EXPLANATORY STATEMENT

Issued by the authority of the Minister for Resources, the Hon Madeleine King MP

Offshore Petroleum and Greenhouse Gas Storage Act 2006

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

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2022

Purpose and Operation

The purpose of the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2022* (the 2022 Levies Regulations) is to remake the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (the 2004 Levies Regulations) in substantially the same form, with minor amendments to ensure consistency with current drafting practices, simplify language, update references where necessary and remove provisions that are superfluous or redundant.
The 2004 Levies Regulations are due to sunset on 1 April 2024.

The Department of Industry, Science and Resources (the department), in consultation with the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and the Titles Administrator, reviewed the effectiveness and efficiency of the operation of the 2004 Levies Regulations. The department found that the 2004 Levies Regulations are still required, fit for purpose and remain consistent with the whole-of-government policy for cost recovery.

Details of the 2022 Levies Regulations are set out in Attachment A.

Background

The 2022 Levies Regulations provide the rules for calculating the various levies imposed under the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Levies Act), including when they are due and payable, and other matters in relation to levies. Levies collected under this legislation fund the operations of the Titles Administrator and NOPSEMA.

The mechanism for setting levy amounts is through the preparation of a cost recovery implementation statement (CRIS) that meets the requirements of the Australian Government Cost Recovery Guidelines. NOPSEMA and the Titles Administrator each have a CRIS that documents the cost recovery model for each levy, and both NOPSEMA and the Titles Administrator conduct regular reviews of their CRISs to ensure that their cost recovery arrangements are adequate to enable them to continue to effectively discharge their regulatory functions. The CRIS is certified by each body as the 'accountable authority' pursuant to the *Public Governance, Performance and Accountability Act 2013*. The CRIS is then presented to the Department of Finance which assesses the Charging Risk Assessment prior to being approved by the Minister.

The remake includes increases to the amounts of safety case levies, annual well levies, well activity levies and environment plan levies for petroleum titles and activities, and sets amounts for levies for greenhouse gas titles and activities commensurate with the amounts imposed in relation to petroleum. The levy amount increases implement the outcomes of the 2022 review of NOPSEMA's CRIS, and ensures that the cost recovery arrangements are adequate to enable them to continue to effectively discharge their regulatory functions.

The 2022 Levies Regulations provide in relation to levies (taxes) imposed by the Levies Act. The Levies Act includes provisions that enable the amounts of levies to be specified in, or worked out in accordance with, the regulations. The Levies Act does not set any limits on the imposition of tax. However, in practice, levy amounts are limited to amounts necessary for cost recovery for the effective operations of NOPSEMA and the Titles Administrator, in accordance with the Australian Government Cost Recovery Guidelines. In addition, under the 2022 Levies Regulations the CEO of NOPSEMA must conduct periodic reviews of cost recovery arrangements in relation to the operations of NOPSEMA, prepare a financial report that assesses the cost-effectiveness of the operations of NOPSEMA in each financial year, and meet representatives of the offshore petroleum and greenhouse gas storage industries annually to discuss the cost-effectiveness of the operations of NOPSEMA.

It is necessary and appropriate to use delegated legislation to set the amounts of levies, rather than primary legislation. It would be inefficient if Parliament was required to consider and pass a Bill every time levy amounts are revised. This is particularly the case when levy amounts may be reviewed relatively frequently to ensure offshore petroleum and greenhouse gas regulators can ensure operations are funded on a fully cost-recovered basis. The Senate also has the ability to scrutinise levy amounts through disallowance procedures for regulations.

The 2022 Levies Regulations also impose a fee for service for NOPSEMA's assessment of a safety case for certain proposed facilities.

The numbering in the 2022 Levies Regulations largely mirrors the numbering in the 2004 Levies Regulations, merging and moving provisions as necessary. Providing for the continuity of numbering where possible alleviates cost and impost to NOPSEMA and the Titles Administrator in having to update their systems and maintains continuity for regulated entities.

The 2022 Levies Regulations commence on 1 January 2023.

The 2004 Levies Regulations are repealed by the *Offshore Petroleum and Greenhouse Gas Storage Legislation (Repeal and Other Measures) Regulations 2022.*

Authority

The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) provides the legal framework for the exploration for and recovery of petroleum, and for the injection and storage of greenhouse gas substances, in offshore areas. This includes provision for the regulations to specify when levies imposed under the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Levies Act) are due and payable, along with other matters in relation to levies.

Section 781 of the OPGGS Act provides that the Governor-General may make regulations prescribing matters required or permitted by the OPGGS Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the OPGGS Act.

The Levies Act provides for the imposition of levies in relation to offshore petroleum and greenhouse gas activities, facilities or titles. The levies are collected by NOPSEMA and the Titles Administrator to fund their operations on a cost-recovered basis.

Section 11 of the Levies Act provides that the Governor-General may make regulations for the purposes of sections 5 and 6 (safety investigation levies), 7 and 8 (safety case levies), 9 and 10 (well investigation levies), 10A and 10B (annual well levies), 10C and 10D (well activity levies), 10E (annual titles administration levy) and 10F and 10G (environment plan levies).

The *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2022* (the 2022 Levies Regulations) provide for matters relating to levies imposed by the Levies Act, including the amounts of levies and when levies are due and payable.

Consultation

The department consulted with NOPSEMA and the Titles Administrator during the development of the remake of the 2004 Levies Regulations. Broader consultation was not undertaken because the 2022 Levies Regulations remake the 2004 Levies Regulations without substantive change.

