EXPLANATORY MEMORANDUM

PETROLEUM LEGISLATION AMENDMENT AND REPEAL
BILL 2005

General Outline

This is a Bill to amend the Petroleum (Submerged Lands) Act 1982, the
Petroleum Act 1967 and the Petroleum Pipelines Act 1969 with respect to the
occupational safety and health of persons at offshore petroleum facilities,
petroleum operations and petroleum pipeline operations. This Bill also repeals
the Petroleum Safety Act 1999 and makes consequential amendments to the
Barrow Island Act 2003, the Industrial Relations Act 1979 and the
Occupational Safety and Health Act 1984.

Part 1 introduces the Bill and provides for the commencement of the various
provisions.

Part 2 introduces changes to the Petroleum Act 1967 for the occupational
safety and health of persons engaged in petroleum operations.

Part 3 provides for the changes to the Petroleum Pipelines Act 1969 for the
occupational safety and health of persons engaged in petroleum pipeline
operations.

Part 4 provides for the changes to the Petroleum (Submerged Lands) Act
1982 and mirrors the Commonwealth Petroleum (Submerged Lands) Act
1967 ("the Commonwealth Act"). This reflects the commitment to the 1967
Offshore Constitutional Settlement, under which the Commonwealth, the
States and the Territories agreed "the Commonwealth and States should
endeavour to maintain, as far as practicable, common principles, rules and
practices in the regulation and control of the exploration for and the
exploitation of the petroleum resources in submerged lands".

In August 2001, with the support of the industry and the workforce, the
Commonwealth Department of Industry Science and Resources prepared a
report on offshore safety. While Western Australia was regarded as being
effective in terms of safety regulation, this was not the case in other States.
The Report found that there was little coordination between the States and
that industry wanted uniform administration of safety around the country.
There was also strong industry and workforce support for a national safety
regulator to remove overlap and inconsistencies between the various
jurisdictions.

The Commonwealth has responded to the Report by passing the Petroleum
(Submerged Lands) Amendment Act 2003 ("the Commonwealth Amending
Act") which provides for the creation of a National Offshore Petroleum Safety Authority to regulate occupational safety and health matters on offshore petroleum facilities in both Commonwealth and State waters.

This part of the Bill reflects the amendments made by the Commonwealth Amending Act to ensure that a consistent regulatory regime operates on offshore facilities in State waters and meets the State’s obligations under the Offshore Constitutional Settlement.


Part 1 – Preliminary

Clause 1 - Short title
The title of the Bill is the Petroleum Legislation Amendment and Repeal Bill 2005.

Clause 2 - Commencement
Provides for the Bill to come into operation on a day or days to be proclaimed.

Part 2 – Amendments to the Petroleum Act 1967

Clause 3 – The Act amended
Provides that the Bill amends the Petroleum Act 1967.

Clause 4 - Section 5 amended
Introduces the following definitions in the Petroleum Act 1967:

“facility” means a structure for or in connection with carrying out a petroleum operation.

“listed OSH laws” means the provisions of section 117A, Schedule 1, regulations made for the purposes of section 149B and any other regulations relating to occupational safety and health matters that are prescribed for the purposes of this paragraph;

“operator” in relation to a petroleum title means the registered holder of the title for the title area. The definition also covers the lessee of the Barrow Island lease as defined in s.128. Operator is also defined in terms of the s.67 underground storage provisions and in relation to the Barrow Island Act 2003 sections 3 and 13. There is also provision for the regulations when prescribing a petroleum operation to prescribe the person who will be the operator.
“other protected person” means a person who is in the vicinity of a petroleum operation at the invitation of, or with the express or implied consent of –

(a) the operator for the petroleum operation; or
(b) a person in control of a part of the petroleum operation;

“petroleum operation” means an operation to explore for, drill for or recover petroleum and the carrying on of such operations and the execution of such works as is necessary for those purposes. The definition also extends to the mining, obtaining or production of petroleum under the Barrow Island lease as defined in section 128. The definition also covers the injection of petroleum into a natural underground reservoir under s.67 and the injection of carbon dioxide as defined in the Barrow Island Act 2003 s.3 into an underground reservoir or other subsurface formation. “Petroleum operation” does not include a petroleum operation of a kind that is prescribed by the regulations to not be a petroleum operation for the purposes of the regulation.

“structure” means any fixed, moveable or floating structure or installation and includes a pipeline, pumping station, tank station and valve station.

Clause 5 – Section 7AA inserted
Inserts a new section 7AA in the Petroleum Act 1967. The new section 7AA disapplies current Western Australian occupational safety and health laws (as will be prescribed by regulations) in relation to a petroleum operation and other protected persons as defined in clause 4. In their place, the occupational safety and health regime set out in the new Schedule 1 to the Petroleum Act 1967 will apply.

Clause 6 – Section 83 repealed
This clause repeals section 83 covering the provision that the Minister is not liable to certain actions as this is now covered in the protection provisions of the new section 119A at clause 11.

Clause 7 – Section 91 amended
This clause removes occupational safety and health matters from section 91. The provisions in the new Schedule 1 will cover occupational safety and health matters.

Clause 8 – Section 117A inserted
After section 117 a new section has been inserted as s.117A prohibiting, in areas covered by the Act, intentional or reckless interference with or damage to any well, structure or vessel used for any purpose approved under the Act as well as operations or works connected with that structure or vessel. The 10 year imprisonment penalty is equal to the most severe penalty in the Act, the other offence attracting this penalty being applicable to the owner and person
in charge of a vessel entering or remaining in a safety zone in contravention of the Act.

Clause 9 - Section 118 amended
Clause 9 amends section 118 “Inspectors” so that it is possible to specify whether an inspector is appointed for all purposes of the Act, or, such purposes as are specified in the instrument of appointment and the certificate.

It also deletes the references to the ‘regulations in sections 118(1) and 118(2)’. Any references to an Act are taken to include a reference to any subsidiary legislation made under the Act.

Clause 10 - Section 119 amended
Provides for the deletion of the reference to ‘and the regulations’ in s.119 (1) as any references to an Act are taken to include a reference to any subsidiary legislation made under the Act. The words ‘, but without affecting the powers of an inspector under Schedule 1’ are inserted instead and clarify the powers of inspectors under Section 119 and Schedule 1.

Clause 11 - Section 119A inserted
Provides that a person is not personally liable for acts or omissions done in good faith for the performance of a function under the Act.

Clause 12 - Section 125 amended
Deletes the reference to the regulations.

Clause 13 - Section 126A inserted
Section 126A (1) establishes that certain matters in relation to a petroleum operation are taken to have been proved in the absence of evidence to the contrary.

Section 126A (2) and (3)
Outlines the matters that in proceedings for an offence against the Act that proof is not required unless evidence is given to the contrary and provides for the certification of codes of practice, Australian Standards and Australian/New Zealand standards.

Section 126A (4)
Defines the terms ‘Australian Standards’ ‘Australian/New Zealand Standard’ and ‘CEO’

Clause 14 – Part IIIA inserted

- Section 149A provides that Schedule 1 has effect for occupational safety and health.
• Section 149B provides for the making of regulations for the purposes of occupational safety and health of persons engaged in petroleum operations.

• Section 149C confers general functions on the Minister for occupational safety and health of persons engages in petroleum operations.

The functions include promotion of the occupational safety and health of persons, development and implementation of effective monitoring and enforcement strategies, investigations of accidents and occurrences affecting occupational safety and health, and reporting.

Clause 15 – Section 153 amended
Inserts a new clause following s.153 (2)(j) to enable regulations to be made for fees in relation to petroleum operations, safety audits or other services provided by the Minister, or any transitional matters arising from amendments made by this Act.

Clause 15 also inserts a provision at 15(2) to allow for the application of laws approach for petroleum regulations. These provisions would, if required, allow for regulations to adopt, or apply with or without modification, any petroleum regulations either under the State or Commonwealth legislation.

Clause 16 – Various sections amended to delete “the regulations” (Interpretation Act s.46)
 Provides for amendments to various sections to delete the words “the regulations” as provided for by s.46 of the Interpretation Act 1984.

Clause 17 – Schedule replaced with Schedule 1
Repeals the existing Schedule and inserts a new Schedule 1 into the Petroleum Act 1967 regarding occupational safety and health in relation to petroleum operations.

Schedule 1 – Occupational safety and health

Division 1 — Introduction

Clause 1 - Objects
Sets out the objects of Schedule 1.

The objects relate to the securing of the occupational safety and health of all persons in relation to petroleum operations, whether they are engaged in those operations under a contract of employment with any person or under some other contractual arrangement and regardless of whether they have any contract at all with a person who owes a duty of care.

It also provides that the objects are not confined to persons while they are working but are also intended to protect the workforce during mealtimes, recreation and periods of rest.
Clause 2 – Simplified outline
Sets out the simplified outline of Schedule 1 which covers the following areas:

- Establishes duties of care for the operator of a petroleum operation, employers and others;
- Sets out consultative arrangements in relation to designated work groups, safety and health representatives, OSH committees, etc;
- Defines the powers of inspectors, enabling them to make inspections, take samples, seize evidence, issue notices, etc; and
- Establishes duties to report accidents and dangerous occurrences.

Clause 3 - Definitions
Defines the following terms:

“accident” includes the contraction of a disease.

“contract” includes an arrangement or understanding.

“contractor” has the meaning given by clause 6.

“dangerous occurrence” means an occurrence declared by the regulations to be a dangerous occurrence for the purposes of this definition.

“designated work group” means a group of members of the workforce engaged in a petroleum operation that is established as a designated work group under clause 17 or 18, or that group as varied in accordance with clause 19 or 20.

“employee”, in relation to an employer, means an employee of that employer.

“employer” means an employer who carries on a petroleum operation.

“group member”, in relation to a designated work group for a petroleum operation, means a person who is a member of the workforce engaged in that operation and included in that designated work group.

“improvement notice” means an improvement notice issued under clause 60(1).

“inspection” means an inspection conducted under Division 4 and includes an investigation or inquiry.

“member of the workforce”, in relation to a petroleum operation, means a natural person who is engaged in the petroleum operation, whether as an employee of the operator or of another person or as a contractor of the operator or of another person.
“operator’s representative” means a person present at a workplace in compliance with the obligations imposed on the operator by clause 4.

“own” includes own jointly and own in part.

“plant” includes any machinery, equipment or tool, or any component.

“premises” includes a structure or building; a place (whether or not enclosed or built on) or, a part of a structure or a place.

“prohibition notice” means a prohibition notice issued under clause 58(1).

“registered organisation” means an organisation within the meaning of the Workplace Relations Act 1996 of the Commonwealth or as defined in the Industrial Relations Act 1979, section 7(1).

“regulated business premises” means a place where a petroleum operation is carried on, or premises that are occupied by a person who is the operator of a petroleum operation and used, or proposed to be used, wholly or principally in connection with a petroleum operation.

“regulations” means regulations made for the purposes of this Schedule.

“Tribunal” has the meaning given to that term in the Occupational Safety and Health Act 1984 section 51G(2).

“work” means work that is directly or indirectly related to a petroleum operation.

“workforce representative” means:
(a) in relation to a person who is member of the workforce engaged in a petroleum operation - a registered organisation of which that person is a member, if the person is qualified to be a member of that organisation because of the work that person performs in relation to the petroleum operation; or
(b) in relation to a designated work group or a proposed designated work group - a registered organisation of which a person who is, or who is likely to be, in the work group is a member, if the person is qualified to be a member of that organisation because of the work the person performs, or will perform, in relation to the petroleum operation as a member of the group.

“work group employer”, in relation to a designated work group in relation to a petroleum operation, means an employer or one or more group members, but does not include the operator of the petroleum operation.
“workplace”, in relation to a petroleum operation, means the whole place where the petroleum operation is carried on or any part of a place where the petroleum operation is carried on.

Clause 4 – Operator must ensure presence of operator’s representative
Provides that the operator for a petroleum operation, must ensure at all times the presence at the workplace of a representative of the operator, who has the day-to-day management and control of the petroleum operation and display their name prominently at the workplace.

Clause 5 – Safety and health of persons using an accommodation amenity
Provides that the provisions of Schedule 1 apply to persons using an accommodation amenity provided for the accommodation of persons engaged in a petroleum operation.

Clause 6 - Contractor
Defines "contractor" for the purposes of Schedule 1.

Division 2 — Occupational safety and health

Subdivision 1 — Duties relating to occupational safety and health

Clause 7 – Duties of operator
Establishes the duties of care that are owed by the operator of a petroleum operation to the members of the workforce.

