THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE (REGULATORY LEVIES) AMENDMENT BILL 2018

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Resources and Northern Australia, Senator the Honourable Matthew Canavan)
OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE (REGULATORY LEVIES) AMENDMENT BILL 2018

OUTLINE

The purpose of the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Bill 2018 (the Bill) is to amend the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003 (the Levies Act) to:

- impose a well investigation levy, an annual well levy and a well activity levy in relation to greenhouse gas wells;
- revise provisions which impose a well activity levy, as a consequence of amendments to Part 5 of the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011 (the Wells Regulations);
- revise provisions which impose a safety investigation levy and well investigation levy as a consequence of previous amendments to the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (the OPGGS Act); and
- remove certain spent provisions.

Imposition of levies in relation to greenhouse gas wells
Amendments to the OPGGS Act included in the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Bill 2018, together with forthcoming amendments to the Wells Regulations, will transfer regulatory oversight for greenhouse gas wells from the responsible Commonwealth Minister to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

NOPSEMA’s operations are fully cost-recovered by way of fees and levies imposed on the offshore petroleum and greenhouse gas storage industries. Given NOPSEMA is to be the regulator for greenhouse gas wells, NOPSEMA will need to recover its costs in undertaking greenhouse gas well-related regulatory functions to avoid any funding shortfalls. The Bill amends the Levies Act to impose a well investigation levy, an annual well levy and a well activity levy in relation to greenhouse gas wells. These levies are currently only imposed in relation to petroleum wells, as NOPSEMA is currently the regulator of offshore petroleum well operations.

Consequential amendments—well activity levy
Amendments to the Wells Regulations commenced on 1 January 2016, which implemented the outcomes of a review of those Regulations. Amongst other things, the amendments established a regime under which a single well operations management plan (WOMP) covers all stages of the life of a well, and is required to be revised every five years. The amendments also removed the requirement for a titleholder to apply to NOPSEMA for approval to commence well activities.

Currently, under the Levies Act a well activity levy is imposed on applications for acceptance of a new WOMP and on applications for approval to commence well activities. As a consequence of the amendments to the Wells Regulations, the Bill amends the Levies Act to also impose a well activity levy on submission of a five-yearly revision of a WOMP, and to remove the levy imposed on applications for approval to commence well activities.
Consequential amendments—safety investigation levy and well investigation levy
Under section 5 of the Levies Act, a safety investigation levy is imposed if a NOPSEMA inspector conducts an inspection in relation to a notifiable accident or occurrence, and the costs and expenses reasonably incurred by NOPSEMA in relation to the inspection exceed $30,000. Similarly, under section 9, a well investigation levy is imposed if a NOPSEMA inspector conducts an inspection concerning a contravention, or possible contravention, of subclause 13A(1) or (2) of Schedule 3 to the OPGGS Act (Occupational Health and Safety (OHS) duties of a titleholder in relation to wells), and the costs and expenses reasonably incurred by NOPSEMA in relation to the inspection exceed $30,000.

At the time when the provisions relating to the safety investigation levy and well investigation levy were drafted, the term “inspection” was used to refer to either a monitoring inspection or an investigation into a possible contravention, which were both carried out under Schedule 3 to the OPGGS Act. Investigations into possible contraventions are now conducted under Part 3 of the Regulatory Powers (Standard Provisions) Act 2014 (the Regulatory Powers Act), as it is applied by the OPGGS Act. The Bill amends the Levies Act to clarify that it is an investigation under Part 3 of the Regulatory Powers Act in relation to which a safety investigation levy or well investigation levy may be imposed.

Removal of spent provisions
Certain transitional provisions that were inserted into the Levies Act by the Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 1) Act 2011 have now fulfilled their intended function. These provisions are fully spent and will be repealed by the Bill.