Deloitte conducted an independent statutory review into the operations of NOPSEMA and the Titles Administrator for the period of 1 January 2015 to 31 December 2019. These operational reviews included surveys, interviews and workshops with a broad cross-section of industry stakeholders, including international regulators, titleholders, unions, and community, environment and conservation groups. The reviews analysed the financial sustainability and efficiency of NOPSEMA's and the Titles Administrator's operations, and how they reduce burden for industry and recover costs. Deloitte found that their costs are considered reasonable and the cost recovery models are effective. Both operational reviews were tabled in Parliament on 22 July 2021 (see *2020 Review of Operations of the National Offshore Petroleum and Environmental Management Authority* and *2020 Review of activities of the National Offshore Petroleum Titles Administrator*).

NOPSEMA and the Titles Administrator undertook reviews of their cost recovery arrangements in 2022. The Titles Administrator determined that a change to their CRIS, which commenced on 1 January 2022, was not required.

NOPSEMA's review indicated that an increase in levies was required to ensure adequate cost recovery and an updated CRIS was developed. This involved consultation with facility operators and titleholders (levy payers) and the industry peak body, the Australian Petroleum Production and Exploration Association. The CRIS was then reviewed by the Department of Finance before being approved by the Minister for Resources in September 2022.

Regulatory Impact

The department consulted with the Office of Best Practice Regulation (OBPR) on the proposal to remake the 2004 Levies Regulations and was advised that a Regulatory Impact Statement (RIS) was not required (OBPR reference ID 44023).

The department has a standing RIS exemption from OBPR for amendments to the Levies Regulations to increase levy amounts (OBPR reference ID 20801).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at **Attachment B**.

Attachment A

Details of the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2022*

Part 1—Preliminary

Section 1 – Name

This section provides that the name of this instrument is the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2022* (the Levies Regulations).

Section 2 – Commencement

This section provides that the Levies Regulations commence on 1 January 2023.

Section 3 – Authority

This section provides that the Levies Regulations are made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the OPGGS Act) and the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (the Levies Act).

Section 4 – Definitions

This section provides for definitions of terms used in the Levies Regulations. The section provides a central reference point for many of the definitions of terms used, however, terms that have meanings particular to certain Parts or Divisions of the Regulations are defined in those Parts or Divisions.

A number of terms used in the Levies Regulations are defined in the Levies Act or the OPGGS Act, some of which are detailed in notes 1 and 2 to this section. The definitions in those Acts apply to use of the terms in the Levies Regulations because of the operation of paragraph 13(1)(b) of the *Legislation Act 2003*, which provides that, unless the contrary intention appears, expressions used in an instrument have the same meaning as in the enabling legislation as in force from time to time.

For further context, additional explanation is provided on the following definitions.

'Acceptance event'

The term ***acceptance event*** is defined for the purpose of calculating safety case levies in relation to pipelines. An acceptance event occurs when NOPSEMA first accepts a safety case in relation to a facility that is a pipeline, or when NOPSEMA accepts a revision of such a safety case. An amount of levy is only applied when one or more acceptance events occur in a year. If there are no acceptance events during the year, the amount of levy imposed is zero.

'Costs and expenses reasonably incurred by NOPSEMA'

The term ***costs and expenses reasonably incurred by NOPSEMA***, in relation to the conduct of a compliance investigation or an inspection, is defined to include:

- remuneration and other costs in relation to NOPSEMA inspectors and other staff of NOPSEMA who are involved in the investigation or inspection; and
- costs incurred for the services of independent experts in relation to the investigation or inspection.

Costs relating to other staff of NOPSEMA are included in this definition because staff involved in the conduct of the investigation or inspection will not be available to carry out their ordinary duties, such as routine monitoring inspections.

The definition is not exhaustive. Other applicable costs that have not been specifically listed include incidental costs incurred in connection with the conduct of the investigation or inspection, such as travel expenditure, meals for inspectors, and printing and stationery costs.

However, the definition of this term excludes any share of fixed overheads, such as rent of office space or corporate costs, which would have been incurred by NOPSEMA in any case.

'Disregarded facility'

The term ***disregarded facility*** is used to denote certain proposed facilities in relation to which a safety case is in force but the amount of safety case levy imposed is zero. A disregarded facility is a proposed facility constructed at a location outside NOPSEMA waters, that is proposed to be installed and operated within NOPSEMA waters, but that has not entered NOPSEMA waters. The amount of levy imposed is zero as NOPSEMA is not required to expend regulatory effort (such as compliance monitoring) in relation to the proposed facility until it has entered waters over which NOPSEMA exercises jurisdiction.

'Facility' and 'proposed facility'

The term ***facility*** has different definitions depending on its usage in different provisions of the Levies Regulations.

For a provision of the Levies Regulations that applies in relation to Commonwealth waters, this term has the same meaning as in Schedule 3 to the OPGGS Act.

For a provision of the Levies Regulations that applies in relation to the designated coastal waters of a State or the Northern Territory, this term has the same meaning as in the applicable State or Territory safety law. The terms ***applicable State or Territory safety law***, ***State safety law*** and ***Territory safety law*** are defined in section 3 of the Levies Act. The definitions refer to the provisions of a State Petroleum Submerged Lands Act (PSLA) or the Territory PSLA, as defined in section 643 of the OPGGS Act, that substantially

correspond to Schedule 3 to the OPGGS Act. Schedule 3 sets up a scheme to regulate occupational health and safety matters at or near facilities located in Commonwealth waters. In order for a State or Territory to confer regulatory functions and powers on NOPSEMA for occupational health and safety matters at or near facilities in designated coastal waters, the relevant State or Territory PSLA must include provisions that substantially correspond to Schedule 3 to the OPGGS Act.

For Parts 3 and 9 of the Levies Regulations, the definition of a ***facility*** includes a proposed facility (which is also defined in this section). The definition of ***proposed facility***, for a provision that applies in relation to the designated coastal waters of a State or the Northern Territory, also has the same meaning as in the applicable State or Territory safety law.