The primary duty of the operator is to take all reasonably practicable steps to ensure that the petroleum operation and all work and other activities at the petroleum operation are safe and without risk to safety and health.

Clause 8 - Duties of persons in control of parts of petroleum operation
Establishes duties of persons who may be in management or control of a part of a petroleum operation, or of certain activities at a petroleum operation. Examples of such persons may be those supervising a construction or maintenance crew.

The duties established for these persons are similar to those established for the operator, but are limited to the areas or activities under the control of the person.

Clause 9 – Duties of employers
Establishes duties of employers to employees and to contractors.

The employer’s duties are to take all reasonable practicable steps to protect the safety and health of employees.
There is overlap in the duties of care imposed on operators, on persons in control of parts of the petroleum operation or particular work, and on employers. There is further overlap with the duties of care imposed on manufacturers, suppliers, etc, which are defined by later clauses, and ensures that there are no gaps in the coverage of the duties of care, so that, when enforcement action is required, it can be taken against the most appropriate person in the circumstances.

Clause 10 - Duties of manufacturers in relation to plant and substances
Provides for the duties of care of manufacturers (including importers and overseas manufacturers with no place of business in Australia) in relation to plant and substances reasonably expected to be used by members of the workforce at a petroleum operation. This provision does not affect other State laws relating to goods.

Clause 11 - Duties of suppliers of facilities, plant and substances
Provides for the duties of care of suppliers of plant and substances, to all persons at all times they are at a petroleum operation. This provision also extends to an ostensible supplier in the business of financing the acquisition or use of goods by others.

Clause 12 - Duties of persons erecting facilities or installing plant
Provides for the duties of care of persons erecting or installing plant, to all persons at all times they are at a petroleum operation.

Clause 13 - Duties of persons in relation to occupational safety and health
Provides the duties of care of any person at a petroleum operation in relation to occupational safety and health.

Clause 14 – Reliance on information supplied or results of research
Provides that persons in complying with their duties, may rely on information provided by others, or on the results of testing and research conducted by others.

Subdivision 2 — Regulations relating to occupational safety and health

Clause 15 - Regulations relating to occupational safety and health
Provides that regulations may be made that relate to any matter affecting or likely to affect occupational safety and health of any class of person at a petroleum operation and lists those matters.

Part 3 — Workplace arrangements

Subdivision 1 — Introduction

Clause 16 - Simplified outline
Sets out the simplified outline that is a summary of this Part.
Subdivision 2 — Designated Work Groups

The purpose of designated work groups is to provide a formal and structured organisation for consultation between management and the workforce on occupational safety and health issues.

Clause 17 – Establishment of designated work groups by request
Provides that the operator of a petroleum operation has the responsibility to organise a designated work group if a member of the workforce or workforce makes a request.

The operator on receiving such a request must within 14 days enter into consultation with members of the workforce, workforce representatives, or each employer (if any) of members of the workforce.

Clause 18 - Establishment of designated work groups at initiative of operator
Provides that the operator of a petroleum operation may initiate the establishment of a designated work group.

Clause 19 – Variation of designated work groups by request
Provides that the operator of a petroleum operation has the responsibility to vary an established designated work group if a request for variation is made.

Clause 20 - Variation of designated work groups at initiative of operator
Provides that the operator of a petroleum operation may initiate the variation of an established designated work group.

Clause 21 – Referral of disagreement to reviewing authority
Provides that, if a disagreement arises between the parties in the course of consultation under clause 17, 18, 19 or 20, either party made refer the disagreement to the reviewing authority for resolution. The reviewing authority will be prescribed in regulations.

Clause 22 - Manner of grouping members of the workforce
Provides for the manner in which members of the workforce may be grouped and the issues that the parties to the consultation must have regard.

Subdivision 3 — Safety and health representatives

Clause 23 - Selection of safety and health representatives
Provides for the selection of a safety and health representatives. Safety and health representatives are the persons selected to represent the
members of each designated work group during consultations with management on safety and health issues.

Clause 24 - Election of safety and health representatives
Relates to the election of safety and health representatives if there is a vacancy for a safety and health representatives, and the group has within a reasonable time unanimously selected no person. The operator is required to invite nominations from all group members. If the operator fails to invite such nominations in a reasonable time, the Minister may direct the operator to do so. A person cannot be nominated if disqualified under clause 30.

If there is only one candidate, that person is taken to be elected. If more than one candidate is nominated, the operator must conduct or arrange for the conduct of an election. All members of the workforce in the designated work group are entitled to vote. The operator must comply with any directions of the Minister when conducting the election.

Clause 25 – List of safety and health representatives
Requires the operator to prepare and keep up to date a list of all safety and health representatives, and to make that list available to the members of the workforce and to inspectors.

Clause 26 - Members of the designated work group must be notified of selection etc. of safety and health representative
Requires the operator to notify members of the designated work group of a vacancy for a safety and health representative within a reasonable time of that vacancy arising, and to notify those members of the name of the person selected within a reasonable time of the selection being made.

Clause 27 – Term of office
Provides that a safety and health representative holds office for a term agreed to by the parties or for 2 years if there is no agreement.

Clause 28 – Training of safety and health representatives
Provides that a safety and health representative must undertake a course of training relating to occupational safety and health that is accredited by the Minister. The operator and employer are required to grant the safety and health representative leave to attend an accredited course.

Clause 29 – Resignation etc. of safety and health representatives
Provides the processes to be followed for the formal resignation of safety and health representatives. It also sets out the requirements for notifying relevant persons of such resignations.
Clause 30 - Disqualification of safety and health representatives
Provides the process for disqualification of a safety and health representative by the Tribunal.

Clause 31 - Deputy safety and health representatives
Allows for the selection of a deputy safety and health representative by the designated work group who exercises the powers of the safety and health representative if the safety and health representative ceases to be the safety and health representative or is unavailable.

Clause 32 - Powers of safety and health representatives
Sets out the powers of a safety and health representative. These powers include the power to inspect the workplace, to request an inspection by an inspector, to accompany that inspector during such an inspection, to represent the group members in consultations with management, to investigate complaints by group members about a safety and health representative, to be present at any interview of a group member by an inspector or management about safety and health representative issues, to obtain access to relevant information, and to issue provisional improvement notices under clause 36.

Clause 33 - Assistance by consultant
Provides that in exercising these powers, a safety and health representative may be assisted by consultants, if either the Minister or the operator agree.

Clause 34 - Information
Provides that neither the safety and health representative or a consultant is entitled to have access to information that is subject to legal professional privilege, or that is of a confidential medical nature unless they have the person's consent or the person cannot be identified by that information.

Clause 35 – Obligations and liabilities of safety and health representatives
Provides that safety and health representatives are not obliged to exercise their powers and protects them from liability.

Clause 36 - Provisional improvement notices
Provides that safety and health representatives have the power to issue provisional improvement notices to the persons responsible for relevant work activities that the safety and health representative believes contravene the occupational safety and health laws. The provisional improvement notice may also indicate an action the safety and health representative believes the responsible person must take to rectify the apparent contravention. A safety and health representative may only issue a provisional improvement notice after having consulted with the responsible person about the apparent contravention, and if there is a failure to reach agreement within a reasonable time.
Clause 37 – Effect of provisional improvement notice
Provides that if a safety and health representative issues a provisional improvement notice to any person, that person may request an inspection by an inspector. Upon that request being made the provisional improvement notice is suspended, but the inspector may subsequently confirm, vary or cancel the provisional improvement notice, and make any other decision or exercise any other powers considered necessary. The responsible person is required to ensure that the notice (as confirmed or varied by the inspector) is complied with, to the extent that the responsible person has control.

Clause 38 – Duties of the operator and other employers in relation to safety and health representatives
Provides that the operator is required to consult with a safety and health representative (if requested) about any workplace changes that may affect the safety and health of the workforce, and (if there is no safety and health committee) about the implementation and review of measures to control safety and health. They also require the operator to allow the safety and health representative to make inspections under clause 32.

Subdivision 4 — Safety and health committees

Clause 39 - Safety and health committees
Establishes when a safety and health committee must be established, such as if the workforce engaged in a petroleum operation is not less than 50 in total, there are designated work groups, and a request is made. The clause also states that the composition and procedures of the committee are to be agreed by appropriate consultation, that the committee must meet at least every 3 months, and that minutes of meetings must be retained for 3 years.

Clause 40 - Functions of safety and health committees
Defines the functions of safety and health committees which include providing assistance to the operator of a petroleum operation to review, develop and implement safety and health measures for the workforce.

Clause 41 – Duties of the operator and other employers in relation to safety and health committees
Makes provisions to ensure that the safety and health committee functions effectively, for example by requiring that relevant information be provided to the committee, and by requiring that persons are given time off work activities to attend committee meetings.

Subdivision 5 — Emergency procedures

Clause 42 – Action by safety and health representatives
Deals with the emergency powers of a safety and health representative.
It provides that if a safety and health representative has reasonable cause to believe that there is an imminent and serious danger to the safety and health of any person at or near a petroleum operation unless a group member ceases to perform particular work, the safety and health representative must either inform a supervisor or, if no supervisor can be contacted immediately, must direct that the work cease and inform a supervisor as soon as practicable. The supervisor must then take such action as the supervisor thinks appropriate to remove the danger.

It also provides that if the safety and health representative has reasonable cause to believe that there continues to be an imminent and serious danger to health or safety unless the work ceases, despite any action taken by the supervisor, the safety and health representative must direct that the work cease and, as soon as practicable, inform the supervisor that the direction has been given.

Clause 43 – Directions to perform other work
Provides that if an employee has ceased to perform work in accordance with a direction of a safety and health representative or inspector under clause 42, the employer may direct the employee to do suitable alternative work.

Subdivision 6 — Exemptions

Clause 44 - Exemptions
Enables the Minister in accordance with the regulations, to make a written order exempting a specified person from any or all of the provisions of Division 3 of Schedule 1 (the workplace arrangements). The Minister must not make an exemption order unless the Minister is satisfied on reasonable grounds that it is impracticable for the person to comply with the provision or provisions.

Division 4 — Inspections

Subdivision 1 — Introduction

Clause 45 - Simplified outline
Provides a simplified outline that is a summary of this Part.

Clause 46 - Powers, functions and duties of inspectors
Establishes that inspectors have the powers, functions and duties conferred or imposed by a listed occupational safety and health law. The Minister may issue directions and restrictions on the exercise of inspector's powers.

Subdivision 2 — Inspections
Clause 47 - Inspections
Provides that an inspector may conduct an inspection at any time or as directed by the Minister, to determine that a listed OSH law is being complied with, a listed OSH law has been contravened or concerning an accident or dangerous occurrence at a petroleum operation.

Subdivision 3 — Powers of inspectors in relation to the conduct of inspections

Clause 48 – Powers of entry and search – places at which petroleum operations are carried on
Provides for powers of entry and search at a petroleum operation by an inspector.

The inspector is given power to inspect, take extracts from, or make copies from, any documents at a petroleum operation that the inspector has reasonable grounds to believe are related to the subject of the inspection. This power is needed in order to conduct effective inspections at a petroleum operation, and may also be needed in response to incidents that have occurred. The inspector is given power to inspect the subsoil in the vicinity of the petroleum operation. This power may be needed for accident investigation. The inspector is also required to afford relevant elected safety and health representatives a reasonable opportunity to consult about the subject of the inspection.

Clause 49 - Powers of entry and search – regulated business premises (other than places where petroleum operations carried on)
Provides inspectors with powers of entry and search at "regulated business premises" that are not a place at which a petroleum operation is carried on. The search powers under this clause relate only to documents that relate to a petroleum operation or petroleum operations that are the subject of an inspection. The powers therefore relate only to the responsibilities of the Minister in relation to safety and health of the workforce at a petroleum operation.

"Regulated business premises" are defined in clause 3 to mean premises that are occupied by a person who is the operator of a petroleum operation and that are used or proposed to be used, wholly or principally in connection with a petroleum operation. The intent is to enable inspectors to enter and search operator premises used in relation to a petroleum operation. These may be, for example, premises used for remote operation of a petroleum operation, or offices used for management of operations, supply bases, heliports, etc, where there are documents related to an inspection.

Clause 50 - Powers of entry and search – premises (other than regulated business premises)
Provides inspectors with powers of entry and search at premises that are not "regulated business premises". "Premises" are defined in clause 3
as including a structure or building, a place (whether or not enclosed or built upon) or a part thereof. The intent is to enable inspectors to enter and search other relevant premises, such as the offices or workshops of a company that designs modifications to a petroleum operation, or manufactures or maintains equipment used on a petroleum operation, where there are relevant documents.