FINANCIAL IMPACT STATEMENT

The Bill is expected to have nil financial impact. The amendments will ensure that NOPSEMA is fully cost-recovered for its regulatory operations.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS


Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Bill 2018 (the Bill)

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

Overview of the Bill

The purpose of the Bill is to amend the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003 to:

- impose a well investigation levy, an annual well levy and a well activity levy in relation to greenhouse gas wells;
- revise provisions that impose a well activity levy, as a consequence of amendments to the well-related regulations in Part 5 of the Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011;
- revise provisions that impose a safety investigation levy and well investigation levy as a consequence of previous amendments to the Offshore Petroleum and Greenhouse Gas Storage Act 2006; and
- remove certain spent provisions.

Human rights implications

The amendments in the Bill are mechanical in nature and do not engage any of the applicable rights or freedoms.

Conclusion

The Bill is compatible with human rights as it does not raise any human rights issues.
OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE (REGULATORY LEVIES) AMENDMENT BILL 2018

NOTES ON CLAUSES

Clause 1: Short title

1. This is a formal provision specifying the short title of the Act.

Clause 2: Commencement

2. The table in this clause sets out the commencement date for when the Bill’s provisions commence.

3. Sections 1 to 3 will commence the day the Bill receives Royal Assent.

4. Part 1 of Schedule 1, and Schedules 4 and 5 will commence the day after the Bill receives Royal Assent.

5. Part 2 of Schedule 1 and Schedule 3 will commence on a day to be fixed by Proclamation. The amendments in this Part and Schedule require supporting amendments to the Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004 (the Levies Regulations). Commencing the amendments by Proclamation will allow the timing of commencement to be aligned with the commencement of the amendments to the Levies Regulations.

6. If Proclamation does not occur within 6 months of Royal Assent, then Part 2 of Schedule 1 and Schedule 3 will automatically commence the day after the 6 month period expires.

7. Schedule 2 will commence at the same time as Schedule 1 to the Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Act 2018. This will ensure that the amendments in Schedule 2, which impose well-related levies on greenhouse gas titleholders, will commence at the same time that the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) take responsibility for regulatory oversight of greenhouse gas well operations.

Clause 3: Schedules

8. This clause gives effect to the provisions in the Schedules to the Bill.

Schedule 1—Well activity levy

Part 1—Amendments commencing on the day after Royal Assent

Items 1 and 2: Paragraph 10C(1)(a); Subsection 10C(5)

9. Amendments to Part 5 of the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration Regulations 2011)* (the Wells Regulations), which commenced on 1 January 2016, have removed the requirement for a titleholder to seek approval from NOPSEMA to commence a well activity. These items repeal the well activity levy imposed on an application by a titleholder to NOPSEMA to commence a well activity.

Items 3 to 9: Paragraph 10D(1)(a); Subparagraph 10D(1)(a)(i); Subparagraph 10D(1)(a)(ii); At the end of paragraph 10D(1)(a); Paragraph 10D(5)(a); Subsection 10D(6)

10. Section 10D of the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Levies Act) imposes a well activity levy when a titleholder makes an application for acceptance of a well operations management plan (WOMP), or for approval to commence a well activity, to NOPSEMA under the regulations of a State or Territory that substantially correspond to the (Commonwealth) Wells Regulations. Amendments to the Wells Regulations commenced on 1 January 2016 and it is likely to be some time before other jurisdictions mirror the Commonwealth’s amendments for their State or Territory coastal waters.

11. These items amend section 10D to impose a well activity levy when a State/Territory titleholder makes a relevant application under State/Territory regulations that substantially correspond to the Wells Regulations as in force before they were amended, as well as under State/Territory regulations that mirror the current Wells Regulations.

12. The requirement to apply for approval to commence well activities has been removed from the amended Wells Regulations. Accordingly, the amendments only refer to an application to NOPSEMA for approval to commence a well activity under the regulations of a State or Territory that substantially correspond to the old Wells Regulations.

Item 10: Application of amendments

13. This item applies the amendments of sections 10C and 10D, made by Part 1 of Schedule 1 to the Bill, to applications made to NOPSEMA after the commencement of the amendments.