'Liable holder'

The term ***liable holder*** for well investigation levy imposed by section 9 or 10 of the Levies Act is defined as meaning the registered holder of the title by whom levy is payable (see subsections 9(3) and 10(3)).

The concept of a 'liable holder' is necessary because the well investigation levy is payable by the registered holder of the 'current title' (within the meaning of subsection 9(1) and 10(1) of the Levies Act), which may not be the registered holder of the eligible title. For example, a well investigation levy may be imposed in respect of a compliance investigation relating to a well that has been used in connection with operations authorised by an eligible title from which the current title is derived. Either the earlier eligible title or the current title from which it is derived may have been transferred to another registered holder.

'Notifiable accident or occurrence'

The term ***notifiable accident or occurrence*** is defined as having the same meaning as in subsection 5(8) of the Levies Act for Division 1 of Part 2 of the Levies Regulations (Safety investigation levy—Commonwealth waters), and subsection 6(8) of the Levies Act for Division 2 of Part 2 of the Levies Regulations (Safety investigation levy—designated coastal waters).

Subsection 5(8) of the Levies Act defines this term, in relation a facility, as meaning an accident or dangerous occurrence at or near the facility, and that is required to be notified to NOPSEMA by the facility operator under clause 82 of Schedule 3 to the OPGGS Act. Similarly, subsection 6(8) of the Levies Act defines this term, in relation to a facility, as meaning an accident or dangerous occurrence at or near a facility, and that is required to be notified to NOPSEMA by the facility operator under the provision of the applicable State or Territory safety law that substantially corresponds to clause 82 of Schedule 3 to the OPGGS Act. (See the note on the definition of ***facility*** in this section for the definition of ***applicable State or Territory safety law***.)

'Operator'

The term ***operator***, in relation to a facility, is defined as having the same meaning as in Schedule 3 to the OPGGS Act if the facility is located, or proposed to be located, in Commonwealth waters, and as in the applicable State or Territory safety law if the facility is located, or proposed to be located, in the designated coastal waters of a State or the Northern Territory. (See the note on the definition of ***facility*** in this section for the definition of ***applicable State or Territory safety law***.)

'Pipeline'

The term ***pipeline*** has different definitions depending on its usage in different provisions of the Levies Regulations.

For a provision of the Levies Regulations that applies in relation to Commonwealth waters, this term has the same meaning as in the OPGGS Act. This term is defined in section 7 of the OPGGS Act as meaning a ***petroleum pipeline*** or a ***greenhouse gas pipeline***, which in turn are both defined in that section.

For a provision of the Levies Regulations that applies in relation to the designated coastal waters of a State or the Northern Territory, this term has the same meaning as in the applicable State or Territory safety law. (See the note on the definition of ***facility*** in this section for the definition of ***applicable State or Territory safety law***.)

For Part 3 of the Levies Regulations (Safety case levy), the definition of a ***pipeline*** includes a pipeline that is proposed to be constructed or operated, or being constructed. This is consistent with the definition of ***pipeline*** in Part 3 of the Levies Act, which imposes the safety case levy.

'Pipeline licence'

The term ***pipeline licence*** has different definitions depending on its usage in different provisions of the Levies Regulations.

For a provision in Part 3 of the Levies Regulations (Safety case levy) that applies in relation to the designated coastal waters of a State or the Northern Territory, this term has the same meaning as in the applicable State or Territory safety law. (See the note on the definition of ***facility*** in this section for the definition of ***applicable State or Territory safety law***.)

For a provision in Part 8 of the Levies Regulations (Environment plan levy) in relation to activities authorised by State/Territory titles, this term is defined as meaning a pipeline licence granted under a State PSLA or a Territory PSLA (Petroleum Submerged Lands Act), as defined in section 643 of the OPGGS Act.

For any other provision of the Levies Regulations, this term has the same meaning as in the OPGGS Act (as defined in section 7).

Part 2—Safety investigation levy

Division 1—Safety investigation levy—Commonwealth waters

Safety investigation levy is imposed under section 5 of the Levies Act on a notifiable accident or occurrence in relation to safety that has happened at or near a facility located in Commonwealth waters, where a NOPSEMA inspector begins to conduct a compliance investigation in relation to the notifiable accident or occurrence. For levy to be imposed, the condition or conditions specified in the regulations must be satisfied (see paragraph 5(1)(c)). The levy is payable by the operator of the facility (see subsection 5(3)).

The purpose of safety investigation levy is to recover from an operator of a facility the cost of a compliance investigation into a notifiable accident or occurrence that has required a substantial commitment of resources by NOPSEMA. Ordinarily, the safety case levy covers the costs and expenses of NOPSEMA's performance of its regulatory activities in relation to safety, including cost recovery for routine investigations of notifiable accidents and occurrences. However, if a compliance investigation into a notifiable accident or occurrence exceeds a threshold amount of $30,000 (see paragraph 7(2)(a) of the Levies Regulations), safety investigation levy is imposed on the notifiable accident or occurrence.

Safety investigation levy avoids inequitable cross-subsidisation by operators who have a good safety performance with an operator whose operations have resulted in a major accident or occurrence.

A ***compliance investigation*** is defined in section 3 of the Levies Act to mean an investigation under Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act) in its application under Division 1 of Part 6.5 of the OPGGS Act. The application of these provisions empower NOPSEMA inspectors to exercise powers to gather material that relates to the contravention of offence provisions and civil penalty provisions, and include powers of entry, search, inspection and seizure. The levy is not imposed in relation to a monitoring inspection undertaken under Part 2 of the Regulatory Powers Act as applied under Part 6.5 of the OPGGS Act, or under Schedule 3 to the OPGGS Act.

A ***notifiable accident or occurrence*** is defined in subsection 5(8) of the Levies Act to mean an accident or dangerous occurrence at or near a facility that is required to be notified to NOPSEMA by the operator of the facility under clause 82 of Schedule 3 to the OPGGS Act. An ***accident*** and a ***dangerous occurrence*** are defined in clause 3 of Schedule 3 to the OPGGS Act.

