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HOUSE OF REPRESENTATIVES

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Offshore Electricity Infrastructure Bill 2021

No. , 2021

(Industry, Science, Energy and Resources)

**A Bill for an Act to regulate offshore renewable
energy infrastructure and offshore electricity
transmission infrastructure, and for related
purposes**

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A Bill for an Act to regulate offshore renewable energy infrastructure and offshore electricity transmission infrastructure, and for related purposes

The Parliament of Australia enacts:

Chapter 1—Preliminary

Part 1—Introduction

1 Short title

This Act is the *Offshore Electricity Infrastructure Act 2021*.

Section 2

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Object of this Act

The object of this Act is to provide an effective regulatory framework for:

- (a) offshore renewable energy infrastructure; and
- (b) offshore electricity transmission infrastructure.

4 Simplified outline of this Act

<p>This Act regulates offshore electricity infrastructure by:</p> <ul style="list-style-type: none">(a) prohibiting unauthorised offshore renewable energy infrastructure and offshore electricity transmission infrastructure in the Commonwealth offshore area; and

- (b) providing for the Minister to declare areas that are suitable for offshore renewable energy infrastructure; and
- (c) providing for the Minister to grant various kinds of licences authorising offshore renewable energy infrastructure and offshore electricity transmission infrastructure in the Commonwealth offshore area.

Offshore renewable energy infrastructure is offshore infrastructure (such as an offshore wind farm) for generating electricity or other forms of energy from renewable energy resources, and storing or transmitting the electricity or energy.

Offshore electricity transmission infrastructure is offshore infrastructure (such as an undersea cable and other infrastructure associated with the cable) for storing or transmitting electricity (including electricity not generated from renewable sources).

For the purpose of regulating offshore electricity infrastructure, this Act establishes the Offshore Infrastructure Registrar and provides for the National Offshore Petroleum Safety and Environmental Management Authority to be the Offshore Infrastructure Regulator for the purposes of this Act.

The Registrar is responsible for keeping the Register of Offshore Infrastructure Licences, and for other administrative tasks.

The Regulator is responsible for the management and operation of offshore infrastructure, and for monitoring, investigating and enforcing compliance in the Commonwealth offshore area.

Work health and safety is provided for by applying the *Work Health and Safety Act 2011* to offshore infrastructure activities. This Act also applies State and Territory laws in relation to offshore infrastructure.

5 External Territories

This Act extends to the following external Territories:

Section 6

- (a) Norfolk Island;
- (b) the Coral Sea Islands Territory;
- (c) the Territory of Ashmore and Cartier Islands;
- (d) the Territory of Christmas Island;
- (e) the Territory of Cocos (Keeling) Islands;
- (f) the Territory of Heard Island and McDonald Islands.

6 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) However, this Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

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

- (1) This section applies to the provisions of this Act to the extent to which they relate to offshore electricity transmission infrastructure for the transmission of electricity to or from a place beyond the outer limits of the Commonwealth offshore area.
- (2) The provisions have effect subject to Australia's obligations under international law, including obligations under any agreement between Australia and any foreign country or countries.

Part 2—Definitions

8 Definitions

In this Act:

acts jointly with: for when a person ***acts jointly with*** another person, see subsection 84(2).

applicable document means:

- (a) an application made to the Minister or the Registrar under Chapter 3 (licensing); or
- (b) a document accompanying such an application; or
- (c) a report, return or other document that relates to a licence or an application for a licence and was given to the Minister or the Registrar under:
 - (i) Chapter 3 (licensing) or 7 (information relating to offshore infrastructure); or
 - (ii) regulations made for the purposes of those Chapters.

applied State and Territory provisions: see subsection 248(2).

applied work health and safety provisions means the provisions of the Work Health and Safety Act, and (subject to section 243 of this Act) the regulations made under that Act, as applied by Part 1 of Chapter 6 of this Act.

approval period: see section 85.

Australia, when used in a geographical sense, includes the external Territories to which this Act extends.

Note: For the external Territories to which this Act extends, see section 5.

Australian national means:

- (a) an Australian citizen; or
- (b) a body corporate established by, or under, a law of:
 - (i) the Commonwealth; or
 - (ii) a State; or

Section 8

- (iii) a Territory; or
- (c) the Commonwealth; or
- (d) a State; or
- (e) a Territory.

Australian vessel has the same meaning as ***Australian ship*** has in the *Customs Act 1901*.

authorised safety zone official: see section 140.

CEO means the Chief Executive Officer of NOPSEMA.

Note 1: See section 176.

Note 2: NOPSEMA is the Regulator for the purposes of this Act (see section 175).

change in control: for when there is a ***change in control*** of a licence holder, see subsection 84(4).

civil penalty provision has the same meaning as in the Regulatory Powers Act.

coastal waters:

- (a) of 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 seabed and subsoil beneath, that part of that sea; and
- (b) of 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 seabed and subsoil beneath, that part of that sea.

commercial licence means a licence granted under section 42.

Commonwealth offshore area means the following areas, and the seabed and subsoil beneath those areas:

- (a) the territorial sea of Australia;
- (b) the exclusive economic zone;

but does not include the coastal waters of a State or the Northern Territory.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

controls: for when a person **controls** a licence holder, see subsection 84(1).

data management direction means a direction given under subsection 263(2) or 264(2).

datum means a reference frame for defining geographic coordinates.

Note: If the position on the surface of the Earth of a particular point is identified by a coordinate that is 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.

declaration means a declaration under section 17.

declared area: see subsection 17(2).

Defence Minister means the Minister administering section 1 of the *Defence Act 1903*.

de-identified, in relation to personal information, has the same meaning as in the *Privacy Act 1988*.

documentary information means information contained in an applicable document.

do not disturb notice: see subsection 205(2).

eligible person means:

- (a) a body corporate that has a registered office (within the meaning of the *Corporations Act 2001*) 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.

Note: A person must be an eligible person in order to apply for a licence, and a licence that is not held by an eligible person may be cancelled.

end day:

Section 8

- (a) of a feasibility licence—has the meaning given by section 36 (subject to any extension under section 37); and
- (b) of a commercial licence—has the meaning given by section 46 (subject to any extension under section 47); and
- (c) of a research and demonstration licence—has the meaning given by section 55 (subject to any extension under section 56); and
- (d) of a transmission and infrastructure licence—has the meaning given by section 64 (subject to any extension under section 65).

engage in conduct means to do an act or omit to do an act.

enter, when used in relation to premises that are a vessel, includes board.

evidential material has the same meaning as in the Regulatory Powers Act.

exploit, in relation to a renewable energy resource, includes:

- (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.

explore includes exploring for the existence of, or assessing or scoping the extent, capacity or attributes of, a renewable energy resource.

feasibility licence means a licence granted under section 33.

Federal Court means the Federal Court of Australia.

fixed or tethered infrastructure means 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);

but does not include a vessel that is temporarily moored or anchored to the seabed.

foreign national means a person who is not an Australian national.

foreign vessel means a vessel that is not an Australian vessel.

holder, in relation to a licence, means an eligible person to whom a licence has been:

- (a) granted under Part 1 of Chapter 3; or
- (b) transferred under section 70;

so long as the licence has not been cancelled under section 73, surrendered under section 74 (in respect of the whole of the licence area) or transferred to another eligible person under section 70.

improvement notice: see subsection 209(2).

included offshore area of a State or Territory: see section 247.

infrastructure integrity, in relation to offshore renewable energy infrastructure or offshore electricity transmission infrastructure, means the following:

- (a) the ability of the infrastructure to perform in accordance with its intended purpose;
- (b) the structural soundness, strength and stability of the infrastructure;
- (c) the mechanical integrity and systems integrity (including the integrity of electrical, hydraulic and other systems) of the infrastructure.

licence means any of the following:

- (a) a feasibility licence;
- (b) a commercial licence;
- (c) a research and demonstration licence;
- (d) a transmission and infrastructure licence.

licence area, in relation to a licence, has the meaning given by:

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- (a) for a feasibility licence—subsection 33(2); and
- (b) for a commercial licence—subsection 42(2); and
- (c) for a research and demonstration licence—subsection 52(2);
and
- (d) for a transmission and infrastructure licence—
subsection 61(3).

licence holder's representative: see subsection 201(2).

licence infrastructure, in relation to a licence, means 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.

licensing scheme: see subsection 29(1).

listed WHS law: see section 221.

management plan: the **management plan** for a licence is a plan, for the offshore infrastructure activities and other activities that are to be carried out under the licence, that has been approved by the Regulator under the licensing scheme.

Note: See section 114 (licensing scheme must provide for management plans).

master, in relation to a vessel, means the person having command or charge of the vessel.

meets the merit criteria:

- (a) for when a feasibility licence **meets the merit criteria**, see section 34; and
- (b) for when a commercial licence **meets the merit criteria**, see section 44; and
- (c) for when a research and demonstration licence **meets the merit criteria**, see section 53; and
- (d) for when a transmission and infrastructure licence **meets the merit criteria**, see section 62.

NOPSEMA means the National Offshore Petroleum Safety and Environmental Management Authority.

OEI inspection means an inspection conducted by an OEI inspector in the exercise of the OEI 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 Act.

OEI inspector means a person appointed as an OEI inspector under section 192.

offshore electricity infrastructure levy has the same meaning as in the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021*.

offshore electricity transmission infrastructure has the meaning given by section 11.

offshore infrastructure activity means the construction, installation, commissioning, operation, maintenance or decommissioning of:

- (a) offshore renewable energy infrastructure; or
- (b) offshore electricity transmission infrastructure.

offshore infrastructure information has the meaning given by section 291.

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.

Offshore Infrastructure Registrar Special Account means the Offshore Infrastructure Registrar Special Account established by section 171.

offshore premises means any of the following:

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- (a) offshore renewable energy infrastructure in the Commonwealth offshore area;
- (b) offshore electricity transmission infrastructure in the Commonwealth offshore area;
- (c) 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 the carrying out of an activity in connection with the exercise of a licence holder's rights, or the performance of a licence holder's obligations, under this Act or the licence.

offshore renewable energy infrastructure has the meaning given by section 10.

own includes own jointly or own in part.

personal information has the same meaning as in the *Privacy Act 1988*.

premises has the same meaning as in the Regulatory Powers Act.

Note: See also subsection 197(2), which provides for an extended meaning of ***premises*** for the purposes of certain provisions of the Regulatory Powers Act.

prohibition notice: see subsection 207(2).

proposed commercial offshore infrastructure project, in relation to a feasibility licence (including an application for a feasibility licence): see paragraph 30(a).

protection zone means a protection zone determined by the Regulator under subsection 142(1).

Register means the Register of Offshore Infrastructure Licences kept under section 162.

Registrar means the Offshore Infrastructure Registrar.

Note: See section 153.

Regulator means NOPSEMA.

Note: See section 175.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

renewable energy product means:

- (a) electricity generated or obtained from one or more renewable energy resources; or
- (b) any thing that embodies or contains energy that was generated or obtained from one or more renewable energy resources, for the purposes of storing, transmitting or using the energy.

renewable energy resource has the meaning given by section 13.

research and demonstration licence means a licence granted under section 52.

safety zone: see subsection 136(2).

Secretary means the Secretary of the Department.

this Act includes the regulations.

transmission and infrastructure licence means a licence granted under section 61.

vacated area, in relation to a licence (including a licence that is no longer in effect), means any area that:

- (a) was at any time part of the licence area; and
- (b) is no longer part of the licence area:
 - (i) because the licence has ceased to be in effect; or
 - (ii) because the licence has been varied to remove the area; or
 - (iii) because the licence has been extended, but the extension does not apply to the area; or
 - (iv) because the licence has been surrendered in respect of the area; or
 - (v) for any other reason;

and, in relation to a commercial licence that was granted on the basis of a particular feasibility licence, includes an area that:

- (c) is a vacated area in relation to the feasibility licence; and

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(d) is not part of the licence area of the commercial licence.

vessel means any kind of vessel used in navigation by water, however propelled or moved.

Work Health and Safety Act: see section 226.

9 Datum provisions

- (1) Subject to subsection (2), the position on the surface of the Earth of a point, a line or an area is to be determined, for the purposes of this Act, by reference to the Australian Geodetic Datum as defined in Gazette No. 84 of 6 October 1966 (AGD66 geodetic data set).
- (2) The regulations may:
 - (a) provide for the position on the surface of the Earth of a point, a line or an area to be determined in some other way for the purposes of this Act; and
 - (b) make provision for matters of a transitional nature arising from a change in the way the position on the surface of the Earth of a point, a line or an area is to be determined.
- (3) Subsection (2) does not authorise the regulations to provide for any change to the position on the surface of the Earth of a point, line or area.
- (4) Regulations made for the purposes of subsection (2) may apply, adopt or incorporate, with or without modification, any matter contained in any instrument or other writing as in force at a particular time or as in force from time to time.

10 Meaning of *offshore renewable energy infrastructure*

- (1) For the purposes of this Act, *offshore renewable energy infrastructure* means fixed or tethered 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.
- (2) The following are also ***offshore renewable energy infrastructure***:
 - (a) any infrastructure, structure or installation that would be offshore renewable energy infrastructure except that it is being constructed, installed or decommissioned;
 - (b) any infrastructure, structure or installation that would be offshore renewable energy infrastructure except that it has temporarily or accidentally ceased to be fixed or tethered infrastructure.

Exclusions

- (3) Despite subsections (1) and (2), the following are not ***offshore renewable energy infrastructure***:
 - (a) an infrastructure facility within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
 - (b) a facility within the meaning of Schedule 3 to that Act;
 - (c) 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);
 - (d) a cable:
 - (i) that is laid on or beneath the seabed that lies beneath the Commonwealth offshore area; and
 - (ii) that is not connected to any place in Australia; and
 - (iii) that is not connected to anything else in, or inside the inner limits of, the Commonwealth offshore area.

Note: See also section 309 (pre-existing infrastructure).

11 Meaning of *offshore electricity transmission infrastructure*

- (1) For the purposes of this Act, ***offshore electricity transmission infrastructure*** means 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).

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- (2) The following are also ***offshore electricity transmission infrastructure***:
- (a) any infrastructure, structure or installation that would be offshore electricity transmission infrastructure except that it is being constructed, installed or decommissioned;
 - (b) any infrastructure, structure or installation that would be offshore electricity transmission infrastructure except that it has temporarily or accidentally ceased to be fixed or tethered infrastructure.

Exclusions

- (3) Despite subsections (1) and (2), the following are not ***offshore electricity transmission infrastructure***:
- (a) an infrastructure facility within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
 - (b) a facility within the meaning of Schedule 3 to that Act;
 - (c) 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);
 - (d) a cable:
 - (i) that is laid on or beneath the seabed that lies beneath the Commonwealth offshore area; and
 - (ii) that is not connected to any place in Australia; and
 - (iii) that is not connected to anything else in, or inside the inner limits of, the Commonwealth offshore area.

Note: See also section 309 (pre-existing infrastructure).

12 Offshore renewable energy infrastructure and offshore electricity transmission infrastructure

To avoid doubt, a single piece of infrastructure may be both offshore renewable energy infrastructure and offshore electricity transmission infrastructure.

13 Meaning of *renewable energy resource*

- (1) For the purposes of this Act, a *renewable energy resource* is any of the following from which energy may be obtained:
- (a) wind and air flow;
 - (b) wind-generated waves;
 - (c) tides;
 - (d) ocean currents;
 - (e) light or heat from the sun;
 - (f) rain;
 - (g) geothermal heat;
 - (h) a resource, event or circumstance prescribed by the regulations for the purposes of this paragraph.

Regulations

- (2) For the purposes of this Act, the regulations may provide that a resource, event or circumstance referred to in subsection (1) has the meaning prescribed by the regulations.
- (3) For the purposes of this Act, the regulations may make provision for and in relation to limiting the meaning of a resource, event or circumstance referred to in subsection (1).

Chapter 2—Regulation of offshore infrastructure activities

Part 1—Prohibition of unauthorised offshore infrastructure activities

14 Simplified outline of this Part

It is prohibited to construct, install, commission, operate, maintain or decommission:

- (a) offshore renewable energy infrastructure; or
- (b) offshore electricity transmission infrastructure;

in the Commonwealth offshore area without a licence or other authorisation under this Act.

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

- (1) A person contravenes this subsection if:
- (a) the person constructs, installs, commissions, operates, maintains or decommissions fixed or tethered infrastructure; and
 - (b) the fixed or tethered infrastructure is:
 - (i) offshore renewable energy infrastructure; or
 - (ii) offshore electricity transmission infrastructure; and
 - (c) the fixed or tethered infrastructure is in the Commonwealth offshore area.

Exception—licence or other authorisation

- (2) Subsection (1) does not apply to conduct that is:
- (a) authorised by a licence; or
 - (b) otherwise authorised or required by or under this Act.

Note 1: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Note 2: A licence authorises the construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure or offshore electricity transmission infrastructure only if there is a management plan for the licence and the licence holder has provided financial security in relation to the infrastructure.

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years.

Civil penalty

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

Civil penalty: 3,000 penalty units.

Part 2—Declaring areas for offshore renewable energy infrastructure

Division 1—Introduction

16 Simplified outline of this Part

The Minister may declare an area in the Commonwealth offshore area if the Minister is satisfied that the area is suitable for offshore renewable energy infrastructure.

A declaration may allow feasibility licences, commercial licences and research and demonstration licences to be granted in respect of licence areas in the declared area (transmission and infrastructure licences are not limited to declared areas). The declaration can limit the kinds of licences that may be granted, and require conditions to be imposed on them.

The Part also provides for the variation and revocation of declarations, and consultation requirements that must be satisfied before a declaration is made, varied or revoked.

Division 2—Declared areas

17 Declared areas

- (1) Subject to subsection (3), the Minister may, by legislative instrument, declare a specified area in the Commonwealth offshore area for the purposes of this Act.
- (2) An area declared under subsection (1) is a **declared area** for the purposes of this Act.
- (3) The Minister may declare an area only if:
 - (a) a notice proposing to declare the area has been published under section 18; and
 - (b) the day specified in the notice under paragraph 18(d) as the day by which submissions may be made has passed; and
 - (c) the Minister has consulted:
 - (i) the Defence Minister; and
 - (ii) the Minister administering section 1 of the *Navigation Act 2012*; and
 - (d) the Minister is satisfied that the area is suitable for offshore renewable energy infrastructure.
- (4) A declared area:
 - (a) need not be continuous; and
 - (b) may be all of, or part of, the area specified in the notice under paragraph 18(a).
- (5) A declaration must set out the following:
 - (a) the declared area;
 - (b) any conditions under section 20 that the declaration is subject to.
- (6) Subsection 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to a declaration.

Note: For revocation of a declaration, see section 26 of this Act. For variation of a declaration, see sections 22 to 25 of this Act.

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18 Notice of proposal to declare an area

If the Minister proposes to declare an area, the Minister must publish a notice on the Department's website that:

- (a) specifies the area that the Minister proposes to declare; and
- (b) invites submissions from the public on the proposal; and
- (c) specifies how submissions may be made; and
- (d) specifies the day by which submissions may be made (which must be at least 60 days after the day the notice is published); and
- (e) includes any other information that the Minister considers appropriate.

19 Making a decision

- (1) In deciding for the purposes of paragraph 17(3)(d) whether an area is suitable for offshore renewable energy infrastructure, the Minister must have regard to the following:
 - (a) the potential impacts of the construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure in the area on other marine users and interests;
 - (b) any submissions received in accordance with the notice under section 18;
 - (c) any advice received as a result of the consultation mentioned in paragraph 17(3)(c);
 - (d) Australia's international obligations in relation to the area.
- (2) The Minister may also have regard to any other matters that the Minister considers relevant.
- (3) If the Minister is not satisfied that the whole of the proposed declared area is suitable for all kinds of offshore renewable energy infrastructure, the Minister may:
 - (a) decide not to make a declaration; or
 - (b) do either or both of the following, as the Minister thinks appropriate:

- (i) declare a part of the proposed declared area that the Minister is satisfied is suitable for offshore renewable energy infrastructure;
- (ii) declare an area subject to such conditions under section 20 as the Minister considers will make the declared area suitable for offshore renewable energy infrastructure.

20 Conditions that apply to a declaration

- (1) This section applies if the Minister thinks it appropriate to make a declaration subject to conditions under this section, as mentioned in subparagraph 19(3)(b)(ii).
- (2) The declaration may provide that any of the following may not be granted in respect of the declared area or a specified part of the declared area:
 - (a) feasibility licences;
 - (b) commercial licences;
 - (c) research and demonstration licences.
- (3) The declaration may provide that a licence, or a specified kind of licence, granted in respect of the declared area or a specified part of the declared area may not authorise specified kinds of offshore infrastructure activities.
- (4) The declaration may provide that a licence, or a specified kind of licence, granted in respect of the declared area or a specified part of the declared area must be subject to conditions specified in the declaration.
- (5) Subsections (3) and (4) do not apply to transmission and infrastructure licences.
- (6) The declaration may provide that the Minister may revoke the declaration under section 26 in circumstances specified in the declaration.

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21 Period for which a declaration remains in force

- (1) Subject to subsection (2), a declaration remains in force until it is revoked under section 26.
- (2) A declaration may provide that the declaration ceases to have effect on a specified day.

Effect of cessation or revocation on existing licences

- (3) The cessation or revocation of a declaration does not cause a licence in force in respect of the declared area, or a part of the declared area, to cease to be in force.

Note 1: However, 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. See sections 37 (extending the term of a feasibility licence), 47 (extending the term of a commercial licence) and 56 (extending the term of a research and demonstration licence).

Note 2: 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)).

Sunsetting not affected

- (4) To avoid doubt, nothing in this section, or section 22, affects the operation of Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003*.

Division 3—Varying a declaration

22 Variation to extend period or increase declared area

- (1) The Minister may, by legislative instrument, vary a declaration for one or more of the following purposes:
 - (a) to extend the period for which the declaration is to be in force, by changing the day on which the declaration ceases to have effect under subsection 21(2) to a later day;
 - (b) to add an area or areas in the Commonwealth offshore area to the declared area.
- (2) The Minister may only make a variation under subsection (1) if:
 - (a) a notice proposing to vary the declaration has been published under section 24; and
 - (b) the day specified in the notice under paragraph 24(1)(e) as the day by which submissions may be made has passed; and
 - (c) the Minister has consulted:
 - (i) the Defence Minister; and
 - (ii) the Minister administering section 1 of the *Navigation Act 2012*; and
 - (d) the Minister is satisfied that the declared area, or the declared area as varied, is suitable for offshore renewable energy infrastructure.
- (3) In deciding for the purposes of paragraph (2)(d) whether an area is suitable for offshore renewable energy infrastructure, the Minister must have regard to the following:
 - (a) the potential impacts of the construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure in the area on other marine users and interests;
 - (b) any submissions received in accordance with the notice under section 24;
 - (c) any advice received as a result of the consultation mentioned in paragraph (2)(c) of this section;
 - (d) Australia's international obligations in relation to the area.

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- (4) The Minister may also have regard to any other matters that the Minister considers relevant.

23 Variation of conditions, or to reduce declared area

- (1) The Minister may, by legislative instrument, vary a declaration for one or more of the following purposes:
- (a) to remove a part of the declared area;
 - (b) to make the declaration subject to any of the conditions mentioned in section 20;
 - (c) to vary or omit a condition mentioned in section 20 that the declaration is subject to.
- (2) The Minister may only make a variation under subsection (1) if:
- (a) a notice proposing to vary the declaration has been published under section 24; and
 - (b) the day specified in the notice under paragraph 24(1)(e) as the day by which submissions may be made has passed; and
 - (c) the Minister has consulted:
 - (i) the Defence Minister; and
 - (ii) the Minister administering section 1 of the *Navigation Act 2012*; and
 - (d) the Minister is satisfied that the declared area would be suitable for offshore renewable energy infrastructure if the variation were made.
- (3) In deciding for the purposes of paragraph (2)(d) whether an area is suitable for offshore renewable energy infrastructure, the Minister must have regard to the following:
- (a) the potential impacts of the construction, installation, commissioning, operation, maintenance or decommissioning of offshore renewable energy infrastructure in the area on other marine users and interests;
 - (b) any submissions received in accordance with the notice under section 24;
 - (c) any advice received as a result of the consultation mentioned in paragraph (2)(c) of this section;
 - (d) Australia's international obligations in relation to the area.

- (4) The Minister may also have regard to any other matters that the Minister considers relevant.

Effect of variation on existing and new licences

- (5) A variation of a declaration under this section 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*).
- (6) However:
- (a) the variation applies in relation 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
 - (b) 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
 - (c) subsection (5) does not prevent the Minister varying a pre-existing licence under a provision of Chapter 3 to impose, vary or revoke a condition of the licence in a way that is consistent with the variation of the declaration.

Note 1: See sections 37 (extending the term of a feasibility licence), 47 (extending the term of a commercial licence) and 56 (extending the term of a research and demonstration licence). The provisions of a declaration do not affect transmission and infrastructure licences.

Note 2: See also sections 38 (varying a feasibility licence), 48 (varying a commercial licence) and 57 (varying a research and demonstration licence).

24 Consultation on proposed variation

- (1) For the purposes of paragraphs 22(2)(a) and 23(2)(a), the Minister must publish a notice on the Department's website that:
- (a) identifies the declaration that is proposed to be varied; and
 - (b) specifies the proposed variation; and
 - (c) invites submissions from the public on the proposal; and
 - (d) specifies how submissions may be made; and

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- (e) specifies the day by which submissions may be made (which must be at least 30 days after the day the notice is published); and
 - (f) includes any other information that the Minister considers appropriate.
- (2) 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 that covers any part of the declared area.

25 Varying a declaration to make minor and technical corrections

The Minister may, by legislative instrument, vary a declaration to make a minor change to a matter stated in the declaration (including to correct a minor or technical error).

Division 4—Revoking a declaration

26 Revoking a declaration

- (1) Subject to subsection (2), the Minister may, by legislative instrument, revoke a declaration.

Note: Any licence in force in respect of a licence area in the declared area remains in force. However, the end day of such a licence may not be extended, and no further licences may be granted in respect of the declared area (including a commercial licence in relation to a feasibility licence already in force).

- (2) The Minister may revoke a declaration under subsection (1) only if:
- (a) a notice proposing to revoke the declaration has been published under section 27; and
 - (b) the day specified in the notice under paragraph 27(1)(d) as the day by which submissions may be made has passed; and
 - (c) one or more of the following applies:
 - (i) the Minister becomes aware of circumstances which the Minister considers justify the revocation;
 - (ii) the Minister is satisfied that the declared area is no longer suitable for offshore renewable energy infrastructure, and could not be made suitable by a variation under section 23;
 - (iii) the Minister is satisfied that circumstances specified in the declaration under subsection 20(6) apply.
- (3) In deciding whether to revoke a declaration under subsection (1), the Minister:
- (a) must have regard to any submissions received in accordance with the notice under section 27; and
 - (b) must have regard to Australia's international obligations in relation to the declared area; and
 - (c) may have regard to any other matters that the Minister considers relevant.

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27 Revoking a declaration—consultation

- (1) For the purposes of paragraph 26(2)(a), the Minister must publish a notice on the Department’s website that:
 - (a) identifies the declaration that is proposed to be revoked; and
 - (b) invites submissions from the public on the proposal; and
 - (c) specifies how submissions may be made; and
 - (d) specifies the day by which submissions may be made (which must be at least 30 days after the day the notice is published); and
 - (e) includes any other information that the Minister considers appropriate.
- (2) 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

28 Simplified outline of this Part

This Part provides for the 4 kinds of licences that may be granted under this Act to eligible persons.

- A feasibility licence authorises the licence holder to assess the feasibility of an offshore infrastructure project and apply for a commercial licence for the project.
- A commercial licence authorises the licence holder to carry out an offshore infrastructure project for the purpose of exploiting renewable energy resources. A commercial licence can only be granted to the holder of a feasibility licence.
- A research and demonstration licence authorises research into, or demonstration of, offshore renewable energy infrastructure or offshore electricity transmission infrastructure.
- A transmission and infrastructure licence authorises the licence holder to store, transmit or convey electricity (which may or may not be from renewable sources) or a renewable energy product. Unlike the other kinds of licence, a transmission and infrastructure licence can cover one or more areas outside a declared area.

The regulations must prescribe a licensing scheme dealing with application procedures and other matters relating to licences.

For a licence to be granted to an eligible person, the licence must meet merit criteria relating to the capabilities and suitability of the eligible person, the viability of the project to be carried out under the licence and other matters prescribed by the licensing scheme.

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A licence is granted for a particular term, until the end day of the licence, which may be extended in certain circumstances. After the end day, the licence ceases to authorise most offshore infrastructure activities but remains in force until it is cancelled or surrendered (see Division 3 of Part 2 of this Chapter for cancellation and surrender of licences).