Part 2—Amendments commencing on a day to be fixed by Proclamation

*Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*

Items 11 to 13: Paragraph 10C(1)(a); At the end of subsection 10C(1); Subsection 10C(4)

14. Under the Wells Regulations prior to their amendment on 1 January 2016, a WOMP ceased to be in force at the end of the five-year period commencing on the date on which the WOMP was accepted, unless it was terminated sooner. This meant that, in order to continue to have a WOMP in force (and continue to undertake well activities), it was necessary for the titleholder to apply for acceptance of a new WOMP every five years.
This triggered the well activity levy imposed by section 10C of the Levies Act when the titleholder made an application to NOPSEMA for acceptance of a WOMP. A levy is not currently imposed on applications for acceptance of revisions to a WOMP.

15. The amendments to the Wells Regulations have established a different WOMP regime, under which a single WOMP covers all stages of the life of a well, from the time when drilling commences until the well is plugged and abandoned. Under the amended Wells Regulations, submission and acceptance of a five-yearly revision results in the continuation in force of the existing WOMP, rather than submission of a new WOMP every five years.

16. In order for NOPSEMA to recover its costs for assessment of five-yearly revisions of WOMPs (and replace the levy NOPSEMA would have received for assessing a new WOMP every five years), section 10C is amended to impose a well activity levy on submissions to NOPSEMA of a five-yearly revision of a WOMP.

Item 14 to 17: Subparagraph 10D(1)(a)(iii); At the end of paragraph 10D(1)(a); At the end of subsection 10D(1); Subsection 10D(4)

17. These items amend section 10D of the Levies Act to impose well activity levy on submission to NOPSEMA of a five-yearly revision of a WOMP, under a regulation of a State or Territory that substantially corresponds to regulation 5.13 of the Wells Regulations.

Item 18: Application of amendments

18. This item applies the amendments of sections 10C and 10D, made by Part 2 of Schedule 1 to the Bill, to submissions of a five-yearly revision of a WOMP made to NOPSEMA after the commencement of the amendments. This will ensure the new well activity levy on five-yearly revisions of a WOMP will not be imposed retrospectively.

19. This item also applies the amendments of sections 10C made by this Part to applications made to NOPSEMA after the commencement of the amendments.

Schedule 2—Greenhouse gas storage

Part 1—Well investigation levy

*Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*

Items 1 to 8: Section 9 (heading); Subparagraphs 9(1)(a)(i) and (ii); Paragraph 9(1)(b); Subsection 9(1) (note); At the end of subsection 9(1); Subsection 9(5); Subsection 9(5) (definition of *registered holder*); Subsection 9(5) (definition of *title area*)

20. These items amend the Levies Act to impose a well investigation levy in relation to Commonwealth greenhouse gas titles. Prior to these amendments, the levy only applied in relation to petroleum titles.
21. As with petroleum titles, a well investigation levy will be imposed on a greenhouse gas titleholder where there is a breach or suspected breach of the titleholder’s duty of care in relation to wells and well-related equipment in clause 13B of Schedule 3 to the OPGGS Act, and the cost of an inspection undertaken by a NOPSEMA inspector in relation to the breach or suspected breach exceeds the threshold amount of $30,000. The levy is imposed for each three month period during which the inspection continues after the threshold amount has been exceeded.

22. The amount of $30,000 is the approximate cost to NOPSEMA of undertaking an ordinary monitoring inspection into compliance with a listed OHS law (as defined in section 638 of the OPGGS Act). The function of the well investigation levy is to recover additional costs incurred by NOPSEMA in undertaking a particular investigation.