The provisions in this division set out the conditions for imposing the levy, how the amount of the levy is derived and when it becomes due and payable.

Section 7 – Conditions for imposition of levy

This section specifies the conditions that are required to be satisfied for safety investigation levy to be imposed on a notifiable accident or occurrence that happens in relation to a facility located in Commonwealth waters under paragraph 5(1)(c) of the Levies Act.

Subsection (2) provides that the specified conditions are that:

- The ***threshold time*** has been reached. The ***threshold time*** is the first time when the amount of the costs and expenses reasonably incurred by NOPSEMA in relation to the conduct of a compliance investigation exceeds a threshold amount of $30,000;

- NOPSEMA has given the operator of the facility at which the notifiable accident or occurrence happened written notice that the amount of the costs and expenses reasonably incurred by NOPSEMA in relation to the conduct of the investigation has exceeded the threshold amount.

The ***costs and expenses reasonably incurred by NOPSEMA*** in relation to the conduct of a compliance investigation is defined in section 4 of the Levies Regulations. (See the discussion at the notes on the definition of this term in that section for more detail about what kinds of costs and expenses it may include.) Safety investigation levy therefore recovers the excess cost of the investigation, that is, the costs that NOPSEMA would not have incurred had the investigation not taken place.

As soon as practicable once the cost of a compliance investigation has exceeded the threshold amount, NOPSEMA must give the operator a notice under paragraph 7(2)(b) of the Levies Regulations. Safety investigation levy is not imposed until the notice has been given.

Section 10 of the Levies Regulations provides for the appointment of an independent expert to assess the costs and expenses that NOPSEMA has reasonably incurred. (See the discussion at the notes on that section.)

Section 9 – Amount of levy

This section specifies the amount of safety investigation levy imposed on a notifiable accident or occurrence that happens in relation to a facility located in Commonwealth waters for the purposes of subsection 5(5) of the Levies Act.

The amount of levy is the total amount of the costs and expenses reasonably incurred by NOPSEMA in relation to the conduct of the compliance investigation in respect of the notifiable accident or occurrence to the day that the conduct of the investigation has ceased under paragraph 11(4)(a) or (b) of the Levies Regulations, as applicable, minus the threshold amount of $30,000. (See the discussion at the notes on the definition of the ***costs and expenses reasonably incurred by NOPSEMA*** in section 4.) Subtracting the threshold amount

ensures that, when the amount of levy is worked out, the operator will not be liable to pay for the first $30,000 of the cost of the investigation.

Section 10 – Amount of costs and expenses—advice of independent expert

This section enables an operator of a facility and NOPSEMA to agree to the selection and appointment of an independent expert for the purposes of assessing the costs and expenses NOPSEMA reasonably incurred in conducting a compliance investigation in respect of a notifiable accident or occurrence, and providing a report to NOPSEMA on the assessment. Selecting and appointing an independent expert for these purposes ensures transparency and rigour in the costing of NOPSEMA's conduct of the investigation and subsequently the working out of the amount of the levy. It also ensures that the assessment is carried out by a person who has specialist expertise in the technology involved and is familiar with proper investigatory processes.

This section sets out a number of procedural matters on the appointment and selection of an independent expert:

- Subsection (1) provides that the operator and NOPSEMA may agree to the selection and appointment of the independent expert at any time after the threshold time, which is defined in paragraph 7(2)(a) of the Levies Regulations.

- Subsection (2) provides that NOPSEMA must not unreasonably withhold agreement to the selection or appointment of the independent expert.

- Subsection (3) provides that the costs incurred for the services of the independent expert are required to borne by the operator.

Subsection (4) provides that, as soon as practicable after NOPSEMA receives a report from the independent expert of its assessment, NOPSEMA is required to give a copy of the report to the operator, and consider the report in determining the amount of the costs and expenses reasonably incurred in conducting the investigation.

Section 11 – When levy becomes due and payable

This section provides for when safety investigation levy becomes due and payable for the purposes of subsection 686(1) of the OPGGS Act.

Subsection (2) provides that, if a NOPSEMA inspector ceases to conduct a compliance investigation in relation to a notifiable accident or occurrence within a period of 3 months or less commencing at the threshold time, safety investigation levy becomes payable when the inspector ceases the investigation. Subsection (3) provides that, for longer investigations (that is, a compliance investigation that is conducted for more than 3 months), safety investigation levy becomes payable in instalments at the end of each 3-month period during which the inspector continues to conduct the investigation, beginning when the investigation commences and ending at the end of the day the inspector ceases to conduct the investigation.

Subsection (4) provides for when a NOPSEMA inspector is taken to have ceased to conduct a compliance investigation for the purposes of subsections (2) and (3), which is the earlier of either:

- the day NOPSEMA refers a brief of evidence to a prosecuting agency, such as the Commonwealth Director of Public Prosecutions, in relation to the proposed prosecution of a person in connection with the notifiable accident or occurrence;

- the day NOPSEMA informs the operator, by written notice, that the investigation is complete.

The investigation in relation to the notifiable accident or occurrence may continue or resume beyond either point, but no further safety investigation levy will be payable in respect of the notifiable accident or occurrence once the investigation is taken to have ceased in accordance with this subsection.

Subsection (5) provides that, if NOPSEMA refers a brief of evidence to a prosecuting agency in relation to the proposed prosecution of a person in connection with the notifiable accident or occurrence, NOPSEMA is required to notify the operator, in writing, as soon as practicable after the referral. For levy purposes, this will ensure that the operator is aware that the compliance investigation is taken to have ceased in accordance with paragraph (4)(a), and that no further levy will be payable in respect of the notifiable accident or occurrence after that point.