29 Licensing scheme

- (1) The regulations must prescribe a scheme (the *licensing scheme*) relating to:
 - (a) applications for licences; and
 - (b) the offering and granting of licences; and
 - (c) transfers of licences; and
 - (d) changes in control of licence holders; and
 - (e) management plans; and
 - (f) any other matters that this Act provides for the licensing scheme to deal with.

- (2) The licensing scheme may include any other provision that may, under this Act, be included in the regulations.

Note 1: For example, the licensing scheme may include provisions about fees and levies (see Part 3 of Chapter 5).

Note 2: The regulations may provide that an application under this Act is taken to have been made only if a fee or levy has been paid (see subsections 189(5) and 190(8)).

Division 2—Feasibility licences

30 Purpose of a feasibility licence

The purpose of a feasibility licence is to provide for the licence holder to:

- (a) assess the feasibility of an offshore infrastructure project that the licence holder proposes to carry out in the licence area under a commercial licence (the *proposed commercial offshore infrastructure project* for the feasibility licence); and
- (b) apply for a commercial licence in relation to the proposed commercial offshore infrastructure project, if the licence holder chooses to do so.

31 Activities authorised by a feasibility licence

- (1) A feasibility licence authorises the licence holder to construct, install, commission, operate, maintain and decommission offshore renewable energy infrastructure in the licence area, so long as:
 - (a) there is a management plan for the licence; and
 - (b) the construction, installation, commissioning, operation, maintenance or decommissioning is carried out in accordance with the management plan and the conditions of the licence; and
 - (c) the licence holder is in compliance with sections 117 and 118 (financial security).
- (2) The rights conferred on the licence holder by this section are subject to this Act.

32 Applications for feasibility licences

- (1) The licensing scheme must prescribe procedures for:
 - (a) eligible persons to be invited to apply for feasibility licences; and
 - (b) eligible persons to apply for feasibility licences; and
 - (c) applications for feasibility licences to be considered; and
-

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- (d) the Minister to offer to grant feasibility licences.
- (2) The licensing scheme must require an application for a feasibility licence to describe the proposed commercial offshore infrastructure project for the feasibility licence.

Financial offers

- (3) The licensing scheme may provide for:
 - (a) the Minister to invite eligible persons that have applied for feasibility licences to submit financial offers in relation to their applications; and
 - (b) the Minister to decide which applicant or applicants to offer to grant licences to on the basis of their financial offers; and
 - (c) such a licence to be granted only if the amount of the financial offer is paid to the Commonwealth.

33 Grant of a feasibility licence

- (1) The Minister may, by written notice, grant a feasibility licence in respect of an area to an eligible person if:
 - (a) the eligible person applies for the licence under the licensing scheme; and
 - (b) the area is a declared area, or a part of a declared area, under a declaration at the time the licence is granted; and
 - (c) the Minister is satisfied that granting the licence would be consistent with any conditions that apply to the declaration; and
 - (d) the area meets the requirements in subsection (4); and
 - (e) the Minister is satisfied that the licence meets the merit criteria; and
 - (f) any other requirements prescribed by the licensing scheme are met.
- (2) 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).

Note: See the definition of *vacated area* in section 8.

- (3) The notice of grant of a feasibility licence must:
- (a) specify the licence area; and
 - (b) state the day on which the licence comes into force; and
 - (c) state the end day of the licence; and
 - (d) specify the conditions that are to apply to the licence; and
 - (e) include any other matters prescribed by the licensing scheme; and
 - (f) be given in accordance with the licensing scheme.
- (4) The licence area:
- (a) must be continuous; and
 - (b) must not include any part of the licence area of any other feasibility licence or commercial licence; and
 - (c) must not exceed the maximum area prescribed by the licensing scheme; and
 - (d) must be entirely within the Commonwealth offshore area at the time the licence is granted.

34 Merit criteria for a feasibility licence

- (1) For the purposes of this Act, a feasibility licence held or applied for by an eligible person *meets the merit criteria* if:
- (a) 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
 - (b) the proposed commercial offshore infrastructure project is likely to be viable; and
 - (c) the eligible person is suitable to hold the licence; and
 - (d) any criteria prescribed by the licensing scheme are satisfied.
- (2) The licensing scheme may provide for:
- (a) matters that may or must be considered in any decision under this Act about whether a feasibility licence meets the merit criteria; and
 - (b) the suitability of an eligible person to hold a feasibility licence to be assessed with regard to the suitability of other

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- persons (including another person that controls the eligible person); and
- (c) procedures for making decisions under this Act about whether a feasibility licence meets the merit criteria.

35 Conditions that apply to a feasibility licence

- (1) A feasibility licence is subject to the following conditions:
- (a) a condition that the licence holder must comply with any requirement to pay an amount of offshore electricity infrastructure levy;
 - (b) if the declaration that applies to the licence area requires the licence to be subject to conditions—those conditions;
 - (c) any conditions prescribed by the licensing scheme;
 - (d) a condition that the following people must comply with the management plan for the licence, if there is one:
 - (i) the licence holder;
 - (ii) any other person carrying out activities under this Act or the licence on behalf of the licence holder;
 - (e) any conditions imposed on the licence under:
 - (i) subsection (2); or
 - (ii) subsection 38(1).
- (2) The Minister may, when granting a feasibility licence, impose such conditions on the licence as the Minister thinks fit.
- (3) Without limiting subsection (2), the conditions that the Minister may impose on a feasibility licence include conditions relating to any commercial licence that may be granted in relation to the feasibility licence.

Licence holder must comply with licence conditions

- (4) The holder of a feasibility licence must comply with the conditions of the licence.

36 Term of a feasibility licence

- (1) Before granting a feasibility licence, the Minister must determine the *end day* of the licence.
- (2) The *end day* of a feasibility licence must not be later than the day after the period of 7 years beginning on:
 - (a) the day on which the licence is granted; or
 - (b) if a later day is specified under paragraph 33(3)(b) as the day on which the licence comes into force—that later day.

However, this subsection does not limit an extension of a feasibility licence under provisions of the licensing scheme made for the purposes of section 37.

- (3) The licensing scheme may provide for the manner in which the end day of a feasibility licence is to be determined.

Effect of granting a commercial licence

- (4) If a commercial licence is granted in relation to a feasibility licence, then:
 - (a) in a case where the licence area of the commercial licence is the whole of the licence area of the feasibility licence (including any vacated area)—the feasibility licence ceases to have effect when the commercial licence takes effect; or
 - (b) in any other case—the *end day* of the feasibility licence (in respect of the whole of the licence area of the feasibility licence) is the day the commercial licence comes into force.

Note: If paragraph (b) applies, the feasibility licence remains in effect and may be surrendered under section 74 if the conditions for surrender in that section are satisfied.

- (5) Subsection (4) has effect despite any extension under section 37.
- (6) However, if there are different end days in respect of different parts of the licence area, subsection (4) does not affect any such end day that occurs before the day the commercial licence comes into force.

Note: There may be different end days in respect of different parts of the licence area as a result of extensions under provisions of the licensing scheme made for the purposes of section 37.

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Effect of end day

- (7) On or after the end day of a feasibility licence, the licence does not authorise the construction, installation, operation or maintenance of offshore renewable energy infrastructure, except to the extent necessary to decommission infrastructure.

Note: The licence remains in force until cancelled under section 73 or surrendered under section 74.

37 Extending the term of a feasibility licence

- (1) The licensing scheme may provide for the following:
- (a) the Minister to extend the end day of a feasibility licence:
 - (i) on the application of the licence holder; or
 - (ii) on the Minister's own initiative;
 - (b) such an extension to be in respect of only part of the licence area (as long as this does not result in the part of the licence area that has not reached the end day being non-continuous).

Note 1: 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 section 23).

Note 2: For review of decisions, see section 297.

- (2) An extension must not result in the end day of a feasibility licence being later than the day after the end of 7 years after the extension is made.
- (3) 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.
- (4) If an extension results in there being different end days for different parts of a licence area, subsection 36(7) applies separately in respect of each such part.

38 Varying a feasibility licence

- (1) The Minister may, by written notice to the holder of a feasibility licence, vary the licence to:
- (a) impose a condition on the licence; or

- (b) vary or revoke a condition imposed on the licence under paragraph (a) or subsection 35(2); or
 - (c) remove one or more areas from the licence area.
- (2) A variation under subsection (1) may be made on the application of the licence holder, which must be made in accordance with the licensing scheme.
- (3) A variation under subsection (1) may also be made on the Minister's own initiative, but only if:
- (a) the variation is made at the same time as:
 - (i) the Minister extends the end day of the licence under a provision of the licensing scheme made for the purposes of section 37, if the extension is made as a result of an application by the licence holder; or
 - (ii) the Minister makes a decision to transfer the licence under subsection 70(1); or
 - (iii) the Minister makes another variation under this section as a result of an application by the licence holder; or
 - (b) 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.
- (4) An area may be removed under paragraph (1)(c) only if:
- (a) the licence holder has not carried out any offshore infrastructure activities in the area; and
 - (b) the Minister is satisfied that the licence holder does not intend to carry out any offshore infrastructure activities in the area under the licence or under a commercial licence; and
 - (c) the removal does not result in the remaining licence area being non-continuous.

Division 3—Commercial licences

39 Purpose of a commercial licence

The purpose of a commercial licence is to provide for the licence holder to carry out an offshore infrastructure project in the licence area for the purpose of exploiting renewable energy resources in the licence area.

40 Activities authorised by a commercial licence

- (1) A commercial licence authorises the licence holder to construct, install, commission, operate, maintain and decommission offshore renewable energy infrastructure in the licence area, so long as:
 - (a) there is a management plan for the licence; and
 - (b) the construction, installation, commissioning, operation, maintenance or decommissioning is carried out in accordance with the management plan and the conditions of the licence; and
 - (c) the licence holder is in compliance with sections 117 and 118 (financial security).
- (2) A commercial licence does not authorise the licence holder to construct, install, commission, operate or maintain offshore electricity transmission infrastructure that is not also offshore renewable energy infrastructure.
- (3) The rights conferred on the licence holder by this section are subject to this Act.

41 Applications for commercial licences

- (1) An eligible person that holds a feasibility licence may apply for the Minister to grant a commercial licence to the eligible person.
- (2) The licensing scheme must prescribe procedures for:
 - (a) an application under subsection (1) to be made; and
 - (b) such an application to be considered; and

- (c) the Minister to offer to grant a commercial licence in response to such an application.
- (3) The licensing scheme must require an application for a commercial licence to describe the offshore infrastructure project to be carried out under the licence.

42 Grant of a commercial licence

- (1) The Minister may, by written notice, grant a commercial licence in respect of an area to an eligible person if:
 - (a) the eligible person holds a feasibility licence; and
 - (b) the eligible person applies for the commercial licence under the licensing scheme; and
 - (c) the area is a declared area, or a part of a declared area, under a declaration at the time the licence is granted; and
 - (d) the Minister is satisfied that granting the licence would be consistent with any conditions that apply to the declaration; and
 - (e) the area meets the requirements in subsection (4); and
 - (f) the Regulator has, under the licensing scheme, approved a management plan for the commercial licence; and
 - (g) 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 in relation to the feasibility licence; and
 - (h) the Minister is satisfied that either:
 - (i) the offshore infrastructure project to be carried out under the licence is substantially similar to the proposed commercial offshore infrastructure project described, under subsection 32(2), in the application for the feasibility licence; or
 - (ii) if subparagraph (i) does not apply—the offshore infrastructure project to be carried out under the licence is appropriate, having regard to the matters in subsection (5); and
 - (i) the Minister is satisfied that the licence meets the merit criteria; and

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- (j) any other requirements prescribed by the licensing scheme are met.

Note: For review of decisions, see section 297.

- (2) The **licence area** of a commercial licence is the area in respect of which the licence is granted (other than any part of that area that becomes a vacated area).

Note: See the definition of **vacated area** in section 8.

- (3) The notice of grant of a commercial licence must:

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

- (4) The licence area:

- (a) must be continuous; and
- (b) must not include any part of the licence area of any other commercial licence or feasibility licence; and
- (c) must not exceed the maximum area prescribed by the licensing scheme; and
- (d) must be entirely within the Commonwealth offshore area at the time the licence is granted; and
- (e) must consist of, or be entirely within, the licence area of the feasibility licence referred to in paragraph (1)(a).

- (5) For the purposes of subparagraph (1)(h)(ii), the Minister must have regard to the following:

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

43 Minister may require applicant to consult etc.

- (1) This section applies if:
 - (a) an eligible person that holds a feasibility licence has applied for the Minister to grant a commercial licence; and
 - (b) the Minister is considering whether to grant the commercial licence.
- (2) The Minister may, by notice in writing, require the eligible person to do any of the following:
 - (a) conduct specified kinds of consultations in relation to the application;
 - (b) prepare a revised management plan for the commercial licence and apply to the Regulator, under the licensing scheme, for the Regulator to approve the revised management plan;
 - (c) anything else in relation to the application that the Minister thinks fit.
- (3) The Minister may cease considering whether to grant the commercial licence until the requirement is complied with.
- (4) A notice under subsection (2) is not a legislative instrument.
- (5) The Minister must give a copy of a notice under subsection (2) to the Registrar.
- (6) The Registrar must include the notice in the Register in relation to the feasibility licence and any commercial licence granted as a result of the application.

44 Merit criteria for a commercial licence

- (1) For the purposes of this Act, a commercial licence held or applied for by an eligible person *meets the merit criteria* if:
 - (a) the eligible person has the technical and financial capability to carry out the offshore infrastructure project that is to be carried out under the licence; and
 - (b) the offshore infrastructure project is likely to be viable; and
 - (c) the eligible person is suitable to hold the licence; and

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- (d) any criteria prescribed by the licensing scheme are satisfied.
- (2) The licensing scheme may provide for:
 - (a) matters that may or must be considered in any decision under this Act about whether a commercial licence meets the merit criteria; and
 - (b) the suitability of an eligible person to hold a commercial licence to be assessed with regard to the suitability of other persons (including another person that controls the eligible person); and
 - (c) procedures for making decisions under this Act about whether a commercial licence meets the merit criteria; and
 - (d) how subsection (1) is to be applied to an offshore infrastructure project that has begun to be, or is being, carried out.

45 Conditions that apply to a commercial licence

- (1) A commercial licence is subject to the following conditions:
 - (a) a condition that the licence holder must comply with any requirement to pay an amount of offshore electricity infrastructure levy;
 - (b) if the declaration that applies to the licence area requires the licence to be subject to conditions—those conditions;
 - (c) any conditions prescribed by the licensing scheme;
 - (d) a condition that the following people must comply with the management plan for the licence:
 - (i) the licence holder;
 - (ii) any other person carrying out activities under this Act or the licence on behalf of the licence holder;
 - (e) any conditions imposed on the licence under:
 - (i) subsection (2); or
 - (ii) subsection 48(1).
- (2) The Minister may, when granting a commercial licence, impose such conditions on the licence as the Minister thinks fit.

Licence holder must comply with licence conditions

- (3) The holder of a commercial licence must comply with the conditions of the licence.

46 Term of a commercial licence

- (1) Before granting a commercial licence, the Minister must determine the *end day* of the licence.
- (2) The *end day* of a commercial licence must not be later than the day after the period of 40 years beginning on:
 - (a) the day on which the licence is granted; or
 - (b) if a later day is specified under paragraph 42(3)(b) as the day on which the licence comes into force—that later day.

However, this subsection does not limit an extension of a commercial licence under provisions of the licensing scheme made for the purposes of section 47.

- (3) The licensing scheme may provide for the manner in which the end day of a commercial licence is to be determined.

Effect of end day

- (4) On or after the end day of a commercial licence, the licence does not authorise the construction, installation, operation or maintenance of offshore renewable energy infrastructure, except to the extent necessary to decommission infrastructure.

Note: The licence remains in force until cancelled under section 73 or surrendered under section 74.

47 Extending the term of a commercial licence

- (1) The licensing scheme may provide for the following:
 - (a) the holder of a commercial licence to apply to the Minister to extend the end day of the licence;
 - (b) procedures for the Minister to decide whether or not to grant such an extension;
 - (c) such an extension to be granted in respect of the whole licence area, or a part of the licence area (as long as this does

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not result in the part of the licence area that has not reached the end day being non-continuous);

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

Note 1: 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 section 23).

Note 2: For review of decisions, see section 297.

- (2) An application under provisions of the licensing scheme made for the purposes of paragraph (1)(a) may only be made at least 5 years before the end day of the licence.
- (3) An extension must not result in the end day of a commercial licence being later than the day after the end of 40 years after the extension is made.
- (4) 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.
- (5) If an extension results in there being different end days for different parts of a licence area, subsection 46(4) applies separately in respect of each such part.

48 Varying a commercial licence

- (1) The Minister may, by written notice to the holder of a commercial licence, vary the licence to:
- (a) impose a condition on the licence; or
 - (b) vary or revoke a condition imposed on the licence under paragraph (a) or subsection 45(2); or
 - (c) remove one or more areas from the licence area.
- (2) A variation under subsection (1) may be made on the application of the licence holder, which must be made in accordance with the licensing scheme.
- (3) A variation under subsection (1) may also be made on the Minister's own initiative, but only if:
- (a) the variation is made at the same time as:

- (i) the Minister extends the end day of the licence under a provision of the licensing scheme made for the purposes of section 47, if the extension is made as a result of an application by the licence holder; or
 - (ii) the Minister makes a decision to transfer the licence under subsection 70(1); or
 - (iii) the Minister makes another variation under this section as a result of an application by the licence holder; or
- (b) 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.
- (4) An area may be removed under paragraph (1)(c) only if:
- (a) the licence holder has not carried out any offshore infrastructure activities in the area; and
 - (b) the Minister is satisfied that the licence holder does not intend to carry out any offshore infrastructure activities in the area under the licence; and
 - (c) the removal does not result in the remaining licence area being non-continuous.

Division 4—Research and demonstration licences

49 Purpose of a research and demonstration licence

The purpose of a research and demonstration licence is to provide for the licence holder to carry out an offshore infrastructure project for any of the following purposes:

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

50 Activities authorised by a research and demonstration licence

- (1) A research and demonstration 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, so long as:
 - (a) there is a management plan for the licence; and
 - (b) the construction, installation, commissioning, operation, maintenance or decommissioning is carried out in accordance with the management plan and the conditions of the licence; and
 - (c) the licence holder is in compliance with sections 117 and 118 (financial security).
- (2) The rights conferred on the licence holder by this section are subject to this Act.
- (3) To avoid doubt, electricity stored, transmitted or conveyed under a research and demonstration licence need not be a renewable energy product.

51 Applications for research and demonstration licences

- (1) The licensing scheme must prescribe procedures for:
 - (a) eligible persons to apply for research and demonstration licences; and
 - (b) applications for research and demonstration licences to be considered; and
 - (c) the Minister to offer to grant research and demonstration licences.
- (2) The licensing scheme must require an application for a research and demonstration licence to describe the offshore infrastructure project to be carried out under the licence.

52 Grant of a research and demonstration licence

- (1) The Minister may, by written notice, grant a research and demonstration licence in respect of an area to an eligible person if:
 - (a) the eligible person applies for the licence under the licensing scheme; and
 - (b) the area is a declared area, or a part of a declared area, under a declaration at the time the licence is granted; and
 - (c) the Minister is satisfied that granting the licence would be consistent with any conditions that apply to the declaration; and
 - (d) the area meets the requirements in subsection (4); and
 - (e) if the area includes 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
 - (f) the Minister is satisfied that the licence meets the merit criteria; and
 - (g) any other requirements prescribed by the licensing scheme are met.

Note: For review of decisions, see section 297.

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- (2) 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).

Note: See the definition of *vacated area* in section 8.

- (3) The notice of grant of a research and demonstration licence must:
- (a) specify the licence area; and
 - (b) state the day on which the licence comes into force; and
 - (c) state the end day of the licence; and
 - (d) specify the conditions that are to apply to the licence; and
 - (e) include any other matters prescribed by the licensing scheme; and
 - (f) be given in accordance with the licensing scheme.
- (4) The licence area:
- (a) must be continuous; and
 - (b) must be entirely within the Commonwealth offshore area at the time the licence is granted.

53 Merit criteria for a research and demonstration licence

- (1) For the purposes of this Act, a research and demonstration licence held or applied for by an eligible person *meets the merit criteria* if:
- (a) 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; and
 - (b) the offshore infrastructure project is likely to be viable; and
 - (c) the eligible person is suitable to hold the licence; and
 - (d) any criteria prescribed by the licensing scheme are satisfied.
- (2) The licensing scheme may provide for:
- (a) matters that may or must be considered in any decision under this Act about whether a research and demonstration licence meets the merit criteria; and
 - (b) the suitability of an eligible person to hold a research and demonstration licence to be assessed with regard to the suitability of other persons (including another person that controls the eligible person); and

- (c) procedures for making decisions under this Act about whether a research and demonstration licence meets the merit criteria; and
- (d) how subsection (1) is to be applied to an offshore infrastructure project that has begun to be, or is being, carried out.

54 Conditions that apply to a research and demonstration licence

- (1) A research and demonstration licence is subject to the following conditions:
 - (a) a condition that the licence holder must comply with any requirement to pay an amount of offshore electricity infrastructure levy;
 - (b) if the declaration that applies to the licence area requires the licence to be subject to conditions—those conditions;
 - (c) any conditions prescribed by the licensing scheme;
 - (d) a condition that the following people must comply with the management plan for the licence, if there is one:
 - (i) the licence holder;
 - (ii) any other person carrying out activities under this Act or the licence on behalf of the licence holder;
 - (e) any conditions imposed on the licence under:
 - (i) subsection (2); or
 - (ii) subsection 57(1).
- (2) The Minister may, when granting a research and demonstration licence, impose such conditions on the licence as the Minister thinks fit.

Licence holder must comply with licence conditions

- (3) The holder of a research and demonstration licence must comply with the conditions of the licence.

55 Term of a research and demonstration licence

- (1) Before granting a research and demonstration licence, the Minister must determine the *end day* of the licence.

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- (2) The **end day** of a research and demonstration licence must not be later than the day after the period of 10 years beginning on:
- (a) the day on which the licence is granted; or
 - (b) if a later day is specified under paragraph 52(3)(b) as the day on which the licence comes into force—that later day.

However, this subsection does not limit an extension of a research and demonstration licence under provisions of the licensing scheme made for the purposes of section 56.

- (3) The licensing scheme may provide for the manner in which the end day of a research and demonstration licence is to be determined.

Effect of end day

- (4) On or after the end day of a research and demonstration licence, the licence does not authorise the construction, installation, operation or maintenance of offshore renewable energy infrastructure or offshore electricity transmission infrastructure, except to the extent necessary to decommission infrastructure.

Note: The licence remains in force until cancelled under section 73 or surrendered under section 74.

56 Extending the term of a research and demonstration licence

- (1) The licensing scheme may provide for the following:
- (a) the Minister to extend the end day of a research and demonstration licence:
 - (i) on the application of the licence holder; or
 - (ii) on the Minister's own initiative;
 - (b) such an extension to be in respect of only part of the licence area (as long as this does not result in the part of the licence area that has not reached the end day being non-continuous);
 - (c) more than one such extension to be granted in respect of a particular licence.

Note 1: 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 section 23).

Note 2: For review of decisions, see section 297.

- (2) 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.
- (3) 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.
- (4) If an extension results in there being different end days for different parts of a licence area, subsection 55(4) applies separately in respect of each such part.

57 Varying a research and demonstration licence

- (1) The Minister may, by written notice to the holder of a research and demonstration licence, vary the licence to:
 - (a) impose a condition on the licence; or
 - (b) vary or revoke a condition imposed on the licence under paragraph (a) or subsection 54(2); or
 - (c) remove one or more areas from the licence area.
- (2) A variation under subsection (1) may be made on the application of the licence holder, which must be made in accordance with the licensing scheme.
- (3) A variation under subsection (1) may also be made on the Minister's own initiative, but only if:
 - (a) the variation is made at the same time as:
 - (i) the Minister extends the end day of the licence under a provision of the licensing scheme made for the purposes of section 56, if the extension is made as a result of an application by the licence holder; or
 - (ii) the Minister makes a decision to transfer the licence under subsection 70(1); or
 - (iii) the Minister makes another variation under this section as a result of an application by the licence holder; or
 - (b) 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.
- (4) An area may be removed under paragraph (1)(c) only if:

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

Division 5—Transmission and infrastructure licences

58 Purpose of a transmission and infrastructure licence

The purpose of a transmission and infrastructure licence is to provide for the licence holder to carry out an offshore infrastructure project for any of the following purposes:

- (a) to assess the feasibility of storing, transmitting or conveying electricity or a renewable energy product in or through the licence area;
- (b) to store, transmit or convey electricity or a renewable energy product in or through the licence area.

59 Activities authorised by a transmission and infrastructure licence

- (1) 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, so long as:
 - (a) there is a management plan for the licence; and
 - (b) the construction, installation, commissioning, operation, maintenance or decommissioning is carried out in accordance with the management plan and the conditions of the licence; and
 - (c) the licence holder is in compliance with sections 117 and 118 (financial security).
- (2) The rights conferred on the licence holder by this section are subject to this Act.
- (3) To avoid doubt, electricity stored, transmitted or conveyed under a transmission and infrastructure licence need not be a renewable energy product.

60 Applications for transmission and infrastructure licences

- (1) The licensing scheme must prescribe procedures for:

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- (a) eligible persons to apply for transmission and infrastructure licences; and
 - (b) applications for transmission and infrastructure licences to be considered; and
 - (c) the Minister to offer to grant transmission and infrastructure licences.
- (2) 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.

61 Grant of a transmission and infrastructure licence

- (1) The Minister may, by written notice, grant a transmission and infrastructure licence to an eligible person if:
- (a) the eligible person applies for the licence under the licensing scheme; and
 - (b) 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
 - (c) the Minister is satisfied that the licence meets the merit criteria; and
 - (d) any other requirements prescribed by the licensing scheme are met.

Note: For review of decisions, see section 297.

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

Note: The licence area of a transmission and infrastructure licence is not required to be within a declared area.

- (3) The *licence area* of a transmission and infrastructure licence consists of the area or areas mentioned in subsection (2) (other than any part of those areas that becomes a vacated area).

Note: See the definition of *vacated area* in section 8.

- (4) The notice of grant of a transmission and infrastructure licence must:
- (a) specify the licence area; and
 - (b) state the day on which the licence comes into force; and
 - (c) state the end day of the licence; and
 - (d) specify the conditions that are to apply to the licence; and
 - (e) include any other matters prescribed by the licensing scheme; and
 - (f) be given in accordance with the licensing scheme.

62 Merit criteria for a transmission and infrastructure licence

- (1) For the purposes of this Act, a transmission and infrastructure licence held or applied for by an eligible person *meets the merit criteria* if:
- (a) 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; and
 - (b) the offshore infrastructure project is likely to be viable; and
 - (c) the eligible person is suitable to hold the licence; and
 - (d) any criteria prescribed by the licensing scheme are satisfied.
- (2) The licensing scheme may provide for:
- (a) matters that may or must be considered in any decision under this Act about whether a transmission and infrastructure licence meets the merit criteria; and
 - (b) the suitability of an eligible person to hold a transmission and infrastructure licence to be assessed with regard to the suitability of other persons (including another person that controls the eligible person); and
 - (c) procedures for making decisions under this Act about whether a transmission and infrastructure licence meets the merit criteria; and
 - (d) how subsection (1) is to be applied to an offshore infrastructure project that has begun to be, or is being, carried out.

Section 63

63 Conditions that apply to a transmission and infrastructure licence

- (1) A transmission and infrastructure licence is subject to the following conditions:
 - (a) a condition that the licence holder must comply with any requirement to pay an amount of offshore electricity infrastructure levy;
 - (b) any conditions prescribed by the licensing scheme;
 - (c) a condition that the following people must comply with the management plan for the licence, if there is one:
 - (i) the licence holder;
 - (ii) any other person carrying out activities under this Act or the licence on behalf of the licence holder;
 - (d) any conditions imposed on the licence under:
 - (i) subsection (2); or
 - (ii) subsection 66(1).
- (2) The Minister may, when granting a transmission and infrastructure licence, impose such conditions on the licence as the Minister thinks fit.

Licence holder must comply with licence conditions

- (3) The holder of a transmission and infrastructure licence must comply with the conditions of the licence.

64 Term of a transmission and infrastructure licence

- (1) Before granting a transmission and infrastructure licence, the Minister must determine the *end day* of the licence.
- (2) The licensing scheme may provide for the manner in which the end day of a transmission and infrastructure licence is to be determined.

Effect of end day

- (3) On or after the end day of a transmission and infrastructure licence, the licence does not authorise the construction, installation,

operation or maintenance of offshore renewable energy infrastructure or offshore electricity transmission infrastructure, except to the extent necessary to decommission infrastructure.

Note: The licence remains in force until cancelled under section 73 or surrendered under section 74.