Items 9 to 18: Section 10 (heading); Subparagraph 10(1)(a)(i); Subparagraph 10(1)(a)(ii); Paragraph 10(1)(b); Subsection 10(1) (note); At the end of subsection 10(1); Subsection 10(5); Subsection 10(5) (definition of registered holder); Subsection 10(5); Subsection 10(5) (definition of title area)

23. These items amend the Levies Act to impose a well investigation levy in relation to State/Territory greenhouse gas titles. Prior to these amendments, the levy only applied in relation to petroleum titles.

24. As with State/Territory petroleum titles, a well investigation levy will be imposed on a State/Territory greenhouse gas titleholder where there is a breach or suspected breach of a provision of the State or Territory offshore greenhouse gas storage legislation that substantially corresponds to the titleholder duty of care in relation to wells and well-related equipment in subclause 13B(1) or (2) of the OPGGS Act (Commonwealth).

25. The levy is only imposed where the State or Territory legislation confers powers of inspection on NOPSEMA inspectors, and contains a provision that substantially corresponds to clause 13B of Schedule 3 to the OPGGS Act.

Item 19: Application of amendments

26. This item applies the amendments of sections 9 and 10 of the Levies Act, made by Part 1 of Schedule 2 to the Bill, to investigations which are started by a NOPSEMA inspector after commencement of the amendments. This will ensure that the well investigation levy in relation to greenhouse gas titles will not be imposed retrospectively.
Part 2—Annual well levy


Items 20 to 29: Section 10A (heading); Subsection 10A(1); Subsection 10A(3); Paragraph 10A(5)(a); Subparagraph 10A(5)(b)(ii); Paragraph 10A(6)(a); Subparagraph 10A(6)(b)(ii); Subsection 10A(8); Subsection 10A(8) (definition of registered holder); Subsection 10A(8) (definition of title area)

27. These items amend the Levies Act to impose an annual well levy in relation to Commonwealth greenhouse gas titles. Prior to these amendments, the levy only applied in relation to petroleum titles.

28. As with petroleum titles, an annual well levy will be imposed on a greenhouse gas titleholder at the start of each year, with the levy amount based on the number of non-abandoned wells that existed in the title area at the end of the preceding calendar year (eligible wells). This number of wells is deemed to include any wells in the title area that commenced to be drilled during the preceding calendar year and were plugged and abandoned during that year. These wells would otherwise not be counted, even though NOPSEMA had exercised regulatory oversight in respect of them.

29. The purpose of the annual well levy is to recover, from industry, NOPSEMA’s full regulatory costs associated with undertaking its integrity of wells and well operations functions, including regulatory oversight, compliance monitoring and enforcement. The levy also covers NOPSEMA’s costs of monitoring and enforcing compliance with the titleholder’s duty of care in relation to wells in clause 13A and 13B of Schedule 3 to the OPGGS Act.

Items 30 to 40: Section 10B (heading); Paragraphs 10B(1)(a) and (b); Subsection 10B(3); Paragraph 10B(5)(a); Subparagraph 10B(5)(b)(ii); Paragraph 10B(6)(a); Subparagraph 10B(6)(b)(ii); Subsection 10B(8); Subsection 10B(8) (definition of registered holder); Subsection 10B(8); Subsection 10B(8) (definition of title area)

30. These items amend the Levies Act to provide for the imposition of an annual well levy in relation to State/Territory greenhouse gas titles. Prior to these amendments, the levy only applied in relation to petroleum titles.

31. As with State/Territory petroleum titles, an annual well levy will be imposed on a State/Territory greenhouse gas titleholder at the start of each year, with the levy amount based on the number of non-abandoned wells that existed in the title area at the end of the preceding calendar year.

32. The levy is only imposed in State or Territory coastal waters where NOPSEMA has functions and powers under regulations of that State or Territory that substantially correspond to the Wells Regulations.
**Item 41: Application of amendments**

33. This item applies the amendments of sections 10A and 10B of the Levies Act, made by Part 2 of Schedule 2 to the Bill, to eligible wells in relation to a Commonwealth or State/Territory greenhouse gas title at the start of a year that begins at or after commencement of the amendments. This will ensure the annual well levy in relation to greenhouse gas titles does not apply retrospectively.