These powers under clause 50 may only be exercised with the consent of the occupier of the premises to be entered and searched, or in accordance with a search warrant.

Clause 51 – Warrant to enter premises (other than regulated business premises)
Establishes how warrants to enter premises (other than regulated business premises) may be obtained.

Clause 51(1)
Provides that an inspector may apply to a magistrate for a warrant that would authorise the inspector, with such assistance as the inspector thinks necessary, to exercise the specified powers at particular premises.

Clause 51(2)
States that the application for a warrant must be supported by information, on oath or affirmation that sets out the grounds for applying for the warrant.

Clause 51(3) provides that, if the magistrate is satisfied that there are reasonable grounds, a warrant may be issued.

Clause 51(4)
Establishes that such a warrant must specify the name of the inspector, whether the inspection can be made at any time or at specified times, the day on which the warrant ceases to have effect and the purpose for which the warrant is issued.

Clause 51(5) establishes that a warrant must have a date of expiry no later than 7 days from the date of issue.

Clause 51(6) establishes that the warrant must identify the premises to which the warrant applies.

Clause 52 - Obstructing or hindering inspector
Provides that it is an offence to obstruct or hinder an inspector.

Clause 53 – Power to require assistance and information
Provides that an inspector has the power to require reasonable assistance and information in the conduct of an inspection.
Clause 54 – Power to require the answering of questions and the production of documents or articles
Provides that an inspector has the power to require a person being questioned in relation to the conduct of an inspection to answer questions and produce documents or articles, if the inspector believes it reasonably necessary to do so in connection with the conduct of the inspection.

Clause 55 – Privilege against self-incrimination
Provides for the privilege against self-incrimination in answering questions or producing documents etc. during the conduct of an investigation.

Clause 56 – Power to take possession of plant, take samples of substances etc.
Gives inspectors the power to take possession of plant, to take samples of substances, etc., for example as part of an investigation into an accident. The affected persons are to be notified when powers under clause 56(1) are exercised.

Clause 57 – Power to direct that workplace etc. not be disturbed
Provides that inspectors have the power to issue notices that direct that workplaces not be disturbed, in order to remove immediate threats to safety and health, or to allow inspections or other examinations to take place. The direction must be displayed in a prominent place in a workplace and must specify the time required to remove the threat or carry out an inspection, etc. The direction may be renewed.

Clause 58 – Power to issue prohibition notices
Provides that inspectors have the power to issue notices that prohibit specified activities.

The operator’s representative at the petroleum operation must give a copy of the notice to the safety and health representative (if any) of each designated work group that is affected by the notice, and to display a copy of the notice in a prominent place.

The inspector is also required to give a copy of the notice to any person other than the operator who owns plant, substances, etc, affected by the notice.

Clause 59 – Compliance with prohibition notice
Provides that an operator must ensure that the prohibition notice issued is complied with. The inspector is to inform the operator if the action taken by the operator to remove the threat to safety and health is not adequate. The notice ceases to have effect once the inspector has informed the operator that the inspector is satisfied with the action taken to remove the threat.
Clause 60 – Power to issue improvement notices
Provides an inspector with the power to issue an improvement notice if the inspector believes on reasonable grounds that a listed OSH law is being or has been contravened.

Clause 61 – Compliance with improvement notice
Provides that a person issued with an improvement notice must comply with it.

Clause 62 - Notices must not be tampered with or removed
Provides that a displayed provisional improvement notice, prohibition notice or improvement notice must not be tampered with or removed without reasonable excuse.

Subdivision 4 — Reports on inspections

Clause 63 - Reports on inspections
Requires an inspector to prepare a written report for the Minister (including the inspector’s conclusion, recommendation and any other prescribed matters) as soon as practicable after conducting an inspection.

Clause 63(3)
Requires the Minister to give a copy of the report to the operator for the petroleum operation, to employees who carry out activities to which the report relates, and to the owners of plant etc to which the report relates.

Clause 63(5) requires a copy of the report, and any related written comments made by the Minister to be given to each safety and health committee and (where there is no such committee) to the safety and health representative of each designated work group.

Subdivision 5 — Reviews

Clause 64 - Reviews of inspector’s decisions
Provides for a review of an inspector’s decision by the reviewing authority, by an operator for a petroleum operation or any employer (other than the operator) affected by the decision, a person to whom a notice has been issued under clause 37 or 60, a safety and health representative, workplace representative, a member of the workforce or a person who owns any workplace, plant, substance or thing to which a decision under clause 37, 56, 57, 58, 59 or 60 relates.

In this clause and in clause 65 “reviewing authority” means a person prescribed by the regulations to be a reviewing authority for the purposes of this clause.

Clause 65 - Powers of reviewing authority on review
Sets out the powers of the reviewing authority on review.
Division 5 — Referrals to the Tribunal

Clauses 66, 67, 68 and 68 cover the operation of the Tribunal.

**Clause 66** provides that a decision of the reviewing authority may be referred to the Tribunal.

**Clause 67** provides that the Tribunal may affirm the decision of the reviewing authority, affirm the decision with such modifications as the Tribunal considers appropriate or revoke the decision of the reviewing authority.

**Clause 68** describes the effect of the pending review by the Tribunal.

**Clause 69** outlines the jurisdiction of the Tribunal.

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Division 6 — General

**Clause 70 - Notification and reporting accidents and dangerous occurrences**
Requires notification and reporting of accidents and dangerous occurrences in relation to a petroleum operation and requires the notification and report to be sent to the Minister. The clause also provides for regulations to be made to prescribe the requirements of notification and reporting.

**Clause 71 - Records of the accidents and dangerous occurrences to be kept**
Requires records of the accidents and dangerous occurrences notified under clause 67 to be kept by the operator for the petroleum operation. Regulations may prescribe the contents of the record and the period for which the record must be retained.

**Clause 72 – Codes of Practice**
Provides for prescribed codes of practice to have the purpose of providing practical guidance to operators for petroleum operations and employers of members of the workforce. The clause also provides that a person is not liable in any civil or criminal proceedings for contravening a code of practice.

**Clause 73 - Codes of practice in proceedings**
Provides that codes of practice can be used in proceedings for an offence against a listed OSH law, if they were in effect at the time of the alleged contravention.

**Clause 74 - Interference etc. with equipment etc.**
Makes it an offence to interfere with equipment or device provided for the safety and health or welfare of the workforce at a petroleum operation.
Clause 75 – No charges to be levied on members of workforce
Makes it an offence for either the operator or an employer to levy a member of the workforce in relation to safety and health matters.

Clause 76 - Victimisation
Relates to unfair dismissal or other prejudicial acts against an employee as a result of (for example) a safety and health complaint, by that employee.

Clause 77 – Institution of prosecutions
Provides that the Minister or an inspector may institute proceedings for an offence against a listed occupational safety and health law. A safety and health representative or a workplace representative may request the Minister to institute proceedings if a period of 6 months has elapsed since the relevant act or omission occurred and the Minister has not yet instituted proceedings.

Clause 78 – Conduct of directors, employees and agents
Establishes the state of mind for the conduct of company officers and agents to the company in relation to occupational safety and health matters.

Clause 79 – Act not to give rise to other liabilities
Provides that Schedule 1 does not confer rights or defences to actions in any civil proceedings.

Clause 80 - Circumstances preventing compliance may be defence to prosecution
Provides that circumstances preventing compliance with a listed OSH law may be defence to a prosecution.

Clause 81 – Regulations - general
Provides further regulation-making powers regarding occupational safety and health matters.

Clause 81(1)
Provides that regulations may prescribe selection procedures under clause 39 for members of safety and health committees, the procedures to be followed at safety and health committee meetings, the manner in which notices are to be served under this Schedule and the forms for the purposes of this Schedule.

Clause 81(1)(d)
Introduces provisions that may be required for the practices and procedures of reviews conducted by reviewing authority.

Clause 81(2)
Provides for exemptions from the application of this Schedule if a law of the State or Commonwealth also applies.
Clause 81(3)
Provides that regulations made for the purpose of clause 78(2) do not remain in force for longer than 5 years after they commence and provides that further regulations of the same substance may be made.

Clause 81(4)
Establishes that the reference to the Schedule in 78(2) includes regulations made for this purpose of the Schedule.

Part 3 – Petroleum Pipelines Act 1969

Clause 18 – The Act amended
Provides that the Bill amends the Petroleum Pipelines Act 1969.

Clause 19 - Section 4 amended
Introduces the following definitions in the Petroleum Pipelines Act 1969:

“listed OSH laws” means the provisions of section 65, Schedule 1, regulations made for the purposes of section 56B and any other regulations relating to occupational safety and health matters that are prescribed for the purposes of this paragraph;

“other protected person” means a person who is in the vicinity of a pipeline operation at the invitation of, or with the express or implied consent of –

(a) the licensee for the pipeline operation; or
(b) a person in control of a part of the pipeline operation;

“pipeline operation” means an operation in connection with the construction, operation, inspection, maintenance or repair of a pipeline carried out on land that is specified in any licence as licence area.

Clause 20 – Section 5AA inserted
Inserts a new section 5AA in the Petroleum Pipelines Act 1969. The new section 5AA disapplies current Western Australian occupational safety and health laws (as prescribed by regulations to be made) in relation to a pipeline operation and other protected persons as defined in clause 18. In their place, the occupational safety and health regime set out in the new Schedule 1 to the Petroleum Pipelines Act 1969 will apply.

Clause 21 – Section 36A amended
This clause removes occupational safety and health matters from section 36A. The provisions in the new Schedule 1 will cover occupational safety and health matters.
Clause 22 – Section 55 repealed  
This clause repeals section 55 covering the provision that the Minister is not liable to certain actions as this is now covered in the protection provisions of the new section 63A at clause 27.

Clause 23 – Part IVA inserted  

- Section 56A provides that Schedule 1 has effect for occupational safety and health.

- Section 56B provides for the making of regulations for the purposes of occupational safety and health of persons engaged in pipeline operations.

- Section 56C confers general functions on the Minister for occupational safety and health of persons engaged in pipeline operations. Pipeline operations include operations in connection with the construction, operation, inspection, maintenance or repair of a pipeline.

The functions include promotion of the occupational safety and health of persons, development and implementation of effective monitoring and enforcement strategies, investigations of accidents and occurrences affecting occupational safety and health, and reporting.

Clause 24 - Section 61 amended  
Deletes the reference to the ‘Department of Mines at Perth in the State’ and replaces it with the ‘department of the Public Service’ principally assisting in the administration of the Act.

Clause 25 - Section 62 amended  
Clause 25 amends section 62 “Inspectors” so that it is possible to specify whether an inspector is appointed for all purposes of the Act, or, such purposes as are specified in the instrument of appointment and the certificate.

It also deletes the references to the ‘regulations in sections 62(1) and 62(2)’. Any references to an Act are taken to include a reference to any subsidiary legislation made under the Act.

Clause 26 - Section 63 amended  
Provides for the deletion of the reference to ‘and the regulations’ in S.63 (1) as any references to an Act are taken to include a reference to any subsidiary legislation made under the Act. The words ‘, but without affecting the powers of an inspector under Schedule 1’ are inserted instead and clarify the powers of inspectors under Section 63 and Schedule 1.

Clause 27 - Section 63A inserted  
Provides that a person is not personally liable for acts or omissions done in good faith for the performance of a function under the Act.
**Clause 28 – Section 65 replaced**
This clause repeals the existing section 65 “Damaging etc. pipelines” and replaces it with the equivalent of s.117A Petroleum Act 1967 and s.124B Petroleum (Submerged Lands) Act 1982. This new section “Interfering with pipeline operation” has a penalty provision of 10 years imprisonment.

**Clause 29 - Sections 66BA and 66BB inserted and transitional provision**

Section 66BA establishes that proceedings in respect of an offence against the Act may be brought at any time. This new provision is consistent with the provisions of S.136 of the Petroleum (Submerged Lands) Act 1982 and S.125 of the Petroleum Act 1967.

Section 66BB (1) establishes that certain matters in relation to a pipeline operation are taken to have been proved in the absence of evidence to the contrary.

Section 66BB (2) and (3)
Outlines the matters that in proceedings for an offence against the Act that proof is not required unless evidence is given to the contrary and provides for the certification of codes of practice, Australian Standards and Australian/New Zealand standards.

Section 66BB (4)
Defines the terms ‘Australian Standards’ ‘Australian/New Zealand Standard’ and ‘CEO’

**Clause 30 – Section 67 amended**
Inserts a new clause following s.67 (1)(f) to enable regulations to be made for fees in relation to pipeline safety audits or other services provided by the Minister, or any transitional matters arising from amendments made by this Act.