65 Extending the term of a transmission and infrastructure licence

- (1) The licensing scheme may provide for the following:
 - (a) the holder of a transmission and infrastructure licence to apply to the Minister to extend the end day of the licence;
 - (b) procedures for the Minister to decide whether or not to grant such an extension;
 - (c) such an extension to be granted in respect of the whole licence area, or a part of a licence area;
 - (d) more than one such extension to be granted in respect of a particular licence.

Note: For review of decisions, see section 297.

- (2) An extension must not apply to any part of a licence area that is not in the Commonwealth offshore area at the time the extension is granted.
- (3) If an extension results in there being different end days for different parts of a licence area, subsection 64(3) applies separately in respect of each such part.

66 Varying a transmission and infrastructure licence

- (1) The Minister may, by written notice to the holder of a transmission and infrastructure licence, vary the licence to:
 - (a) impose a condition on the licence; or
 - (b) vary or revoke a condition imposed on the licence under paragraph (a) or subsection 63(2); or
 - (c) remove one or more areas from the licence area.
- (2) A variation under subsection (1) may be made on the application of the licence holder, which must be made in accordance with the licensing scheme.

Section 66

- (3) A variation under subsection (1) may also be made on the Minister's own initiative, but only if:
- (a) the variation is made at the same time as:
 - (i) the Minister extends the end day of the licence under a provision of the licensing scheme made for the purposes of section 65, if the extension is made as a result of an application by the licence holder; or
 - (ii) the Minister makes a decision to transfer the licence under subsection 70(1); or
 - (iii) the Minister makes another variation under this section as a result of an application by the licence holder; or
 - (b) 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.
- (4) An area may be removed under paragraph (1)(c) only if:
- (a) the licence holder has not carried out any offshore infrastructure activities in the area; and
 - (b) the Minister is satisfied that the licence holder does not intend to carry out any offshore infrastructure activities in the area under the licence.

Part 2—General provisions about licences

Division 1—Introduction

67 Simplified outline of this Part

Licences may be transferred under Division 2. A licence transfer requires approval from the Minister, and arrangements must be made for any financial security under the licence.

Licences are not intended to be a form of property, and can be cancelled by the Minister in certain circumstances, including where the licence holder has failed to comply with a condition of the licence or has contravened a provision of this Act or the applied work health and safety provisions.

A licence holder may also apply to surrender a licence if certain conditions are met. A licence may be surrendered entirely, or in respect of only part of the licence area.

Division 4 contains miscellaneous provisions about licences.

Division 2—Licence transfers

68 Licences to be transferred only under this Division

A licence may only be transferred under this Division.

69 Application for transfer

- (1) This section applies if a licence holder (the *transferor*) proposes that the licence be transferred to another eligible person (the *transferee*)
- (2) The transferor or the transferee may apply to the Registrar for the licence to be transferred from the transferor to the transferee.
- (3) The licensing scheme must prescribe procedures for:
 - (a) an application under subsection (2) to be made; and
 - (b) the Minister to consider such an application.
- (4) The transferor may only make an application under subsection (2) with the agreement of the transferee.
- (5) The transferee may only make an application under subsection (2) with the agreement of the transferor.

70 Minister may transfer licence

- (1) The Minister may transfer a licence held by a licence holder (the *transferor*) to an eligible person (the *transferee*) if:
 - (a) an application for the transfer is made under section 69; and
 - (b) the Minister is satisfied that the licence would meet the merit criteria if it were held by the transferee; and
 - (c) the Minister is satisfied that the transferee will be able to comply with sections 117 and 118 (financial security), subject to section 72, in relation to the licence; and
 - (d) any other requirements prescribed by the licensing scheme are satisfied.

Note: For review of decisions, see section 297.

- (2) The Minister must give written notice of a decision under subsection (1) to the transferor and the transferee.
- (3) A transfer of a licence takes effect at the time specified in the notice under subsection (2). At that time:
 - (a) the transferor ceases to be the holder of the licence; and
 - (b) the transferee begins to be the holder of the licence.

71 Licence transfer does not affect conditions or end day

- (1) The transfer of a licence does not affect any conditions that apply to the licence.

Note: However, the Minister may vary or revoke the conditions that apply to a licence that is transferred, or impose further conditions—see sections 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)

- (2) The transfer of a licence does not affect the end day of the licence.

72 Financial security for a transferred licence

- (1) This section applies to a licence if:
 - (a) there is a management plan for the licence; and
 - (b) an application has been made under section 69 for the licence to be transferred from the licence holder (the *transferor*) to another eligible person (the *transferee*); and
 - (c) any of the following apply:
 - (i) the Minister is considering whether to transfer the licence;
 - (ii) the Minister has decided to transfer the licence;
 - (iii) the transfer has occurred.
- (2) The licensing scheme may require both:
 - (a) the transferor; and
 - (b) the transferee;to comply with sections 117 and 118 (financial security) in relation to the licence.

Chapter 3 Licensing

Part 2 General provisions about licences

Division 2 Licence transfers

Section 72

- (3) The licensing scheme may provide for the transferor's obligations under sections 117 and 118:
- (a) to cease, in whole or part, after the transferee has complied with equivalent obligations; or
 - (b) 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

73 Cancellation of licence

- (1) The Minister may, by written notice to a licence holder, cancel the licence if the Minister is satisfied that:
- (a) the licence holder has failed to comply with a condition of the licence; or
 - (b) the licence holder has contravened a provision of this Act, or the applied work health and safety provisions; or
 - (c) the licence does not meet the merit criteria; or
 - (d) the licence holder has failed to commence activities under the licence within a reasonable time; or
 - (e) the licence holder is not an eligible person; or
 - (f) a person has contravened subsection 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.

Note: For review of decisions, see section 297.

Consultation

- (2) Before deciding to cancel a licence under subsection (1), the Minister must:
- (a) by written notice to the licence holder, give at least 30 days notice of the Minister's intention to make the decision; and
 - (b) give a copy of the notice to such other persons (if any) as the Minister thinks fit.
- (3) The notice must:
- (a) set out the grounds for cancelling the licence; and
 - (b) invite a person to whom the notice, or a copy of the notice, has been given to make a written submission to the Minister about the proposal; and
 - (c) specify a time limit for making that submission.

Section 74

Making a decision on cancellation

- (4) In deciding whether to cancel a licence under subsection (1), the Minister must take into account:
- (a) any action taken by the licence holder:
 - (i) to address the circumstances that give rise to the grounds for cancelling the licence; or
 - (ii) to prevent the recurrence of similar circumstances; and
 - (b) any submissions made as mentioned in paragraph (3)(b).

Notice and effect of cancellation

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

Note: For remedial directions (including in relation to a licence that has been cancelled), see sections 126 and 127.

74 Surrender of licence

- (1) A licence holder may apply to the Minister, in writing, for the Minister to consent to the surrender of the licence in respect of an area (the *surrender area*) that is the whole or a part of the licence area.

Note: A licence may be surrendered before, on or after the end day of the licence.

- (2) The application must:
- (a) specify the surrender area; and
 - (b) set out the reasons for the surrender; and
 - (c) set out how each of the requirements in subsection (3) has been met.
- (3) The Minister must, by written notice to the licence holder, consent to the surrender if:
- (a) the licence holder has paid all fees and amounts due and payable under this Act or the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021*, or has made

arrangements for the payment of those fees and amounts that are satisfactory to:

- (i) for a fee charged by the Regulator on behalf of the Commonwealth—the Regulator; or
- (ii) for any other amount—the Registrar; and
- (b) the licence holder is in compliance with all of the conditions of the licence; and
- (c) the licence holder is in compliance with any other obligations under this Act in relation to the licence or the surrender area; and
- (d) 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
- (e) the licence holder has either:
 - (i) to the satisfaction of the Regulator, removed or caused to be removed from the surrender area all equipment or other property brought into the surrender area by any person engaged or concerned in the activities authorised by the licence; or
 - (ii) made arrangements that are satisfactory to the Regulator in relation to that equipment or property; and
- (f) the licence holder has, to the satisfaction of the Regulator, 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
- (g) 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.

Note: For review of decisions, see section 297.

- (4) If the Minister gives consent to the surrender, the licence holder may, by written notice to the Registrar accompanied by the notice of the Minister's consent, surrender the licence in respect of the surrender area.

Chapter 3 Licensing

Part 2 General provisions about licences

Division 3 Cancelling and surrendering licences

Section 74

- (5) The Registrar must, by notifiable instrument, give notice of the surrender. The surrender takes effect when the notice under this subsection is registered on the Federal Register of Legislation.
- (6) When the surrender takes effect:
- (a) if the surrender relates to the whole of the licence area—the licence ceases to be in force; or
 - (b) if the surrender relates to part of the licence area—that part ceases to be part of the licence area.

Note: For remedial directions (including in relation to a licence that has been surrendered), see sections 126 and 127.

Division 4—Other general provisions about licences

75 False or misleading information

A person commits an offence if:

- (a) the person gives information in, or in connection with, an application under:
 - (i) this Part, or Part 1, of this Chapter; or
 - (ii) a provision of the licensing scheme made for the purposes of a provision of this Part, or Part 1, of this Chapter; and
- (b) the person does so knowing that the information:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the information is misleading in a material particular.

Note: The same conduct may be an offence against both this section and section 137.1 of the *Criminal Code*.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

76 False or misleading documents

A person commits an offence if:

- (a) the person produces a document in, or in connection with, an application under:
 - (i) this Part, or Part 1, of this Chapter; or
 - (ii) a provision of the licensing scheme made for the purposes of a provision of this Part, or Part 1, of this Chapter; and
- (b) the person does so knowing that the document is false or misleading in a material particular.

Note: The same conduct may be an offence against both this section and section 137.2 of the *Criminal Code*.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

Section 77

77 Interference with other activities by licence holder

- (1) A person contravenes this subsection if:
- (a) the person is a licence holder; and
 - (b) the person carries out activities in the Commonwealth offshore area under or for the purposes of the licence; and
 - (c) those activities interfere with:
 - (i) navigation; or
 - (ii) the exercise of native title rights and interests (within the meaning of the *Native Title Act 1993*); or
 - (iii) fishing; or
 - (iv) the conservation of the resources of the sea or the seabed; or
 - (v) any activities being carried on by another person in accordance with the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; or
 - (vi) any other activities being lawfully carried on by another person; and
 - (d) the interference is greater than is necessary for:
 - (i) the reasonable exercise of the person's rights under this Act or the licence; or
 - (ii) the performance of the person's obligations under this Act or the licence.

Strict liability offence

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

Penalty: 100 penalty units.

Civil penalty provision

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

Civil penalty: 265 penalty units.

78 Interference with other activities by other person carrying out activities under licence

- (1) A person (the *first person*) contravenes this subsection if:
- (a) the first person is a licence holder; and
 - (b) another person carries out activities in the Commonwealth offshore area on behalf of the licence holder, or under an arrangement with the licence holder; and
 - (c) those activities interfere with:
 - (i) navigation; or
 - (ii) the exercise of native title rights and interests (within the meaning of the *Native Title Act 1993*); or
 - (iii) fishing; or
 - (iv) the conservation of the resources of the sea or the seabed; or
 - (v) any activities being carried on by another person in accordance with the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; or
 - (vi) any other activities that someone else is lawfully carrying out; and
 - (d) the interference is greater than is necessary for:
 - (i) the reasonable exercise of the first person's rights under this Act or the licence; or
 - (ii) the performance of the first person's obligations under this Act or the licence.

Strict liability offence

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

Penalty: 100 penalty units.

Civil penalty

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

Civil penalty: 265 penalty units.

Section 79

79 No conditions about payment of money

- (1) The conditions of a licence must not include a condition requiring the payment of money to the Regulator, the Registrar or the Commonwealth.
- (2) Subsection (1) does not apply to a condition mentioned in:
 - (a) paragraph 35(1)(a) (feasibility licences—requirement to pay offshore electricity infrastructure levy); or
 - (b) paragraph 45(1)(a) (commercial licences—requirement to pay offshore electricity infrastructure levy); or
 - (c) paragraph 54(1)(a) (research and demonstration licences—requirement to pay offshore electricity infrastructure levy); or
 - (d) paragraph 63(1)(a) (transmission and infrastructure licences—requirement to pay offshore electricity infrastructure levy).
- (3) Subsection (1) does not apply to a payment made in accordance with:
 - (a) section 117 or 119 (financial security); or
 - (b) regulations made for the purposes of section 117 or 119; or
 - (c) a provision of a management plan that relates to the obligations of a licence holder under section 117, 118 or 119; or
 - (d) a provision of the licensing scheme made for the purposes of subsection 32(3) (financial offers for feasibility licences).

80 Basis on which licences granted

A licence granted under this Act is granted on the basis that:

- (a) the licence may be cancelled under section 73; and
- (b) the licence may be varied under:
 - (i) for a feasibility licence—section 38; or
 - (ii) for a commercial licence—section 48; or
 - (iii) for a research and demonstration licence—section 57; or
 - (iv) for a transmission and infrastructure licence—section 66; and

- (c) the licence may be cancelled, revoked, terminated or varied by or under later legislation; and
- (d) no compensation is payable if the licence is cancelled, revoked, terminated or varied as mentioned in any of the above paragraphs.

81 Changes to the boundaries of the Commonwealth offshore area

- (1) If:
 - (a) a licence has been granted on the basis that an area (the *first area*) is within the Commonwealth offshore area; and
 - (b) as a result of a change to the boundary of the coastal waters of a State or Territory, the first area:
 - (i) ceases to be within the Commonwealth offshore area; and
 - (ii) falls within the coastal waters of the State or Territory;this Act applies in relation to the licence as if the first area were still within the Commonwealth offshore area.
- (2) Subsection (1):
 - (a) continues to apply to the first area only:
 - (i) while the licence remains in force; or
 - (ii) in relation to remediation or decommissioning in the first area after the licence ceases to be in force; and
 - (b) does not apply in relation to an extension of the end day of the licence; and
 - (c) if the licence is a feasibility licence—does not apply in relation to an application for a commercial licence in respect of the licence area.

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

Each of the following is declared not to be personal property for the purposes of the *Personal Property Securities Act 2009*:

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

Note: See paragraph 8(1)(k) of the *Personal Property Securities Act 2009*.

Part 3—Change in control of a licence holder

Division 1—Introduction

83 Simplified outline of this Part

A person who begins to control, or ceases to control, a licence holder may commit an offence or contravene a civil penalty provision if the change in control has not been approved by the Registrar.

The Registrar may obtain information, documents or evidence in relation to a change in control of a licence holder, or a possible change in control, in certain circumstances.

84 Meaning of *control* and *change in control* of licence holder

- (1) A person *controls* a licence holder if the person (whether alone or together with one or more other persons the person acts jointly with):
 - (a) holds the power to exercise, or control the exercise of, 20% or more of the voting rights in the licence holder; or
 - (b) holds, or holds an interest in, 20% or more of the issued securities in the licence holder.
- (2) 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.
- (3) The licensing scheme may prescribe a different percentage, or different percentages, to the percentage specified in paragraph (1)(a) or (b).
- (4) There is a *change in control* of a licence holder if:
 - (a) one or more persons (an *original controller*) control the licence holder at a particular time; and
 - (b) either:

- (i) 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
- (ii) 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.

85 Meaning of *approval period*

For the purposes of this Act, the *approval period*, for a change in control of a licence holder, means the period:

- (a) starting on the day the notice of approval for the change in control is given; and
- (b) ending at the earliest of the following:
 - (i) immediately after the change in control takes effect;
 - (ii) if the approval of a change in control is revoked—when the notice of revocation is given;
 - (iii) 9 months after the day the notice of approval is given.

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

86 Application for approval

A person who:

- (a) proposes to begin to control a licence holder; or
- (b) proposes to cease to control a licence holder;

may apply, in accordance with the licensing scheme, to the Registrar for approval of a change in control of the licence holder.

Note: 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 section 95).

87 Registrar must decide whether to approve change in control

Scope

- (1) This section applies if an application is made for approval of a change in control of a licence holder under section 86.

Decision

- (2) The Registrar must decide:
 - (a) to approve the change in control; or
 - (b) to refuse to approve the change in control.

Note: The applicant must be notified of the decision (see section 88).

- (3) Before deciding whether to approve or refuse to approve a change in control, the Registrar may consult with:
 - (a) the Regulator; or
 - (b) the Minister.
- (4) In deciding whether to approve or refuse to approve a change in control, the Registrar:
 - (a) must have regard to whether the licence would, if the change in control occurred, meet the merit criteria; and

- (b) must have regard to any matters prescribed by the licensing scheme; and
- (c) may have regard to the following matters:
 - (i) matters raised in consultations (if any) under subsection (3);
 - (ii) matters prescribed by the licensing scheme;
 - (iii) any other matters the Registrar considers relevant.

88 Notice of decision

Notice of approval

- (1) 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

- (2) 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.

89 Retention and return of instrument

If an application under section 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 subsection 87(2):

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

90 Limit of effect of approval

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.

Section 91

91 Notification of change in circumstances before or during approval period

- (1) A person contravenes this subsection if:
- (a) an application is made for approval of a change in control of a licence holder under section 86; and
 - (b) the person proposes to:
 - (i) begin to control the licence holder; or
 - (ii) cease to control the licence holder; and
 - (c) 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 subsection 87(4); and
 - (d) the change in circumstances occurs either:
 - (i) before the Registrar makes a decision under subsection 87(2); or
 - (ii) if the change in control is approved—during the approval period for the change in control; and
 - (e) the person does not notify the Registrar of the matters in paragraph (c) as soon as practicable after the change in circumstances occurs.

Note 1: Under subsection 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.

Note 2: Contravention of this subsection is also a ground for cancellation of a licence (see paragraph 73(1)(f)).

Civil penalty provision

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

Civil penalty: 480 penalty units.

92 Revocation of approval

Revocation

- (1) The Registrar may revoke an approval of a change in control of a licence holder in the approval period for the change in control if:
-

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

Notice of revocation

- (2) 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.

93 Notification of change in control

- (1) A person contravenes this subsection if:
 - (a) the Registrar approves a change in control of a licence holder; and
 - (b) the change in control takes effect within the approval period for the change in control; and
 - (c) the person given notice of the approval of the change in control does not notify the Registrar of the matter in paragraph (b) within 10 days after the end of the approval period.

Civil penalty provision

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

Civil penalty: 480 penalty units.

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

Note: Subsection (2) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

Chapter 3 Licensing

Part 3 Change in control of a licence holder

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

Section 94

94 Change in control information to be entered in Register

- (1) 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 subsection (2) in the Register in the record for the licence.
- (2) The matters are the following:
 - (a) the date of any application made under section 86;
 - (b) the date of any decision made under subsection 87(2);
 - (c) the date the change in control took effect.
- (3) The Registrar may make such other notation in the Register as the Registrar considers appropriate.

Division 3—Change in control must be approved

95 Change in control must be approved by Registrar

- (1) A person contravenes this subsection if:
- (a) there is a change in control of a licence holder; and
 - (b) the person:
 - (i) begins to control the licence holder; or
 - (ii) ceases to control the licence holder; and
 - (c) either:
 - (i) the Registrar has not approved the change in control; or
 - (ii) 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.

Note: Contravention of this subsection is also a ground for cancellation of a licence (see paragraph 73(1)(f)).

Fault-based offence

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

Penalty: Imprisonment for 5 years or 1,200 penalty units, or both.

Civil penalty provision

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

Civil penalty: 2,400 penalty units.

- (4) Subsection (3) 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.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

Section 96

96 Notification of change in control that takes effect without approval

- (1) A person contravenes this subsection if:
- (a) there is a change in control of a licence holder; and
 - (b) the person:
 - (i) begins to control the licence holder; or
 - (ii) ceases to control the licence holder; and
 - (c) either:
 - (i) the Registrar has not approved the change in control; or
 - (ii) 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
 - (d) the person does not notify the Registrar of the change in control within 30 days of the change taking effect.

Note: Contravention of this subsection is also a ground for cancellation of a licence (see paragraph 73(1)(f)).

Civil penalty provision

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

Civil penalty: 480 penalty units.

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

Note: Subsection (2) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

- (4) Subsection (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.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

97 Notification of change in control by licence holder

- (1) A person contravenes this section if:
- (a) the person is a licence holder; and
 - (b) there is a change in control of the licence holder; and
 - (c) either:
 - (i) the Registrar has not approved the change in control; or
 - (ii) 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
 - (d) the licence holder knows or ought reasonably to know the change in control has taken effect; and
 - (e) the licence holder does not notify the Registrar of the change in control within 30 days of the change taking effect.

Civil penalty provision

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

Civil penalty: 480 penalty units.

- (3) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (2).

Division 4—Information-gathering powers

98 Registrar may obtain information and documents

Scope

- (1) This section applies if:
 - (a) one of the following applies:
 - (i) the Registrar reasonably believes that there has been, or that there will be, a change in control of a licence holder;
 - (ii) an application is made under section 86 for an approval of a change in control of a licence holder;
 - (iii) the approval period for the change in control of a licence holder has not ended and the Registrar reasonably believes 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
 - (b) the Registrar reasonably believes that a person has information or a document, or is capable of giving evidence, that is relevant to the matter in subparagraph (a)(i), (ii) or (iii).

Requirement

- (2) The Registrar may, by notice in writing given to the person, require the person:
 - (a) to give the Registrar, within the period and in the manner specified in the notice, any such information; or
 - (b) to produce to the Registrar, within the period and in the manner specified in the notice, any such documents; or
 - (c) if the person is an individual—to appear before the Registrar at a time and place specified in the notice to:
 - (i) give any such evidence, either orally or in writing; and
 - (ii) produce any such documents; or

- (d) 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 to:
 - (i) give any such evidence, either orally or in writing; and
 - (ii) produce any such documents.
- (3) The period specified under paragraph (2)(a) or (b) must not be shorter than 14 days after the notice is given.
- (4) A time specified under paragraph (2)(c) or (d) must not be earlier than 14 days after the notice is given.

Notice to set out the effect of offence and civil penalty provisions

- (5) A notice under subsection (2) must set out the effect of the following provisions:
 - (a) section 99 (about compliance with the notice);
 - (b) section 104 (about giving false or misleading information);
 - (c) section 105 (about giving false or misleading documents);
 - (d) section 106 (about giving false or misleading evidence).

99 Complying with information-gathering notice

- (1) A person contravenes this subsection if:
 - (a) the person is given a notice under subsection 98(2); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the notice.

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (5).

Penalty: 100 penalty units.

Civil penalty provision

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

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Civil penalty: 150 penalty units.

Continuing offences and continuing contraventions of civil penalty provisions

- (4) The maximum penalty for each day that an offence under subsection (6) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

Note: To the extent that subsection (6) provides, subsection (2) is a continuing offence under section 4K of the *Crimes Act 1914*.

- (5) The maximum civil penalty for each day that a contravention of subsection (7) continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: To the extent that subsection (6) provides, subsection (3) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

- (6) Subsections (4) and (5) apply only in relation to a contravention of a requirement to which paragraph 98(2)(a) or (b) applies.

100 Power to examine on oath or affirmation

The Registrar may:

- (a) administer an oath or affirmation to a person required to appear before the Registrar under section 98; and
- (b) examine that person on oath or affirmation.

101 Self-incrimination

- (1) An individual is not excused from giving information or evidence or producing a document under section 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.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (2) However:

- (a) the information or evidence given or the document produced; and

- (b) the giving of the information or evidence or the production of the document; and
 - (c) 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;
- are not admissible in evidence against the individual in any criminal proceedings, other than:
- (d) proceedings for an offence against subsection 99(2) or section 104, 105 or 106; or
 - (e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Division.
- (3) 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 section 98, the individual is not excused from giving the information or evidence or producing the document under those provisions on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

102 Copies of documents

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.

103 Registrar may retain documents

- (1) The Registrar may take possession of a document produced under this Division, and retain it for as long as is reasonably necessary.
- (2) 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.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

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- (4) 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.

104 False or misleading information

A person commits an offence if:

- (a) the person gives information in compliance or purported compliance with a notice under subsection 98(2); and
- (b) the person does so knowing that the information:
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the information is misleading in a material particular.

Note: The same conduct may be an offence against both this section and section 137.1 of the *Criminal Code*.

Penalty: 100 penalty units.

105 False or misleading documents

A person commits an offence if:

- (a) the person produces a document in compliance or purported compliance with a notice under subsection 98(2); and
- (b) the person does so knowing that the document is false or misleading in a material particular.

Note: The same conduct may be an offence against both this section and section 137.2 of the *Criminal Code*.

Penalty: 100 penalty units.

106 False or misleading evidence

A person commits an offence if:

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

Penalty: Imprisonment for 12 months.

Division 5—Tracing and anti-avoidance

107 Tracing

- (1) Subsection (4) applies if a person (whether alone or together with one or more other persons the person acts jointly with):
- (a) holds the power to exercise, or control the exercise of, 20% or more of the voting rights in:
 - (i) a corporation (**higher party**); or
 - (ii) a partnership (a general partner of which is a **higher party**); or
 - (b) holds, or holds an interest in, 20% or more of the issued securities in a corporation (**higher party**); or
 - (c) holds 20% or more of the interests in:
 - (i) a trust (a trustee of which is a **higher party**); or
 - (ii) a partnership (a general partner of which is a **higher party**);

including because of one or more applications of this section, and:

- (d) the higher party (whether alone or together with one or more other persons the person acts jointly with) holds the power to exercise, or control the exercise of, 20% or more of the voting rights in:
 - (i) a corporation (**lower party**); or
 - (ii) a partnership (**lower party**) other than the partnership mentioned in subparagraph (a)(ii) or subparagraph (c)(ii) (if either of those subparagraphs apply); or
- (e) the higher party holds, or holds an interest in, 20% or more of the issued securities in a corporation (**lower party**); or
- (f) the higher party holds 20% or more of the interests in:
 - (i) a trust (**lower party**); or
 - (ii) a partnership (**lower party**) other than the partnership mentioned in subparagraph (a)(ii) or subparagraph (c)(ii) (if either of those subparagraphs apply).

- (2) A person **holds 20% or more of the interests** in a trust if the person holds 20% or more of:
- (a) the beneficial interest in the income or property of the trust; or
 - (b) the interest in units in a unit trust.
- (3) A person **holds 20% or more of the interests** in a partnership 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.
- (4) For the purposes of this Part:
- (a) 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
 - (b) 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
 - (c) if paragraph (1)(f) applies, the person is taken to hold the interests in the lower party that the higher party holds.
- (5) The licensing scheme may prescribe a different percentage, or different percentages, to the percentage specified in paragraphs (1)(a) to (f) and subsection (2) or (3).
- (6) In this section:
- general partner** means a partner of a partnership whose liability in relation to the partnership is not limited.

108 Anti-avoidance

- (1) A person contravenes this subsection if:
- (a) the person, either alone or with one or more other persons:
 - (i) enters into a scheme; or
 - (ii) begins to carry out a scheme; or
 - (iii) carries out a scheme; and

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- (b) 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
- (c) as a result of that scheme or part of that scheme, a person avoided the application of Division 3.

Note: Contravention of this subsection is also a ground for cancellation of a licence (see paragraph 73(1)(f)).

Fault-based offence

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

Penalty: 1,200 penalty units.

Civil penalty provision

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

Civil penalty: 2,400 penalty units.

- (4) In this section:

scheme means the following:

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

Division 6—Other provisions

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

None of the following is concerned with the effect in law of an instrument lodged under this Part:

- (a) the Minister;
- (b) the Registrar;
- (c) a person acting under the direction or authority of the Minister or the Registrar.

110 Falsified documents

A person commits an offence if:

- (a) the person produces or tenders in evidence a document; and
- (b) the document falsely purports to be a copy of or extract from an instrument given to the Registrar under this Part.

Note: The same conduct may be an offence against both this section and section 137.2 of the *Criminal Code*.

Penalty: 50 penalty units.

111 Inspection of instruments

The Registrar must ensure that all instruments, or copies of instruments, subject to inspection under this Part are open for inspection at all convenient times, by any person on payment of a fee calculated under the licensing scheme.

112 Evidentiary provisions

Certified copies and extracts

- (1) The Registrar may supply a copy of or extract from any instrument lodged with the Registrar under this Part, certified by the Registrar to be a true copy or true extract.

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- (2) The certified copy or extract is admissible in evidence in all courts and proceedings without further proof or production of the original.

Evidentiary certificate

- (3) The Registrar may issue a written certificate:
- (a) stating that an entry, matter or thing required or permitted by or under this Part to be made or done:
 - (i) has been made or done; or
 - (ii) has not been made or done; or
 - (b) stating that an entry, matter or thing required by or under this Part not to be made or done:
 - (i) has not been made or done; or
 - (ii) has been made or done.
- (4) The certificate is to be received in all courts and proceedings as prima facie evidence of the statements in the certificate.

