

While high-level merit criteria and application pathways is proposed to be included in the bill, the detail around application assessment criteria is flexible and able to be set at the time of inviting applications.

The department intends to work with industry to scope reasonable application requirements and assessment criteria in 2021.

Data submission and release

Stakeholders expressed mixed perspectives on data. Some stakeholders suggested certain information such as environmental data should be made publicly available. Other stakeholders noted that commercially sensitive data could impact a project's competitive ability or desirability to be collected if shared publicly.

The bill would provide for heads or power to require and publish data in accordance with regulations. As data is such a sensitive issue, the department proposes to work with industry to develop the data regulations in 2021.

Electricity markets and grid connection issues

Several stakeholders sought information on how the framework would interact with legislation regulating the electricity and transmission markets.

Matters relating to connection to electricity markets and onshore transmission are outside of the scope of this framework and would be the responsibility of project proponents.

Strategic planning and incentives for investment

A number of stakeholders recommended that the Australian Government be proactive in identification of preferred clean energy sites and exclusion zones, noting that in other international jurisdictions, government has provided early stage investment in exploration, though this is often where there may be few other renewable investment opportunities.

The framework is intended to enable the development of the offshore electricity sector, rather than drive its establishment.

7 Preferred Option

The Australian Government considers that the more effective means for achieving a, competitive and well-functioning offshore electricity industry is by implementing Option 2 - Implementation of an offshore electricity infrastructure regulatory framework.

Broadly, this would be achieved through establishing a legislative framework that would allow a range of activities not currently provided for and limit impacts on other maritime users, offshore workers and the environment. Timely introduction of the regulatory framework would build investor confidence early, especially considering the long development time for large scale offshore electricity infrastructure.

Subsequent regulations and rules would be formulated either concurrently or following the initial introduction of core legislation, and further consultation would be undertaken on the regulations, rules and policy under the proposed framework.

As noted, the cost benefit assessment was challenging to quantify due to uncertainties in the current operational environment, challenges in forecasting the viability of proposals and the likely growth of the sector. On this basis, a highly qualitative cost-benefit assessment was undertaken.

Despite this context, the very significant opportunities presented by the proposed regulatory framework provide a strong case that option 2 provides the highest net benefit.

8 Implementation

Subject to the passage of the Offshore Electricity Infrastructure Bill, the implementation of the proposed legislation is subject to the challenges outlined below.

Implementation challenges

The development of the proposed legislative framework is a resource intensive process, involving significant engagement with agencies across the Commonwealth, external consultation, as well as new and complex technical matters for consideration. The Australian Government is proposing the new legislation be introduced as soon as practical, and be able to facilitated by mid-2021.

Prior to this, the department would continue to undertake a range of consultation with other Commonwealth agencies, engagement with relevant developers, and potentially affected stakeholders to ensure an effective implementation process.

Concurrent to this process, the department is starting operational matters to ensure developers are able to seek licences in a timely manner. This would include:

- Recruitment of additional staff within the department,
- Preparing NOPSEMA and NOPTA for their expanded scope of work following passage of the Act,
- Development of guideline material to further explain assessment processes, submission of expression of interest,
- Communication material clarification of policy matters on outstanding technical matters (for example the operation of the safety zone), and
- Initiating steps to undertake a declaration for a given area such as data collection, due diligence and stakeholder engagement.

The department would develop an implementation plan that would guide the program of work.

Implementation risks

Key implementation risks

Risk and rating	***Consequence***	***Management and mitigation***
Delay in passage of legislation – possible	Reduced investor confidence and potential loss of new and significant investment (noting any delays would expect to be limited)	Before implementation, the Bill will receive further oversight by the Senate Standing Committee on Regulations and Ordinances of Parliament which could impact on timeframes for implementation.
Stakeholders do not support legislation and it not fit for purpose – Low likelihood as stakeholders are supportive	Reputational damage to the department and the Australian government. Delays in operationalising legislation	The drafting process has ensure wide, and open consultation with a broad range of stakeholders with feedback followed up as outlined in section 6. The development of regulations would undergo further consultation.
Operational matters are not prepared in sufficient time – Low likelihood	Delays in undertaking declaration processes, and the assessment and provision of licences	Lead times should be adequate, noting that operationalising the new legislative framework is a significant undertaking. There are many stakeholders, a large geographic coverage and the introduction of a new sector to Australia's offshore region.

Impacts on affected users are greater than anticipated – Low likelihood	Undue costs	Every consideration has been made to ensure a flexible, responsive regime that can accommodate the needs of the offshore maritime environment. As previously noted, should the regulatory framework require further refinement to respond to the needs of end users, further conditions and consideration can be included through the declaration, assessment, or within management plans approved as part of issuance of a licence.

Transitional arrangements

Existing activities and rights underway at the time of commencement would be allowed to continue, specifically:

- the Basslink cable; and
- the Star of the South deed of licence

It is proposed the regulatory framework would not apply to existing activities conducted by the relevant entities in association with these projects. The framework would however, apply to those entities where they undertake new offshore electricity infrastructure activities that are not already authorised. It is also intended that the framework should apply to activities associated with those entities' existing licences if property or licence rights are transferred to a third party.

Monitoring and evaluation of policy

The department has sought to ensure broad and ongoing monitoring and evaluation of the legislation through a variety of processes:

- The Offshore Electricity Infrastructure Interdepartmental Committee (IDC) have established a good level of awareness of the opportunities and potential impacts of the sector, and a robust network for ongoing engagement and feedback.
- As the most prospective region, the department has established a long standing engagement with relevant Victorian government agencies to inform roll out at the local level.
- The department has undertaken extensive external engagement with industry prior to development of the regulatory framework, as part of formal consultation and during drafting of the Bill.

Implementation may be further informed by assurance reviews, internal audits and quality reviews, to understand opportunities to improve implementation. More generally, monitoring would take place through existing communications channels with industry stakeholders.