Clause 30 also inserts a provision at 30(2) to allow for the application of laws approach for petroleum regulations. These provisions would, if required, allow for regulations to adopt, or apply with or without modification, any petroleum regulations either under the State or Commonwealth legislation.

**Clause 31 - Various sections amended to delete “the regulations” (Interpretation Act s.46)**
Provides for amendments to various sections to delete the words “the regulations” as provided for by S.46 of the Interpretation Act 1984.

**Clause 32 – Schedule 1 inserted**
Inserts a new Schedule 1 into the Petroleum Pipelines Act 1969 regarding occupational safety and health in relation to pipeline operations.

Schedule 1 – Occupational safety and health

Division 1 — Introduction
Clause 1 - Objects
Sets out the objects of Schedule 1.

The objects relate to the securing of the occupational safety and health of all persons in relation to pipeline operations, whether they are engaged in those operations under a contract of employment with any person or under some other contractual arrangement and regardless of whether they have any contract at all with a person who owes a duty of care.

It also provides that the objects are not confined to persons while they are working but are also intended to protect the workforce during mealtimes, recreation and periods of rest.

Clause 2 – Simplified outline
Sets out the simplified outline of Schedule 1 which covers the following areas:

- Establishes duties of care for licensees, employers and others;
- Sets out consultative arrangements in relation to designated work groups, safety and health representatives, OSH committees, etc;
- Defines the powers of inspectors, enabling them to make inspections, take samples, seize evidence, issue notices, etc; and
- Establishes duties to report accidents and dangerous occurrences.

Clause 3 - Definitions
Defines the following terms:

“accident” includes the contraction of a disease.

“contract” includes an arrangement or understanding.

“contractor” has the meaning given by clause 6.

“dangerous occurrence” means an occurrence declared by the regulations to be a dangerous occurrence for the purposes of this definition.

“designated work group” means a group of members of the workforce engaged in a petroleum operation that is established as a designated work group under clause 17 or 18, or that group as varied in accordance with clause 19 or 20.

“employee”, in relation to an employer, means an employee of that employer.

“employer” means an employer who carries on a pipeline operation.
“group member”, in relation to a designated work group for a pipeline operation, means a person who is a member of the workforce engaged in that operation and included in that designated work group.

“improvement notice” means an improvement notice issued under clause 60(1).

“inspection” means an inspection conducted under Division 4 and includes an investigation or inquiry.

“licensee” in relation to a pipeline operation, means the registered holder of the licence granted in respect of that operation.

“licensee’s representative” means a person present at a workplace in compliance with the obligations imposed on the licensee by clause 4.

“member of the workforce”, in relation to a pipeline operation, means a natural person who is engaged in the pipeline operation, whether as an employee of the licensee or of another person, or as a contractor of the licensee or of another person.

“own” includes own jointly and own in part.

“plant” includes any machinery, equipment or tool, or any component.

“premises” includes a structure or building, a place (whether or not enclosed or built on) or, a part of a structure or a place.

“prohibition notice” means a prohibition notice issued under clause 58(1).

“registered organisation” means an organisation within the meaning of the Workplace Relations Act 1996 of the Commonwealth or as defined in the Industrial Relations Act 1979, section 7(1).

“regulated business premises” means a place where a pipeline operation is carried on, or premises that are occupied by a person who is the licensee of a pipeline operation and used, or proposed to be used, wholly or principally in connection with a pipeline operation.

“regulations” means regulations made for the purposes of this Schedule.

“Tribunal” has the meaning given to that term in the Occupational Safety and Health Act 1984 section 51G(2).

“work” means work that is directly or indirectly related to a pipeline operation.

“workforce representative” means:
(a) in relation to a person who is member of the workforce engaged in a pipeline operation - a registered organisation of which that person is a member, if the person is qualified to be a member of that organisation because of the work that person performs in relation to the pipeline operation; or
(b) in relation to a designated work group or a proposed designated work group - a registered organisation of which a person who is, or who is likely to be, in the work group is a member, if the person is qualified to be a member of that organisation because of the work the person performs, or will perform, in relation to the pipeline operation as a member of the group.

“work group employer” in relation to a designated work group in relation to a pipeline operation, means an employer or one or more group members, but does not include the licensee of the pipeline operation.

“workplace” in relation to a pipeline operation, means the whole place where the pipeline operation is carried on or any part of a place where the pipeline operation is carried on.

Clause 4 - Licensee must ensure presence of licensee’s representative
Provides that the licensee for a pipeline operation must ensure at all times the presence at the workplace of a representative of the licensee, who has the day-to-day management and control of the pipeline operation and display their name prominently at the workplace.

Clause 5 - Safety and health of persons using an accommodation amenity
Provides that the provisions of Schedule 1 apply to persons using an accommodation amenity provided for the accommodation of persons engaged in a pipeline operation.

Clause 6 - Contractor
Defines "contractor" for the purposes of Schedule 1.

Division 2 — Occupational safety and health

Subdivision 1 — Duties relating to occupational safety and health

Clause 7 - Duties of licensee
Establishes the duties of care that are owed by the licensee of a pipeline operation to the members of the workforce.

The primary duty of the licensee is to take all reasonably practicable steps to ensure that the pipeline operation and all work and other activities at the pipeline operation are safe and without risk to safety and health.
Clause 8 - Duties of persons in control of parts of pipeline operation
Establishes duties of persons who may be in management or control of a part of a pipeline operation, or of certain activities at a pipeline operation. Examples of such persons may be those supervising a construction or maintenance crew.

The duties established for these persons are similar to those established for the licensee, but are limited to the areas or activities under the control of the person.

Clause 9 - Duties of employers
Establishes duties of employers to employees and to contractors.

The employer’s duties are to take all reasonable practicable steps to protect the safety and health of employees.

There is overlap in the duties of care imposed on licensees, on persons in control of parts of the pipeline operation or particular work, and on employers. There is further overlap with the duties of care imposed on manufacturers, suppliers, etc, which are defined by later clauses, and ensures that there are no gaps in the coverage of the duties of care, so that, when enforcement action is required, it can be taken against the most appropriate person in the circumstances.

Clause 10 - Duties of manufacturers in relation to plant and substances
Provides for the duties of care of manufacturers (including importers and overseas manufacturers with no place of business in Australia) in relation to plant and substances reasonably expected to be used by members of the workforce at a pipeline operation. This provision does not affect other State laws relating to goods.

Clause 11 - Duties of suppliers of pipelines, plant and substances
Provides for the duties of care of suppliers of pipelines, plant and substances, to all persons at all times they are at a pipeline operation. This provision also extends to an ostensible supplier in the business of financing the acquisition or use of goods by others.

Clause 12 - Duties of persons constructing pipelines or installing plant
Provides for the duties of care of persons constructing or installing a pipeline or plant, and to all persons at all times they are at a pipeline operation.

Clause 13 - Duties of persons in relation to occupational safety and health
Provides the duties of care of any person at a pipeline operation in relation to occupational safety and health.
Clause 14 – Reliance on information supplied or results of research
Provides that persons in complying with their duties may rely on information provided by others, or on the results of testing and research conducted by others.

Subdivision 2 — Regulations relating to occupational safety and health

Clause 15 - Regulations relating to occupational safety and health
Provides that regulations may be made that relate to any matter affecting or likely to affect occupational safety and health of any class of person at a pipeline operation and lists those matters.

Part 3 — Workplace arrangements

Subdivision 1 — Introduction

Clause 16 - Simplified outline
Sets out the simplified outline that is a summary of this Part.

Subdivision 2 — Designated Work Groups

The purpose of designated work groups is to provide a formal and structured organisation for consultation between management and the workforce on occupational safety and health issues.

Clause 17 – Establishment of designated work group by request
Provides that the licensee of a pipeline operation has the responsibility to organise a designated work group if a member of the workforce or workforce makes a request.

The licensee on receiving such a request must within 14 days enter into consultation with members of the workforce, workforce representatives, or each employer (if any) of members of the workforce.

Clause 18 - Establishment of designated work groups at initiative of licensee
Provides that the licensee of a pipeline operation may initiate the establishment of a designated work group.

Clause 19 – Variation of designated work group by request
Provides that the licensee of a pipeline operation has the responsibility to vary an established designated work group if a request for variation is made.

Clause 20 - Variation of designated work group at initiative of licensee
Provides that the licensee of a pipeline operation may initiate the variation of an established designated work group.
Clause 21 – Referral of disagreement to reviewing authority
Provides that, if a disagreement arises between the parties in the course of consultation under clause 17, 18, 19 or 20, either party made refer the disagreement to the reviewing authority for resolution. The reviewing authority will be prescribed in regulations.

Clause 22 – Manner of grouping members of the workforce
Provides for the manner in which members of the workforce may be grouped and the issues that the parties to the consultation must have regard.

Subdivision 3 — Safety and health representatives

Clause 23 – Selection of safety and health representatives
Provides for the selection of a safety and health representatives. Safety and health representatives are the persons selected to represent the members of each designated work group during consultations with management on safety and health issues.

Clause 24 - Election of safety and health representatives
Relates to the election of safety and health representatives if there is a vacancy for a safety and health representatives, and no person has within a reasonable time been unanimously selected by the group. The licensee is required to invite nominations from all group members. If the licensee fails to invite such nominations in a reasonable time, the Minister may direct the licensee to do so. A person cannot be nominated if disqualified under clause 30.

If there is only one candidate, that person is taken to be elected. If more than one candidate is nominated, the licensee must conduct or arrange for the conduct of an election. All members of the workforce in the designated work group are entitled to vote. The licensee must comply with any directions of the Minister when conducting the election.

Clause 25 - list of safety and health representatives
Requires the licensee to prepare and keep up to date a list of all safety and health representatives, and to make that list available to the members of the workforce and to inspectors.

Clause 26 – Members of designated work group must be notified of selection etc. of safety and health representative
Requires the licensee to notify members of the workforce of a vacancy for a safety and health representative within a reasonable time of that vacancy arising, and to notify those members of the name of the person selected within a reasonable time of the selection being made.
Clause 27 – Term of office
Provides that a safety and health representative holds office for a term agreed to by the parties or for 2 years if there is no agreement.

Clause 28 – Training of safety and health representatives
Provides that a safety and health representative must undertake a course of training relating to occupational safety and health that is accredited by the Minister. The licensee and employer are required to grant the safety and health representative leave to attend an accredited course.

Clause 29 - Resignation etc. of safety and health representatives
Provides the processes to be followed for the formal resignation of safety and health representatives. It also sets out the requirements for notifying relevant persons of such resignations.

Clause 30 - Disqualification of safety and health representatives
Provides the process for disqualification of a safety and health representative by the Tribunal.

Clause 31 - Deputy safety and health representatives
Allows for the selection of a deputy safety and health representative by the designated work group who exercises the powers of the safety and health representative if the safety and health representative ceases to be the safety and health representative or is unavailable.

Clause 32 - Powers of safety and health representatives
Sets out the powers of a safety and health representative. These powers include the power to inspect the workplace, to request an inspection by an inspector, to accompany that inspector during such an inspection, to represent the group members in consultations with management, to investigate complaints by group members about a safety and health representative, to be present at any interview of a group member by an inspector or management about safety and health representative issues, to obtain access to relevant information, and to issue provisional improvement notices under clause 36.

Clause 33 - Assistance by consultant
Provides that in exercising these powers, a safety and health representative may be assisted by consultants, if either the Minister or the licensee agree.

Clause 34 - Information
Provides that neither the safety and health representative or a consultant is entitled to have access to information that is subject to legal professional privilege, or that is of a confidential medical nature unless they have the person's consent or the person cannot be identified by that information.
Clause 35 – Obligations and liabilities of safety and health representatives
Provides that safety and health representatives are not obliged to exercise their powers and protects them from liability.

Clause 36 - Provisional improvement notices
Provides that safety and health representatives have the power to issue provisional improvement notices to the persons responsible for relevant work activities that the safety and health representative believes contravenes the occupational safety and health laws. The provisional improvement notices may also indicate an action the safety and health representative believes the responsible person must take to rectify the apparent contravention. A safety and health representative may only issue a provisional improvement notice after having consulted with the responsible person about the apparent contravention, and if there is a failure to reach agreement within a reasonable time.

Clause 37 – Effect of provisional improvement notice
Provides that if a safety and health representative issues a provisional improvement notice to any person, that person may request an inspection by an inspector. Upon that request being made the provisional improvement notice is suspended, but the inspector may subsequently confirm, vary or cancel the provisional improvement notice, and make any other decision or exercise any other powers considered necessary. The responsible person is required to ensure that the notice (as confirmed or varied by the inspector) is complied with, to the extent that the responsible person has control.