Criminal proceedings—copy of certificate to be given to defendant 14 days before certificate admitted in evidence

- (5) A certificate must not be admitted in evidence under subsection (4) in proceedings for an offence unless:
- (a) the person charged with the offence; or
 - (b) 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 so admitted, been given a copy of the certificate together with notice of the intention to produce the certificate as evidence in the proceedings.

Person signing the certificate may be called to give evidence

- (6) If, under subsection (4), a 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:
- (a) called as a witness for the prosecution; and
 - (b) cross-examined as if the person who signed the certificate had given evidence of the matters stated in the certificate.

- (7) However, subsection (6) does not entitle the person charged to require the person who signed the certificate to be called as a witness for the prosecution unless:
- (a) 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 so called; or
 - (b) the court, by order, allows the person charged to require the person who signed the certificate to be so called.

Evidence in support, or in rebuttal, of matters in certificate to be considered on its merits

- (8) Any evidence given in support, or in rebuttal, of a matter stated in a certificate issued under subsection (3) 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 section.

Chapter 4—Management and protection of infrastructure

Part 1—Management and operation of infrastructure

Division 1—Introduction

113 Simplified outline of this Part

A licence holder that proposes to construct, install, commission, operate, maintain or decommission offshore infrastructure must have a management plan for the licence. A management plan is a plan for these activities, and other activities to be carried out under a licence, that is prepared by the licence holder and approved by the Regulator under Division 2.

Division 3 requires a licence holder to maintain or remove property used in activities under this Act.

Division 4 requires a licence holder to provide financial security to cover decommissioning and other costs.

Division 2—Management plans

114 Licensing scheme must provide for management plans

- (1) The licensing scheme must provide for:
- (a) licence holders to prepare plans for the offshore infrastructure activities and other activities that are to be carried out under licences; and
 - (b) procedures for a licence holder to apply to the Regulator for the Regulator to approve such a plan; and
 - (c) procedures for the Regulator to consider such an application, and approve or refuse to approve the plan.

Note 1: A plan that has been approved for a licence by the Regulator under the licensing scheme is a *management plan* for the licence.

Note 2: The holder of a licence must have a management plan for the licence in order to carry out offshore infrastructure activities under the licence.

- (2) Without limiting subsection (1), the licensing scheme may provide for any of the following:
- (a) matters to which the Regulator may or must have regard when considering whether to approve a management plan;
 - (b) the revision of management plans, including requirements for a licence holder to revise a management plan and procedures for the Regulator to consider a revised management plan and approve, or refuse to approve, the revised management plan;
 - (c) requirements for consultation in relation to an application for approval of a management plan or a revised management plan;
 - (d) requirements for a licence holder to give notifications to the Regulator in relation to the design of offshore renewable energy infrastructure and offshore electricity transmission infrastructure;
 - (e) 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;

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- (f) requirements that, for the purposes of paragraph 74(3)(d), the licence holder must comply with for the licence to be surrendered.
- (3) Despite section 46AA of the *Acts Interpretation Act 1901*, the licensing scheme may provide for a management plan to provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.
- (4) A management plan is not a legislative instrument.

115 Matters that a management plan must address

- (1) A management plan for a licence must address the following matters:
 - (a) how the licence holder is to carry out offshore infrastructure activities and other activities under the licence;
 - (b) any matters that the conditions of the licence require to be addressed in the management plan;
 - (c) environmental management, including how the licence holder is to comply with any obligations under the *Environment Protection and Biodiversity Conservation Act 1999*, or regulations under that Act, in relation to the activities to be carried out under the licence;
 - (d) how the licence holder is complying with, or is to comply with, section 116 (maintenance and removal of property etc. by licence holder);
 - (e) how the licence holder is complying with, or is to comply with, sections 117 and 118 (financial security);
 - (f) requirements for the licence holder to keep, at a place in Australia, records in relation to offshore infrastructure activities, and make those records available for inspection under the applied work health and safety provisions;
 - (g) any other matters that this Act requires to be addressed in a management plan;
 - (h) any matters prescribed by the licensing scheme;
 - (i) any matters required by the Regulator under subsection (3).

- (2) Without limiting paragraph (1)(h), the licensing scheme may require a management plan to address any of the following:
- (a) the design, infrastructure integrity and maintenance of licence infrastructure;
 - (b) work health and safety;
 - (c) emergency management;
 - (d) the making and keeping of records;
 - (e) requirements to consult with any person that may be affected by activities carried out under the licence;
 - (f) the outcomes of any consultation, including consultation carried out before the management plan was approved or while the management plan is in effect;
 - (g) monitoring, auditing, managing and reviewing the management plan and the licence holder's compliance with the management plan.
- (3) The Regulator may require a management plan for a licence to make any reasonable provision for any matters, or to impose any reasonable requirements on the licence holder, in relation to the offshore infrastructure activities to be carried out under the licence, that the Regulator considers appropriate.

Division 3—Operations

116 Maintenance and removal of property etc. by licence holder

Maintenance of property etc.

- (1) A licence holder must maintain in good condition and repair all structures that are, and all equipment and other property that is:
 - (a) in the licence area; and
 - (b) used in connection with activities authorised or required by or under this Act.

Removal of property etc.

- (2) A licence holder must remove from the licence area all structures that are, and all equipment and other property that is, neither used nor to be used in connection with the activities:
 - (a) in which the holder is or will be engaged; and
 - (b) that are authorised or required by or under this Act.

Exception

- (3) Subsections (1) and (2) do not apply in relation to any structure, equipment or other property that was not brought into the licence area by or with the authority of the licence holder.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the *Regulatory Powers Act*).

Strict liability offence

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

Penalty: 100 penalty units.

Civil penalty provision

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

Civil penalty: 525 penalty units.

Section has effect subject to other provisions etc.

- (6) This section has effect subject to:
- (a) any other provision of this Act; and
 - (b) a direction given by the Regulator under section 121 (general directions); and
 - (c) a direction given by the Regulator or the Minister under Division 3 (remedial directions) of Part 2 of this Chapter; and
 - (d) the management plan for the licence, if there is one; and
 - (e) any other law.

Division 4—Financial security

117 Requirement to provide financial security

- (1) The holder of a licence for which there is a management plan must, at all times while the licence is in force, provide the Commonwealth with financial security sufficient to pay any costs, expenses and liabilities that may arise in connection with, or as a result of:
- (a) the decommissioning of licence infrastructure; and
 - (b) the removal of equipment and other property from the licence area or a vacated area; and
 - (c) the remediation of the licence area and vacated areas, and any other area affected by activities carried out under the licence.

Note: The purposes for which the financial security may be used are not limited to the matters in paragraphs (a), (b) and (c) (see subsection 119(2)).

- (2) The regulations may provide for the Regulator:
- (a) to refuse to approve a management plan for a licence unless the licence holder has provided the financial security required by subsection (1) in relation to the activities to be carried out under the licence in accordance with the management plan; or
 - (b) to refuse to approve a revised management plan for a licence unless the licence holder has provided the financial security required by subsection (1) in relation to the activities to be carried out under the licence in accordance with the management plan as revised.
- (3) The regulations may provide for the financial security required by subsection (1):
- (a) to be required to be provided in a form acceptable to the Regulator; or
 - (b) to be required at different times in relation to particular licence infrastructure, so long as the financial security that relates to particular infrastructure is provided before that infrastructure is constructed or installed in the licence area; or

- (c) to cease to be required in relation to particular licence infrastructure, property or remediation activities if the Regulator is satisfied that no further costs, expenses or liabilities are likely to arise in relation to that infrastructure or property or those activities.
- (4) The regulations may prescribe:
 - (a) arrangements that may be treated as financial security for the purposes of this section; and
 - (b) arrangements that are not to be treated as financial security for the purposes of this section; and
 - (c) methods for working out the amount of financial security that a licence holder must provide under subsection (1) (which may take into account costs, expenses and liabilities that might arise from emergencies or unexpected circumstances); and
 - (d) circumstances in which the Regulator may accept a reduced amount of financial security.

118 Contravention of requirement to provide financial security

- (1) A person contravenes this subsection if:
 - (a) subsection 117(1) requires the person to provide the Commonwealth with financial security in accordance with section 117; and
 - (b) the person does not comply with the requirement.

Fault-based offence

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

Penalty: 300 penalty units.

Civil penalty

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

Civil penalty: 480 penalty units.

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119 Recovery and application of financial security

- (1) 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 Act, to be recovered by the Commonwealth from a financial security provided by the licence holder.
- (2) To avoid doubt, the costs, expenses, liabilities and debts mentioned in subsection (1):
 - (a) are not limited to the costs, expenses and liabilities mentioned in subsection 117(1); and
 - (b) may include amounts of offshore electricity infrastructure levy that are due and payable to the Commonwealth by the licence holder.
- (3) An amount:
 - (a) received by the Commonwealth as financial security, or in respect of a financial security, for the purposes of this section; or
 - (b) recovered by the Commonwealth from a financial security provided for the purposes of this section;is to be credited to the Offshore Infrastructure Registrar Special Account.
- (4) An amount referred to in subsection (3) must be:
 - (a) 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 under regulations made for the purposes of subsection (1); or
 - (b) paid to the Regulator for the purposes of:
 - (i) 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 subsection (1); or
 - (ii) to the extent that the Regulator is satisfied that the amount is no longer required—refunding the amount; or

- (c) to the extent that the Regulator is satisfied that the amount is no longer required—refunded by the Commonwealth; or
- (d) if paragraphs (a), (b) and (c) do not apply—retained by the Commonwealth until it is:
 - (i) applied as mentioned in paragraph (a); or
 - (ii) paid to the Regulator as mentioned in paragraph (b); or
 - (iii) refunded as mentioned in paragraph (c).

Part 2—Directions powers

Division 1—Introduction

120 Simplified outline of this Part

The Regulator may give a licence holder directions about the licence holder's activities under this Act.

The Regulator and the Minister may give a licence holder or a former licence holder remedial directions requiring the licence holder or former licence holder to take various remedial actions, including by making good damage done to the environment.

The Regulator and the Minister may take actions to give effect to a direction that is not complied with.

Division 2—General power to give directions

121 General power to give directions—Regulator

Direction to licence holder

(1) The Regulator may, by written notice to a licence holder, give the licence holder a direction as to any of the following:

- (a) how the licence holder is to comply with any provision of this Act, the applied work health and safety provisions, the conditions of the licence or the management plan for the licence (if there is a management plan for the licence);
- (b) how offshore infrastructure activities are to be carried out under the licence;
- (c) any matter that, under this Act or the licensing scheme, a management plan may or must address.

Note: Breach of a direction may attract a criminal or civil penalty (see section 123).

(2) Without limiting subsection (1), the directions that may be given under that subsection include the following:

- (a) a direction to carry out offshore infrastructure activities under the licence in a particular way;
- (b) a direction to make arrangements for another person to carry out offshore infrastructure activities under the licence on behalf of the licence holder;
- (c) a direction as to how the licence holder is to comply with a requirement under this Act, the applied work health and safety provisions, the licence or the management plan (if any) for the licence;
- (d) a direction requiring the licence holder to ensure that a requirement under this Act, the applied work health and safety provisions, the licence or the management plan (if any) for the licence is not contravened;
- (e) a direction requiring the licence holder to comply with a requirement under this Act, the applied work health and safety provisions, the licence or the management plan (if any)

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for the licence in a specified manner or within a specified time;

- (f) a direction requiring the licence holder to cease carrying out activities under the licence until a requirement under this Act, the applied work health and safety provisions, the licence or the management plan (if any) for the licence is complied with.

Extended application of direction

- (3) A direction given under this section to a licence holder applies to the licence holder and may also be expressed to apply to:
 - (a) a specified class of persons, so long as the class consists of, or is included in, either or both of the following classes:
 - (i) employees or agents of, or persons acting on behalf of, the licence holder;
 - (ii) persons performing work or services, whether directly or indirectly, for the licence holder; or
 - (b) any person (other than the licence holder or a person to whom the direction applies in accordance with paragraph (a)) who is:
 - (i) in the Commonwealth offshore area for any reason touching, concerning, arising out of, or connected with, offshore infrastructure activities; or
 - (ii) in, on, above, below or in the vicinity of a vessel, aircraft, structure or installation, or equipment or other property, that is in the Commonwealth offshore area for a reason of that kind.
- (4) If a direction so expressed is given, the direction is taken to apply to each person included in the specified class mentioned in paragraph (3)(a) or to each person who is in the Commonwealth offshore area as mentioned in paragraph (3)(b), as the case may be.

Additional matters

- (5) A direction under this section has effect, and must be complied with, despite:
 - (a) any previous direction under this section; and

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- (b) anything in the regulations or the applied State and Territory provisions.

Note: For the *applied State and Territory provisions*, see subsection 248(2).

- (6) A direction under this section may prohibit the doing of an act or thing:
 - (a) unconditionally; or
 - (b) subject to conditions, including conditions requiring the consent or approval of a person specified in the direction.

Revocation of direction

- (7) The Regulator must, by written notice to the licence holder that a direction under this section applies to, revoke the direction if the Regulator is satisfied that the direction is no longer required (whether because the direction has been complied with, or for any other reason).
- (8) Subsection (7) does not limit subsection 33(3) of the *Acts Interpretation Act 1901*.

Status of directions and notices

- (9) If paragraph (3)(b) applies to a direction under this section, each of the following is a legislative instrument:
 - (a) the direction;
 - (b) a notice under subsection (7) revoking the direction.
- (10) If paragraph (3)(b) does not apply to a direction under this section, the following are not legislative instruments:
 - (a) the direction;
 - (b) a notice under subsection (7) revoking the direction.

122 Directions under section 121 may extend outside of licence area

- (1) A direction given under section 121 to a licence holder may require the licence holder to take an action (or not to take an action) anywhere in the Commonwealth offshore area, whether within or outside the licence area.

Section 123

- (2) If a direction under section 121 requires the holder of a licence (the *first licence*) to take an action in, or in relation to, the licence area of another licence (the *related licence*), the Regulator must give a copy of the direction to the holder of the related licence as soon as practicable after the direction is given to the holder of the first licence.

123 Directions under section 121—compliance

- (1) A person contravenes this subsection if:
- (a) the person is subject to a direction under section 121; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the direction.

Fault-based offence

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

Penalty: 5 years imprisonment or 2,000 penalty units, or both.

Strict liability offence

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

Penalty: 100 penalty units.

Civil penalty provision

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

Civil penalty: 525 penalty units.

Defences—breach of direction by person other than a licence holder

- (5) Subsection (6) applies in relation to a breach of a direction if:
- (a) both of the following persons are subject to the direction:
 - (i) a licence holder;

- (ii) another person; and
 - (b) the other person is prosecuted for an offence against subsection (2) or (3), or a civil penalty is sought for the purposes of subsection (4), in relation to the other person's breach of the direction; and
 - (c) the other person adduces evidence that the other person did not know, and could not reasonably be expected to have known, of the existence of the direction.
- (6) Unless it is proved that the other person knew, or could reasonably be expected to have known, of the existence of the direction:
- (a) if the other person is prosecuted for an offence—the other person is not to be convicted of the offence; or
 - (b) if a civil penalty order is sought against the other person—the order is not to be made against the other person.

Continuing offences and continuing contraventions of civil penalty provisions

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

Section 124

124 Regulator may take action if there is a breach of a direction under section 121

- (1) This section applies if:
 - (a) a person is subject to a direction given by the Regulator under section 121; and
 - (b) the person does not comply with the direction.
- (2) The Regulator may:
 - (a) do any or all of the things required by the direction to be done; or
 - (b) engage another person to do any or all of those things on behalf of the Regulator.
- (3) If the Regulator incurs costs or expenses in relation to the doing of anything under subsection (2):
 - (a) the costs or expenses are a debt due by the person to the Regulator; and
 - (b) the debt is recoverable in:
 - (i) the Federal Court; or
 - (ii) the Federal Circuit and Family Court of Australia (Division 2); or
 - (iii) a court of a State or Territory that has jurisdiction in relation to the matter.

Exception—direction that has an extended application

- (4) If:
 - (a) a direction under section 121 applies to:
 - (i) a licence holder; and
 - (ii) another person; and
 - (b) an action under subsection (3) of this section relating to the direction is brought against the other person; and
 - (c) the other person adduces evidence that the other person did not know, and could not reasonably be expected to have known, of the existence of the direction;the other person is not liable under subsection (3) of this section unless the plaintiff proves that the other person knew, or could

reasonably be expected to have known, of the existence of the direction.

Division 3—Remedial directions

125 Remedial directions—power to issue directions under different provisions

The power to give a direction under a provision of this Division to a person in relation to a matter does not limit:

- (a) the power of the Regulator or the Minister to give a direction to the person in relation to the same (or a different) matter under another provision of this Division; or
- (b) the power of the Regulator to give a direction to the person in relation to the same (or a different) matter under section 121.

126 Remedial directions by the Regulator

- (1) This section applies to a person if:
 - (a) the person holds a licence; or
 - (b) the person held a licence that was surrendered or cancelled, and the person held the licence immediately before the surrender or cancellation took effect.
- (2) The Regulator may, by written notice to the person, direct the person:
 - (a) to do, before a time specified in the direction, any or all of the following:
 - (i) provide, to the satisfaction of the Regulator, for the conservation and protection of the natural resources in the licence area or a vacated area in relation to the licence;
 - (ii) make good, to the satisfaction of the Regulator, any damage to the seabed or subsoil, or any other environmental damage, in the Commonwealth offshore area (whether inside or outside the licence area or a vacated area) caused by any person engaged or concerned in the activities authorised by the licence; or

- (b) to do, until a time specified in the direction, any or all of the following in relation to a vacated area in relation to the licence:
 - (i) assess and monitor environmentally sensitive areas within the area;
 - (ii) give reports to the Regulator in relation to specified matters; or
- (c) if the person holds a licence—to do any or all of the following things before a time specified in the direction:
 - (i) comply with any obligation of the licence holder under this Act or the licence in connection with an offshore infrastructure activity;
 - (ii) if there is a management plan for the licence—carry out any obligation of the licence holder under the management plan;
 - (iii) make arrangements that are satisfactory to the Regulator in relation to an obligation referred to in subparagraph (i) or (ii); or
- (d) if paragraph (1)(b) applies—to do any or all of the following things before a time specified in the direction:
 - (i) comply with any obligation of the licence holder under this Act or the licence, as the licence was in effect immediately before it was cancelled or surrendered, in connection with an offshore infrastructure activity;
 - (ii) 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;
 - (iii) make arrangements that are satisfactory to the Regulator in relation to an obligation referred to in subparagraph (i) or (ii).

Note: A direction under this section has no effect to the extent of any inconsistency with a direction under section 127 (see subsection 127(5)).

- (3) The time specified in the direction must be reasonable.
- (4) The person must comply with the direction.

127 Remedial directions by the Minister

- (1) This section applies to a person if:
 - (a) the person holds a licence; or
 - (b) the person held a licence that was surrendered or cancelled, and the person held the licence immediately before the surrender or cancellation took effect.
- (2) The Minister may, by written notice to the person, direct the person:
 - (a) to do, before a time specified in the direction, any or all of the following:
 - (i) provide, to the satisfaction of the Minister, for the conservation and protection of the natural resources in the licence area or a vacated area in relation to the licence;
 - (ii) make good, to the satisfaction of the Minister, any damage to the seabed or subsoil, or any other environmental damage, in the Commonwealth offshore area (whether inside or outside the licence area or a vacated area) caused by any person engaged or concerned in the activities authorised by the licence; or
 - (b) to do, until a time specified in the direction, any or all of the following in relation to a vacated area in relation to the licence:
 - (i) assess and monitor environmentally sensitive areas within the area;
 - (ii) give reports to the Regulator in relation to specified matters; or
 - (c) if the person holds a licence—to do any or all of the following things before a time specified in the direction:
 - (i) comply with any obligation of the licence holder under this Act or the licence in connection with an offshore infrastructure activity;
 - (ii) if there is a management plan for the licence—carry out any obligation of the licence holder under the management plan;

- (iii) make arrangements that are satisfactory to the Minister in relation to an obligation referred to in subparagraph (i) or (ii); or
- (d) if paragraph (1)(b) applies—to do any or all of the following things before a time specified in the direction:
 - (i) comply with any obligation of the licence holder under this Act or the licence, as the licence was in effect immediately before it was cancelled or surrendered, in connection with an offshore infrastructure activity;
 - (ii) 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;
 - (iii) make arrangements that are satisfactory to the Minister in relation to an obligation referred to in subparagraph (i) or (ii).
- (3) The time specified in the direction must be reasonable.
- (4) The person must comply with the direction.

Inconsistency

- (5) If a direction under section 126 is inconsistent with a direction under this section, the direction under section 126 has no effect to the extent of the inconsistency.

128 Remedial directions—compliance

- (1) A person contravenes this subsection if:
 - (a) the person is subject to a direction under:
 - (i) section 126 (remedial directions by the Regulator); or
 - (ii) section 127 (remedial directions by the Minister); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the direction.

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Fault-based offence

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

Penalty: 5 years imprisonment or 2,000 penalty units, or both.

Strict liability offence

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

Penalty: 100 penalty units.

Civil penalty provision

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

Civil penalty: 525 penalty units.

Continuing offences and continuing contraventions of civil penalty provisions

- (5) The maximum penalty for each day that an offence under subsection (2) or (3) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

Note: Subsections (2) and (3) are continuing offences under section 4K of the *Crimes Act 1914*.

- (6) The maximum civil penalty for each day that a contravention of subsection (4) continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (4) is a continuing civil penalty provision under section 93 of the *Regulatory Powers Act*.

129 Regulator may take action if direction breached or arrangement not carried out

- (1) If:
- (a) a direction is given to a person under section 126, and the person does not comply with the direction; or
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- (b) a person makes an arrangement, as mentioned in subparagraph 126(2)(c)(iii) or (d)(iii), and does not carry out the arrangement;
- the Regulator may:
- (c) do any or all of the things required by the direction or arrangement to be done; or
- (d) engage another person to do any or all of those things on behalf of the Regulator.
- (2) If the Regulator incurs costs or expenses in relation to the doing of anything under subsection (1):
- (a) the costs or expenses are a debt due by the person to the Regulator; and
- (b) the debt is recoverable in:
- (i) the Federal Court; or
- (ii) the Federal Circuit and Family Court of Australia (Division 2); or
- (iii) a court of a State or Territory that has jurisdiction in relation to the matter.

Direction to remove property

- (3) If any property brought into a vacated area (including before the vacated area became a vacated area) by any person engaged or concerned in the activities authorised by a licence has not been removed in accordance with:
- (a) a direction under section 126 in relation to the vacated area; or
- (b) an arrangement under subparagraph 126(2)(c)(iii) or (d)(iii) in relation to the vacated area;
- the Regulator may, by notifiable instrument, direct the owner or owners of that property to:
- (c) remove the property from the vacated area; or
- (d) dispose of the property to the satisfaction of the Regulator; before the time specified in the instrument.

Note: For sanctions, see section 130.

- (4) The time specified in the instrument must be reasonable.

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- (5) If a direction is given under subsection (3) in relation to property, the Regulator must give a copy of the direction to each person whom the Regulator believes to be an owner of the property or of any part of the property.

130 Removal, disposal or sale of property by Regulator—breach of direction

Power to remove, dispose of or sell property

- (1) If a direction under subsection 129(3) has been breached in relation to property, the Regulator may do any or all of the following things:
- (a) remove, in such manner as the Regulator thinks fit, any or all of that property from the vacated area concerned;
 - (b) dispose of, in such manner as the Regulator thinks fit, any or all of that property;
 - (c) if, under subsection 129(5), a person was given a copy of the notice of the direction—sell, by public auction or otherwise, as the Regulator thinks fit, any or all of that property that belongs, or that the Regulator believes to belong, to that person.

Deduction of costs and expenses etc. from proceeds of sale

- (2) The Regulator may deduct, from the proceeds of a sale under subsection (1) of property that belongs (or that the Regulator believes to belong) to a particular person, the whole or a part of:
- (a) any costs and expenses incurred by the Regulator under that subsection in relation to that property; and
 - (b) any costs and expenses incurred by the Regulator in relation to the doing of any thing required by a direction under section 126 to be done by that person; and
 - (c) any fees or amounts due and payable by that person to the Regulator under this Act.
- (3) The Regulator may, on behalf of the Commonwealth, deduct, from the proceeds of a sale under subsection (1) of property that belongs

(or that the Regulator believes to belong) to a particular person, the whole or a part of:

- (a) any fees or amounts due and payable by that person to the Commonwealth under this Act; and
 - (b) any amounts of offshore electricity infrastructure levy, of a kind prescribed by regulations made for the purposes of this paragraph, that are due and payable to the Commonwealth by that person.
- (4) If the Regulator, under subsection (3), deducts an amount payable to the Commonwealth, the Regulator must remit that amount to the Commonwealth.

Balance of proceeds of sale to be paid to owner of property

- (5) The proceeds of a sale of property under subsection (1), less any deductions under subsection (2) or (3), are to be paid to the owner of the property.

Recovery of costs and expenses—removal, disposal or sale of property

- (6) If the Regulator incurs any costs or expenses under subsection (1) in relation to the removal, disposal or sale of property:
- (a) the costs or expenses are a debt due by the owner of the property to the Regulator; and
 - (b) to the extent to which the costs or expenses are not deducted under subsection (2)—the debt is recoverable in:
 - (i) the Federal Court; or
 - (ii) the Federal Circuit and Family Court of Australia (Division 2); or
 - (iii) a court of a State or Territory that has jurisdiction in relation to the matter.

Recovery of costs and expenses—breach of direction

- (7) If the Regulator incurs costs or expenses in relation to the doing of anything required by a direction under section 126 to be done by a person who is or was the holder of a licence:

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- (a) the costs or expenses are a debt due by the person to the Regulator; and
- (b) to the extent to which the costs or expenses are not deducted under subsection (2)—the debt is recoverable in:
 - (i) the Federal Court; or
 - (ii) the Federal Circuit and Family Court of Australia (Division 2); or
 - (iii) a court of a State or Territory that has jurisdiction in relation to the matter.

131 Removal, disposal or sale of property—limitation of action etc.

Limitation of action etc.

- (1) Except as provided by subsection 130(6) or section 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 section 130.
- (2) Section 301 does not apply to an act or matter to the extent to which subsection (1) of this section applies to the act or matter.

Judicial review

- (3) This section does not affect:
 - (a) any rights conferred on a person by the *Administrative Decisions (Judicial Review) Act 1977* to apply to a court in relation to:
 - (i) a decision; or
 - (ii) conduct engaged in for the purpose of making a decision; or
 - (iii) a failure to make a decision; or
 - (b) any other rights that a person has to seek a review by a court or tribunal in relation to:
 - (i) a decision; or
 - (ii) conduct engaged in for the purpose of making a decision; or
 - (iii) a failure to make a decision.

- (4) An expression used in subsection (3) has the same meaning as in section 10 of the *Administrative Decisions (Judicial Review) Act 1977*.

132 Minister may take action if direction breached or arrangement not carried out

- (1) If:
- (a) a direction is given to a person under section 127, and the person does not comply with the direction; or
 - (b) a person makes an arrangement, as mentioned in subparagraph 127(2)(c)(iii) or (d)(iii), and does not carry out the arrangement;
- the Minister may:
- (c) do any or all of the things required by the direction or arrangement to be done; or
 - (d) engage another person to do any or all of those things on behalf of the Minister.
- (2) If the Commonwealth incurs costs or expenses in relation to the doing of anything under subsection (1):
- (a) the costs or expenses are a debt due by the person to the Commonwealth; and
 - (b) the debt is recoverable in:
 - (i) the Federal Court; or
 - (ii) the Federal Circuit and Family Court of Australia (Division 2); or
 - (iii) a court of a State or Territory that has jurisdiction in relation to the matter.

Division 4—Defence of taking reasonable steps to comply with a direction

133 Defence of taking reasonable steps to comply with a direction

- (1) It is a defence in a prosecution for an offence, or in proceedings for a civil penalty order, for a breach of a direction covered by subsection (2) if the defendant proves that the defendant took all reasonable steps to comply with the direction.

Note: A defendant bears a legal burden in relation to the matter in this subsection in a prosecution for an offence (see section 13.4 of the *Criminal Code*). The same applies in proceedings for a civil penalty.

- (2) This subsection covers the following directions:
- (a) a direction given by the Regulator under:
 - (i) Division 2 (general directions); or
 - (ii) Division 3 (remedial directions); or
 - (iii) a provision of the regulations; or
 - (b) a direction given by the Minister under Division 3 (remedial directions).

Part 3—Protection of infrastructure

Division 1—Introduction

134 Simplified outline of this Part

It is an offence for a person to interfere with infrastructure and other things in the Commonwealth offshore area.

Under Division 3, the Regulator may determine safety zones around certain infrastructure in the Commonwealth offshore area. A safety zone is an area around the infrastructure that must not be entered by vessels, or by particular kinds of vessel.