34. This item also includes application provisions which stipulate the period from the date of commencement of the amendments, until the next 31 December, will be treated as a levy year in its own right (if the amendments do not commence on a 1 January). This will ensure that NOPSEMA can collect the annual well levy on a pro rata basis in the year that the levy commences, and avoid a gap in the funding available to NOPSEMA.

35. The application provisions in sub-items 41(5) and (6) provide that the amendments of sections 10A and 10B of the Levies Act, made by Part 2 of Schedule 2 to the Bill, apply to eligible wells in relation to a Commonwealth or State/Territory petroleum title at the start of a year that begins at or after commencement of the amendments. The application provision is included for the avoidance of doubt only; an annual well levy already applies in relation to petroleum titles, and these application provisions clarify that the amendments of section 10A and 10B do not affect the ongoing application of the levy in practice.

**Part 3—Well activity levy**

*Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*

**Item 42: Section 3**

36. This item inserts a definition of *greenhouse gas assessment permit* for the purposes of the Levies Act. This term is defined to have the same meaning as in the OPGGS Act.

**Items 43 to 46: Section 10C (heading); Paragraph 10C(1)(b); Subsection 10C(6); Subsection 10C(6) (definition of *registered holder*)**

37. These items amend the Levies Act to impose a well activity levy in relation to Commonwealth greenhouse gas titles. Prior to these amendments, the levy only applied in relation to petroleum titles.

38. As with petroleum titles, the well activity levy will be imposed on a greenhouse gas titleholder when the titleholder makes an application to NOPSEMA, under the Wells Regulations, for acceptance of a WOMP. On commencement of the amendments made by Part 2 of Schedule 1 to the Bill, a levy will also be imposed when the titleholder submits a five-yearly revision of a WOMP to NOPSEMA. The purpose of the well activity levy is to recover NOPSEMA’s costs associated with the regulatory oversight of specific well operations by titleholders.
39. These items amend the Levies Act to impose a well activity levy in relation to State/Territory greenhouse gas titles. Prior to these amendments, the levy only applied in relation to petroleum titles.

40. As with State/Territory petroleum titles, a well activity levy will be imposed on a State/Territory greenhouse gas titleholder when the titleholder makes an application to NOPSEMA under regulations of the State or Territory that substantially correspond to the Wells Regulations for acceptance of a WOMP. On commencement of the amendments made by Part 2 of Schedule 1 to the Bill, a levy will also be imposed when the titleholder submits to NOPSEMA a five-yearly revision of a WOMP.

41. The levy is only imposed in State or Territory coastal waters where NOPSEMA has functions and powers under regulations of that State or Territory that substantially correspond to the Wells Regulations.

Item 53: Subsection 10F(7) (definition of greenhouse gas assessment permit)

42. This item repeals the definition of greenhouse gas assessment permit in subsection 10F(7) of the Levies Act. A new definition is inserted by item 42 of Part 3 of Schedule 2 to the Bill.

Item 54: Application of amendments

43. This item applies the amendments of sections 10C and 10D of the Levies Act, made by Part 3 of Schedule 2 to the Bill, to applications for assessment of a WOMP, or submission of a five-yearly revision of a WOMP, made after the commencement of the amendments. This will ensure the well activity levy in relation to greenhouse gas titles is not imposed retrospectively.

Schedule 3—Investigations


Item 1: Section 3

44. This item inserts a new definition of compliance investigation for the purposes of the Levies Act. The definition refers to an investigation under Part 3 of the Regulatory Powers (Standard Provisions) Act 2014 (the Regulatory Powers Act) as, following amendments to the OPGGS Act which commenced on 1 October 2014, investigations into possible contraventions of the OPGGS Act are now conducted under that Part of the Regulatory Powers Act, as it is applied by the OPGGS Act.
Item 2: Paragraph 5(1)(b)

45. This item amends section 5 of the Levies Act to impose a safety investigation levy if a NOPSEMA inspector begins to conduct a “compliance investigation” in relation to a notifiable accident or occurrence (as defined in subsection 5(8)) in relation to a facility located in Commonwealth waters, and where certain conditions are met.