Clause 38 – Duties of the licensee and other employers in relation to safety and health representatives
Provides that the licensee is required to consult with a safety and health representative (if requested) about any workplace changes that may affect the safety and health of the workforce, and (if there is no safety and health committee) about the implementation and review of measures to control safety and health. They also require the licensee to allow the safety and health representative to make inspections under clause 32.

Subdivision 4 — Safety and health committees

Clause 39 - Safety and health committees
Establishes when a safety and health committee must be established, such as if the workforce engaged in a pipeline operation is not less than 50, there are designated work groups, and a request is made. The clause also states that the composition and procedures of the committee are to be agreed by appropriate consultation, that the committee must meet at least every 3 months, and that minutes of meetings must be retained for 3 years.
Clause 40 - Functions of safety and health committees
Defines the functions of safety and health committees which include providing assistance to the licensee of a pipeline operation to review, develop and implement safety and health measures for the workforce.

Clause 41 – Duties of the licensee and other employers in relation to safety and health committees
Makes provisions to ensure that the safety and health committee functions effectively, for example by requiring that relevant information be provided to the committee, and by requiring that persons are given time off work activities to attend committee meetings.

Subdivision 5 — Emergency procedures

Clause 42 – Action by safety and health representatives
Deals with the emergency powers of a safety and health representative.

It provides that if a safety and health representative has reasonable cause to believe that there is an imminent and serious danger to the safety and health of any person at or near a pipeline operation unless a group member ceases to perform particular work, the safety and health representative must either inform a supervisor or, if no supervisor can be contacted immediately, must direct that the work cease and inform a supervisor as soon as practicable. The supervisor must then take such action as the supervisor thinks appropriate to remove the danger.

It also provides that if the safety and health representative has reasonable cause to believe that there continues to be an imminent and serious danger to health or safety unless the work ceases, despite any action taken by the supervisor, the safety and health representative must direct that the work cease and, as soon as practicable, inform the supervisor that the direction has been given.

Clause 43 – Directions to perform other work
Provides that if an employee has ceased to perform work in accordance with a direction of a safety and health representative or inspector under clause 42, the employer may direct the employee to do suitable alternative work.

Subdivision 6 — Exemptions

Clause 44 - Exemptions
Enables the Minister in accordance with the regulations, to make a written order exempting a specified person from any or all of the provisions of Division 3 of Schedule 1 (the workplace arrangements). The Minister must not make an exemption order unless the Minister is satisfied on reasonable grounds that it is impracticable for the person to comply with the provision or provisions.
Division 4 — inspections

Subdivision 1 — Introduction

Clause 45 - Simplified outline
Provides a simplified outline that is a summary of this Part.

Clause 46 - Powers, functions and duties of inspectors
Establishes that inspectors have the powers, functions and duties conferred or imposed by a listed occupational safety and health law. The Minister may issue directions and restrictions on the exercise of inspector's powers.

Subdivision 2 — Inspections

Clause 47 - Inspections
Provides that an inspector may conduct an inspection at any time or as directed by the Minister, to determine that a listed OSH law is being complied with, a listed OSH law has been contravened or concerning an accident or dangerous occurrence at a pipeline operation.

Subdivision 3 — Powers of inspectors in relation to the conduct of inspections

Clause 48 - Powers of entry and search – places at which pipeline operations are carried on
Provides for powers of entry and search at a pipeline operation by an inspector.

The inspector is given power to inspect, take extracts from, or make copies from, any documents at a pipeline operation that the inspector has reasonable grounds to believe are related to the subject of the inspection. This power is needed in order to conduct effective inspections at a pipeline operation, and may also be needed in response to incidents that have occurred. The inspector is given power to inspect the subsoil in the vicinity of the pipeline operation. This power may be needed for accident investigation. The inspector is also required to afford relevant elected safety and health representatives a reasonable opportunity to consult about the subject of the inspection.

Clause 49 - Powers of entry and search – regulated business premises (other than places where pipeline operations carried on)
Provides inspectors with powers of entry and search at "regulated business premises" that are not a place at which a pipeline operation is carried on. The search powers under this clause relate only to documents that relate to a pipeline operation or pipeline operation operations that are the subject of an inspection. The powers therefore relate only to the responsibilities of the Minister in relation to safety and health of the workforce at a pipeline operation.
"Regulated business premises" are defined in clause 3 to mean premises that are occupied by a person who is the licensee of a pipeline operation and that are used or proposed to be used, wholly or principally in connection with a pipeline operation. The intent is to enable inspectors to enter and search licensee premises used in relation to a pipeline operation. These may be, for example, premises used for remote operation of a pipeline operation, or offices used for management of operations, supply bases, heliports, etc, where there are documents related to an inspection.

Clause 50 - Powers of entry and search – premises (other than regulated business premises)
Provides inspectors with powers of entry and search at premises that are not "regulated business premises". "Premises" are defined in clause 3 as including a structure or building, a place (whether or not enclosed or built upon) or a part thereof. The intent is to enable inspectors to enter and search other relevant premises, such as the offices or workshops of a company that designs modifications to a pipeline operation, or manufactures or maintains equipment used on a pipeline operation, where there are relevant documents.

These powers under clause 50 may only be exercised with the consent of the occupier of the premises to be entered and searched, or in accordance with a search warrant.

Clause 51 – Warrant to enter premises (other than regulated business premises)
Establishes how warrants to enter premises (other than regulated business premises) may be obtained.

Clause 51(1)
Provides that an inspector may apply to a magistrate for a warrant that would authorise the inspector, with such assistance as the inspector thinks necessary, to exercise the specified powers at particular premises.

Clause 51(2)
States that the application for a warrant must be supported by information, on oath or affirmation that sets out the grounds for applying for the warrant.

Clause 51(3) provides that, if the magistrate is satisfied that there are reasonable grounds, a warrant may be issued.

Clause 51(4)
Establishes that such a warrant must specify the name of the inspector, whether the inspection can be made at any time or at specified times, the day on which the warrant ceases to have effect and the purpose for which the warrant is issued.
Clause 51(5) establishes that a warrant must have a date of expiry no later than 7 days from the date of issue.

Clause 51(6) establishes that the warrant must identify the premises to which the warrant applies.

Clause 52 - Obstructing or hindering inspector
Provides that it is an offence to obstruct or hinder an inspector.

Clause 53 - Power to require assistance and information
Provides that an inspector has the power to require reasonable assistance and information in the conduct of an inspection.

Clause 54 - Power to require the answering of questions and the production of documents or articles
Provides that an inspector has the power to require a person being questioned in relation to the conduct of an inspection to answer questions and produce documents or articles, if the inspector believes it reasonably necessary to do so in connection with the conduct of the inspection.

Clause 55 - Privilege against self-incrimination
Provides for the privilege against self-incrimination in answering questions or producing documents etc. during the conduct of an investigation.

Clause 56 - Power to take possession of plant, take samples of substances, etc.
Gives inspectors the power to take possession of plant, to take samples of substances, etc., for example as part of an investigation into an accident. The affected persons are to be notified when powers under clause 56(1) are exercised.

Clause 57 - Power to direct that workplaces not be disturbed
Provides that inspectors have the power to issue notices that direct that workplaces not be disturbed, in order to remove immediate threats to safety and health, or to allow inspections or other examinations to take place. The direction must be displayed in a prominent place in a work place and must specify the time required to remove the threat or carry out an inspection, etc. The direction may be renewed.

Clause 58 - Power to issue prohibition notices
Provides that inspectors have the power to issue notices that prohibit specified activities.

The licensee’s representative at the pipeline operation must give a copy of the notice to the safety and health representative (if any) of each designated work group that is affected by the notice, and to display a copy of the notice in a prominent place.
The inspector is also required to give a copy of the notice to any person other than the licensee who owns plant, substances, etc, affected by the notice.

Clause 59 – Compliance with prohibition notice
Provides that a licensee must ensure that the prohibition notice issued is complied with. The inspector is to inform the licensee if the action taken by the licensee to remove the threat to safety and health is not adequate. The notice ceases to have effect once the inspector has informed the licensee that the inspector is satisfied with the action taken to remove the threat.

Clause 60 - Power to issue an improvement notice
Provides an inspector with the power to issue an improvement notice if the inspector believes on reasonable grounds that a listed OSH law is being or has been contravened.

Clause 61 – Compliance with improvement notice
Provides that a person issued with an improvement notice must comply with it.

Clause 62 - Notices not be tampered with or removed
Provides that a displayed provisional improvement notice, prohibition notice or improvement notice must not be tampered with or removed without reasonable excuse.

Subdivision 4 — Reports on inspections

Clause 63 - Reports on inspections
Requires an inspector to prepare a written report for the Minister (including the inspector’s conclusion, recommendation and any other prescribed matters) as soon as practicable after conducting an inspection.

Clause 63(3)
Requires the Minister to give a copy of the report to the licensee for the pipeline operation, to employees who carry out activities to which the report relates, and to the owners of plant etc to which the report relates.

Clause 63(5) requires a copy of the report, and any related written comments made by the Minister to be given to each safety and health committee and (where there is no such committee) to the safety and health representative of each designated work group.

Subdivision 5 — Reviews

Clause 64 - Reviews of inspector’s decisions
Provides for a review of an inspector’s decision by the reviewing authority, by a licensee for a pipeline operation or any employer (other
than the licensee) affected by the decision, a person to whom a notice has been issued under clause 37 or 60, a safety and health representative, workplace representative, a member of the workforce or a person who owns any workplace, plant, substance or thing to which a decision under clause 37, 56, 57, 58, 59 or 60 relates.

In this clause and in clause 65 “reviewing authority” means a person prescribed by the regulations to be a reviewing authority for the purposes of this clause.

Clause 65 - Powers of the reviewing authority on review
Sets out the powers of the reviewing authority on review.

Division 5 — Referrals to the Tribunal

Clauses 66, 67, 68 and 68 cover the operation of the Tribunal.

Clause 66 provides that a decision of the reviewing authority may be referred to the Tribunal.

Clause 67 provides that the Tribunal may affirm the decision of the reviewing authority, affirm the decision with such modifications as the Tribunal considers appropriate or revoke the decision of the reviewing authority.

Clause 68 describes the effect of the pending review by the Tribunal.

Clause 69 outlines the jurisdiction of the Tribunal.

Division 6 — General

Clause 70 - Notifying and reporting of accidents and dangerous occurrences
Requires notification and reporting of accidents and dangerous occurrences in relation to a pipeline operation and requires the notification and report to be sent to the Minister. The clause also provides for regulations to be made to prescribe the requirements of notification and reporting.

Clause 71 - Records of accidents and dangerous occurrences to be kept
Requires records of the accidents and dangerous occurrences notified under clause 67 to be kept by the licensee for the pipeline operation. Regulations may prescribe the contents of the record and the period for which the record must be retained.
Clause 72 - Codes of practice
Provides for prescribed codes of practice to have the purpose of providing practical guidance to licensees for pipeline operations and employers of members of the workforce. The clause also provides that a person is not liable in any civil or criminal proceedings for contravening a code of practice.

Clause 73 – Use of codes of practice in proceedings
Provides that codes of practice can be used in proceedings for an offence against a listed OSH law, if they were in effect at the time of the alleged contravention.

Clause 74 – Interference etc. with equipment etc.
Makes it an offence to interfere with equipment or device provided for the safety and health or welfare of the workforce at a pipeline operation.

Clause 75 – No charges to be levied on members of the workforce
Makes it an offence for either the licensee or an employer to levy a member of the workforce in relation to safety and health matters.

Clause 76 - Victimisation
Relates to unfair dismissal or other prejudicial acts against an employee as a result of (for example) a safety and health complaint, by that employee.

Clause 77 - Institution of proceedings
Provides that the Minister or an inspector may institute proceedings for an offence against a listed occupational safety and health law. A safety and health representative or a workplace representative may request the Minister to institute proceedings if a period of 6 months has elapsed since the relevant act or omission occurred and the Minister has not yet instituted proceedings.

Clause 78 - Conduct of directors, employees and agents
Establishes the state of mind for the conduct of company officers and agents to the company in relation to occupational safety and health matters.

Clause 79 – Act not to give rise to other liabilities etc.
Provides that Schedule 1 does not confer rights or defences to actions in any civil proceedings.

Clause 80 - Circumstances preventing compliance may be defence to prosecution
Provides that circumstances preventing compliance with a listed OSH law may be defence to a prosecution.
Clause 81 – Regulations - general
Provides further regulation-making powers regarding occupational safety and health matters.