Under Division 4, the Regulator may determine protection zones in the Commonwealth offshore area. Certain activities posing a risk to safety or a risk of damage to infrastructure may be restricted or prohibited in a protection zone.

Division 2—Offence of interfering with infrastructure

135 Interfering with infrastructure

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct results in:
 - (i) damage to, or interference with, offshore renewable energy infrastructure or offshore electricity transmission infrastructure in the Commonwealth offshore area; or
 - (ii) damage to, or interference with, any structure or vessel that is in the Commonwealth offshore area and that is, or is to be, used in connection with offshore infrastructure activities; or
 - (iii) damage to, or interference with, any equipment on, or attached to, such a structure or vessel; or
 - (iv) interference with any operations or activities being carried out, or any works being executed, on, by means of, or in connection with, such a structure or vessel.

Penalty: Imprisonment for 10 years.

- (2) In this section:

structure means any fixed, moveable or floating structure or installation.

Division 3—Safety zones**Subdivision A—Safety zones****136 Safety zones***Eligible safety zone infrastructure*

- (1) In this section:

eligible safety zone infrastructure means any of the following in the Commonwealth offshore area:

- (a) offshore renewable energy infrastructure (other than a cable that rests on the seabed);
- (b) offshore electricity transmission infrastructure (other than a cable that rests on the seabed);
- (c) a cable that rests on the seabed and that:
 - (i) is offshore renewable energy infrastructure or offshore electricity transmission infrastructure; and
 - (ii) connects 2 or more pieces of offshore renewable energy infrastructure that are all within the same licence area; and
 - (iii) 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 this subparagraph.

Note: A cable that transmits electricity from offshore renewable energy infrastructure to the shore, or between the shore and a place outside the Commonwealth offshore area, or between different licence areas, is not eligible safety zone infrastructure.

Determination

- (2) For the purpose of protecting eligible safety zone infrastructure, the Regulator may, by notifiable instrument, determine that a specified area surrounding the eligible safety zone infrastructure is a ***safety zone***.
- (3) The determination must state that:
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- (a) all vessels; or
 - (b) all vessels other than specified vessels; or
 - (c) all vessels other than the vessels included in specified classes of vessels;
- are prohibited from entering or being present in the safety zone without the written consent of the Regulator.
- (4) The determination must also include any other information prescribed by the regulations.
 - (5) A safety zone specified in a determination under subsection (2):
 - (a) may, subject to paragraph (b) of this subsection, extend to a distance of 500 metres around the eligible safety zone infrastructure specified in the determination, where that distance is measured from each point of the outer edge of the infrastructure; and
 - (b) must be entirely within the Commonwealth offshore area.

137 Determination on Regulator’s initiative or in response to application

- (1) A determination of a safety zone under subsection 136(2) may be made:
 - (a) on the Regulator’s own initiative; or
 - (b) on the application of a person under regulations made for the purposes of subsection (2) of this section.
- (2) The regulations may prescribe procedures for:
 - (a) a person to apply for the Regulator to determine a safety zone; and
 - (b) the Regulator to consider the application; and
 - (c) the Regulator to require further information in relation to the application; and
 - (d) the Regulator to make, or refuse to make, a determination under subsection 136(2) in relation to the application.

138 When a determination takes effect

- (1) A determination of a safety zone takes effect at the time specified in the determination.
- (2) If a determination relates only to offshore renewable energy infrastructure or offshore electricity transmission infrastructure that 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.

139 Offences of entering or being present in a safety zone*Offence—intentional breach*

- (1) A person commits an offence if:
 - (a) the person is the owner or master of a vessel; and
 - (b) the vessel is subject to a determination under subsection 136(2); and
 - (c) in breach of the determination, the vessel enters or is present in the safety zone specified in the determination.

Penalty: Imprisonment for 15 years.

- (2) The fault element for paragraph (1)(c) is intention.

Offence—reckless breach

- (3) A person commits an offence if:
 - (a) the person is the owner or master of a vessel; and
 - (b) the vessel is subject to a determination under subsection 136(2); and
 - (c) in breach of the determination, the vessel enters or is present in the safety zone specified in the determination.

Penalty: Imprisonment for 12.5 years.

- (4) The fault element for paragraph (3)(c) is recklessness.

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Offence—negligent breach

- (5) A person commits an offence if:
- (a) the person is the owner or master of a vessel; and
 - (b) the vessel is subject to a determination under subsection 136(2); and
 - (c) in breach of the determination, the vessel enters or is present in the safety zone specified in the determination.

Penalty: Imprisonment for 10 years.

- (6) The fault element for paragraph (5)(c) is negligence.

Offence—strict liability

- (7) A person commits an offence of strict liability if:
- (a) the person is the owner or master of a vessel; and
 - (b) the vessel is subject to a determination under subsection 136(2); and
 - (c) in breach of the determination, the vessel enters or is present in the safety zone specified in the determination.

Penalty: Imprisonment for 5 years.

Defence

- (8) In a prosecution for an offence against subsection (1), (3), (5) or (7), it is a defence if the defendant proves that:
- (a) 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:
 - (i) the vessel; or
 - (ii) another vessel; or
 - (iii) offshore renewable energy infrastructure or offshore electricity transmission infrastructure; or
 - (iv) any other structure or equipment; or
 - (v) human life; or

- (b) an unforeseen emergency rendered it necessary for the vessel to enter or be present in the safety zone in order to prevent pollution; or
- (c) 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.

Note: A defendant bears a legal burden in relation to the matters in subsection (8) (see section 13.4 of the *Criminal Code*).

Subdivision B—Authorised safety zone officials and powers in relation to safety zones

140 Authorised safety zone officials

- (1) For the purposes of this Act, an *authorised safety zone official* is:
 - (a) a member or special member of the Australian Federal Police; or
 - (b) a member of the Defence Force; or
 - (c) an officer of Customs within the meaning of the *Customs Act 1901*; or
 - (d) a person who is an authorised safety zone official because of a determination under subsection (2).
- (2) The Regulator may, 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 Act.

State and Territory officials

- (3) An employee of a State or Territory must not be determine to be an authorised safety zone official under subsection (2) without the agreement of the State or Territory.

141 Requirement to move vessel etc.

- (1) An authorised safety zone official may:
 - (a) require the master of a vessel that satisfies the following conditions:
 - (i) the vessel is in a safety zone;

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- (ii) the vessel is not specified under paragraph 136(3)(b) in the determination of the safety zone;
 - (iii) the vessel is not in a class of vessels specified under paragraph 136(3)(c) in the determination of the safety zone;
 - (iv) no written consent of the Regulator is in force under subsection 136(3) in relation to the safety zone and the vessel;
- to take the vessel outside the safety zone; or
- (b) require the master of a disabled vessel that satisfies any of the following conditions:
 - (i) the vessel is in a safety zone;
 - (ii) the authorised safety zone official reasonably believes that the vessel is likely to cause damage to any offshore renewable energy infrastructure, offshore electricity transmission infrastructure, structure or equipment in a safety zone;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.
- (2) A person contravenes this subsection if:
 - (a) the person is subject to a requirement under subsection (1); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.
 - (3) A person contravenes this subsection if:
 - (a) the person engages in conduct; and
 - (b) the conduct obstructs or hinders an authorised safety zone official who is acting under subsection (1).

Fault-based offences

- (4) A person commits an offence if the person contravenes subsection (2).

Penalty: 50 penalty units.

- (5) A person commits an offence if the person contravenes subsection (3).

Note: The same conduct may be an offence against both subsection (5) of this section and section 149.1 of the *Criminal Code*.

Penalty: 50 penalty units.

Civil penalty provisions

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

Civil penalty: 350 penalty units.

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

Civil penalty: 350 penalty units.

Division 4—Protection zones

Subdivision A—Determinations

142 Regulator may determine a protection zone

- (1) The Regulator may, by legislative instrument, determine that a specified area in the Commonwealth offshore area is a *protection zone* in relation to offshore renewable energy infrastructure or offshore electricity transmission infrastructure that is, or is proposed to be, installed in the area under a specified licence.
- (2) The Regulator may make a determination under subsection (1) only if the Regulator is satisfied that:
 - (a) either:
 - (i) there is a risk to human safety, or to offshore renewable energy infrastructure or offshore electricity transmission infrastructure, in the protection zone; or
 - (ii) there would be such a risk if offshore infrastructure activities were carried out in the protection zone in accordance with a management plan that the Regulator has approved under the licensing scheme; and
 - (b) the determination would avoid or reduce that risk.
- (3) A determination of a protection zone must:
 - (a) identify the area covered by the protection zone, which must be determined in accordance with regulations made for the purposes of this paragraph; and
 - (b) include any other information prescribed by the regulations.
- (4) A determination of a protection zone may:
 - (a) set out, in accordance with section 144, the activities that are prohibited in the protection zone; and
 - (b) set out, in accordance with section 145, the restrictions that apply to specified activities in the protection zone.

143 Determination on Regulator's initiative or in response to application

- (1) A determination of a protection zone may be made:
 - (a) on the Regulator's own initiative; or
 - (b) on the application of a person under regulations made for the purposes of subsection (2).
- (2) The regulations may prescribe procedures for:
 - (a) a person to apply for the Regulator to determine a protection zone; and
 - (b) the Regulator to consider the application; and
 - (c) the Regulator to require further information in relation to the application; and
 - (d) the Regulator to make, or refuse to make, a determination under section 142 in relation to the application.

144 Prohibited activities

- (1) For the purposes of paragraph 142(4)(a), the activities that may be prohibited in a protection zone are:
 - (a) any activity that involves a serious risk to human safety; or
 - (b) any activity that involves a serious risk of damaging offshore renewable energy infrastructure or offshore electricity transmission infrastructure; or
 - (c) an activity specified in the regulations.
- (2) The regulations may prescribe activities that may not be prohibited in a protection zone for the purposes of paragraph 142(4)(a).

145 Restricted activities

- (1) For the purposes of paragraph 142(4)(b), the activities on which restrictions may be imposed in a protection zone are:
 - (a) any activity that involves a serious risk to human safety; or
 - (b) any activity that involves a serious risk of damaging offshore renewable energy infrastructure or offshore electricity transmission infrastructure; or

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- (c) an activity specified in the regulations.
- (2) The regulations may prescribe activities on which restrictions may not be imposed in a protection zone for the purposes of paragraph 142(4)(b).

146 When a determination takes effect

- (1) A determination of a protection zone takes effect at the time specified by the Regulator.
- (2) If a determination relates only to offshore renewable energy infrastructure or offshore electricity transmission infrastructure that 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.

147 Determination continues in effect even if infrastructure ceases to operate

- (1) A determination of a protection zone continues in effect until it is revoked.

Note 1: For revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: The determination may also be repealed under Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003*.

- (2) To avoid doubt, a determination continues in effect even if the offshore renewable energy infrastructure or offshore electricity transmission infrastructure in the protection zone has ceased to operate.

Subdivision B—Offences in relation to protection zones

148 Engaging in prohibited or restricted activities

A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct occurs in a protection zone; and
- (c) the conduct:

- (i) is prohibited in the protection zone; or
- (ii) contravenes a restriction imposed on an activity in the protection zone; and
- (d) the conduct is not engaged in by a licence holder, or a person acting on behalf of a licence holder, in accordance with the licence or the management plan (if any) for the licence.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

149 Defences to offence of engaging in prohibited or restricted activities

Section 148 does not apply if:

- (a) the conduct was necessary to save a life or vessel; or
- (b) the conduct was necessary to prevent pollution; or
- (c) the defendant took all reasonable steps to avoid engaging in the conduct.

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

150 Master or owner of vessel used in offence of engaging in prohibited or restricted activities

- (1) A person (the *first person*) commits an offence if:
 - (a) the first person is the owner or master of a vessel; and
 - (b) the first person permits another person to use the vessel; and
 - (c) the other person commits an offence against section 148; and
 - (d) the vessel is used in the commission of the offence and the first person is reckless as to that fact.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (2) Strict liability applies to paragraph (1)(c).

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151 Foreign nationals and foreign vessels

Foreign nationals—no involvement of vessel

(1) This Subdivision does not apply to anything done, or omitted to be done, if:

- (a) the thing is done, or omitted to be done, by a foreign national; and
- (b) 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 of Australia; and
- (c) the thing done, or omitted to be done, does not involve a vessel;

unless the thing done, or omitted to be done, touches, concerns, arises out of or is connected with:

- (d) the exploration of the continental shelf of Australia; or
- (e) 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
- (f) the operations of artificial islands, installations or structures that are under Australia's jurisdiction.

Foreign nationals—involvement of foreign vessel

(2) This Subdivision does not apply to anything done, or omitted to be done, if:

- (a) the thing is done, or omitted to be done, by a foreign national; and
- (b) the thing is done, or omitted to be done, in the waters of the exclusive economic zone of Australia; and
- (c) the thing done, or omitted to be done, involves a foreign vessel;

unless the thing done, or omitted to be done, touches, concerns, arises out of or is connected with:

- (d) the exploration of the continental shelf of Australia; or
- (e) 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

- (f) 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

152 Simplified outline of this Part

The Offshore Infrastructure Registrar is an employee in the Department responsible for keeping the Register of Offshore Infrastructure Licences and for various other administrative tasks. The Register holds records of licences and events affecting licences.

Division 4 establishes the Offshore Infrastructure Registrar Special Account.

Division 2—Offshore Infrastructure Registrar

153 Offshore Infrastructure Registrar

- (1) There is to be an Offshore Infrastructure Registrar.

Note: The Offshore Infrastructure Registrar is referred to in this Act as the Registrar (see the definition of *Registrar* in section 8).

- (2) The Offshore Infrastructure Registrar is to be a person who is:
- (a) an SES employee in the Department; and
 - (b) appointed in a written instrument made by the Secretary.

National Offshore Petroleum Titles Administrator may be appointed

- (3) The Secretary may, under paragraph (2)(b), appoint the National Offshore Petroleum Titles Administrator to be the Offshore Infrastructure Registrar.

Note: The office of National Offshore Petroleum Titles Administrator is established by section 695A of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

- (4) If the Secretary does so:
- (a) a reference in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* to the functions or powers of the National Offshore Petroleum Titles Administrator does not include the functions or powers of the Offshore Infrastructure Registrar; and
 - (b) a reference in this Act to the functions or powers of the Offshore Infrastructure Registrar does not include the functions or powers of the National Offshore Petroleum Titles Administrator.

154 Functions of the Registrar

The Registrar has the following functions:

- (a) to provide information, assessments, analysis, reports, advice and recommendations to the Minister in relation to the

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performance of the Minister's functions or the exercise of the Minister's powers under this Act;

- (b) to cooperate with the Regulator in matters relating to the administration and enforcement of this Act and the applied work health and safety provisions;
- (c) to cooperate with other Commonwealth agencies and authorities having functions relating to the regulation of offshore infrastructure activities;
- (d) such other functions as are conferred on the Registrar by or under this Act;
- (e) to do anything incidental to or conducive to the performance of any of the above functions.

155 Powers of the Registrar

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.

156 Delegation by the Registrar

- (1) The Registrar may, in writing, delegate all or any of the Registrar's functions or powers to:
 - (a) an SES employee, or acting SES employee, in the Department; or
 - (b) an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent or higher position, in the Department; or
 - (c) a person prescribed by the regulations.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Registrar.
- (3) Subsection (1) does not apply to a power to make, vary or revoke a legislative instrument.

157 Consultants

- (1) The Registrar may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Registrar's functions.
- (2) The consultants are to be engaged on the terms and conditions that the Registrar determines in writing.

158 Registrar to be assisted by APS employees in the Department

The Registrar is to be assisted by APS employees in the Department who are made available for the purpose by the Secretary.

159 Annual report

The Registrar must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the Registrar's activities under this Act during that year.

160 Reviews of activities of Registrar

- (1) The Minister must cause to be conducted reviews of the activities of the Registrar.

Report

- (2) The Minister must cause to be prepared a report of a review under subsection (1).
- (3) The Minister must cause copies of a report under subsection (2) 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.

First review

- (4) The first review:
 - (a) is to relate to the 3-year period beginning on the commencement of this section; and

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- (b) is to be completed, and the report under subsection (2) given to the Minister, within 6 months, or such longer period as the Minister allows, after the end of that 3-year period.

Subsequent reviews

- (5) Subsequent reviews:
 - (a) are to relate to successive 5-year periods; and
 - (b) are to be completed, and the report under subsection (2) given 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.

161 Judicial notice of signature of the Registrar

- (1) All courts must take judicial notice of:
 - (a) the signature of a person who is, or has been:
 - (i) the Registrar; or
 - (ii) a delegate of the Registrar; and
 - (b) the fact that the person is, or was at a particular time:
 - (i) the Registrar; or
 - (ii) a delegate of the Registrar.

- (2) In this section:

court includes a person authorised to receive evidence:

- (a) by a law of the Commonwealth, a State or a Territory; or
- (b) by consent of parties.

Division 3—The Register of Offshore Infrastructure Licences

162 Register to be kept

- (1) The Registrar must keep a Register of Offshore Infrastructure Licences for the purposes of this Act.

Note: The Register of Offshore Infrastructure Licences is referred to in this Act as the Register (see the definition of *Register* in section 8).

- (2) The Register is to be made available for public inspection on the internet.
- (3) The Register is not a legislative instrument.

163 Records to be made in Register

- (1) The Registrar must enter a record in the Register for each licence granted under this Act.
- (2) A record for a licence must include the information set out in the following table.

Information to be included in a record

Item	Information
1	The following details of the licence holder: (a) name; (b) if the licence holder has an ACN (within the meaning of the <i>Corporations Act 2001</i>)—the ACN; (c) if the licence holder has an ARBN (within the meaning of the <i>Corporations Act 2001</i>)—the ARBN
2	Whether the licence is: (a) a feasibility licence; or (b) a commercial licence; or (c) a research and demonstration licence; or (d) a transmission and infrastructure licence
3	Details of the licence area (which may include a map)

Chapter 5 Administration

Part 1 Offshore Infrastructure Registrar

Division 3 The Register of Offshore Infrastructure Licences

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Information to be included in a record

Item	Information
4	The day on which the licence was granted
5	The day on which the licence comes into force
6	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)
7	The conditions that apply to the licence
8	Any other matters that the Registrar thinks appropriate
9	Any other matters prescribed by the regulations

164 Entry in Register—events affecting a licence

- (1) If an event specified in the following table occurs in relation to a licence, the Registrar must include a record of the event in the record for the licence.

Events affecting a licence

Item	Event
1	The licence is varied
2	The licence is transferred
3	The name of the licence holder changes
4	The Registrar is required by subsection 43(6) to include a notice under subsection 43(2) (requirements relating to applications for commercial licences) in the Register in relation to the licence
5	The Registrar is required by subsection 94(1) (change in control of licence holder) to make a notation in the Register in relation to the licence
6	The licence reaches the end day in respect of the whole or a part of the licence area
7	The end day of the licence is extended in respect of the whole or a part of the licence area
8	The licence is surrendered in respect of the whole or a part of the licence area
9	The licence is cancelled

- (2) The regulations may prescribe details that must be included in a record included in the Register under subsection (1).
- (3) The record for a licence is to remain on the Register even if the licence has been surrendered or cancelled, or has otherwise ceased to be in effect.

165 Other instruments or notices to be included in register

The regulations may require copies of specified kinds of notices or instruments affecting a licence or a licence holder to be included in the record for the licence.

166 Notation in Register—applicable datum

The Registrar may make a notation in the Register about the applicable datum for a licence, notice or instrument.

Note: See section 9 (datum provisions).

167 Material that must not be included in a record for a licence

The regulations may prescribe information that must not be included in a record for a licence, despite anything in this Division.

168 Notification requirements—licence holder

- (1) A licence holder must give the Registrar written notice of a change in any of the following before the end of 30 days after the change occurs:
 - (a) a detail mentioned in item 1 of the table in subsection 163(2);
 - (b) the address of:
 - (i) if the licence holder has a registered office (within the meaning of the *Corporations Act 2001*)—the registered office; or
 - (ii) otherwise—the head office or principal office of the licence holder;
 - (c) the licence holder's telephone number;

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- (d) if the licence holder has a fax number—the fax number;
- (e) the licence holder's email address.

Strict liability offence

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

Penalty: 50 penalty units.

Civil penalty provision

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

Civil penalty: 90 penalty units.

Continuing offences and continuing contraventions of civil penalty provisions

- (4) The maximum penalty for each day that an offence under subsection (2) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

Note: Subsection (2) is a continuing offence under section 4K of the *Crimes Act 1914*.

- (5) The maximum civil penalty for each day that a contravention of subsection (3) continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (3) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

169 Evidentiary provisions

Register

- (1) The Register is to be received in all courts and proceedings as prima facie evidence of all matters required or authorised by this Act to be entered in the Register.

Certified copies and extracts

- (2) The Registrar may supply to a person:
 - (a) a copy of or extract from a record in the Register; or
 - (b) a copy of or extract from any instrument lodged with the Registrar under this Act;certified by the Registrar to be a true copy or true extract, as the case may be.
- (3) The certified copy or extract is admissible in evidence in all courts and proceedings without further proof or production of the original.

170 Corrections of clerical errors or obvious defects

The Registrar may alter the Register for the purposes of correcting a clerical error or an obvious defect in the Register.

Division 4—Offshore Infrastructure Registrar Special Account

171 Offshore Infrastructure Registrar Special Account

- (1) The Offshore Infrastructure Registrar Special Account is established by this section.
- (2) The Offshore Infrastructure Registrar Special Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

172 Credits to the Offshore Infrastructure Registrar Special Account

- (1) There must be credited to the Offshore Infrastructure Registrar Special Account amounts equal to the following:
 - (a) amounts of fees paid to the Registrar under this Act;
 - (b) amounts of offshore electricity infrastructure levy paid to the Registrar;
 - (c) amounts of late payment penalty under subsection 190(3) paid to the Registrar;
 - (d) amounts required to be credited to the Special Account under subsection 119(3) (financial security);
 - (e) any other amounts paid to the Registrar under this Act.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

- (2) An amount of a financial offer paid in accordance with a provision of the licensing scheme made for the purposes of subsection 32(3) (financial offers for feasibility licence applications) is not to be credited to the Offshore Infrastructure Registrar Special Account.

173 Purposes of the Offshore Infrastructure Registrar Special Account

The purposes of the Offshore Infrastructure Registrar Special Account are as follows:

- (a) paying or reimbursing the Commonwealth's costs associated with the administration of this Act and the applied work health and safety provisions;
- (b) paying any remuneration or allowances payable to:
 - (i) the Registrar; or
 - (ii) APS employees assisting the Registrar under section 158; or
 - (iii) any consultants engaged under section 157;
- (c) paying amounts in respects of financial securities to the Regulator under subsection 119(4)(b), for the purposes of applying those amounts to the costs, expenses, liabilities or debts referred to in that paragraph;
- (d) refunding amounts in respects of financial securities under paragraph 119(4)(c);
- (e) refunding an amount received by the Commonwealth as mentioned in section 172 and credited to the Account, to the extent that the amount is required or permitted to be refunded:
 - (i) by an order of a court; or
 - (ii) by or under any Act.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

Part 2—Offshore Infrastructure Regulator

Division 1—Introduction

174 Simplified outline of this Part

The Offshore Infrastructure Regulator is the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

The Regulator has a range of responsibilities, including work health and safety, environmental management and the infrastructure integrity of offshore renewable energy infrastructure and offshore electricity transmission infrastructure. The Regulator is also largely responsible for the activities of OEI inspectors.

Division 2—The Regulator

175 The Regulator

- (1) A reference in this Act to the **Regulator** is a reference to NOPSEMA.

Note: See Part 6.9 (National Offshore Petroleum Safety and Environmental Management Authority) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

- (2) A reference in this Act or the applied work health and safety provisions to the functions or powers of the Regulator does not include a reference to any functions or powers of NOPSEMA other than in its capacity as the Regulator.

Note: For an equivalent of subsection (2) in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, see section 649A of that Act.

176 The CEO of the Regulator

- (1) A reference in this Act to the **CEO** is a reference to the Chief Executive Officer of NOPSEMA.

CEO to act on behalf of Regulator

- (2) 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.

177 Functions of the Regulator

- (1) The Regulator has the following functions:
- (a) to promote the work health and safety of persons engaged in offshore infrastructure activities;
 - (b) to develop and implement effective monitoring and enforcement strategies to secure compliance by persons with their obligations under this Act, the applied work health and safety provisions or a licence or in relation to matters related to the following:
 - (i) work health and safety;

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- (ii) environmental management;
- (iii) the infrastructure integrity of offshore renewable energy infrastructure and offshore electricity transmission infrastructure;
- (c) to investigate accidents, occurrences and circumstances:
 - (i) that affect, or have the potential to affect, the work health and safety of persons engaged in offshore infrastructure activities; or
 - (ii) that involve, or may involve, deficiencies in environmental management in connection with offshore infrastructure activities; or
 - (iii) that involve or may involve deficiencies in the infrastructure integrity of offshore renewable energy infrastructure or offshore electricity transmission infrastructure;
- (d) to report, as appropriate, to the Minister on investigations covered by paragraph (c);
- (e) to advise persons, either on its own initiative or on request, on matters relating to work health and safety, environmental protection and infrastructure integrity in connection with offshore infrastructure activities;
- (f) to make reports, including recommendations, to the Minister on issues relating to work health and safety, environmental protection and infrastructure integrity in connection with offshore infrastructure activities;
- (g) to provide information, assessments, analysis, reports, advice and recommendations to the Minister in relation to the administration and functioning of this Act and the applied work health and safety provisions;
- (h) to cooperate with the Registrar in matters relating to the administration and enforcement of this Act and the applied work health and safety provisions;
- (i) to cooperate with other Commonwealth, State or Territory agencies and authorities having functions relating to the regulation of offshore infrastructure activities;
- (j) the functions conferred on the Regulator by the applied work health and safety provisions;

- (k) such other functions as are conferred on the Regulator by or under this Act;
 - (l) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) The functions of the Regulator may be performed within or outside Australia.

178 Powers of the Regulator

- (1) Subject to this Act, 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.
- (2) Without limiting subsection (1), the Regulator has all the powers and functions that an OEI inspector has under this Act or the applied work health and safety provisions.
- (3) The powers of the Regulator may be exercised within or outside Australia.

179 Delegation by the Regulator

- (1) The Regulator may, in writing, delegate all or any of the Regulator's functions or powers under this Act to:
 - (a) a member of the staff of the Regulator; or
 - (b) an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent or higher position, in the Department; or
 - (c) a person prescribed by the regulations.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Regulator.
- (3) Subsection (1) does not apply to a power to make, vary or revoke a legislative instrument.

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180 Consultants and persons seconded to the Regulator

- (1) 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.
- (2) The Regulator may also be assisted:
 - (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and of authorities of the Commonwealth; or
 - (b) by officers and employees of a State, the Australian Capital Territory or the Northern Territory, or of an agency or authority of a State, the Australian Capital Territory or the Northern Territory;whose services are made available to the Regulator in connection with the performance of any of its functions or the exercise of any of its powers.

181 Minister may require Regulator to prepare reports or give information

Reports

- (1) The Minister may, by written notice to the Regulator, require the Regulator to:
 - (a) prepare a report about one or more specified matters relating to the performance of the Regulator's functions or the exercise of the Regulator's powers; and
 - (b) give a copy of the report to the Minister;within the period specified in the notice.

Information

- (2) The Minister may, by written notice to the Regulator, require the Regulator to:
 - (a) prepare a document setting out specified information relating to the performance of the Regulator's functions or the exercise of the Regulator's powers; and
 - (b) give a copy of the document to the Minister;

within the period specified in the notice.

Compliance with requirement

- (3) The Regulator must comply with a requirement under subsection (1) or (2).

182 Minister may give directions to Regulator

- (1) The Minister may, by legislative instrument, give written directions to the Regulator about the performance of its functions under this Act.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) A direction under subsection (1) must be of a general nature only.
- (3) However, subsection (2) does not prevent the Minister from directing the Regulator to investigate a particular occurrence in relation to particular offshore renewable energy infrastructure or offshore electricity transmission infrastructure.
- (4) The Regulator must comply with a direction under subsection (1).

183 Additional functions and powers

States and Territories

- (1) The Regulator may provide services, under a contract entered into by the Regulator, to:
 - (a) a State, the Australian Capital Territory or the Northern Territory; or
 - (b) an agency or authority of a State, the Australian Capital Territory or the Northern Territory;

where:

- (c) the services relate to the regulation of:
 - (i) exploring for or exploiting renewable energy resources;or

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- (ii) storing, transmitting or conveying electricity or a renewable energy product;
- on or in:
- (iii) land or waters within the limits of the State or Territory; or
 - (iv) the coastal waters of the State or Territory; and
- (d) if the services are to be provided on land that is, or in waters that are, within the limits of the State or Territory:
- (i) the services relate to the regulation of activities carried on by a constitutional corporation; or
 - (ii) the services relate to the regulation of vessels, structures or other things that are owned or controlled, or that are being constructed, operated, maintained or decommissioned, by a constitutional corporation; and
- (e) the contract is approved in writing by the Minister.