Subsection (6) provides that an amount of safety investigation levy becomes due and payable by the end of the period of 30 days after the day NOPSEMA gives a written notice to the operator under subsection (7). Subsection (7) provides that, if an amount of levy becomes payable under subsection (2) or (3) in respect of a period, NOPSEMA is required to give a written notice of the amount to the operator either:

- if an independent expert is appointed under section 10, within 14 days after the independent expert provides a report to NOPSEMA on the assessment of the costs and expenses reasonably incurred by NOPSEMA during that period in relation to the conduct of the investigation;

- within 14 days after the day the amount becomes payable.

If an independent expert has been appointed, providing for an amount of levy to become due and payable after the expert has provided a report on the assessment of costs and expenses will ensure that any revisions of the costs and expenses as a result of the assessment can be taken into account in the amount actually paid by the operator.

Subsection (8) provides that, in circumstances where NOPSEMA fails to give a written notice in accordance with subsection (7) in respect of a levy period, any subsequent notice of the amount payable in respect of that levy period that NOPSEMA gives to the operator is valid. This subsection is to ensure that NOPSEMA does not risk a shortfall in cost recovery by

reason of an administrative oversight. NOPSEMA has processes in place to ensure compliance with time limits so that notices are given in a timely manner in accordance with the requirements of the Levies Regulations. Although the levy becomes payable in accordance with subsection (2) or (3), payment of the levy is not due until 30 days after written notice is given to an operator by NOPSEMA. This timing for payment will still apply if notice is given after the time set out in subsection (7). The operator therefore won't be liable to pay an amount of levy until they have been made aware of the requirement to pay by written notice and will have up to 30 days to make the payment.

Division 2 —Safety investigation levy—designated coastal waters

Safety investigation levy is imposed under section 6 of the Levies Act on a notifiable accident or occurrence in relation to safety that has happened at or near a facility located in the designated coastal waters of a State or the Northern Territory, where a NOPSEMA inspector begins to conduct an inspection in relation to the notifiable accident or occurrence. For levy to be imposed, the condition or conditions specified in the regulations must be satisfied (see paragraph 6(1)(c)). The levy is payable by the operator of the facility (see subsection 6(3)).

Section 3A of the Levies Act sets out the definition of ***designated coastal waters*** in relation to a State or the Northern Territory.

The purpose of safety investigation levy is to recover from an operator of a facility the cost of an inspection into a notifiable accident or occurrence that has required a substantial commitment of resources by NOPSEMA. Ordinarily, the safety case levy covers the costs and expenses of NOPSEMA's performance of its regulatory operations in relation to safety, which includes cost recovery for routine investigations of notifiable accidents and occurrences. These investigations form part of NOPSEMA's ordinary workload. However, if an inspection into a notifiable accident or occurrence exceeds a threshold amount of $30,000 (see paragraph 14(2)(a) of the Levies Regulations), safety investigation levy is imposed on the notifiable accident or occurrence.

The safety investigation levy avoids inequitable cross-subsidisation of an operator whose operations have resulted in a major accident or occurrence by those operators who have a good safety performance.

A ***notifiable accident or occurrence*** is defined in subsection 6(8) of the Levies Act to mean an accident or dangerous occurrence at or near a facility that is required to be notified to NOPSEMA by the operator of the facility under the provision of the applicable State or Territory safety law that substantially corresponds to clause 82 of Schedule 3 to the OPGGS Act. An ***accident*** and a ***dangerous occurrence*** are defined in the applicable State or Territory safety law. For 'applicable State or Territory safety law', see the discussion of the defined term '***facility***' in the notes to section 4.

The provisions in this division set out the conditions for imposing the levy, how the amount of the levy is derived and when it becomes due and payable.

Section 14 – Conditions for imposition of levy

This section specifies the conditions that are required to be satisfied for safety investigation levy to be imposed on a notifiable accident or occurrence that happens in relation to a facility located in the designated coastal waters of a State or of the Northern Territory under paragraph 6(1)(c) of the Levies Act.

Subsection (2) provides that the specified conditions are that:

a) The ***threshold time*** has been reached. The ***threshold time*** is the first time when the amount of the costs and expenses reasonably incurred by NOPSEMA in relation to the conduct of an inspection exceeds the threshold amount of $30,000;

b) NOPSEMA has given the operator of the facility at which the notifiable accident or occurrence happened notice, in writing, that the amount of costs and expenses reasonably incurred by NOPSEMA in relation to the conduct of the inspection has exceeded the threshold amount.

The ***costs and expenses reasonably incurred by NOPSEMA*** in relation to the conduct of an inspection is defined in section 4 of the Levies Regulations. (See the discussion at the notes on the definition of this tem in that section for more detail about what kinds of costs and expenses it may include.) Safety investigation levy therefore recovers the excess cost of the inspection, that is, the costs that NOPSEMA would not have incurred had the inspection not taken place.

As soon as practicable once the cost of an inspection has exceeded the threshold amount, NOPSEMA must give the operator a notice under paragraph 14(2)(b) of the Levies Regulations. Safety investigation levy is not imposed until the notice has been given.

Section 17 provides for the appointment of an independent expert to assess the costs and expenses that NOPSEMA has reasonably incurred. See the discussion at the notes on that section.

Section 16 – Amount of levy

This section specifies the amount of safety investigation levy imposed on a notifiable accident or occurrence that happens in relation to a facility located in designated coastal waters of a State or of the Northern Territory for the purposes of subsection 6(5) of the Levies Act.

The amount of levy is the total amount of the costs and expenses reasonably incurred by NOPSEMA in relation to the conduct of the inspection in respect of the notifiable accident or occurrence to the day that conduct of the inspection has ceased under paragraph 18(4)(a) or (b) of the Levies Regulations, as applicable, minus the threshold amount of $30,000. (See the discussion at the notes on the definition of the ***costs and expenses reasonably incurred by NOPSEMA*** in section 4.) This will ensure that when the amount of levy is calculated, the operator will not be liable to pay the first $30,000 of the cost of the inspection.