Clause 81(1)
Provides that regulations may prescribe selection procedures under clause 39 for members of safety and health committees, the procedures to be followed at safety and health committee meetings, the manner in which notices are to be served under this Schedule and the forms for the purposes of this Schedule.

Clause 81(1)(d)
Introduces provisions that may be required for the practices and procedures of reviews conducted by reviewing authority.

Clause 81(2)
Provides for exemptions from the application of this Schedule if a law of the State or Commonwealth also applies.

Clause 81(3)
Provides that regulations made for the purpose of clause 78(2) do not remain in force for longer than 5 years after they commence and provides that further regulations of the same substance may be made.

Clause 81(4)
Establishes that the reference to the Schedule in 78(2) includes regulations made for this purpose of the Schedule.

Part 4 – Petroleum (Submerged Lands) Act 1982

Clause 33 – The Act amended
Provides that the Bill amends the Petroleum (Submerged Lands) Act 1982.

Clause 34 - Section 4 amended
Makes consequential amendments to definitions in the Petroleum (Submerged Lands) Act 1982:

“Commonwealth Minister” means the Commonwealth Minister administering the Commonwealth Act or the Minister acting on behalf of that Minister

“facility” has the same meaning as in Schedule 5.

“interstate Minister” means the State or Northern Territory Minister (other than the Western Australian Minister) performing the functions of the Designated Authority under the Commonwealth Act.
“listed OSH law” has the same meaning given in section 151C.

“offshore petroleum operation” describes the scope of the petroleum operations in respect of which the Safety Authority will exercise safety regulatory functions. The operations covered by the definition are:

- diving operations (whether at a facility or not); and
- operations at a facility that relate to exploration for petroleum, or the recovery, processing, storage, offloading or piped conveyance of petroleum.

“OHS inspector” means an OHS inspector appointed under the Commonwealth Act.

“Safety Authority” means the National Offshore Petroleum Safety Authority (the Safety Authority) established under the Commonwealth Act.

Clause 35 – Section 11 amended
This clause amends section 11 by deleting “Division” and inserting instead “Part”.

Clause 36 – Part IIA inserted
Inserts a new section 15A in the Petroleum (Submerged Lands) Act 1982. The new section 15A disapplies current Western Australian occupational safety and health laws (as prescribed by regulations to be made) in State waters in relation to offshore petroleum facilities. In their place, the occupational safety and health regime set out in the new Schedule 5 to the Petroleum (Submerged Lands) Act 1982 will apply.

Clause 37 – Section 89 repealed
This clause repeals section 89 covering the provision that the Minister is not liable to certain actions as this is now covered in the protection provisions of the new section 126A at clause 42.

Clause 38 – Section 97 amended
This clause removes occupational safety and health matters from section 97. The provisions in the new Schedule 5 will cover occupational safety and health matters.

Clause 39 – Section 124B inserted
After section 124 a new section has been inserted as s.124B prohibiting intentional or reckless interference with or damage to any structure or vessel used or is to be used in an offshore petroleum operation. The 10 year imprisonment penalty is equal to the most severe penalty in the Act, the other offence attracting this penalty being applicable to the owner and person in charge of a vessel entering or remaining in a safety zone in contravention of the Act.
Clause 40 - Section 125 amended
Clause 40 amends section 125 “Inspectors” so that it is possible to appoint “a person” to be an inspector rather than limiting the appointment to a public service officer within the meaning of the Public Sector Management Act 1994.

The clause also amends s.125 such that an inspector appointed under this section is not for the purposes of Part IIIA of the Act.

The clause also specifies whether an inspector is appointed for all purposes of the Act, or, such purposes as are specified in the instrument of appointment and the certificate.

It also deletes the references to the ‘regulations in sections 125(1) and 125(2)’. Any references to an Act are taken to include a reference to any subsidiary legislation made under the Act.

Clause 41 - Section 126 amended
Provides for the deletion of the reference to ‘and the regulations’ in s.126 (1) as any references to an Act are taken to include a reference to any subsidiary legislation made under the Act. The words “other than Part IIIA” are inserted instead to clarify the powers of inspectors appointed under s.125 do not extend to Part IIIA.

Clause 42 - Section 126A inserted
Provides that a person is not personally liable for acts or omissions done in good faith for the performance of a function under the Act.

Clause 43 - Section 137A inserted

Section 137A (1) establishes that certain matters in relation to a petroleum operation are taken to have been proved in the absence of evidence to the contrary.

Section 137A (2) and (3)
Outlines the matters that in proceedings for an offence against the Act that proof is not required unless evidence is given to the contrary and provides for the certification of codes of practice, Australian Standards and Australian/New Zealand standards.

Section 137A (4)
Defines the terms ‘Australian Standards’ ‘Australian/New Zealand Standard’ and ‘CEO’

Clause 44 - Part IIIA inserted
This clause inserts a new Part IIIA regarding occupational safety and health into the Petroleum (Submerged Lands) Act 1982.

Division 1— Introduction
Section 151A defines terms used in Part IIIA that are relevant to the functions of the Safety Authority:


“CEO” means the Chief Executive Officer of the Safety Authority

Section 151B provides that Schedule 5 has effect. Schedule 5 sets out requirements regarding occupational safety and health on offshore petroleum facilities.

Section 151C describes the OHS laws as defined for the purposes of the Petroleum (Submerged Lands) Act 1982.

Section 151D provides for the making of regulations for the purposes of occupational safety and health of persons in offshore petroleum facilities.

Division 2—Functions and powers of the Safety Authority

Section 151E confers general functions on the Safety Authority that are concerned with the occupational safety and health of persons engaged in offshore petroleum operations. Offshore petroleum operations include offshore petroleum-related diving activities and other offshore petroleum activities that take place at an offshore petroleum facility, but do not include seismic survey vessels and operations carried out on those vessels, except for diving activities.

The functions include promoting occupational safety and health of persons, development and implementation of effective monitoring and enforcement strategies, investigations of accidents and occurrences affecting occupational safety and health, and reporting.

Section 151F provides that the Safety Authority has the power to do all things necessary or convenient to be done for, or in connection with the performance of its functions. These include power to acquire, hold and dispose of real property, enter contracts, lease and occupy real property, conduct research, hold and apply for patents and to do anything incidental to its functions.

Section 151G provides for the standard provisions with respect to the seal of the Safety Authority.

Division 3—Safety Authority Board

Division 3 of Part IIIA provides for the functions and powers of the National Offshore Petroleum Safety Authority Board, and its decisions.
Section 151H confers functions on the Board in respect of advising and making recommendations to various persons and bodies. These include the CEO of the Safety Authority, and the State and Commonwealth Ministers with regards to policy or strategic matters relating to occupational health and safety and performance of the Safety Authority.

Section 151I confers powers on the Board by reference to its functions as set out in section 150H. The Board has power to do all things necessary or convenient for, or in connection with, the performance of its functions.

Section 151J provides that the functions and powers are not affected where there is a vacancy or vacancies in the membership of the Board.

Division 4—Chief Executive Officer and staff of the Safety Authority

Subsection 151K provides that anything done by the CEO in the name of the Safety Authority or on the Safety Authority's behalf is taken to have been done by the Safety Authority.

Section 151L establishes the working relationship between the CEO and the Board.

Section 151M permits Western Australian public service and public authority employees and officers to accept delegations from the CEO under the Commonwealth Act. Persons exercising powers under a delegation must do so in accordance with any directions of the CEO.

Section 151N permits Western Australian public service and public authority employees and officers to assist the Safety Authority in connection with the performance of any of its functions or the exercise of any of its powers.

Division 5—Other Safety Authority Provisions

This Division sets out matters in relation to powers of the Minister in relation to the Safety Authority.

Section 151O sets out the powers of the Minister to require the Safety Authority to prepare reports or documents on specified matters relating to the performance of the Safety Authority's function or exercise of its powers. Copies of the report of documents are to be given to the Minister, the Commonwealth Minister and each interstate Minister.

Section 151P provides that the Minister may request that the Commonwealth Minister give a direction to the Safety Authority. The Commonwealth Minister must make a decision regarding the request within 30 days of receipt. If the Commonwealth Minister refuses to grant the request then the Commonwealth Minister must provide the Minister with reasons. The Safety Authority must comply with a direction given by the Commonwealth Minister.
Section 151Q(1) to (5) provides that the Minister is to cause to be conducted reviews of the operations of the Safety Authority relating to each 3-year period after the commencement of operations of the Authority on 1 January 2005. This review relates to the Safety Authority's functions in Western Australian designated coastal waters (called the "adjacent area" in the Petroleum (Submerged Lands) Act 1982). The review can be conducted in conjunction with similar reviews under corresponding laws.

Section 151Q(6) provides that, without limiting the matters to be covered by a review, the review must include an assessment of the effectiveness of the Authority in improving the occupational health and safety of persons engaged in offshore petroleum operations.

Section 151Q(7) requires the tabling of any report of a review in each House of Parliament within 15 sitting days of the report being made available to the Minister.

Clause 45 – Section 152 amended
This clause amends s.152 to enable regulations to be made for fees in relation to offshore petroleum operations, safety audits or other services provided by the Minister, or any transitional matters arising from amendments made by this Act.

Clause 45 also inserts a provision at 45(2) to allow for the application of laws approach for petroleum regulations. These provisions would, if required, allow for regulations to adopt, or apply with or without modification, any petroleum regulations either under the State or Commonwealth legislation.

Clause 46 – Various sections amended to delete “the regulations” (Interpretation Act s.46)
Provides for amendments to various sections to delete the word regulations” as provided for by s.46 of the Interpretation Act 1984.

Clause 47 - Schedule 5 inserted
Inserts a new Schedule 5 into the Petroleum (Submerged Lands) Act 1982 regarding occupational safety and health on offshore petroleum facilities.

Schedule 5 – Occupational safety and health

Division 1 — Introduction

Clause 1 - Objects
Sets out the objects of Schedule 5.

The objects relate to the securing of the occupational safety and health of all persons at or near a facility, whether they work at the facility under a contract of employment with any person or under some other contractual arrangement and regardless of whether they have any contract at all with a person who owes a duty of care.
It also provides that the objects are not confined to persons while they are working but are also intended to protect the workforce during mealtimes, recreation and periods of rest offshore.

Clause 2 – Simplified outline
Sets out the simplified outline that is a summary of Schedule 5.

Clause 3 -
Provides definitions for the purposes of Schedule 5:

“accident” includes the contraction of a disease.

“associated offshore place” is included in a “facility” as defined below. An “associated offshore place” in relation to a “facility” is defined to include other places near a facility where activities (including diving) take place that are related to the construction, operation, maintenance or decommissioning of the facility. “Associated offshore places” specifically do not include any other facility, or any supply vessel, off-take tanker, anchor handling vessel or tugboat or any vessel or structure declared by regulations not to be an associated offshore place.

“contract” includes an arrangement or understanding.

“contractor” has the meaning given by clause 7.

“dangerous occurrence” means an occurrence declared by the regulations to be a dangerous occurrence for the purposes of this definition.

“designated work group” means a group of members of the workforce engaged in a petroleum operation that is established as a designated work group under clause 18 or 19, or that group as varied in accordance with clause 20 or 21.

“employee”, in relation to an employer, means an employee of that employer.

“employer” means an employer who carries on an activity at a facility.

“facility” as defined in this clause inserts a partial definition of the term. A “facility” includes a facility that is being constructed or installed. This will enable the safety case arrangements and Schedule 5 to apply during the construction and installation of a facility. “Facility” also includes an “associated offshore place” in relation to a facility. “Facility” is further defined in clause 4 of Schedule 5.

“group member”, in relation to a designated work group for a petroleum operation, means a person who is a member of the workforce engaged in that operation and included in that designated work group.
“improvement notice” means an improvement notice issued under clause 61(1).

“inspection” means an inspection conducted under Division 4 and includes an investigation or inquiry.

“member of the workforce”, in relation to a petroleum operation, means a natural person who is engaged in the petroleum operation, whether as an employee of the operator or of another person or as a contractor of the operator or of another person.

“operator” means the person who is identified under the regulations as the operator of the facility or proposed facility. The term “operator” is used in Schedule 5 to establish duties of care and impose various requirements on the persons who are in management and control of facilities.

“operator’s representative” means a person present at a facility in compliance with the obligations imposed on the operator by clause 5.

“own” includes own jointly and own in part.

“plant” includes any machinery, equipment or tool, or any component.

“premises” includes a structure or building, a place (whether or not enclosed or built on) or, a part of a structure or a place.

“prohibition notice” means a prohibition notice issued under clause 59(1).