Foreign countries

- (2) The Regulator may provide services, under a contract entered into by the Regulator, to:
- (a) the government of a foreign country; or
 - (b) an agency or authority of a foreign country; or
 - (c) the government of part of a foreign country; or
 - (d) an agency or authority of part of a foreign country;
- where:
- (e) the services relate to the regulation of:
 - (i) exploring for or exploiting renewable energy resources; or
 - (ii) storing, transmitting or conveying electricity or a renewable energy product;outside Australia; and
 - (f) the contract is approved in writing by the Minister.
- (3) Before giving an approval under paragraph (2)(f), the Minister must consult the Foreign Affairs Minister.

Provision of services not to impede other functions

- (4) Subsections (1) and (2) do not authorise the Regulator to provide a service if the provision of the service would:
- (a) impede the Regulator's capacity to perform the Regulator's other functions under this Act; or
 - (b) impede the capacity of NOPSEMA to perform any of NOPSEMA's other functions (including functions under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*).

Certain governance provision do not apply

- (5) The following provisions do not apply in relation to a power conferred by subsection (1) or (2) of this section:
- (a) the following provisions of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*:
 - (i) Division 5 of Part 6.9 (corporate plans);
 - (ii) section 690 (annual reports);
 - (b) the following provisions of this Act:
 - (i) section 182 (Minister may give directions to Regulator);
 - (ii) section 184 (annual reports);
 - (iii) section 189 (fees).
- (6) The annual report for NOPSEMA under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period is not required to include information about a service provided under a contract mentioned in subsection (1) or (2) of this section.

Definitions

- (7) In this section:

Foreign Affairs Minister means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

regulation includes investigation.

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184 Annual reports

The annual report for NOPSEMA under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include any matters prescribed by the regulations.

Division 3—Other financial matters

185 Money received by the Regulator

Money paid to the Regulator, other than by the Commonwealth, is received by the Regulator for and on behalf of the Commonwealth.

186 Commonwealth payments to the Regulator

- (1) The Commonwealth must pay to the Regulator:
 - (a) such money as is appropriated by the Parliament for the purposes of the Regulator; and
 - (b) amounts equal to amounts of fees paid to the Regulator under this Act; and
 - (c) amounts equal to amounts of offshore electricity infrastructure levy paid to the Regulator; and
 - (d) amounts debited from the Offshore Infrastructure Registrar Special Account under subsection 194(2) (about OEI inspectors); and
 - (e) amounts equal to amounts of late payment penalty under subsection 190(3) paid to the Regulator; and
 - (f) amounts equal to any other amounts paid to the Regulator other than by the Commonwealth.
- (2) Amounts payable under paragraphs (1)(b) to (f) are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

187 Application of money of the Regulator

- (1) This section applies to any money of the Regulator that was paid under this Act by the Commonwealth to the Regulator.
- (2) The money is to be applied only:
 - (a) in payment or discharge of the costs, expenses and other obligations incurred by the Regulator in the performance of its functions and the exercise of its powers under this Act; and

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- (b) in payment of any remuneration or allowances payable under this Act.
- (3) Subsection (2) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the Regulator.

Part 3—Fees and offshore electricity infrastructure levy

188 Simplified outline of this Part

The Commonwealth, the Regulator and the Registrar may charge fees for doing things under this Act.

Offshore electricity infrastructure levy is payable in accordance with the regulations.

189 Fees

- (1) The Commonwealth, or the Regulator or Registrar on behalf of the Commonwealth, may charge a fee for:
 - (a) dealing with an application made under this Act or the applied work health and safety provisions; or
 - (b) performing or exercising any other function or power under this Act or the applied work health and safety provisions.
- (2) The amount of the fee is the amount:
 - (a) prescribed by the regulations; or
 - (b) worked out in accordance with a method prescribed by the regulations.
- (3) The fee must not be such as to amount to taxation.
- (4) The fee:
 - (a) is a debt due to the Commonwealth, or the Regulator or Registrar on behalf of the Commonwealth, as the case requires; and
 - (b) is recoverable by the Commonwealth, or the Regulator or Registrar on behalf of the Commonwealth, as the case requires, in a court of competent jurisdiction.
- (5) The regulations may provide that:

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- (a) an application under this Act or the applied work health and safety provisions is taken to have been made only if a fee has been paid in relation to the application; and
- (b) the Minister, the Registrar or the Regulator may decline to perform a function or exercise a power until a fee is paid.

190 Offshore electricity infrastructure levy

- (1) An offshore electricity infrastructure levy (the *levy*) is due and payable in accordance with the regulations.

Note: Offshore electricity infrastructure levy is imposed by the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021*. Regulations under that Act may prescribe different kinds of offshore electricity infrastructure levy.

- (2) The regulations may provide for the remittal or refund of all or part of an amount of levy.
- (3) If an amount of levy payable by a person remains wholly or partly unpaid after it becomes due and payable, the person is liable to pay a late payment penalty under this section.
- (4) The late payment penalty is calculated at the rate of 0.333333% per day on the amount of levy remaining unpaid.
- (5) The person to whom levy is paid may remit the whole or a part of an amount of late payment penalty if the person considers that there are good reasons for doing so.
- (6) Each amount of levy, and each amount of late payment penalty payable in respect of levy:
 - (a) is a debt due to the person to whom the levy is payable; and
 - (b) is recoverable by the person to whom the levy is payable, in a court of competent jurisdiction.
- (7) If the levy is payable to a person other than the Commonwealth, the levy is recoverable by the person on behalf of the Commonwealth.
- (8) The regulations may provide that:

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- (a) an application under this Act is taken to have been made only if an amount of levy has been paid in relation to the application; and
- (b) the Minister, the Registrar or the Regulator may decline to perform a function or exercise a power until an amount of levy is paid.

Part 4—Compliance and enforcement

Division 1—Introduction

191 Simplified outline of this Part

This Part provides various powers to ensure compliance with this Act and to deal with contraventions.

OEI inspectors are appointed by the Regulator under Division 2. OEI inspectors monitor, investigate and enforce compliance with this Act.

Division 3 provides for monitoring and investigation powers, including by applying the monitoring and investigation provisions of the Regulatory Powers Act. These powers include powers for OEI inspectors to enter offshore premises without a warrant in urgent circumstances.

Under the compliance provisions in Division 4, an OEI inspector may issue do not disturb notices, prohibition notices and improvement notices in relation to offshore premises.

This Part also applies the civil penalty, infringement notice, injunction and enforceable undertakings provisions of the Regulatory Powers Act, and provides for adverse publicity orders.

Division 2—OEI inspectors

192 OEI inspectors—appointment

Appointment generally

- (1) The Regulator may, in writing, appoint a person who is one of the following as an OEI inspector:
 - (a) a member of the staff of the Regulator;
 - (b) an employee of the Commonwealth, or of an agency or authority of the Commonwealth;
 - (c) an employee of a State or Territory, or of an agency or authority of a State or Territory.
- (2) Despite subsection (1), the Regulator may appoint as an OEI inspector a person who is not covered by paragraph (1)(a), (b) or (c) if the appointment is for a period, and for the performance of functions, stated in the instrument of appointment.
- (3) The Regulator must not appoint a person as an OEI inspector unless the Regulator is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of an OEI inspector (subject to any limitations as to powers or functions stated in an instrument under subsection (2) or a direction under section 193).
- (4) The Regulator must not appoint an employee of a State or Territory, or of an agency or authority of a State or Territory, as an OEI inspector without the agreement of the State or Territory.

Identity cards

- (5) An identity card issued to an OEI inspector under the Regulatory Powers Act must:
 - (a) state that the OEI inspector is an OEI inspector for the purposes of this Act and the applied work health and safety provisions; and

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- (b) if the OEI inspector is appointed subject to any limitations as to powers or functions stated in the instrument of appointment under subsection (2)—state that limitation.

193 OEI inspectors—directions by Regulator

Directions etc. by the Regulator

- (1) The Regulator may give written directions stating conditions subject to which an OEI inspector's powers may be exercised for the purposes of this Act and the applied work health and safety provisions. If the Regulator does so, the OEI inspector's powers must be exercised in accordance with those directions.
- (2) The Regulator may, by written notice, impose conditions (not inconsistent with any directions under subsection (1)) on the exercise of powers, or the performance of functions, by a particular OEI inspector for the purposes of this Act and the applied work health and safety provisions. If the Regulator does so, the OEI inspector's powers and functions are to be exercised or performed subject to those conditions.

Status of directions and notices as legislative instruments

- (3) If a direction under subsection (1) is of general application, the direction is a legislative instrument.
- (4) If a direction under subsection (1) is not of general application, the direction is not a legislative instrument.
- (5) A notice under subsection (2) is not a legislative instrument.

194 OEI inspectors—reimbursement for exercise of powers relating to the Registrar

Scope

- (1) This section applies if an OEI inspector:
 - (a) 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
-

- (b) exercises a power for a purpose that relates to the powers or functions of the Registrar.

Reimbursement

- (2) The Regulator and the Registrar may, with the agreement of the Minister and by notifiable instrument, make a determination that provides that an amount worked out in accordance with the determination is, on a day worked out in accordance with the determination, to be debited from the Offshore Infrastructure Registrar Special Account.

Note: The Commonwealth must pay a corresponding amount to the Regulator (see paragraph 186(1)(d)).

Division 3—Monitoring and investigation powers

195 Monitoring powers (general)

Provisions subject to monitoring

- (1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:
 - (a) a provision of this Act; or
 - (b) any of the applied work health and safety provisions; or
 - (c) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to this Act or the applied work health and safety provisions.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act and the applied work health and safety provisions have been complied with. It includes powers of entry and inspection.

Information subject to monitoring

- (2) Information given in compliance or purported compliance with a provision of this Act or the applied work health and safety provisions is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

- (3) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), there are no related provisions.

Authorised applicant

- (4) For the purposes of Part 2 of the Regulatory Powers Act, an OEI inspector is an authorised applicant in relation to both of the following:

- (a) the provisions mentioned in subsection (1);
- (b) the information mentioned in subsection (2).

Authorised person

- (5) For the purposes of Part 2 of the Regulatory Powers Act, an OEI inspector is an authorised person in relation to both of the following:
 - (a) the provisions mentioned in subsection (1);
 - (b) the information mentioned in subsection (2).

Issuing officer

- (6) For the purposes of Part 2 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to both of the following:
 - (a) the provisions mentioned in subsection (1);
 - (b) the information mentioned in subsection (2).

Relevant chief executive

- (7) For the purposes of Part 2 of the Regulatory Powers Act, the CEO is the relevant chief executive in relation to both of the following:
 - (a) the provisions mentioned in subsection (1);
 - (b) the information mentioned in subsection (2).
- (8) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (9) to an SES employee, or acting SES employee, of the Regulator.
- (9) The powers and functions that may be delegated are:
 - (a) powers and functions under Part 2 of the Regulatory Powers Act in relation to both of the following:
 - (i) the provisions mentioned in subsection (1);
 - (ii) the information mentioned in subsection (2); and
 - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).

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- (10) A person exercising powers or performing functions under a delegation under subsection (8) must comply with any directions of the relevant chief executive.

Relevant court

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

Person assisting

- (12) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1).

Use of force in executing a monitoring warrant

- (13) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1):
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

Extension to Commonwealth offshore area

- (14) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) or the information mentioned in subsection (2), extends to the Commonwealth offshore area.

Extension to external Territories

- (15) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) or the information mentioned in subsection (2), extends to every external Territory to which this Act extends.

Note: For the external Territories to which this Act extends, see section 5.

196 Investigation powers (general)

Provisions subject to investigation

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) an offence provision of this Act; or
 - (b) a civil penalty provision of this Act; or
 - (c) an offence provision of the applied work health and safety provisions; or
 - (d) a WHS civil penalty provision within the meaning of the applied work health and safety provisions, as if the WHS civil penalty provision were a civil penalty provision; or
 - (e) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to this Act or the applied work health and safety provisions.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1), there are no related provisions.

Authorised applicant

- (3) For the purposes of Part 3 of the Regulatory Powers Act, an OEI inspector is an authorised applicant in relation to evidential material that relates to a provision mentioned in subsection (1).

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Authorised person

- (4) For the purposes of Part 3 of the Regulatory Powers Act, an OEI inspector is an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

Issuing officer

- (5) For the purposes of Part 3 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1).

Relevant chief executive

- (6) For the purposes of Part 3 of the Regulatory Powers Act, the CEO is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).
- (7) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (8) to an SES employee, or acting SES employee, of the Regulator.
- (8) The powers and functions that may be delegated are:
- (a) powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1); and
 - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).
- (9) A person exercising powers or performing functions under a delegation under subsection (7) must comply with any directions of the relevant chief executive.

Relevant court

- (10) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to an offence or civil penalty provision mentioned in subsection (1):
- (a) the Federal Court;

- (b) the Federal Circuit and Family Court of Australia (Division 2);
- (c) the Supreme Court of a State or Territory.

Person assisting

- (11) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Use of force in executing a warrant

- (12) In executing an investigation warrant:
 - (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

Extension to Commonwealth offshore area

- (13) Part 3 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1), extends to the Commonwealth offshore area.

Extension to external Territories

- (14) Part 3 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1), extends to every external Territory to which this Act extends.

Note: For the external Territories to which this Act extends, see section 5.

197 Monitoring and investigation powers (special provisions)

Scope

- (1) This section provides for extended or alternative meanings of terms used in Part 2 or 3 of the Regulatory Powers Act in the application of those Parts under this Division.

Section 198

Premises

- (2) In that application (and without limiting its meaning under that Act) **premises** includes offshore premises.

Occupiers of offshore premises

- (3) In that application, but only in relation to the exercise of powers by an OEI inspector at offshore premises, **occupier** means:
- (a) in the case of the exercise of powers at offshore renewable energy infrastructure, or offshore electricity transmission infrastructure, that is installed or being operated or maintained in accordance with a licence—the licence holder’s representative (if any) at the premises; or
 - (b) if paragraph (a) does not apply, and the premises are a vessel under the command or charge of a master—the master; or
 - (c) if there is no occupier at the premises as provided under paragraph (a) or (b)—the person at the premises (if any) who appears to be in overall control of the premises.

Note: In the case of premises that are not offshore premises, **occupier** would have its ordinary meaning as applied under the Regulatory Powers Act.

198 Monitoring powers (entering offshore premises without warrant)

- (1) Despite subsection 18(2) of the Regulatory Powers Act, an authorised person may enter offshore premises under subsection 18(1) of that Act without:
- (a) the consent of the occupier of the premises; or
 - (b) a monitoring warrant (within the meaning of the Regulatory Powers Act);
- if the authorised person believes that, because of urgent circumstances, it is necessary and reasonable to do so without consent or a monitoring warrant in order to exercise the monitoring powers (within the meaning of the Regulatory Powers Act).
- (2) If an authorised person enters offshore premises under subsection (1), the following provisions of the Regulatory Powers Act apply as if the entry were authorised by a monitoring warrant:

- (a) section 21 (securing electronic equipment to obtain expert assistance);
- (b) section 24 (asking questions and seeking production of documents);
- (c) section 26 (announcement before entry under warrant), except that the authorised person must announce that the authorised person is authorised to enter the premises under this section;
- (d) paragraph 28(2)(b) (details of warrant etc. to be given to occupier);
- (e) section 30 (right to observe execution of warrant);
- (f) section 31 (responsibility to provide facilities and assistance).

199 Investigation powers (entering offshore premises without warrant)

- (1) Despite subsection 48(2) of the Regulatory Powers Act, an authorised person may enter offshore premises under subsection 48(1) of that Act without:

- (a) the consent of the occupier of the premises; or
- (b) an investigation warrant (within the meaning of the Regulatory Powers Act);

if the authorised person believes that, because of urgent circumstances, it is necessary and reasonable to do so without consent or an investigation warrant in order to exercise the investigation powers (within the meaning of the Regulatory Powers Act).

- (2) If an authorised person enters offshore premises under subsection (1), the following provisions of the Regulatory Powers Act 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:

- (a) section 49 (general investigation powers);
- (b) section 50 (operating electronic equipment);
- (c) section 51 (securing electronic equipment to obtain expert assistance);

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- (d) section 54 (asking questions and seeking production of documents);
- (e) 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 section, unless subsection 56(2) of that Act applies;
- (f) paragraph 58(2)(b) (details of warrant etc. to be given to occupier);
- (g) section 62 (right to observe execution of warrant);
- (h) section 63 (responsibility to provide facilities and assistance);
- (i) section 64 (copies of seized things to be provided).

200 Monitoring and investigation powers (reasonable facilities and assistance)

Scope

- (1) This section applies if any powers are to be exercised by an OEI inspector under the Regulatory Powers Act, as it applies under this Division, in relation to both of the following:
 - (a) a particular licence;
 - (b) particular offshore premises.

Reasonable facilities and assistance

- (2) For the purposes of the application of section 31 or 63 of the Regulatory Powers Act under this Division, in addition to any facilities or assistance that must otherwise be provided under those sections in that application, the licence holder must provide:
 - (a) appropriate transport to or from the premises for the following:
 - (i) the OEI inspector;
 - (ii) any person assisting the OEI inspector (within the meaning of section 23 or 53 of the Regulatory Powers Act as that section applies under this Division);
 - (iii) any equipment required by the OEI inspector;
 - (iv) any thing of which the OEI inspector has taken possession; and

- (b) reasonable accommodation and means of subsistence for the OEI inspector, and any such person assisting the OEI inspector, while the OEI inspector is at the premises.

Note: An OEI inspector may be assisted by another person (see subsections 195(12) and 196(11)). Any such assistance must be necessary and reasonable (see sections 23 and 53 of the Regulatory Powers Act).

201 OEI inspections—licence holder’s representative

Scope

- (1) This section applies in relation to an OEI inspection that relates to a licence.

Meaning of licence holder’s representative

- (2) For the purposes of this Act, a **licence holder’s representative** is a person nominated by the licence holder under this section 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

- (3) For the purposes of an OEI inspection, an OEI inspector may, by written notice to the licence holder, require the licence holder to nominate a representative to be present at offshore premises at the time stated in the notice.
- (4) The licence holder must:
- (a) by written notice to the OEI inspector, nominate a representative as required by the notice under subsection (3); and
 - (b) take all reasonably practicable steps to ensure that the nominated representative is present at the offshore premises at the time stated in the notice, and remains at the offshore premises after the stated time until no longer required for the purposes of the OEI inspection.

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Contravention

- (5) A person contravenes this subsection if:
- (a) the person is a licence holder; and
 - (b) the person is given a notice under subsection (3); and
 - (c) the person fails to comply with subsection (4) in relation to the notice.

Strict liability offence

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

Penalty: 50 penalty units.

Civil penalty provision

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

Civil penalty: 135 penalty units.

202 Monitoring and investigation powers (relationship with other powers)

The exercise or performance by an OEI inspector (or any other person) of a power or function under Part 2 or 3 of the Regulatory Powers Act, as it applies under this Division:

- (a) does not prevent the OEI inspector (or other person) from exercising or performing a power or function under:
 - (i) any provision of this Act; or
 - (ii) any of the applied work health and safety provisions; and
- (b) is not prevented by the exercise or performance by an OEI inspector (or any other person) of a power or function under:
 - (i) any provision of this Act; or
 - (ii) any of the applied work health and safety provisions.

203 Obstructing or hindering OEI inspector

- (1) A person contravenes this subsection if:
 - (a) the person engages in conduct; and
 - (b) the conduct obstructs or hinders an OEI inspector in the exercise of the OEI inspector's powers under Part 2 or 3 of the Regulatory Powers Act, as it applies under this Division.

Fault-based offence

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

Note: The same conduct may be an offence against both this subsection and section 149.1 of the *Criminal Code*.

Penalty: 60 penalty units.

Civil penalty provision

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

Civil penalty: 135 penalty units.

Exception—reasonable excuse

- (4) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

204 OEI inspections—reports

Scope

- (1) This section applies if an OEI inspector has conducted an OEI inspection in relation to a licence.

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Report to be given to Regulator

- (2) The OEI inspector must, as soon as practicable, prepare a written report relating to the inspection and give the report to the Regulator.
- (3) The report must include:
 - (a) the OEI inspector's conclusions from conducting the inspection and the reasons for those conclusions; and
 - (b) any recommendations that the OEI inspector wishes to make arising from the inspection; and
 - (c) such other matters (if any) as are prescribed by regulation.

Copies of report to be given to licence holder

- (4) As soon as practicable after receiving the report, the Regulator must give a copy of the report, together with any written comments that it wishes to make, to the licence holder.

Details of remedial action etc.

- (5) The Regulator may, in writing, request the licence holder to provide to the Regulator, within a reasonable period specified in the request, details of any action proposed to be taken as a result of the conclusions or recommendations contained in the report.
- (6) The licence holder must comply with a request under subsection (5).

Division 4—Compliance powers

205 Do not disturb notices—issue

Scope

- (1) This section applies if an OEI inspector is conducting an OEI inspection in relation to offshore premises.

When a notice may be issued

- (2) An OEI inspector may issue a notice (a ***do not disturb notice***) to a licence holder, in writing, under this section if the OEI inspector is satisfied on reasonable grounds that it is reasonably necessary to issue the notice in order to:
 - (a) remove an immediate threat to the health or safety of any person; or
 - (b) allow the inspection, examination or measurement of, or the conducting of tests concerning:
 - (i) the offshore premises; or
 - (ii) particular plant, or a particular substance or thing, at the offshore premises.

Issue of notice

- (3) Without limiting the way in which the notice may be issued, the notice may be issued to the licence holder by being given to the licence holder's representative at the premises.

Contents of notice

- (4) The notice must:
 - (a) direct the licence holder to take all reasonably practicable steps to ensure that one or more of the following are not disturbed for a period specified in the notice:
 - (i) a particular part of the offshore premises;
 - (ii) particular plant, or a particular substance or thing, at the offshore premises; and

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- (b) set out the reasons for the OEI inspector's decision to issue the notice.
- (5) The period specified in the notice must be a period that the OEI inspector is satisfied on reasonable grounds is necessary in order to:
 - (a) address the threat mentioned in paragraph (2)(a); or
 - (b) allow the inspection, examination, measuring or testing mentioned in paragraph (2)(b) to take place.

Renewal of notice

- (6) The notice may be renewed by another notice in the same terms.

Fault-based offence

- (7) A person commits an offence if:
 - (a) the person is a licence holder; and
 - (b) the person is given a do not disturb notice containing a direction under paragraph (4)(a); and
 - (c) the person engages in conduct; and
 - (d) the person's conduct breaches the direction.

Penalty for contravention of subsection (7): 300 penalty units.

206 Do not disturb notices—notification and display

Notice to interested persons

- (1) As soon as practicable after issuing a do not disturb notice, the OEI inspector must take reasonable steps to give a copy of the notice to the following persons:
 - (a) if the offshore premises are a vessel under the command or charge of a master—the master;
 - (b) if the offshore premises are, or the plant, substance or thing is, owned by a person other than the licence holder—that owner.

Display of notice

- (2) The following person must cause a copy of a do not disturb notice to be displayed in a prominent place at the offshore premises:
 - (a) if the notice is given to the licence holder's representative under subsection 205(3)—the licence holder's representative;
 - (b) if the notice is not given to the licence holder's representative—the licence holder.

207 Prohibition notices—issue

Scope

- (1) This section applies if an OEI inspector is conducting an OEI inspection in relation to offshore premises.

When notice may be issued

- (2) An OEI inspector may issue a notice (a **prohibition notice**) to a licence holder, in writing, under this section if, in conducting the inspection, the OEI inspector is satisfied on reasonable grounds that:
 - (a) one or more of the following is the case:
 - (i) an activity is occurring at the premises that involves an immediate and significant threat to the environment;
 - (ii) an activity may occur at the premises that, if it occurred, would involve an immediate and significant threat to the environment;
 - (iii) an activity is occurring at the premises that involves an immediate and significant threat to the health and safety of workers;
 - (iv) an activity may occur at the premises that, if it occurred, would involve an immediate and significant threat to the health and safety of workers;
 - (v) an activity is occurring at the premises that involves an immediate and significant threat to the infrastructure integrity of offshore renewable energy infrastructure or offshore electricity transmission infrastructure;

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- (vi) an activity may occur at the premises that, if it occurred, would involve an immediate and significant threat to the infrastructure integrity of offshore renewable energy infrastructure or offshore electricity transmission infrastructure; and
- (b) it is reasonably necessary to issue the notice in order to remove the threat.

Note: The notice will be published on the Regulator's website (see section 212).

How notice may be issued

- (3) Without limiting the way in which the notice may be issued, the notice may be issued to the licence holder by being given to the licence holder's representative at the premises.

Contents of notice

- (4) The notice must:
 - (a) state that the OEI inspector is satisfied on reasonable grounds that a specified circumstance mentioned in paragraph (2)(a) applies, and set out those grounds; and
 - (b) specify the activity at the premises that involves a threat to the environment, the health and safety of workers or the infrastructure integrity of offshore renewable energy infrastructure or offshore electricity transmission infrastructure; and
 - (c) describe the nature of the threat; and
 - (d) direct the licence holder to ensure:
 - (i) that the activity is not conducted; or
 - (ii) that the activity is not conducted in a specified manner.
- (5) The notice may specify action that may be taken to satisfy an OEI inspector that adequate action has been taken to remove the threat.

Fault-based offence

- (6) A person commits an offence if:
 - (a) the person is a licence holder; and

- (b) the person is given a prohibition notice containing a direction under paragraph (4)(d); and
- (c) the person engages in conduct; and
- (d) the person's conduct breaches the direction.

Penalty: 600 penalty units.

Continuing offences

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

Definition

- (9) In this section:

premises, in relation to offshore premises, includes:

- (a) a particular part of the offshore premises; and
- (b) particular plant or equipment, or a particular substance or thing, at the offshore premises.

208 Prohibition notices—notification

Scope

- (1) This section applies if an OEI inspector issues a prohibition notice to a licence holder under section 207 that concerns a threat mentioned in paragraph 207(2)(a) in relation to an activity at particular offshore premises.

Notice to interested persons

- (2) As soon as practicable after issuing the notice, the OEI inspector must take reasonable steps to give a copy of the notice to the following persons:

Section 208

- (a) if the premises are a vessel under the command or charge of a master—the master;
- (b) if the premises are, or the plant, substance or thing is, owned by a person other than the licence holder—that owner.

Display of notice

- (3) The licence holder must cause a copy of the notice to be displayed in a prominent place at the premises.

Inadequate action in response to notice

- (4) If an OEI inspector is satisfied that action taken by the licence holder to remove the threat is not adequate, the OEI inspector must inform the licence holder accordingly.
- (5) In making a decision under subsection (4), an OEI inspector may exercise such of the powers of an OEI inspector conducting an inspection in the exercise of the OEI inspector's powers under Part 2 or 3 of the Regulatory Powers Act, as it applies under Division 3 of this Part, as the OEI inspector considers necessary for the purposes of making the decision.

When notice ceases to have effect

- (6) The notice ceases to have effect in relation to a licence holder when an OEI inspector notifies the licence holder that the OEI inspector is satisfied that the licence holder, or another person, has taken adequate action to remove the threat.

Definition

- (7) In this section:

premises, in relation to offshore premises, includes:

- (a) a particular part of the offshore premises; and
- (b) particular plant or equipment, or a particular substance or thing, at the offshore premises.

209 Improvement notices—issue

Scope

- (1) This section applies if an OEI inspector is conducting an OEI inspection in relation to offshore premises.

When notice may be issued

- (2) An OEI inspector may issue a notice (an **improvement notice**) to a licence holder, in writing, under this section if, in conducting the inspection, the OEI inspector is satisfied on reasonable grounds that:
- (a) the licence holder:
 - (i) is contravening a provision of this Act, or an applied work health and safety provision; or
 - (ii) has contravened a provision of this Act, or an applied work health and safety provision, and is likely to contravene that provision again; and
 - (b) as a result, there is, or may be, a significant threat to:
 - (i) the environment; or
 - (ii) the health and safety of workers; or
 - (iii) the infrastructure integrity of offshore renewable energy infrastructure or offshore electricity transmission infrastructure; and
 - (c) the OEI inspector is satisfied on reasonable grounds that action is required to be taken by the licence holder to remove the threat.

Note: The notice will be published on the Regulator's website (see section 212).

How notice may be issued

- (3) Without limiting the way in which the notice may be issued, the notice may be issued to the licence holder by being given to the licence holder's representative at the premises.