46. The amendments to the safety investigation levy imposed in Commonwealth waters are not replicated for the safety investigation levy imposed on investigations carried out in State/Territory jurisdictions, as those jurisdictions have not applied the Regulatory Powers Act.

Item 3: Subsection 5(8) (definition of inspection)

47. This item repeals the definition of inspection, for the purpose of section 5 of the Levies Act. The term “inspection” is no longer used in this section; instead, references are made to a “compliance investigation”, the definition of which is addressed in paragraph 44 above.

Items 4, 5, 6 and 7: Paragraph 9(1)(b); Paragraphs 9(1)(d) and (e); Subsection 9(1); Paragraph 9(1)(g)

48. These items amend subsection 9(1) of the Levies Act to impose a well investigation levy if a NOPSEMA inspector has begun to conduct a “compliance investigation” relating to a contravention, or possible contravention, of subclause 13A(1) or (2) of Schedule 3 to the OPGGS Act (the titleholder’s OHS duty of care in relation to wells), and certain conditions are met in relation to the costs of the investigation.

49. The amendments to the well investigation levy imposed in Commonwealth waters are not replicated for well investigation levy imposed on investigations carried out in State/Territory jurisdictions, as those jurisdictions have not applied the Regulatory Powers Act.

Items 8, 9, 10 and 11: Subsection 9(4); Subsection 9(5) (definition of conduct); Subsection 9(5) (definition of inspection)

50. Item 11 repeals the definition of “inspection” for the purposes of section 9 of the Levies Act. The term “inspection” is no longer used in this section; instead, references are made to a “compliance investigation”. Items 8, 9 and 10 amend subsection 9(4) and the definition of conduct for the purposes of section 9 to reflect this change.

Item 12: Application of amendments

51. To ensure they do not apply retrospectively, the amendments made by this Schedule apply in relation to an investigation carried out under Part 3 of the Regulatory Powers Act that begins to be conducted after the commencement of the amendments.
Schedule 4—Abandoned wells


Items 1, 2, 3 and 4: Before subsection 10A(7); Subsection 10A(7)

52. Subsection 10A(7) of the Levies Act provides that, if the Wells Regulations require the commencement of the abandonment of a well to be approved by NOPSEMA, the well should not be taken to have been abandoned, for the purposes of the imposition of annual well levy, unless the commencement of the abandonment was approved by NOPSEMA, and that abandonment was undertaken in accordance with any conditions to which the approval was subject.

53. Amendments to the Wells Regulations, which commenced on 1 January 2016, removed the requirement for a titleholder to seek approval from NOPSEMA for the commencement of well activities (such as abandonment of a well). However, the removal of the requirement to obtain approval for the commencement of well activities was subject to transitional arrangements. The requirement continued to apply until the titleholder had a new WOMP accepted by NOPSEMA in accordance with the amended Wells Regulations. The requirement to seek approval to abandon a well was still in place for some titleholders until 1 January 2018 (by which time all titleholders were required to have a new WOMP in place).

54. The amendments to the Wells Regulations also implemented new requirements (in regulation 5.17) for a well to be treated as an “abandoned” well. These are:

   (a) the titleholder has permanently abandoned the well; and

   (b) the titleholder has given NOPSEMA a written report of the process that was undertaken in abandoning the well, and the outcome of that process; and

   (c) NOPSEMA notifies the titleholder in writing that NOPSEMA is reasonably satisfied that the process of abandoning the well has been undertaken in accordance with the WOMP.