“proposed facility” is a facility in planning, design or fabrication at a place other than in Safety Authority waters (for example at an Australian shipyard or overseas). Schedule 5 has no direct application to a proposed facility, but the term is used in the Commonwealth Offshore Petroleum (Safety Levies) Act 2003. The inclusion of the term “proposed facility” in the Levies Act is necessary to enable the Safety Authority to have influence over the facility’s design and future OSH management, prior to its actual construction or installation in Australian waters, and to recover its costs in so doing. This will only occur, however, if the owners or operator of the proposed facility wish to have a safety case in force in respect of the proposed facility, prior to construction or installation in Safety Authority waters, or to utilise services of the Safety Authority under the regulations in relation to a proposed facility.

“recovery” includes all processes directly or indirectly associated with recovery of petroleum. It is a broad ranging term that would include, for example, activities to enhance the productive capacity of a petroleum deposit. It does not limit the meaning of the word when used elsewhere in the Act.
“registered organisation” means an organisation within the meaning of the Workplace Relations Act 1996 of the Commonwealth, or as defined in the Industrial Relations Act 1979, section 7(1).

“regulated business premises” means a facility, or premises that are occupied by a person who is the operator of a facility, and used, or proposed to be used, wholly or principally in connection with an offshore petroleum operation.

“regulations” means regulations made for the purposes of this Schedule.

“Tribunal” has the meaning given to that term in the Occupational Safety and Health Act 1984 section 51G(2).

“work” means work offshore that is directly or indirectly related to the construction, installation, operation, maintenance or decommissioning of a facility.

“workforce representative” means:
(a) in relation to a person who is member of the workforce at a facility - a registered organisation of which that person is a member, if the person is qualified to be a member of that organisation because of the work that person performs in relation to the facility; or
(b) in relation to a designated work group or a proposed designated work group - a registered organisation of which a person who is, or who is likely to be, in the work group is a member, if the person is qualified to be a member of that organisation because of the work the person performs, or will perform, in relation to the facility as a member of the group.

“work group employer”, in relation to a designated work group at a facility, means an employer or one or more group members, but does not include the operator of the facility.

“workplace”, in relation to a facility, means the whole facility or any part of the facility.

Clause 4 - Facilities
Defines the vessels and structures located in the adjacent area that are considered to be facilities for the purpose of Schedule 5.

Clause 5 - Operator must ensure presence of operator’s representative
Provides that an operator must ensure at all times the presence of a representative of the operator, who has the day-to-day management and control of the operations at the facility, and display their name prominently at the facility.
Clause 6 - Safety and health of persons using an accommodation amenity
Provides that the provisions of Schedule 5 apply to persons who are at a facility solely for purposes of accommodation, even though all their work activities may be at another facility.

Clause 7 - Contractor
Defines "contractor" for the purposes of Schedule 5.

Division 2 — Occupational safety and health

Subdivision 1 — Duties relating to occupational safety and health

Clause 8 - Duties of operator
Establishes the duties of care that are owed by the operator of a facility to the members of the workforce.

The primary duty of the operator is to take all reasonably practicable steps to ensure that the facility and all work and other activities at the facility are safe and without risk to safety and health.

Clause 9 - Duties of persons in control of parts of facility, or particular work
Establishes duties of persons who may be in management or control of a part of a facility, or of certain activities at a facility. Examples of such persons may be those supervising a drilling crew, maintenance crew or dive team.

The duties established for these persons are similar to those established for the operator, but are limited to the areas or activities under the control of the person. They do not include requirements to provide medical and first aid facilities, or develop or monitor safety and health policy.

Clause 10 - Duties of employers
Establishes duties of employers to employees and to contractors.

The employer duties are to take all reasonable practicable steps to protect the safety and health of employees.

There is overlap in the duties of care imposed on operators, on persons in control of parts of the facility or particular work, and on employers. There is further overlap with the duties of care imposed on manufacturers, suppliers, etc, which are defined by later clauses, and ensures that there are no gaps in the coverage of the duties of care, so that, when enforcement action is required, it can be taken against the most appropriate person in the circumstances.
Clause 11 - Duties of manufacturers in relation to plant and substances
Provides for the duties of care of manufacturers (including importers and overseas manufacturers with no place of business in Australia) in relation to plant and substances reasonably expected to be used by members of the workforce at a facility. This provision does not affect other State laws relating to goods.

Clause 12 - Duties of suppliers of facilities, plant and substances
Provides for the duties of care of suppliers of plant and substances, to all persons at all times they are at an offshore petroleum facility. This provision also extends to an ostensible supplier in the business of financing the acquisition or use of goods by others.

Clause 13 - Duties of persons erecting facilities or installing plant
Provides for the duties of care of persons erecting or installing plant, to all persons at all times they are at an offshore petroleum facility.

Clause 14 - Duties of persons in relation to occupational safety and health
Provides the duties of care of any person at an offshore petroleum facility in relation to occupational safety and health.

Clause 15 – Reliance on information supplied or results of research
Provides that persons in complying with their duties, may rely on information provided by others, or on the results of testing and research conducted by others.

Subdivision 2 — Regulations relating to occupational safety and health

Clause 16 - Regulations relating to occupational safety and health
Provides that regulations may be made that relate to any matter affecting or likely to affect occupational safety and health of any class of person at a facility and lists those matters.

Division 3 — Workplace arrangements

Subdivision 1 — Introduction

Clause 17 - Simplified outline
Sets out the simplified outline that is a summary of this Part.

Subdivision 2 — Designated Work Groups

The purpose of designated work groups is to provide a formal and structured organisation for consultation between management and the workforce on occupational safety and health issues.
Clause 18 – Establishment of designated work groups by request
Provides that the operator of a facility has the responsibility to organise a designated work group if a member of the workforce or workforce makes a request.

The operator on receiving such a request must within 14 days enter into consultation with members of the workforce, workforce representatives, or each employer (if any) of members of the workforce.

 Clause 19 - Establishment of designated work groups at initiative of operator
Provides that the operator of a facility may initiate the establishment of a designated work group.

Clause 20 – Variation of designated work groups by request
Provides that the operator of a facility has the responsibility to vary an established designated work group if a request for variation is made.

Clause 21 - Variation of designated work groups at initiative of operator
Provides that the operator of a facility may initiate the variation of an established designated work group.

Clause 22 – Referral of disagreement to reviewing authority
Provides that, if a disagreement arises between the parties in the course of consultation under clause 18, 19, 20 or 21, either party may refer the disagreement to the reviewing authority for resolution.

Clause 23 - Manner of grouping members of the workforce
Provides for the manner in which members of the workforce may be grouped and the issues that the parties to the consultation must have regard.

Subdivision 3 — Safety and health representatives

Clause 24 - Selection of safety and health representatives
Provides for the selection of safety and health representatives. Safety and health representatives are the persons selected to represent the members of each designated work group during consultations with management on occupational safety and health issues.

Clause 25 - Election of safety and health representatives
Relates to the election of safety and health representatives if there is a vacancy for a safety and health representative, and the group has within a reasonable time unanimously selected no person. The operator is required to invite nominations from all group members. If the operator fails to invite such nominations in a reasonable time, the Safety Authority may direct the operator to do so. A person cannot be nominated if disqualified under clause 31.
If there is only one candidate, that person is taken to be elected. If more than one candidate is nominated, the operator must conduct or arrange for the conduct of an election. All members of the workforce in the designated work group are entitled to vote. The operator must comply with any directions of the Safety Authority when conducting the election.

Clause 26 – List of safety and health representatives
Requires the operator to prepare and keep up to date a list of all safety and health representatives, and to make that list available to the members of the workforce and to Safety Authority inspectors (who are called "OHS inspectors" in the Act).

Clause 27 – Members of designated work group must be notified of selection etc. of safety and health representative
Requires the operator to notify members of the workforce of a vacancy for a safety and health representative within a reasonable time of that vacancy arising, and to notify those members of the name of the person selected within a reasonable time of the selection being made.

Clause 28 – Term of office
Provides that a safety and health representative holds office for a term agreed to by the parties or for 2 years if there is no agreement.

Clause 29 – Training of safety and health representatives
Provides that a safety and health representative must undertake a Safety Authority accredited occupational safety and health training course. The operator and employer are required to grant the safety and health representative leave to attend an accredited course.

Clause 30 – Resignation of safety and health representatives
Provides the processes to be followed for the formal resignation of safety and health representatives. It also sets out the requirements for notifying relevant persons of such resignations.

Clause 31 - Disqualification of safety and health representative
Provides the process for disqualification of a safety and health representative by the Tribunal.

Clause 32 – Deputy safety and health representative
Allows for the selection of a deputy safety and health representative by the designated work group who exercises the powers of the safety and health representative if the safety and health representative ceases to be the safety and health representative or is unable to exercise the powers of a safety and health representative.

Clause 33 - Powers of safety and health representatives
Sets out the powers of a safety and health representative. These powers include the power to inspect the workplace, to request an inspection by an OHS inspector, to accompany that inspector during such an inspection, to represent the group members in consultations.
with management, to investigate complaints by group members about OHS, to be present at any interview of a group member by an inspector or management about OHS issues, to obtain access to relevant information and to issue provisional improvement notices under clause 37.

Clause 34 - Assistance by consultant
Provides that in exercising these powers, a safety and health representative may be assisted by consultants, if either the Safety Authority or management agree.

Clause 35 - Information
Provides that neither the safety and health representative or the consultant is entitled to have access to information that is subject to legal professional privilege, or that is of a confidential medical nature unless they have the person's consent or the person cannot be identified by that information.

Clause 36 – Obligations and liabilities of safety and health representatives
Provides that safety and health representatives are not obliged to exercise their powers and protects them from liability.

Clause 37 - Provisional improvement notices
Provides that safety and health representatives have the power to issue provisional improvement notices, to the persons responsible for relevant work activities that the safety and health representative believes that there is a contravention of occupational safety and health laws. The provisional improvement notices may also indicate an action the safety and health representative believes the responsible person must take to rectify the apparent contravention. Safety and health representative may only issue provisional improvement notices after having consulted with the responsible person about the apparent contravention, and if there is a failure to reach agreement within a reasonable time.

Clause 38 – Effect of provisional improvement notice
Provides that if a safety and health representative issues a provisional improvement notice to any person, that person may request an inspection by an OHS inspector. Upon that request being made the provisional improvement notice is suspended, but the inspector may subsequently confirm, vary or cancel the provisional improvement notice, and make any other decision or exercise any other powers considered necessary. The responsible person is required to ensure that the notice (as confirmed or varied by the inspector) is complied with, to the extent that the responsible person has control.

Clause 39 – Duties of the operator and other employers in relation to safety and health representatives
Provides that the operator is required to consult with a safety and health representative (if requested) about any workplace changes that may
affect the safety and health of the workforce, and (if there is no safety
and health committee) about the implementation and review of
measures to control safety and health. They also require the operator to
allow the safety and health representative to make inspections under
clause 33.

Subdivision 4 — Safety and health committees

Clause 40 – Safety and health committees
Establishes when a safety and health committee must be established,
such as if the workforce exceeds 50 in total, there are designated work
groups, and a request is made. The clause also states that the
composition and procedures of the committee are to be agreed by
appropriate consultation, that the committee must meet at least every 3
months and that minutes of meetings must be retained for 3 years.

Clause 41 – Functions of safety and health committees
Defines the functions of safety and health committees, which include
providing assistance to the operator of a facility to review, develop and
implement safety and health committee’s measures for the workforce.

Clause 42 – Duties the operator and other employers in relation to
safety and health committees
Makes provisions to ensure that the safety and health committee
functions effectively, for example by requiring that relevant information
be provided to the committee, and by requiring that persons are given
time off work activities to attend committee meetings.

Subdivision 5 — Emergency procedures

Clause 43 – Action by safety and health representatives
Deals with the emergency powers of a safety and health representative.
It provides that if a safety and health representative has reasonable
cause to believe that there is an imminent and serious danger to the
safety or health of any person at or near a facility unless a group
member ceases to perform particular work, the safety and health
representative must either inform a supervisor or, if no supervisor can be
contacted immediately, must direct that the work cease and inform a
supervisor as soon as practicable. The supervisor must then take such
action as the supervisor thinks appropriate to remove the danger.

It also provides that if the safety and health representative has
reasonable cause to believe that there continues to be an imminent and
serious danger to safety or health unless the work ceases, despite any
action taken by the supervisor, the safety and health representative must
direct that the work cease and, as soon as practicable, inform the
supervisor that the direction has been given.
Clause 44 – Directions to perform other work
Provides that if an employee has ceased to perform work in accordance with a direction of a safety and health representative or OHS inspector under clause 43, the employer may direct the employee to do suitable alternative work.