Section 209

Contents of notice

- (4) The notice must:
- (a) state that the OEI inspector is satisfied on reasonable grounds that a specified contravention of this Act 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
 - (b) state that the OEI inspector is satisfied on reasonable grounds that as a result of that contravention, there is, or may be, a significant threat to any of the following, and set out those grounds:
 - (i) the environment;
 - (ii) the health and safety of workers;
 - (iii) the infrastructure integrity of offshore renewable energy infrastructure or offshore electricity transmission infrastructure; and
 - (c) describe the nature of the threat; and
 - (d) direct the licence holder to take the action mentioned in paragraph (2)(c), which must be specified in the notice; and
 - (e) specify a period within which the licence holder is to take the action.

Period of notice

- (5) The period specified in the notice must be reasonable.
- (6) If the OEI inspector is satisfied on reasonable grounds that it is appropriate to do so, the OEI inspector may, in writing and before the end of the period, extend the period specified in the notice.

Notice to interested persons

- (7) As soon as practicable after issuing the notice, the OEI inspector must take reasonable steps to give a copy of the notice to the following persons:
- (a) if the offshore premises are a vessel under the command or charge of a master—the master;
 - (b) if the offshore premises are owned by a person other than the licence holder—that owner.

Display of notice

- (8) The licence holder must cause a copy of the notice to be displayed in a prominent place at the offshore premises.

210 Improvement notices—compliance

- (1) A person contravenes this subsection if:
- (a) the person is a licence holder; and
 - (b) the person is given an improvement notice under subsection 209(2) containing a direction under paragraph 209(4)(d); and
 - (c) the person engages in conduct; and
 - (d) the person's conduct breaches the direction.

Fault-based offence

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

Penalty: 300 penalty units.

Civil penalty provision

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

Civil penalty: 400 penalty units.

Continuing offences and continuing contraventions of civil penalty provisions

- (4) The maximum penalty for each day that an offence under subsection (2) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

Note: Subsection (2) is a continuing offence under section 4K of the *Crimes Act 1914*.

- (5) The maximum civil penalty for each day that a contravention of subsection (3) continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

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Note: Subsection (3) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

211 Tampering with and removing notices

Tampering with notice

- (1) A person contravenes this subsection if:
 - (a) a notice is displayed under subsection 206(2), 208(3) or 209(8); and
 - (b) the person tampers with the notice.

Removal of notice

- (2) A person contravenes this subsection if:
 - (a) a notice is displayed under subsection 206(2), 208(3) or 209(8); and
 - (b) the person removes the notice before the notice has ceased to have effect.

Strict liability offence

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

Penalty: 50 penalty units.

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

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

212 Publishing prohibition notices and improvement notices

- (1) The Regulator must publish on its website a prohibition notice or an improvement notice within 21 days after the notice is issued.
- (2) However, the Regulator must not publish the notice if it is aware that the decision to issue the notice is the subject of an application for review by a court.

- (3) If the notice is published on the Regulator's website and the decision to issue the notice is, or becomes, the subject of an application for review by a court, the Regulator must remove the notice from the website as soon as practicable after becoming aware of the application.
- (4) If all rights for judicial review (including any right of appeal) in relation to the decision to issue the notice have been exhausted, and the decision to issue the notice has been upheld, the Regulator must publish the notice on its website within 21 days after becoming aware that the rights have been exhausted.
- (5) If a notice contains personal information (within the meaning of the *Privacy Act 1988*), the Regulator must take such steps as are reasonable in the circumstances to ensure that the information is de-identified before the notice is published.

Division 5—Civil penalties

213 Civil penalty provisions

Enforceable civil penalty provisions

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

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

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, each person mentioned in column 1 of an item of the following table is an authorised applicant in relation to a provision mentioned in column 2 of the item.

Authorised applicants		
	Column 1	Column 2
Item	Authorised applicant	Provisions
1	The CEO	(a) subsection 15(4); (b) subsection 77(3); (c) subsection 78(3); (d) subsection 116(5); (e) subsection 118(3); (f) subsection 123(4); (g) subsection 128(4); (h) subsections 141(6) and (7); (i) subsection 168(3); (j) subsection 201(7); (k) subsection 203(3); (l) subsection 210(3); (m) subsection 267(3); (n) subsection 270(3).

Authorised applicants		
	Column 1	Column 2
Item	Authorised applicant	Provisions
2	The Registrar	(a) subsection 91(2); (b) subsection 93(2); (c) subsection 95(3); (d) subsection 96(2); (e) subsection 97(2); (f) subsection 99(3); (g) subsection 108(3); (h) subsection 168(3); (i) subsection 267(3); (j) subsection 270(3).

No time limit for certain applications

- (3) Subsection 82(2) of the Regulatory Powers Act does not apply to an application made under section 82 of that Act in relation to an alleged contravention of the following provisions of this Act:
- (a) subsection 91(2);
 - (b) subsection 93(2);
 - (c) subsection 95(3);
 - (d) subsection 96(2);
 - (e) subsection 97(2);
 - (f) subsection 99(3);
 - (g) subsection 108(3).

Relevant court

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

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(c) the Supreme Court of a State or Territory.

Extension to Commonwealth offshore area

- (5) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to the Commonwealth offshore area.

Extension to external Territories

- (6) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory to which this Act extends.

Note: For the external Territories to which this Act extends, see section 5.

214 Contravening civil penalty provisions

Scope

- (1) This section applies if a person is liable for a civil penalty under a civil penalty provision of this Act because the person has contravened, or breached a requirement of, another provision of this Act.

References to contraventions

- (2) For the purposes of this Act, the person is taken to have contravened the civil penalty provision if the person has contravened, or breached the requirement of, the other provision.

Division 6—Infringement notices

215 Infringement notices

Provisions subject to an infringement notice

- (1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) subsections 168(2) and (3);
 - (b) subsections 201(6) and (7);
 - (c) subsection 203(3);
 - (d) subsections 267(2) and (3).

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

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, each person mentioned in column 1 of an item of the following table is an infringement officer in relation to a provision mentioned in column 2 of the item.

Infringement officers		
	Column 1	Column 2
Item	Infringement officer	Provisions
1	The Registrar	(a) subsections 168(2) and (3); (b) subsections 267(2) and (3).
2	An OEI inspector	(a) subsections 201(6) and (7); (b) subsections 203(3); (c) subsections 267(2) and (3).

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Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the relevant chief executive in relation to the provisions mentioned in subsection (1) is:
 - (a) if an OEI inspector is the infringement officer under subsection (2) for the provision—the CEO; or
 - (b) if the Registrar is the infringement officer under subsection (2) for the provision—the Secretary.
- (4) The CEO may delegate the relevant chief executive’s powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions for which the CEO is the relevant chief executive to:
 - (a) a member of the staff of the Regulator; or
 - (b) an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent or higher position, in the Department; or
 - (c) a person prescribed by the regulations.
- (5) The Secretary may delegate the relevant chief executive’s powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions for which the Secretary is the relevant chief executive to an SES employee, or acting SES employee, in the Department.
- (6) A person exercising powers or performing functions under a delegation under subsection (4) or (5) must comply with any directions of the relevant chief executive.

Single infringement notice may deal with more than one contravention

- (7) Despite subsection 103(3) of the Regulatory Powers Act, a single infringement notice may be given to a person in respect of:
 - (a) 2 or more alleged contraventions of a provision mentioned in subsection (1) of this section; or
 - (b) alleged contraventions of 2 or more provisions mentioned in subsection (1) of this section.

However, the notice must not require the person to pay more than one amount in respect of the same conduct.

Regulations may set out other matters to be included

- (8) The regulations may prescribe other matters that are to be included in an infringement notice given in respect of a contravention of a provision mentioned in subsection (1).

Extension to Commonwealth offshore area

- (9) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to the Commonwealth offshore area.

Extension to external Territories

- (10) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory to which this Act extends.

Note: For the external Territories to which this Act extends, see section 5.

216 Evidentiary matters

- (1) The relevant chief executive may issue a certificate stating:
- (a) that the relevant chief executive did not allow further time under section 105 of the Regulatory Powers Act to pay the penalty for an offence, or a civil penalty, under this Act, stated in an infringement notice; and
 - (b) that the penalty has not been paid in accordance with the notice within 28 days after the day the infringement notice is given.
- (2) The relevant chief executive may issue a certificate stating:
- (a) that the relevant chief executive allowed, under section 105 of the Regulatory Powers Act, the further time specified in the certificate for payment of the penalty for an offence, or a civil penalty, under this Act, stated in an infringement notice; and
 - (b) that the penalty has not been paid in accordance with the notice or within the further time allowed.

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- (3) The relevant chief executive may issue a certificate stating that a specified infringement notice was withdrawn on a day specified in the certificate.
- (4) A certificate under subsection (1), (2) or (3) must be signed by the relevant chief executive.
- (5) For all purposes and in all proceedings, a document purporting to be a certificate under subsection (1), (2) or (3) must, unless the contrary is established, be taken to be such a certificate and to have been properly given.
- (6) For all purposes and in all proceedings, a certificate under subsection (1), (2) or (3) is prima facie evidence of the matters stated in the certificate.

Division 7—Injunctions

217 Injunctions

Enforceable provisions

- (1) The following provisions are enforceable under Part 7 of the Regulatory Powers Act:
- (a) subsections 15(3) and (4);
 - (b) subsections 77(2) and (3);
 - (c) subsections 78(2) and (3);
 - (d) subsections 116(4) and (5);
 - (e) subsection 118(2) and (3);
 - (f) subsections 123(2), (3) and (4);
 - (g) subsections 128(2), (3) and (4);
 - (h) subsection 135(1);
 - (i) subsections 139(1), (3), (5) and (7);
 - (j) subsections 141(4), (5), (6) and (7);
 - (k) section 148;
 - (l) subsection 150(1);
 - (m) subsections 168(2) and (3);
 - (n) subsections 201(6) and (7);
 - (o) subsections 203(2) and (3);
 - (p) subsection 205(7);
 - (q) subsection 207(6);
 - (r) subsections 210(2) and (3);
 - (s) subsection 211(3);
 - (t) subsections 267(2) and (3);
 - (u) subsections 270(2) and (3);
 - (v) section 276;
 - (w) section 277;
 - (x) section 278.

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

Section 217

Authorised person

- (2) For the purposes of Part 7 of the Regulatory Powers Act, each person mentioned in column 1 of an item of the following table is an authorised person in relation to a provision mentioned in column 2 of the item.

Authorised person		
Item	Column 1 Authorised person	Column 2 Provisions
1	The CEO	(a) subsections 15(3) and (4); (b) subsections 77(2) and (3); (c) subsections 78(2) and (3); (d) subsections 116(4) and (5); (e) subsections 118(2) and (3); (f) subsections 123(2), (3) and (4); (g) subsections 128(2), (3) and (4); (h) subsection 135(1); (i) subsections 139(1), (3), (5) and (7); (j) subsections 141(4), (5), (6) and (7); (k) section 148; (l) subsection 150(1); (m) subsections 201(6) and (7); (n) subsections 203(2) and (3); (o) subsection 205(7); (p) subsection 207(6); (q) subsections 210(2) and (3); (r) subsection 211(3).
2	The Registrar	(a) subsections 168(2) and (3); (b) subsections 267(2) and (3); (c) subsections 270(2) and (3); (d) section 276; (e) section 277;

Authorised person		
	Column 1	Column 2
Item	Authorised person	Provisions
		(f) section 278.

Relevant court

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

Consent injunctions

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

Extension to Commonwealth offshore area

- (5) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to the Commonwealth offshore area.

Extension to external Territories

- (6) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory to which this Act extends.

Note: For the external Territories to which this Act extends, see section 5.

Division 8—Enforceable undertakings

218 Enforceable undertakings

Enforceable provisions

- (1) The following provisions are enforceable under Part 6 of the Regulatory Powers Act:
- (a) subsections 77(2) and (3);
 - (b) subsections 78(2) and (3);
 - (c) subsections 95(2) and (3);
 - (d) section 110;
 - (e) subsections 116(4) and (5);
 - (f) subsections 118(2) and (3);
 - (g) subsections 123(2), (3) and (4);
 - (h) subsections 128(2), (3) and (4);
 - (i) subsection 135(1);
 - (j) subsections 141(4), (5), (6) and (7);
 - (k) section 148;
 - (l) subsection 150(1);
 - (m) subsections 168(2) and (3);
 - (n) subsections 201(6) and (7);
 - (o) subsections 203(2) and (3);
 - (p) subsection 205(7);
 - (q) subsection 207(6);
 - (r) subsections 210(2) and (3);
 - (s) subsection 211(3);
 - (t) subsections 267(2) and (3);
 - (u) subsections 270(2) and (3);
 - (v) section 276;
 - (w) section 277;
 - (x) section 278;
 - (y) the following provisions of the Work Health and Safety Act as applied by Part 1 of Chapter 6 of this Act:

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- (i) subsection 31(1);
- (ii) section 32;
- (iii) section 33;
- (iv) subsections 38(1) and (7);
- (v) subsection 39(1);
- (vi) section 273.

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

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, each person mentioned in column 1 of an item of the following table is an authorised person in relation to a provision mentioned in column 2 of the item.

Authorised person		
Item	Column 1 Authorised person	Column 2 Provisions
1	The CEO	(a) subsections 77(2) and (3); (b) subsections 78(2) and (3); (c) subsections 116(4) and (5); (d) subsections 118(2) and (3); (e) subsections 123(2), (3) and (4); (f) subsections 128(2), (3) and (4); (g) subsection 135(1); (h) subsections 141(4), (5), (6) and (7); (i) section 148; (j) subsection 150(1); (k) subsections 201(6) and (7); (l) subsections 203(2) and (3); (m) subsection 205(7); (n) subsection 207(6); (o) subsections 210(2) and (3);

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Authorised person		
Item	Column 1 Authorised person	Column 2 Provisions
		(p) subsection 211(3); (q) the provisions mentioned in paragraph (1)(y) of this section.
2	The Registrar	(a) subsections 95(2) and (3); (b) section 110; (c) subsections 168(2) and (3); (d) subsections 267(2) and (3); (e) subsections 270(2) and (3); (f) section 276; (g) section 277; (h) section 278.

Relevant court

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

When undertaking must not be accepted

- (4) An authorised person (within the meaning of Part 6 of the Regulatory Powers Act) must not accept an undertaking that was given by a person (the **first person**) under section 114 of that Act in response to an alleged contravention of a listed WHS law if:
- (a) the alleged contravention contributed, or may have contributed, to the death of another person; or
 - (b) the alleged contravention involved recklessness (within the meaning of the *Criminal Code*); or

- (c) during the previous 5 years, the first person has been convicted of a WHS offence that contributed to the death of another person; or
- (d) both:
 - (i) during the previous 10 years, the first person has been convicted of 2 or more WHS offences; and
 - (ii) at least 2 of those convictions arose from separate investigations.
- (5) Subsection (4) does not apply if there are exceptional circumstances.
- (6) For the purposes of subsection (4), **WHS offence** means an offence against a listed WHS law.

Note: For the *listed WHS laws*, see section 221.

Extension to Commonwealth offshore area

- (7) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to the Commonwealth offshore area.

Extension to external Territories

- (8) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory to which this Act extends.

Note: For the external Territories to which this Act extends, see section 5.

219 Publication of enforceable undertakings

CEO

- (1) If:
 - (a) the CEO is an authorised person in relation to a provision mentioned in subsection 218(1); and
 - (b) a person has given an undertaking under section 114 of the Regulatory Powers Act in relation to the provision; and

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- (c) the undertaking has been accepted by the CEO under section 114 of the Regulatory Powers Act; and
 - (d) the undertaking has not been withdrawn or cancelled; the CEO must cause the undertaking to be published on the Regulator's website.
- (2) If an undertaking contains personal information (within the meaning of the *Privacy Act 1988*), 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 subsection (1).

Registrar

- (3) If:
- (a) the Registrar is an authorised person in relation to a provision mentioned in subsection 218(1); and
 - (b) a person has given an undertaking under section 114 of the Regulatory Powers Act in relation to the provision; and
 - (c) the undertaking has been accepted by the Registrar under section 114 of the Regulatory Powers Act; and
 - (d) the undertaking has not been withdrawn or cancelled; the Registrar must publish the undertaking on the Department's website.
- (4) If an undertaking contains personal information (within the meaning of the *Privacy Act 1988*), 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 subsection (3).

220 Compliance with enforceable undertaking

A person commits an offence if:

- (a) the person has given an undertaking under section 114 of the Regulatory Powers Act in relation to a provision mentioned in subsection 218(1) of this Act; and
- (b) the undertaking has been accepted under section 114 of the Regulatory Powers Act; and

- (c) the undertaking has not been withdrawn or cancelled; and
- (d) the person engages in conduct; and
- (e) the person's conduct breaches the undertaking.

Penalty: 250 penalty units.

221 Listed WHS laws

(1) The following provisions are the *listed WHS laws* for the purposes of this Act:

- (a) section 135 or 139, to the extent to which the conduct prohibited by that section results in:
 - (i) damage to, or interference with, offshore renewable energy infrastructure or offshore electricity transmission infrastructure; or
 - (ii) interference with any operations or activities being carried out, or any works being executed, on, by means of, or in connection with, offshore renewable energy infrastructure or offshore electricity transmission infrastructure;

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 offshore renewable energy infrastructure or offshore electricity transmission infrastructure;

- (b) prescribed regulations, or a prescribed provision of regulations, made under this Act;
 - (c) the Work Health and Safety Act as it applies under Part 1 of Chapter 6 of this Act;
 - (d) prescribed regulations, or a prescribed provision of regulations, made under the Work Health and Safety Act as it applies under Part 1 of Chapter 6 of this Act.
- (2) A *listed WHS law* includes a requirement made under a provision listed in subsection (1).

Division 9—Adverse publicity orders

222 Adverse publicity orders

Scope

- (1) This section applies if a court:
 - (a) finds a body corporate guilty of an offence against a provision of this Act, whether or not the court convicts the body corporate of the offence; or
 - (b) finds a body corporate guilty of an offence against section 6 of the *Crimes Act 1914* (whether or not the court convicts the body corporate of the offence) in relation to an offence referred to in paragraph (a) of this subsection; or
 - (c) orders a body corporate to pay a civil penalty for a contravention of a provision of this Act.

Note: For ancillary offences, see section 11.6 of the *Criminal Code*.

Order by court

- (2) The court may make an order (an ***adverse publicity order***):
 - (a) on the application of the person prosecuting the offence or taking the action to obtain a civil penalty order; and
 - (b) in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence or contravention.

An application may only be made within 6 years after the commission of the offence or the contravention.

- (3) An adverse publicity order may require the body:
 - (a) to take either or both of the following actions within the period specified in the order:
 - (i) to publicise, in the way specified in the order, the offence or civil penalty order, its consequences, the penalty imposed and any other related matter;
 - (ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence or civil

penalty order, its consequences, the penalty imposed and any other related matter; and

- (b) to give the Regulator or the Registrar (as specified in the order), within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the body in accordance with the order.

Failing to give evidence

- (4) If the body fails to give evidence in accordance with paragraph (3)(b), 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

- (5) The Regulator or the Registrar (as the case requires) (the **applicant**) may apply to a court for an order authorising the applicant, or a person authorised in writing by the applicant, to take the action or actions if:
- (a) the body gives evidence to the applicant in accordance with paragraph (3)(b); but
 - (b) despite that evidence, the applicant is not satisfied that the body has taken the action or actions specified in the order in accordance with the order.
- (6) If the Regulator takes one or more actions under subsection (4) or actions authorised by an order under subsection (5), the Regulator is entitled to recover from the body, by action in a court, an amount in relation to the reasonable expenses of taking the actions as a debt due to the Regulator.
- (7) If the Registrar takes one or more actions under subsection (4) or actions authorised by an order under subsection (5), the Registrar is entitled to recover from the body, by action in a court, an amount in relation to the reasonable expenses of taking the actions as a debt due to the Registrar on behalf of the Commonwealth.

Division 10—Miscellaneous

223 Physical elements of offences

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct rule provision*) commits an offence.
- (2) 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.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

224 Contravening offence and civil penalty provisions

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

Chapter 6—Application of work health and safety laws and other laws

Part 1—Work Health and Safety

Division 1—Introduction

225 Simplified outline of this Part

The *Work Health and Safety Act 2011* applies, with some modifications, in relation to offshore infrastructure activities and other things done under this Act. Regulations made under this Act may also provide for regulations made under the *Work Health and Safety Act 2011* to apply in the same way.

This Part mostly applies the *Work Health and Safety Act 2011* to matters in the Commonwealth offshore area. However, some provisions also apply onshore, including certain duties of persons conducting businesses or undertakings.

The Regulator and OEI inspectors have various functions and powers under the *Work Health and Safety Act 2011* as applied by this Part.

Division 2—Application of the Work Health and Safety Act 2011

226 Application of the *Work Health and Safety Act 2011*

The *Work Health and Safety Act 2011* (the ***Work Health and Safety Act***), as modified by this Part, applies in relation to any of the following carried out in the Commonwealth offshore area:

- (a) work in the nature of offshore infrastructure activities;
- (b) any other work carried out, or purportedly carried out, under a licence;
- (c) any other work carried out, or purportedly carried out, in accordance with a requirement under this Act.

Note: The provisions of the Work Health and Safety Act, and (subject to section 243 of this Act) regulations made under that Act, as applied by this Part are the ***applied work health and safety provisions*** (see section 8 of this Act).

227 References to Comcare

- (1) The Work Health and Safety Act applies as if a reference to Comcare were a reference to the Regulator (within the meaning of this Act).
- (2) A reference in this Act to the Regulator's functions or powers under this Act includes a reference to any functions or powers of the Regulator under the Work Health and Safety Act as applied by this Part.

228 Section 4 (definitions)

Section 4 of the Work Health and Safety Act applies as if the following definitions were included in that section:

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:

- (a) work in the nature of offshore infrastructure activities (within the meaning of the *Offshore Electricity Infrastructure Act 2021*);
- (b) any other work carried out, or purportedly carried out, under a licence in force under the *Offshore Electricity Infrastructure Act 2021*;
- (c) 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.

related onshore premises, in relation to particular regulated offshore activities, means premises where records relating to the regulated offshore activities are required to be kept under a provision of a management plan mentioned in paragraph 115(1)(f) of the *Offshore Electricity Infrastructure Act 2021*.

229 Section 4 (definition of *inspector*)

Section 4 of the Work Health and Safety Act applies 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*).

230 Section 12 (scope)

Section 12 of the Work Health and Safety Act applies as if the following subsections were inserted after subsection (9) of that section:

Regulated offshore activities

- (9A) This Act also applies in relation to regulated offshore activities.

Section 231

- (9B) However, subsection (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.

231 Section 12A (Act does not apply to certain vessels, structures and facilities)

Section 12A of the Work Health and Safety Act applies as if subsection (1) of that section had not been enacted.

232 Division 3 of Part 2 (further duties of persons conducting businesses or undertakings)

A provision of Division 3 of Part 2 of the Work Health and Safety 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.

233 Section 37 (what is a *dangerous incident*)

Section 37 of the Work Health and Safety Act applies as if paragraph (g) of that section were substituted with the following paragraph:

- (g) the collapse, overturning, failure or malfunction of, or damage to, any plant; or

234 Section 90 (provisional improvement notices)

Section 90 of the Work Health and Safety Act applies as if the following subsection were inserted after subsection (1) of that section:

- (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 continue 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.

235 Section 92 (contents of provisional improvement notice)

Section 92 of the Work Health and Safety Act applies 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.

Section 236

236 Section 102 (decision of inspector on review of provisional improvement notice)

Section 102 of the Work Health and Safety Act applies as if:

- (a) paragraph 102(1)(b) were omitted; and
 - (b) 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*.

237 Part 7 (workplace entry by WHS entry permit holders)

- (1) Part 7 of the Work Health and Safety Act applies in relation to a workplace that is related onshore premises in relation to particular regulated offshore activities.
- (2) For the purposes of that application, section 116 of the Work Health and Safety Act applies as if the definition of **relevant worker** were substituted with the following definition:

relevant worker, in relation to a workplace that is related onshore premises in relation to particular regulated offshore activities, means a worker:

- (a) who is a member, or eligible to be a member, of a relevant union; and
 - (b) whose industrial interests the relevant union is entitled to represent; and
 - (c) who works at a workplace in the Commonwealth offshore area where the regulated offshore activities are carried out.
- (3) Part 7 of the Work Health and Safety Act, as applied by this Part, does not otherwise apply to related onshore premises or in relation to regulated offshore activities.

238 Parts 8 to 11

The Work Health and Safety Act applies as if the following Parts of that Act had not been enacted:

- (a) Part 8 (the regulator);
- (b) Part 9 (securing compliance);
- (c) Part 10 (enforcement measures);
- (d) Part 11 (enforceable undertakings).

239 Division 1 of Part 14 (general provisions)

The following provisions of the Work Health and Safety Act do not apply:

- (a) section 270 (immunity from liability);
- (b) section 271 (confidentiality of information);
- (c) paragraphs 273A(1)(c) and (d).

240 Section 274 (approved codes of practice)

Section 274 of the Work Health and Safety Act 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.

Section 241

241 Schedule 2 (the regulator and local tripartite consultation arrangements and other local arrangements)

Schedule 2 to the Work Health and Safety Act does not apply.

242 Schedule 3 (regulation-making powers)

Schedule 3 of the Work Health and Safety Act applies as if clause 11 of that Schedule had not been enacted.

243 Regulations under the Work Health and Safety Act

- (1) The regulations made under the Work Health and Safety Act do not apply for the purposes of that Act as applied by this Part.
- (2) However, regulations made for the purposes of this Act may:
 - (a) prescribe provisions of regulations made under the Work Health and Safety Act that apply for the purposes of that Act as applied by this Part; and
 - (b) prescribe modifications of regulations made under the Work Health and Safety Act as they apply for the purposes of that Act as applied by this Part; and
 - (c) make provision for and in relation to matters that may, under the Work Health and Safety Act as applied by this Part, be provided for by regulations made under that Act.

Division 3—Other work health and safety provisions

244 Functions and powers of OEI inspectors

The functions and powers of an OEI inspector under this Act include the following:

- (a) to assist in the resolution of:
 - (i) work health and safety issues at workplaces (within the meaning of the applied work health and safety provisions); and
 - (ii) issues related to access to a workplace by an assistant to a health and safety representative (within the meaning of the applied work health and safety provisions);
- (b) to review disputed provisional improvement notices.

Part 2—Application of State and Territory laws in Commonwealth offshore area

Division 1—Introduction

245 Simplified outline of this Part

The general body of laws in force in a State or Territory applies, as laws of the Commonwealth, to offshore infrastructure activities in that part of the Commonwealth offshore area that is included in the offshore area of that State or Territory for the purposes of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

246 Laws that this Part applies to

This Part applies to laws including:

- (a) written laws; and
- (b) unwritten laws (for example, the common law); and
- (c) instruments having effect under laws.

247 Meaning of *included offshore area* of a State or Territory

For the purposes of this Act, the *included offshore area* of a State or Territory is the offshore area of the State or Territory, within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, to the extent that that area is within the Commonwealth offshore area.

Division 2—Application of State and Territory laws

248 Application of State and Territory laws in offshore areas

- (1) The laws in force in a State or Territory (other than laws of the Commonwealth) apply, as provided by this section, 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
 - (b) part of the Commonwealth.

Note: See also sections 249 to 256.

- (2) For the purposes of this Act, the provisions of laws applied under subsection (1) are the *applied State and Territory provisions*.
- (3) Subsection (1) has effect subject to this Act.
- (4) The laws referred to in subsection (1) apply in relation to acts, omissions, matters, circumstances and things touching, concerning, arising out of or connected with:
- (a) offshore infrastructure activities in the included offshore area; or
 - (b) any other activities carried out in the included offshore area under a licence; or
 - (c) any other activities that this Act requires to be carried out in the included offshore area.
- (5) The laws referred to in subsection (1) apply:
- (a) to and in relation to:
 - (i) an act or omission that takes place in, on, above, below or in the vicinity of; and
 - (ii) a matter, circumstance or thing that exists or arises in relation to or in connection with;
a vessel, aircraft, structure or installation, or equipment or other property, that is in the included offshore area for any reason touching, concerning, arising out of or connected with:

Section 249

- (iii) offshore infrastructure activities in the included offshore area; or
 - (iv) any other activities carried out in the included offshore area under a licence; or
 - (v) any other activities that this Act requires to be carried out in the included offshore area; and
- (b) to and in relation to a person who:
- (i) is in the included offshore area for a reason of the kind referred to in paragraph (a); or
 - (ii) is in, on, above, below or in the vicinity of a vessel, aircraft, structure or installation, or equipment or other property, that is in the included offshore area for a reason of the kind referred to in paragraph (a); and
- (c) to and in relation to a person in relation to:
- (i) the carrying on by the person of any operation; or
 - (ii) the doing by the person of any work;
- in the included offshore area for a reason of the kind referred to in paragraph (a).
- (6) Subsection (5) does not limit subsection (4).
- (7) For the purposes of this section, a law is taken to be a law in force in a State or Territory even though that law applies to only part of that State or Territory.