Section 17 – Amount of costs and expenses—advice of independent expert

This section enables NOPSEMA and an operator of a facility to agree to the selection and appointment of an independent expert for the purpose of assessing the costs and expenses NOPSEMA reasonably incurred to carry out an inspection in respect of a notifiable accident or occurrence, and providing a report to NOPSEMA on the assessment. This ability to select and appoint an independent expert ensures that there is transparency and rigour in the costing of NOPSEMA's conduct of the inspection and therefore in the working out of the amount of the levy. It also ensures that the assessment is carried out by a person who has specialist expertise in the technology involved and is familiar with proper investigatory processes.

This section sets out a number of procedural matters on the appointment and selection of an independent expert:

- Subsection (1) provides that an operator and NOPSEMA may agree to the selection and appointment of an independent expert at any time after the threshold time, which is defined in paragraph 14(2)(a) of the Levies Regulations.
- Subsection (2) provides that NOPSEMA must not unreasonably withhold agreement to the selection or appointment of the independent expert.
- Subsection (3) provides that the costs incurred for the services of the independent expert are required to be borne by the operator.

Subsection (4) provides that, as soon as practicable after NOPSEMA receives the report of the independent expert of its assessment, NOPSEMA must give a copy to the operator, and must consider the report in determining the amount of the costs and expenses reasonably incurred in conducting the inspection.

Section 18 – When levy becomes due and payable

For the purposes of subsection 686(1) of the OPGGS Act, this section sets out when safety investigation levy becomes due and payable.

Subsection (2) provides that, if a NOPSEMA inspector ceases to conduct an inspection in relation to a notifiable accident or occurrence within a period of 3 months or less commencing at the threshold time, safety investigation levy becomes payable when the inspector ceases the inspection. Subsection (3) provides that, for longer inspections (that is, an inspection that is conducted for more than 3 months), safety investigation levy becomes

payable in instalments at the end of each 3-month period during which the inspector continues to conduct the inspection, beginning when the inspection commences and ending at the end of the day the inspector ceases to conduct the inspection.

Subsection (4) provides for when a NOPSEMA inspector is taken to have ceased to conduct an inspection for the purposes of subsections (2) and (3), which is the earlier of either:

- the day NOPSEMA refers a brief of evidence to a prosecuting agency, such as a State or Territory prosecuting agency, in relation to the proposed prosecution of a person in connection with the notifiable accident or occurrence;
- the day NOPSEMA informs the operator, by written notice, that the inspection is complete.

The inspection in relation to the notifiable accident or occurrence may continue or resume beyond either point, but no further safety investigation levy will be payable in respect of the notifiable accident or occurrence once the inspection is taken to have ceased in accordance with this subsection.

Subsection (5) provides that, if NOPSEMA refers a brief of evidence to a prosecuting agency in relation to the proposed prosecution of a person in connection with the notifiable accident or occurrence, NOPSEMA is required to notify the operator, in writing, as soon as practicable after the referral. For levy purposes, this will ensure that the operator is aware that the inspection is taken to have ceased in accordance with paragraph (4)(a), and that no further levy will be payable in respect of the notifiable accident or occurrence after that point.

Subsection (6) provides that an amount of safety investigation levy becomes due and payable by the end of the period of 30 days after the day NOPSEMA gives a written notice to the operator under subsection (7). Subsection (7) provides that, if an amount of levy becomes payable under subsection (2) or (3) in respect of a period, NOPSEMA is required to give a written notice of the amount to the operator either:

- if an independent expert is appointed under section 17, within 14 days after the independent expert provides a report to NOPSEMA on the assessment of the costs and expenses reasonably incurred by NOPSEMA during that period in relation to the conduct of the inspection;
- within 14 days after the day the amount becomes payable.

If an independent expert has been appointed, providing for an amount of levy to become due and payable after the expert has provided a report on the assessment of costs and expenses will ensure that any revisions of the costs and expenses as a result of the assessment can be taken into account in the amount actually paid by the operator.

Subsection (8) provides that, in circumstances where NOPSEMA fails to give a written notice in accordance with subsection (7) in respect of a levy period, any subsequent notice of the amount payable in respect of that levy period that NOPSEMA gives to the operator is valid.

This subsection is to ensure that NOPSEMA does not risk a shortfall in cost recovery by reason of an administrative oversight. NOPSEMA has processes in place to ensure compliance with time limits so that notices are given in a timely manner in accordance with the requirements of the Levies Regulations. Although the levy becomes payable in accordance with subsection (2) or (3), payment of the levy is not due until 30 days after written notice is given to an operator by NOPSEMA. This timing for payment will still apply if notice is given after the time set out in subsection (7). The operator therefore won't be liable to pay an amount of levy until they have been made aware of the requirement to pay by written notice and will have up to 30 days to make the payment.

Part 3—Safety case levy

The safety case levy is imposed under the Levies Act. The purpose of safety case levy is to recover the costs associated with NOPSEMA's performance of its regulatory activities in relation to safety of persons at or near a facility, including the conduct of inspections at or in relation to a facility, and monitoring and enforcement of compliance with a person's obligations in the safety case for the facility. Under the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* (the Safety Regulations), and equivalent State/Territory regulations that apply in designated coastal waters, a facility is required to have an operator, a safety case is required to be in force for the facility and work done at the facility must be done in a manner that is compliant with the safety case.

Safety case levy is an annual levy that is imposed:

- when NOPSEMA first accepts a safety case (for a calendar year or part of a calendar year, depending on when the safety case comes into force); and
- for each subsequent year that the safety case is in force.