Subdivision 6 — Exemptions

Clause 45 - Exemptions
Confers on the Safety Authority the power, in accordance with the regulations, to make a written order exempting a specified person from any or all of the provisions of Part 3 of Schedule 5 (the workplace arrangements). The Safety Authority must not make an exemption order unless it is satisfied on reasonable grounds that it is impracticable for the person to comply with the provision or provisions.

Division 4 — Inspections

Subdivision 1 — Introduction

Clause 46 - Simplified outline
Provides a simplified outline that is a summary of this Part.

Clause 47 - Powers, functions and duties of OHS inspectors
Establishes that OHS inspectors have the powers, functions and duties conferred or imposed by a listed OSH law. The Safety Authority may issue direction and restrictions on the exercise of the OHS inspector’s powers.

Subdivision 2 — Inspections

Clause 48 - Inspections
Provides that an OHS inspector may conduct an inspection at any time or as directed by the Safety Authority, to determine that a listed OSH law is being complied with, a listed OSH law has been contravened or concerning an accident or dangerous occurrence at a facility.

Subdivision 3 — Powers of OHS Inspectors in relation to the conduct of Inspections

Clause 49 - Powers of entry and search - facilities
Provides for powers of entry and search at facilities by an OHS inspector.

The inspector is given power to inspect, take extracts from, or make copies from, any documents at the facility that the OHS inspector has reasonable grounds to believe are related to the subject of the
inspection. This power is needed in order to conduct effective inspections at the facility, and may also be needed in response to incidents that have occurred. The OHS inspector is given power to inspect the seabed and subsoil in the vicinity of the facility. This power may be needed for accident investigation. Clause 49(3) requires the OHS inspector to afford relevant elected safety and health representatives a reasonable opportunity to consult about the subject of the inspection.

Clause 50 - Powers of entry and search - regulated business premises (other than facilities)
Provides OHS inspectors with powers of entry and search at "regulated business premises" that are not facilities. The search powers under this clause relate only to documents that relate to a facility or facility operations that are the subject of an inspection. The powers therefore relate only to the responsibilities of the Safety Authority in relation to safety and health of the workforce at a facility.

"Regulated business premises" are defined in clause 3 to mean premises that are occupied by a person who is the operator of a facility and that are used or proposed to be used, wholly or principally in connection with offshore petroleum operations. The intent is to enable inspectors to enter and search operators' premises used in relation to offshore operations. These may be, for example, premises used for remote operation of facilities, or offices used for management of operations, supply bases, heliports, etc, where there are documents related to an inspection.

Clause 51 - Powers of entry and search – premises (other than regulated business premises)
Provides OHS inspectors with powers of entry and search at premises that are not "regulated business premises". "Premises" are defined in clause 3 as including a structure or building, a place (whether or not enclosed or built upon) or a part thereof. The intent is to enable inspectors to enter and search other relevant premises, such as the offices or workshops of a company that designs modifications to a facility, or manufactures or maintains equipment used on a facility, where there are relevant documents.

These powers under clause 50 may only be exercised with the consent of the occupier of the premises to be entered and searched, or in accordance with a search warrant.

Clause 52 - Warrant to enter premises (other than regulated business premises)
Establishes how warrants to enter premises (other than regulated business premises) may be obtained.

Clause 52(1)
Provides that an OHS inspector may apply to a magistrate for a warrant that would authorise the inspector, with such assistance as the inspector thinks necessary, to exercise the specified powers at particular premises.

Clause 52(2) – (3)
States that the application must be supported by information, on oath or affirmation that sets out the grounds for applying for the warrant. Clause 52(3) provides that, if the magistrate is satisfied that there are reasonable grounds, a warrant may be issued.

Clause 52(4) – (6)
Establishes that such a warrant must specify the name of the OHS inspector, whether the inspection can be made at any time or at specified times, the day on which the warrant ceases to have effect and the purpose for which the warrant is issued. Clause 52(5) establishes that a warrant must have a date of expiry no later than 7 days from the date of issue. Clause 52(6) establishes that the warrant must identify the premises to which the warrant applies.

Clause 53 – Obstructing or hindering OHS inspector
Provides that it is an offence to obstruct or hinder an OHS inspector.

Clause 54 – Power to require assistance and information
Provides that an OHS inspector has the power to require reasonable assistance and information in the conduct of an inspection.

Clause 55 - Power to require answering of questions and production of documents or articles
Provides that an OHS inspector has the power to require a person being questioned in relation to the conduct of an inspection to answer questions and produce documents or articles, if the inspector believes it reasonably necessary to do so in connection with the conduct of the inspection.

Clause 56 - Privilege against self-incrimination
Provides for the privilege against self-incrimination in answering questions or producing documents etc. during the conduct of an investigation.

Clause 57 - Power to take possession of plant, take samples of substances, etc.
Gives OHS inspectors the power to take possession of plant, to take samples of substances, etc., for example as part of an investigation into an accident. The affected persons are to be notified when powers under clause 57(1) are exercised.

Clause 58 – Power to direct that workplace etc. not be disturbed
Provides that OHS inspectors have the power to issue notices that direct that workplaces not be disturbed, in order to remove immediate threats
to safety and health, or to allow inspections or other examinations to take place. The direction must be displayed in a prominent place in work place and must specify the time required to remove the threat or carry out an inspection, etc. The direction may be renewed.

Clause 59 – Power to issue prohibition notices
Provides that OHS inspectors have the power to issue notices that prohibit specified activities.

The operator's representative at the facility must give a copy of the notice to the safety and health representative of each designated work group that is affected by the notice, and to display a copy of the notice in a prominent place.

The OHS inspector is also required to give a copy of the notice to any person (who is not the operator) who owns plant, substances, etc, affected by the notice.

Clause 60 – Compliance with prohibition notice
Provides that operators must ensure that the prohibition notice issued is complied with. The OHS inspector is to inform the operator if the action taken by the operator to remove the threat to safety and health is not adequate. The notice ceases to have effect once the inspector has informed the operator that the inspector is satisfied with the action taken to remove the threat.

Clause 61 - Power to issue improvement notices
Provides an OHS inspector with the power to issue an improvement notice if the OHS inspector believes on reasonable grounds that a listed OSH law is being or has been contravened.

Clause 62 – Compliance with improvement notice
Provides that a person issued with an improvement notice must comply with it.

Clause 63 – Notices must not be tampered with or removed
Provides that a displayed provisional improvement notice, prohibition notice or improvement notice must not be tampered with or removed without reasonable excuse.

Subdivision 4 — Reports on Inspections

Clause 64 – Reports on inspections
Requires an OHS inspector to prepare a written report for the Safety Authority (including the inspector's conclusion, recommendation and any other prescribed matters) as soon as practicable after conducting an inspection. Clause 64(3) requires the Safety Authority to give a copy of the report to the operator of the facility, to employees who carry out activities to which the report relates, and to the owners of plant etc to which the report relates. Clause 64(5) requires a copy of the report, and
any related Safety Authority comments, to be given to each safety and health committee and (where there is no such committee) to the health and safety representative of each designated work group.

Subdivision 5 — Reviews of OHS inspectors decisions

Clause 65 - Review of decisions of OHS inspectors
Provides for a review of the decision of an OHS inspector to the reviewing authority, by an operator of a facility or any employer (other than the operator) affected by the decision, a person to whom a notice has been issued under clause 37(2) or 61(1), a health and safety representative, a workplace representative, a member of the workforce or a person who owns any workplace, plant, substance or thing to which a decision under clause 38, 57, 58 or 61 relates.

Clause 66 - Powers of the reviewing authority on review
Sets out the powers of the reviewing authority on a review.

Division 5 — Referrals to the Tribunal

Clauses 67, 68 69 and 70 cover the operation of the Tribunal.

Clause 67 provides that a decision of the reviewing authority may be referred to the Tribunal.

Clause 68 provides that the Tribunal may affirm the decision of the reviewing authority, affirm the decision with such modifications as the Tribunal considers appropriate or revoke the decision of the reviewing authority.

Clause 69 describes the effect of the pending review by the Tribunal.

Clause 70 outlines the jurisdiction of the Tribunal.

Division 6 — General

Clause 71 - Notification and reporting accidents and dangerous occurrences
Requires notification and reporting of accidents and dangerous occurrences in relation to a facility and requires the notification and report to be sent to the Safety Authority. The clause also provides for regulations to be made to prescribe the requirements of notification and reporting.

Clause 72 - Records of accidents and dangerous occurrences to be kept
Requires records of the accidents and dangerous occurrences notified under clause 68 to be kept by the operator of the facility.
Clause 73 - Codes of practice
Provides for prescribed codes of practice to have the purpose of providing practical guidance to operators and employers of members of the workforce. The clause also provides that a person is not liable to any civil or criminal proceedings for contravening a code of practice.

Clause 74 – Use of codes of practice in proceedings
Provides that codes of practice can be used in proceedings for an offence against a listed OSH law, if they were in effect at the time of the alleged contravention.

Clause 75 - Interference etc. with equipment etc.
Makes it an offence to interfere with equipment or device provided for the occupational safety and health of the workforce at a facility.

Clause 76 – No charges to be levied on members of the workforce
Makes it an offence for either the operator or an employer to levy a member of the workforce in relation to occupational safety and health matters.

Clause 77 - Victimisation
Relates to unfair dismissal or other prejudicial acts against an employee as a result of (for example) a safety and health complaint, by that employee.

Clause 78 – Institution of proceedings
Provides that the Safety Authority or an OHS inspector may institute proceedings for an offence against a listed OSH law. A health and safety representative or a workplace representative may request the Safety Authority to institute proceedings if a period of 6 months has elapsed since the relevant act or omission occurred and the Safety Authority has not yet instituted proceedings.

Clause 79 - Conduct of directors, employees and agents
Establishes the state of mind for the conduct of company officers and agents to the company in relation to occupational safety and health matters.

Clause 80 – Act not to give rise to other liabilities etc.
Provides that Schedule 5 does not confer rights or defences to actions in any civil proceedings.

Clause 81 - Circumstances preventing compliance may be defence to prosecution.
Provides that circumstances preventing compliance with a listed OSH law may be defence to a prosecution.
Clause 82 – Regulations - general
Provides further regulation-making powers regarding occupational safety and health matters.

Clause 82(1)
Provides that regulations may prescribe selection procedures under clause 40 for members of safety and health committees, the procedures to be followed at safety and health committee meetings, the manner in which notices are to be served under this Schedule and the forms for the purposes of this Schedule.

Clause 82(1)(d)
Introduces provisions that may be required for the practices and procedures of reviews conducted by reviewing authority.

Clause 82(2)
Provides for exemptions from the application of this Schedule if a law of the State or Commonwealth also applies.

Clause 82(3)
Provides that regulations made for the purpose of clause 79(2) do not remain in force for longer than 5 years after they commence and provides that further regulations of the same substance may be made.

Clause 82(4)
Establishes that the reference to the Schedule in 79(2) includes regulations made for this purpose of the Schedule.

Part 5 – Other Acts

Clause 48 - Barrow Island Act 2003 amended
This clause repeals sections 2(2) and 12 of the Barrow Island Act 2003 due to the repeal of the Petroleum Safety Act 1999 in clause 51.

Clause 49 - Industrial Relations Act 1979 amended
Clause 49 makes the necessary amendments to the Industrial Relations Act 1979 so that a matter that is the subject of a review in Clause 69(1) of the Petroleum Act 1967 Schedule 1, clause 69(1) of the Petroleum Pipelines Act 1969 or clause 70(1) of Schedule 5 to the Petroleum (Submerged Lands) Act 1982 is not an industrial matter.

Clause 49(4) provides for a consequential amendment to the Industrial Relations Act 1979 to allow for the expansion of the jurisdiction of the Tribunal to cover the Petroleum Act 1967, the Petroleum Pipelines Act 1969 and the Petroleum (Submerged Lands) Act 1982.
Clause 50 - *Occupational Safety and Health Act 1984 amended*
This clause makes the necessary amendments to the *Occupational Safety and Health Act 1984* to continue to provide that the OSH Act does not apply to or in relation to a workplace at which a petroleum operation, pipeline operation or an offshore petroleum operation is carried on as defined in the *Petroleum Act 1967, Petroleum Pipelines Act 1969* or the *Petroleum Submerged Lands Act 1982*.

Clause 51 - *Petroleum Safety Act 1999 repealed*
This clause repeals the *Petroleum Safety Act 1999*. 