249 Disapplication and modification of laws

- (1) The regulations may provide that a law:
- (a) does not apply by reason of section 248 in an included offshore area; or
 - (b) applies by reason of section 248 in an included offshore area with such modifications as are specified in the regulations.
- (2) For the purposes of subsection (1), **modifications** includes additions, omissions and substitutions.
- (3) Regulations made for the purposes of subsection (1) may make provision for, and in relation to:
- (a) investing a court of a State with federal jurisdiction; or

(b) conferring jurisdiction on a court of a Territory.

250 Limit on application of laws

Section 248 does not give to the provisions of a law of a State or the Northern Territory an operation, as a law of the Commonwealth, that they would not have, as a law of the State or the Northern Territory, if it were assumed that the included offshore area of the State or the Northern Territory were within the coastal waters of the State or the Northern Territory.

251 Inconsistent law not applied

Section 248 does not apply to a law in so far as the law would be inconsistent with a law of the Commonwealth (including this Act).

252 Criminal laws not applied

- (1) Section 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*.
- (2) This Act does not detract from the operation of the *Crimes at Sea Act 2000*.

253 Tax laws not applied

Section 248 does not operate so as to impose a tax.

254 Appropriation law not applied

Section 248 does not operate so as to appropriate any public money of a Territory.

255 Applied laws not to confer Commonwealth judicial power

Section 248 does not operate so as to confer the judicial power of the Commonwealth on a court, tribunal, authority or officer of a State or Territory.

Section 256

256 Applied laws not to contravene constitutional restrictions on conferral of powers on courts

Section 248 does not operate so as to confer on a court of a State or Territory a power that cannot, under the Constitution, be conferred by the Parliament on such a court.

257 No limits on ordinary operation of law

This Part does not limit the operation that a law has apart from this Part.

258 Jurisdiction of State courts

- (1) The courts of a State are invested with federal jurisdiction in all matters arising under the laws applied under section 248 in the included offshore area of the State.
- (2) Jurisdiction is invested under subsection (1) 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).

259 Jurisdiction of Territory courts

- (1) Jurisdiction is conferred on the courts that have jurisdiction in a Territory in all matters arising out of the laws applied under section 248 in the included offshore area of the Territory.
- (2) Jurisdiction is conferred under subsection (1) 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).

260 Validation of certain acts

If:

- (a) a person or a court does an act in the purported exercise of a power, or the purported performance of a function, under a law of a State or Territory; and

(b) the act could have been done by the person or court in the exercise of a power, or the performance of a function, under the applied State and Territory provisions;
the act is taken to have been done in the exercise of the power, or performance of the function, under the applied State and Territory provisions.

261 Certain provisions not affected by this Part

The other provisions of this Act have effect despite anything in this Part.

Chapter 7—Information relating to offshore infrastructure

Part 1—Managing data and gathering information

Division 1—Introduction

262 Simplified outline of this Part

The Registrar may direct a person involved in offshore infrastructure activities to keep records.

The regulations may make provision for data management.

The Registrar or an OEI inspector may obtain information or documents.

Division 2—Data management

263 Data management directions—offshore infrastructure activities

- (1) This section applies if a person is, has been, or is intending to be, involved in offshore infrastructure activities or other activities carried out under this Act in the Commonwealth offshore area.
- (2) The Registrar may give the person a direction (a *data management direction*) requiring the person to:
 - (a) keep such accounts, records and other documents in connection with the activities as are specified in the notice; or
 - (b) give such reports, returns and other documents as are specified in the notice to:
 - (i) the Registrar; or
 - (ii) a person specified in the notice.

264 Data management directions—merit criteria

- (1) This section applies if a person holds, has held, or is intending to hold a licence.
- (2) The Registrar may give the person a direction (a *data management direction*) requiring the person to:
 - (a) keep such accounts, records and other documents in connection with whether the licence meets the merit criteria as are specified in the notice; or
 - (b) give such reports, returns and other documents as are specified in the notice to:
 - (i) the Registrar; or
 - (ii) a person specified in the notice.

265 Data management directions—giving a data management direction

- (1) A data management direction imposing a requirement on a person must:
 - (a) be given to the person in writing; and

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(b) if the direction is to give reports, returns or other documents—specify the manner in which they must be given.

(2) A data management direction is not a legislative instrument.

266 Minister may give directions to Registrar

(1) The Minister may give the Registrar directions about the exercise of the Registrar's power to give data management directions.

(2) If the Minister's direction is of general application, the Minister's direction is a legislative instrument.

(3) If the Minister's direction relates to a particular case, the direction is not a legislative instrument.

267 Complying with data management directions

(1) A person who is subject to a data management direction must comply with the data management direction.

Strict liability offence

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

Penalty: 100 penalty units.

Civil penalty

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

Civil penalty: 150 penalty units.

Continuing offences and continuing contraventions of civil penalty provisions

(4) A person who commits an offence against subsection (2) by failing to give reports, returns or other documents commits a separate

offence in respect of each day (including a day of a conviction for the offence or any later day) during which the offence continues.

- (5) If a person commits an offence against subsection (2) by failing to give reports, returns or other documents, 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.
- (6) A person who contravenes subsection (3) by failing to give reports, returns or other documents commits a separate contravention in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.
- (7) If a person contravenes subsection (3) by failing to give reports, returns or other documents, the maximum civil penalty for each day that the contravention continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

268 Regulations about data management

- (1) The regulations may make provision for and in relation to:
 - (a) the keeping of accounts, records and other documents in connection with offshore infrastructure activities and other activities carried out under this Act in the Commonwealth offshore area; and
 - (b) the keeping of accounts, records and other documents in connection with whether a licence meets the merit criteria; and
 - (c) the giving of reports, returns and other documents in connection with the matters in paragraphs (a) and (b) to the Registrar or a specified person.
- (2) This section has effect in addition to sections 263 and 264.

Division 3—Information-gathering

269 Information-gathering notices

- (1) The Registrar or an OEI inspector may give a person a written notice in accordance with subsection (2) if the Registrar or the OEI inspector (as the case may be) reasonably believes that the person has information or a document, or is capable of giving evidence, that relates to:
 - (a) offshore infrastructure activities or other activities carried out under this Act in the Commonwealth offshore area; or
 - (b) whether a licence meets the merit criteria; or
 - (c) whether the person or another person has complied with this Act or the applied work health and safety provisions.
- (2) The notice may require the person:
 - (a) to give to the Registrar or the OEI inspector, within the period and in the manner specified in the notice, any such information; or
 - (b) to produce to the Registrar or the OEI inspector, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to the Registrar or the OEI inspector, within the period and in the manner specified in the notice, those copies; or
 - (d) if the person is an individual—to appear before the Registrar or the OEI inspector at a time and place specified in the notice to:
 - (i) give any such evidence, either orally or in writing; and
 - (ii) produce any such documents; or
 - (e) if the person is a body corporate—to cause a competent officer of the body to appear before the Registrar or the OEI inspector at a time and place specified in the notice to:
 - (i) give any such evidence, either orally or in writing; and
 - (ii) produce any such documents.

- (3) A period specified under paragraph (2)(a), (b) or (c) must not end earlier than 14 days after the notice is given.
- (4) A time specified under paragraph (2)(d) or (e) must not be earlier than 14 days after the notice is given.

Notice must set out effect of offence and civil penalty provisions

- (5) A notice under subsection (1) must set out the effect of the following provisions:
 - (a) section 270 (complying with information-gathering notices);
 - (b) section 276 (false or misleading information);
 - (c) section 277 (false or misleading documents);
 - (d) section 278 (false or misleading evidence).

270 Complying with information-gathering notice

- (1) A person contravenes this subsection if:
 - (a) the person is given a notice under subsection 269(1) containing a requirement under subsection 269(2); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the requirement.

Fault-based offence

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

Penalty: 100 penalty units.

Civil penalty

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

Civil penalty: 150 penalty units.

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Continuing offences and continuing contraventions of civil penalty provisions

- (4) If a person commits an offence against subsection (1) by contravening a requirement mentioned in paragraph 269(2)(a), (b) or (c), 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.

Note: An offence against subsection (1) involving a contravention of a requirement mentioned in paragraph 269(2)(a), (b) or (c) is a continuing offence under section 4K of the *Crimes Act 1914*.

- (5) If a person contravenes subsection (2) by contravening a requirement mentioned in paragraph 269(2)(a), (b) or (c), the maximum civil penalty for each day that the contravention continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (2) as it relates to a contravention of a requirement mentioned in paragraph 269(2)(a), (b) or (c) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

271 Copying documents—reasonable compensation

A person is entitled to be paid reasonable compensation for complying with a requirement covered by paragraph 269(2)(c).

272 Power to examine on oath or affirmation

The Registrar or an OEI inspector may:

- (a) administer an oath or affirmation to a person required to appear before the Registrar or the OEI inspector under section 269; and
- (b) examine that person on oath or affirmation.

273 Self-incrimination

- (1) An individual is not excused from giving information or evidence, or producing a document, under section 269 on the ground that giving the information or evidence or producing the document might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (2) 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 section 269, the individual is not excused from giving the information or evidence or producing the document under that provisions on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

- (3) However:

- (a) the information or evidence given or document produced;
and
- (b) the giving of the information or evidence or the production of the document;
- (c) 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;

are not admissible in evidence against the individual in:

- (d) any civil proceedings; or
- (e) criminal proceedings other than:
 - (i) proceedings for an offence against subsection 270(2) or section 276, 277 or 278; or
 - (ii) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Division.

274 Copies of documents

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.

275 Registrar or OEI inspector may retain documents

- (1) The Registrar or an OEI inspector may take possession of a document produced under this Division, and retain it for as long as is reasonably necessary.

Section 276

- (2) 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 or an OEI inspector to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) 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.

276 False or misleading information

A person commits an offence if:

- (a) the person gives information to the Registrar or an OEI inspector; and
- (b) the person does so knowing that the information is false or misleading in a material particular; and
- (c) the information is given in compliance or purported compliance with a notice under subsection 269(1).

Note: The same conduct may be an offence against both this section and section 137.1 of the *Criminal Code*.

Penalty: 100 penalty units.

277 False or misleading documents

A person commits an offence if:

- (a) the person produces a document to the Registrar or an OEI inspector; and
- (b) the person does so knowing that the document is false or misleading in a material particular; and
- (c) the document is produced in compliance or purported compliance with a notice under subsection 269(1).

Note: The same conduct may be an offence against both this section and section 137.2 of the *Criminal Code*.

Penalty: 100 penalty units.

278 False or misleading evidence

A person commits an offence if:

- (a) the person gives evidence to another person; and
- (b) the person does so knowing that the evidence is false or misleading in a material particular; and
- (c) the evidence is given in compliance or purported compliance with a notice under subsection 269(1).

Note: The same conduct may be an offence against both this section and section 137.1 or 137.2 of the *Criminal Code*.

Penalty: Imprisonment for 12 months.

279 Directions by Registrar

- (1) The Registrar may give a written direction to an OEI inspector as to the exercise of the OEI inspector's powers under this Division.
- (2) The OEI inspector must comply with the direction.
- (3) If the direction is of general application, the direction is a legislative instrument.
- (4) If the direction relates to a particular case, the direction is not a legislative instrument.

Part 2—Release of regulatory information

280 Simplified outline of this Part

<p>This Part provides for the Registrar to make copies of certain documents available to the Minister.</p>
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281 Registrar to make documents available to the Minister

- (1) This section applies to a document received or issued by the Registrar in connection with Chapter 3, Chapter 4 or this Chapter.
- (2) The Minister may require the Registrar to make copies of the document available to the Minister.
- (3) The Registrar must comply with the requirement.

Part 3—Release of information given to Registrar

Division 1—Introduction

282 Simplified outline of this Part

This Part deals with the confidentiality and release of information (*documentary information*) contained in certain documents given to the Registrar.

Division 2—Protection of confidentiality of information

Subdivision A—Documentary information obtained by the Registrar

283 Protection of confidentiality of documentary information obtained by the Registrar

- (1) This section restricts what the Registrar may do with documentary information.
- (2) The Registrar must not make the information:
 - (a) publicly known; or
 - (b) available to a person (other than a Minister, a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory).
- (3) Subsection (2) does not apply if the Registrar makes the information known or available:
 - (a) in accordance with regulations made for the purposes of this paragraph; or
 - (b) for the purposes of the administration of this Act.

284 Registrar may make information available to a Minister, a State Minister or a Territory Minister

- (1) The Registrar may make documentary information available to:
 - (a) a Minister; or
 - (b) a Minister of a State; or
 - (c) a Minister of the Australian Capital Territory; or
 - (d) a Minister of the Northern Territory.
- (2) The Minister mentioned in paragraph (1)(a) may require the Registrar to make documentary information available to the Minister.
- (3) The Registrar must comply with the requirement.

Note: For protection of the confidentiality of information obtained by a recipient Minister under this section, see section 285.

Subdivision B—Documentary information obtained by a Minister

285 Protection of confidentiality

- (1) This section 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 made available to the Minister under section 284.
- (2) The Minister must not make the information:
 - (a) publicly known; or
 - (b) available to a person (other than another Minister, a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory).
- (3) If the Minister makes the information available to another Minister (including a Minister of a State, a Minister of the Australian Capital Territory or a Minister of the Northern Territory) the other Minister must not make the information:
 - (a) publicly known; or
 - (b) available to a person.
- (4) Subsection (2) or (3) does not apply if the Minister concerned makes information known or available:
 - (a) in accordance with regulations made for the purposes of this paragraph; or
 - (b) for the purposes of the administration of this Act.

Subdivision C—Miscellaneous

286 Fees

The regulations may make provision for fees relating to making information available in accordance with regulations made for the purposes of paragraph 283(3)(a) or 285(4)(a).

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287 Review by Minister

Regulations made for the purposes of paragraph 283(3)(a) may make provision for the Minister to:

- (a) review a decision of the Registrar under those regulations;
and
- (b) make a decision:
 - (i) confirming the decision reviewed; or
 - (ii) revoking the decision reviewed and substituting another decision for it.

288 Privacy Act

This Part does not override any requirements of the *Privacy Act 1988*. In particular, this Part is not to be taken, for the purposes of that Act, to require or authorise the disclosure of information.

Division 3—Copyright

289 Publishing or making copies of applicable documents not an infringement of copyright

The copyright in a literary or artistic work contained in an applicable document is not infringed by anything done:

- (a) by, or with the authority of, the Registrar or the Minister; and
- (b) for the purpose of the exercise of any of the powers of the Registrar or Minister under this Part.

Part 4—Using and sharing offshore infrastructure information and things

Division 1—Introduction

290 Simplified outline of this Part

This Part deals with using and making available certain information, documents and things obtained for the purposes of this Act.

The information, documents and things may be:

- (a) used by the Regulator for the purpose of exercising any of its powers or performing any of its functions; and
- (b) shared between the Minister, the Secretary, the Regulator and the Registrar; and
- (c) shared between the Regulator and certain other agencies, including law enforcement agencies and State and Territory Government agencies.

291 Scope of Part

- (1) This Part applies in relation to information, a document, a copy of a document or an extract of a document (the *offshore infrastructure information*) or a thing obtained in the course of:
 - (a) the exercise of a power, or the performance of a function or duty, under this Act or the applied work health and safety provisions; or
 - (b) the administration of this Act or the applied work health and safety provisions; or
 - (c) the exercise of a power, or the performance of a function or duty, under the Regulatory Powers Act so far as it applies in relation to a provision of this Act or the applied work health and safety provisions; or

- (d) the administration of the Regulatory Powers Act so far as it applies in relation to a provision of this Act or the applied work health and safety provisions.
- (2) ***Offshore infrastructure information*** may be, or include, personal information (within the meaning of the *Privacy Act 1988*).
- Note: The use or disclosure of personal information is regulated under the *Privacy Act 1988*.
- (3) In particular, without limiting subsection (1), this Part applies in relation to offshore infrastructure information or a thing obtained by the Regulator (including obtained by an OEI inspector, whether under a warrant issued for the purposes of this Act or otherwise).
- (4) This Part does not limit the use of, or making available of, 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

- (5) However, this Part does not apply to offshore infrastructure information, or a thing, covered by Part 3 of this Chapter or a legislative instrument made for the purposes of that Part.

**Division 2—Regulator's use of offshore infrastructure
information or things**

**292 Purposes for which Regulator may use offshore infrastructure
information or things**

If the Regulator obtains offshore infrastructure information or a thing in the course of the exercise of a power, or the performance of a function or duty, under this Act, the Regulator may use the offshore infrastructure information or thing for the purpose of exercising any power, or performing any function or duty, under this Act.

Division 3—Sharing offshore infrastructure information or things

293 Sharing offshore infrastructure information or things for the purposes of this Act

- (1) Any of the following persons may make available offshore infrastructure information or a thing to another of those persons to use as mentioned in subsection (2):
 - (a) the Minister;
 - (b) the Secretary;
 - (c) the Regulator;
 - (d) the Registrar.
- (2) The other person may use the offshore infrastructure information or thing in the course of the following:
 - (a) the exercise of powers, or the performance of functions or duties, under this Act or the applied work health and safety provisions;
 - (b) the administration of this Act or the applied work health and safety provisions.

294 Regulator may share offshore infrastructure information or things with other agencies

- (1) The Regulator may make available offshore infrastructure information or a thing to one or more of the following agencies to use as mentioned in subsection (2):
 - (a) the Australian Maritime Safety Authority;
 - (b) the Civil Aviation Safety Authority;
 - (c) the Australian Defence Force;
 - (d) the Australian Federal Police;
 - (e) the Department administered by the Minister administering Part XII of the *Customs Act 1901*;
 - (f) the police force of a State or Territory;

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- (g) the Director of Public Prosecutions of the Commonwealth or a State or Territory;
 - (h) the coroner of a State, the Australian Capital Territory or the Northern Territory;
 - (i) 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;
 - (j) 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;
 - (k) 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.
- (2) An agency may use the offshore infrastructure 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.
- (3) If offshore infrastructure information or a thing is made available to an agency under subsection (1), the Regulator may, at any time, by written notice to the agency, impose conditions in relation to:
- (a) the agency's use of the offshore infrastructure information or thing; or
 - (b) whether, and the extent to which, the agency itself may make the offshore infrastructure information or thing available to any other agency or person.
- (4) A notice under subsection (3) is not a legislative instrument.

295 Personal information

- (1) This section applies to offshore infrastructure information to the extent that it is personal information.
- (2) 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

296 Simplified outline of this Part

This Part contains miscellaneous provisions.
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297 Review of decisions

Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Minister:

- (a) a decision:
 - (i) not to grant a commercial licence under section 42; or
 - (ii) not to grant a research and demonstration licence under section 52; or
 - (iii) not to grant a transmission and infrastructure licence under section 61;
- (b) a decision not to extend the end day of a licence on the application of the licence holder under a provision of the licensing scheme made for the purposes of:
 - (i) section 37 (feasibility licences); or
 - (ii) section 47 (commercial licences); or
 - (iii) section 56 (research and demonstration licences); or
 - (iv) section 65 (transmission and infrastructure licences);
- (c) a decision to extend the end day of a licence, in respect of 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 a provision mentioned in paragraph (b);
- (d) a decision under section 70 (licence transfer);
- (e) a decision to cancel a licence under section 73;
- (f) a decision not to consent to the surrender of a licence under section 74.

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298 Application of the *Lands Acquisition Act 1989*

- (1) This Act has effect despite anything contained in the *Lands Acquisition Act 1989*, and that Act does not apply to anything done under this Act.
- (2) However, subsection (1) does not prevent the *Lands Acquisition Act 1989* applying to anything done by the Commonwealth or the Regulator in relation to interests in land (within the meaning of that Act) occupied or to be occupied by the Commonwealth or the Regulator for the purposes of administering:
 - (a) this Act; or
 - (b) the *Offshore Electricity Infrastructure (Regulatory Levies) Act 2021* and regulations made under that Act.

299 Jurisdiction of State courts

- (1) The courts of the States are invested with federal jurisdiction in relation to matters arising under this Act or the applied work health and safety provisions.
- (2) Subsection (1) does not apply to matters arising under the applied State and Territory provisions.
- (3) Jurisdiction is invested under subsection (1) within the limits (other than limits of locality) of the jurisdiction of the court (whether those limits are limits as to subject matter or otherwise).

300 Jurisdiction of Territory courts

- (1) Jurisdiction is conferred on the courts of the Territories in relation to matters arising under this Act or the applied work health and safety provisions.
- (2) Subsection (1) does not apply to matters arising under the applied State and Territory provisions.
- (3) Jurisdiction is conferred under subsection (1):
 - (a) within the limits (other than limits of locality) of the jurisdiction of the court (whether those limits are limits as to subject matter or otherwise); and

(b) to the extent that the Constitution permits.

301 Liability for acts and omissions

Scope

- (1) This section applies to the following bodies and people:
 - (a) the Minister;
 - (b) the Registrar;
 - (c) the Regulator;
 - (d) the CEO;
 - (e) an OEI inspector;
 - (f) a person acting under the direction or authority of the Minister or the Registrar;
 - (g) a person acting under the direction or authority of the Regulator or the CEO;
 - (h) a person engaged by the Minister under paragraph 132(1)(d);
 - (i) a person engaged by the Regulator under paragraph 124(2)(b) or 129(1)(d).
- (2) This section does not apply to a person or body merely because the person or body is acting in accordance with:
 - (a) a proposal or plan (however described) that has been accepted, agreed or otherwise approved by or on behalf of the Minister, the Registrar or the Regulator; or
 - (b) a direction under Division 2 (general directions) or Division 3 (remedial directions) of Part 2 of Chapter 4.

Extent of liability

- (3) A body or person is not liable to an action, suit or proceeding for, or in relation to, an act or matter in good faith done or omitted to be done in the exercise, or purported exercise, of any power or authority conferred by:
 - (a) this Act; or
 - (b) a direction under this Act; or
 - (c) the applied work health and safety provisions.

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Judicial review

- (4) This section does not affect:
- (a) any rights conferred on a person by the *Administrative Decisions (Judicial Review) Act 1977* to apply to a court in relation to:
 - (i) a decision; or
 - (ii) conduct engaged in for the purpose of making a decision; or
 - (iii) a failure to make a decision; or
 - (b) any other rights that a person has to seek a review by a court or tribunal in relation to:
 - (i) a decision; or
 - (ii) conduct engaged in for the purpose of making a decision; or
 - (iii) a failure to make a decision.
- (5) An expression used in subsection (4) has the same meaning as in section 10 of the *Administrative Decisions (Judicial Review) Act 1977*.

302 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court 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.

303 Delegation by Minister

- (1) The Minister may, in writing, delegate all or any of the Minister's functions or powers under this Act to:

- (a) the CEO; or
- (b) the Secretary; or
- (c) an SES employee, or acting SES employee, in the Department.

Note 1: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: Paragraph (1)(c) includes the Registrar.

Note 3: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Minister.

Sub-delegation

- (3) If a function or power is delegated to the CEO under subsection (1), the CEO may, by writing, sub-delegate the function or power to an SES employee, or acting SES employee, of the Regulator.
- (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to the sub-delegation in a corresponding way to the way in which they apply in relation to a delegation.
- (5) In performing functions or exercising powers under a sub-delegation, the sub-delegate must comply with any directions of the Minister.

Part 2—Regulations

304 Simplified outline of this Part

The regulations may do the following:

- (a) provide for offences;
- (b) provide for approved forms;
- (c) apply and modify the Regulatory Powers Act;
- (d) deal with offshore renewable energy infrastructure or offshore electricity transmission infrastructure that is already in the Commonwealth offshore area when this Act receives the Royal Assent.

305 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed by the regulations; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

306 Regulations may provide for offences

- (1) The regulations may provide for offences against the regulations.
- (2) The penalties for offences against the regulations must not exceed:
 - (a) a fine of 100 penalty units; or
 - (b) a fine of 100 penalty units for each day on which the offence occurs.

307 Regulations may provide for approved forms

- (1) The regulations may require an application, notice or other instrument made, or given, to the Minister, the Registrar or the Regulator under this Act to be:

- (a) made or given in an approved manner; and
- (b) in the approved form; and
- (c) accompanied by any information or documents required by the form.

Note: The regulations may also require a fee to be paid in relation to an application (see section 189).

- (2) The regulations may provide for the Minister, the Registrar or the Regulator to approve a manner and form referred to in subsection (1).

308 Regulations dealing with the Regulatory Powers Act

- (1) The regulations may do any of the following:
 - (a) make a provision of the regulations a civil penalty provision (see Part 4 of the Regulatory Powers Act);
 - (b) provide that a civil penalty provision of the regulations may be enforced under Part 4 of the Regulatory Powers Act;
 - (c) 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 Regulatory Powers Act;
 - (d) 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 Regulatory Powers Act;
 - (e) provide that an offence provision or a civil penalty provision in a provision of the regulations is subject to an infringement notice (see Part 5 of the Regulatory Powers Act);
 - (f) 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 Regulatory Powers Act;
 - (g) 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 Regulatory Powers Act;
 - (h) make a provision of the regulations enforceable under Part 6 of the Regulatory Powers Act (which deals with enforceable undertakings);

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- (i) 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 Regulatory Powers Act;
- (j) 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 Regulatory Powers Act;
- (k) make a provision of a legislative instrument made under this Act (an *OEI legislative instrument*) enforceable under Part 7 of the Regulatory Powers Act (which deals with injunctions);
- (l) 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 Regulatory Powers Act;
- (m) 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 Regulatory Powers Act;
- (n) modify the Regulatory Powers Act as it applies in relation to a provision of the regulations.

Continuing contravention

- (2) 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

- (3) Part 4 of the Regulatory Powers Act, as it applies in relation to the civil penalty provisions covered by regulations made for the purposes of paragraph (1)(b), extends to the Commonwealth offshore area.
- (4) Part 5 of the Regulatory Powers Act, as it applies in relation to the provisions covered by regulations made for the purposes of paragraph (1)(e), extends to the Commonwealth offshore area.
- (5) Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions covered by regulations made for the purposes of paragraph (1)(h), extends to the Commonwealth offshore area.

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- (6) Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions covered by regulations made for the purposes of paragraph (1)(k), extends to the Commonwealth offshore area.

Extension to external Territories etc.

- (7) Part 4 of the Regulatory Powers Act, as it applies in relation to the civil penalty provisions covered by regulations made for the purposes of paragraph (1)(b), extends to every external Territory to which this Act extends.
- (8) Part 5 of the Regulatory Powers Act, as it applies in relation to the provisions covered by regulations made for the purposes of paragraph (1)(e), extends to every external Territory to which this Act extends.
- (9) Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions covered by regulations made for the purposes of paragraph (1)(h), extends to every external Territory to which this Act extends.
- (10) Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions covered by regulations made for the purposes of paragraph (1)(k), extends to every external Territory to which this Act extends.

Note: For the external Territories to which this Act extends, see section 5.

Application of the Regulatory Powers Act

- (11) In determining the meaning of the expression ***an Act provides***, when used in Part 4, 5, 6 or 7 of the Regulatory Powers Act, assume that regulations made for the purposes of subsection (1) are an Act.

309 Pre-existing infrastructure

- (1) This section applies in relation to fixed or tethered infrastructure (***pre-existing infrastructure***) that:
- (a) is in the Commonwealth offshore area at the time this Act receives the Royal Assent (the ***application time***); and

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- (b) is being operated at the application time, or was operated at any time before the application time; and
 - (c) would be offshore renewable energy infrastructure or offshore electricity transmission infrastructure if this section were disregarded.
- (2) Subject to regulations made for the purposes of subsection (3), pre-existing infrastructure is not offshore renewable energy infrastructure or offshore electricity transmission infrastructure for the purposes of this Act.

Note: This means 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 infrastructure. Most of the other provisions of this Act (such as the safety zone and protection zone provisions in Divisions 3 and 4 of Part 3 of Chapter 4) also do not apply to pre-existing infrastructure.

- (3) The regulations may do any of the following:
- (a) provide that specified provisions of this Act apply, or do not apply, in relation to pre-existing infrastructure;
 - (b) provide that offshore renewable energy infrastructure or offshore electricity transmission infrastructure 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;
 - (c) provide that this section ceases to apply in relation to specified pre-existing infrastructure (and that such pre-existing infrastructure is to be treated as offshore renewable energy infrastructure or offshore electricity transmission infrastructure):
 - (i) at the end of a specified period after this Act commences (which may be the entire life of a project that involves pre-existing infrastructure); or
 - (ii) in specified circumstances;
 - (d) provide for an eligible person to apply for a licence in relation to pre-existing infrastructure;

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- (e) prescribe any other matters of a transitional nature (including prescribing any saving or application provisions) relating to pre-existing infrastructure.