Division 1—Preliminary

Section 19 – Facility ratings—facilities other than pipelines subject to pipeline licences

This section sets out the facility ratings for facilities that are not pipelines subject to a pipeline licence, and provides for rules that apply to facilities to which multiple facility ratings may apply.

The facility rating is the numerical multiplier that is applied in calculating safety case levy. The facility rating for each kind of facility reflects the costs incurred by NOPSEMA to assess the safety case for the facility, and undertake ongoing compliance monitoring in relation to the facility, based on the complexity of the vessel or structure and its operations. Higher ratings are applied to facilities with more complex operations which require greater regulatory effort to administer.

Paragraph (1)(a) provides that the ***facility rating*** for a period is the base rating specified in Column 2 of the applicable item in the table in subsection (1) that describes the facility for the period. For example, in the case of a facility that is a floating liquefied natural gas facility, the base rating is 25.

If both offshore petroleum operations and offshore greenhouse gas storage operations occur at the facility during the period, paragraph (1)(b) provides that the ***facility rating*** for the facility is the base rating specified in the item of the table that describes the facility plus 2. This provides for the increased complexity of the multiple operations. For example, the base rating for a large platform with drilling or workover capability is 12. If both offshore petroleum operations and offshore greenhouse gas storage operations occur at the platform during a year, the base rating for that platform for the year becomes 14.

Subsection (2) provides that if a facility is described in more than one item of the table in subsection (1) for a period, in order to work out the applicable facility rating the facility is taken to be described for the period in the item that most accurately describes the facility.

Subsection (3) provides that if a facility is described in both items 3 and 4 of the table in subsection (1) at different times during a period the facility is taken to be described for the period in:

- the item that describes the facility for the greater number of days in the period; or
- item 3 if both items describe the facility for the same number of days in the period.

In practice, this would apply to a platform (other than a platform mentioned in item 2 of the table) with accommodation facilities which had drilling or workover facilities in commission at some times during the period, and not in commission at other times during the period.

The amount of safety case levy payable in respect of a safety case in force in relation to one or more facilities that are not a pipeline subject to a pipeline licence is worked out in sections 21 and 29.

Section 19A – Facility ratings—pipelines subject to pipeline licence

This section sets out the facility ratings for pipelines subject to a pipeline licence.

The facility rating is the numerical multiplier that is applied in calculating safety case levy. The rating provided for each kind of pipeline reflects the costs incurred by NOPSEMA to assess the safety case for the pipeline, and undertake ongoing compliance monitoring in relation to the pipeline, based on its complexity. The complexity of a pipeline is determined by the number of sub-sea developments or manifolds attached to it. Assessing a safety case and undertaking compliance monitoring for a more complex pipeline requires greater regulatory effort and therefore higher ratings are applied to pipelines that are more complex.

For a pipeline subject to a pipeline licence, this section provides that the ***facility rating*** is the base rating specified in Column 2 of the applicable item in the table in this section that describes the facility. For example, in the case of a pipeline with no more than two subsea developments or manifolds connected to the pipeline, the base rating is 2.

The amount of safety case levy payable in respect of a safety case in force in relation to one or more pipelines subject to a pipeline licence is worked out in sections 21A and 29A. See also section 20D for application in relation to a remedial direction.

Section 20 – Safety case in force in relation to a facility—prescribed regulations

This section is made for the purposes of the definition of a ***safety case in force in relation to a facility*** in subsections 7(8) and 8(8) of the Levies Act. In subsection 7(8), the term is defined as having the meaning given by prescribed regulations, or a prescribed provision of regulations, made under the OPGGS Act. In subsection 8(8), the term is defined as having the same meaning as in regulations of the State or Territory that substantially correspond to prescribed regulations, or a prescribed provision of regulations, made under the OPGGS Act.

This section provides that the Safety Regulations are the prescribed regulations made under the OPGGS Act. This means that safety case levy is imposed under section 7 of the Levies Act on a safety case or a revised safety case that has been accepted by NOPSEMA in accordance with the Safety Regulations and that acceptance has not been withdrawn (see paragraph 7(1)(a)). Safety case levy is imposed under section 8 of the Levies Act on a safety case or a revised safety case that has been accepted by NOPSEMA in accordance with regulations of the relevant State or Territory that substantially correspond to the Safety Regulations and that acceptance has not been withdrawn (see paragraph 8(1)(a)).

Section 20A – Facilities that operate on intermittent basis—mobile facilities

Paragraphs 687(1)(a) and (2)(a) of the OPGGS Act provide that the regulations may make provision for the remittal or refund of part of an amount of safety case levy imposed by the Levies Act in respect of a facility and a year, or a part of a year, if the facility is of a kind declared by the regulations to be a facility that operates on an intermittent basis and the facility in fact only operates for a part of that year, or a part of that part of a year.

The purpose of this section is to declare the kinds of facilities that operate on an intermittent basis. Subsection (1) provides that, for the purposes of paragraphs 687(1)(a) and (2)(a) of the OPGGS Act, a mobile facility is declared to be a facility that operates on an intermittent basis. Subsection (2) provides for the definition of a ***mobile facility***, which is an exhaustive list of different types of vessels, structures and other kinds of facilities, including mobile offshore drilling units or drill-ships and accommodation facilities used for persons working on another facility.

Section 33 of the Levies Regulations provides for remittal or refund of levy imposed on a safety case in force in relation to mobile facilities that operate on an intermittent basis – see the notes on that section.

Section 20B – Operator to inform NOPSEMA about change in description of certain facilities

Subsections (1) and (2) respectively provide that the operator of a facility described in item 3 or 4 respectively of the table in subsection 19(1) must, as far as practicable, notify NOPSEMA in writing if the operator is aware that the facility has or will become a facility described in the other item. For example, if at a particular time a facility that is a platform with accommodation facilities has drilling or workover facilities in commission, and the operator becomes aware that the drilling or workover facilities will not be in commission at a particular time, the operator of the facility must notify NOPSEMA.