55. These items amend section 10A of the Levies Act to include a new provision for abandonment of a well to be taken into account for the purposes of imposition of annual well levy. New subsection 10A(6A) provides that the abandonment of a well should be disregarded, for the purposes of the imposition of annual well levy, unless the process of abandoning the well was the subject of a notification from NOPSEMA under the Wells Regulations (as described in paragraph 54(c) above).

56. Given that the requirement to seek approval from NOPSEMA to commence the abandonment of a well remained in place for some titleholders until 1 January 2018, subsection 10A(7) of the Levies Act is amended to apply only if, at the time abandonment of the well commenced, the Wells Regulations as in force at that time required the titleholder to seek approval from NOPSEMA to commence the abandonment of the well.
Items 5 and 6: Subsection 10B(7); Subsection 10B(8)

57. Section 10B of the Levies Act imposes an annual well levy on eligible wells in relation to State/Territory petroleum titles, where NOPSEMA has functions or powers under regulations of the State or Territory that substantially correspond to the Wells Regulations (Commonwealth). Subsection 10B(7) states that if regulations of a State or Territory that substantially correspond to the Wells Regulations (Commonwealth) require the commencement of the abandonment of a well to be approved by NOPSEMA under those regulations of the State or Territory, the abandonment should be disregarded for the purpose of application of annual well levies unless the commencement was approved by NOPSEMA, and the abandonment was in accordance with any conditions of the approval.

58. As mentioned above, the amendments to the Wells Regulations (Commonwealth), which commenced on 1 January 2016, have removed the requirement to seek approval from NOPSEMA to commencement of abandonment of a well. It may be some time before other jurisdictions are able to mirror the Commonwealth’s amendments for their State or Territory coastal waters.

59. Item 5 amends subsection 10B(7) to instead refer to the requirement for commencement of abandonment of a well to be approved by NOPSEMA under regulations of a State or Territory that substantially correspond to the old Wells Regulations (Commonwealth). Item 6 inserts a definition to make it clear that the old Wells Regulations are those Regulations as in force prior to the amendments that commenced on 1 January 2016.

Item 7: Application of amendment

60. This item is an application provision to provide that new subsection 10A(6A) applies in relation to the abandonment of a well if the abandonment commenced at or after the commencement of the amendments. This will ensure the new provision does not have retrospective application.

Schedule 5—Removal of spent provisions


Items 1 and 2: Subsections 10A(9) and (10); Subsections 10B(9) and (10)

61. Subsection 10A(9) of the Levies Act is a transitional provision which was inserted to provide for the application of an annual well levy to a Commonwealth petroleum title if that section did not commence on 1 January. Subsection 10A(10) was inserted to ensure subsection 10A(6) did not apply to a well that began to be drilled before the commencement of section 10A. Subsection 10A(6) provides that if, during a year, a well began to be drilled in a title area under the authority of a petroleum title, and the well was abandoned during that same year, an annual well levy applies to the well in relation to the subsequent year. Subsections 10B(9) and (10) inserted equivalent transitional provisions in relation to the application of an annual well levy to a State/Territory petroleum title.
62. Sections 10A and 10B commenced on 17 June 2011. Subsections 10A(9) and 10B(9) therefore applied so that the period beginning on 17 June 2011 and ending on 31 December 2011 was taken to be year for the purpose of application of annual well levy. Subsections 10A(10) and 10B(10) applied so that subsections 10A(6) and 10B(6) did not apply to a well that began to be drilled before 17 June 2011. Subsections 10A(9) and (10) and 10B(9) and (10) are now spent provisions. These items repeal those spent subsections.

Item 3: Transitional

63. This item is a transitional provision to ensure that, despite the repeal of subsections 10A(9) and 10B(9) of the Levies Act, those subsections will continue to apply, in relation to the period commencing on 17 June 2011 and ending on 31 December 2011, as if the repeal had not happened. It will also ensure that, despite the repeal of subsections 10A(10) and 10B(10) of the Levies Act, those subsections will continue to apply, in relation to a well that began to be drilled before 17 June 2011, as if the repeal had not happened.