Under subsection 19(3), if a facility is described in both items 3 and 4 of the table in subsection 19(1) at different times during a period, the facility is taken to be described for the whole period in the item that describes the facility for the greater number of days in the period, or in item 3 if both items 3 and 4 describe the facility for the same number of days in the period. The status of the facility at any time during a period may therefore affect the facility rating for the facility. This obligation ensures that amounts of safety case levy paid by the operator correctly reflect the status of the facility and NOPSEMA's regulatory costs in undertaking ongoing compliance monitoring in relation to the facility based on its change in the facility rating.

For a change in the facility rating from a facility described in item 4 to one described in item 3, the consequence of non-compliance is that there may be a shortfall in levy paid because of the change, and a late payment penalty may apply to any shortfall under section 687 of

the OPGGS Act. Additionally, section 32 requires NOPSEMA to ensure that the whole of the amount of the levy that is due and payable is recovered, taking into account any changes in the applicable facility rating of a facility described in items 3 or 4 of the table in subsection 19(1). If NOPSEMA discovers a shortfall through an inspection or by exercising its other information-gathering powers, it may recover the shortfall through the process provided for in subsection 32(2) or, if the amount remains unpaid, in court (see subsection 687(7) of the OPGGS Act). Any amount of safety case levy that is unpaid after it becomes due and payable is subject to a late payment penalty under section 687 (see subsections 687(4) and (5)).

For a change in the facility rating from a facility described in item 3 to a facility described in item 4, it is in the operator's best interest to notify NOPSEMA of this change, otherwise the operator may be overcharged by NOPSEMA when it issues the invoice for the quarter based on the information that was available to NOPSEMA regarding the status of the facility during that quarter.

20C - When person is already liable to pay SMS amount

An operator of a facility is only required to pay one Safety Management System amount (SMS amount) component of safety case levy in respect of any year, whether one or more safety cases is in force in relation to the operator, and whether the operator operates facilities in Commonwealth waters, designated coastal waters or both. Similarly, a licensee of a pipeline licence is only required to pay one SMS amount in any year, whether the licensee holds a licence for more than one pipeline, and whether the pipeline or pipelines are located in Commonwealth waters, designated coastal waters or both.

Subsections 21(4) and 29(4) (for facilities other than pipelines subject to pipeline licences) and subsections 21A(3) and 29A(3) (for pipelines subject to pipeline licences) provide for the calculation of the SMS amount for a safety case and a year. Paragraphs 21(4)(a), 21A(3)(a), 29(4)(a) and 29A(3)(a) provide that the SMS amount is zero if the person liable to pay the levy is already liable to pay an SMS amount in the year for another safety case. This section provides for when a person is already liable to pay an SMS amount.

Under section 20C, if an operator would otherwise become liable to pay more than one SMS amount in a year under section 21 or 29 (or both), or a pipeline licensee would otherwise become liable to pay more than one SMS amount in a year under section 21A or 29A (or both), NOPSEMA is to decide one safety case of the operator or pipeline licensee in relation to which the person is first liable to pay safety case for the year. For other safety cases of the operator, or pipeline licensee, the person is then taken to be already liable to pay an SMS amount for the year for the purposes of paragraph 21(4)(a) and 29(4)(a), or 21A(3)(a) and 29A(3)(a).

It is common for an operator to develop a safety management system that is common to all of that operator's facilities. Consequently, once a full review of the safety management system that applies to a number of facilities has been done, this would not normally need to be repeated for subsequent facilities sharing a common safety management system. For

subsequent facilities, in relation to the safety management system, NOPSEMA would focus most of its activity on how the system is implemented on these facilities rather than a full assessment of the safety management system. The proportional reduction in regulatory activity for the second and subsequent facilities is therefore reflected in the structure of the safety case levy.

20D - Application of this Part if remedial directions are in force in relation to pipelines

This section deems a reference to certain terms in specified provisions of the Levies Regulations to include a reference to other terms if a remedial direction is in force in relation to a pipeline.

Under the OPGGS Act, a remedial direction may be given to a person who is not the current holder of a title. In the case of a remedial direction that applies to a pipeline, this would include a person who is not the pipeline licensee in relation to the pipeline. The Levies Act provides that safety case levy imposed on a safety case in force in relation to a pipeline to which a remedial direction applies is payable by the person who is subject to the remedial direction. That person may be the pipeline licensee or another person.

Under subsection 20D(1), if a remedial direction is in force, the definition of ***SMS amount*** in section 4, and Divisions 1 and 2 of Part 3 of the Levies Regulations (other than subsection 21A(5)) apply as if a reference to a pipeline subject to a pipeline licence included a reference to a pipeline in relation to which a remedial direction is in force. Those provisions also apply as if a reference to a licensee, or a licensee of a pipeline licence, included a reference to a person who is subject to a remedial direction in force in relation to the pipeline.

Under subsection 20D(2), if a State/Territory remedial direction is in force, the definition of ***SMS amount*** in section 4, and Divisions 1 and 3 of Part 3 of the Levies Regulations (other than subsection 29A(5)) apply as if a reference to a pipeline subject to a pipeline licence included a reference to a pipeline in relation to which a State/Territory remedial direction is in force. Those provisions also apply as if a reference to a licensee, or a licensee of a pipeline licence, included a reference to a person who is subject to a State/Territory remedial direction in force in relation to the pipeline.

Subsections 21A(5) and 29A(5) are excluded from the deemed references by subsections 20D(1) and (2) respectively, so that subsections 21A(5) and 29A(5) only apply to a pipeline licensee. Subsections 21A(5) and 29A(5) ensure, in circumstances where a pipeline is partly in Commonwealth waters and partly in State/Territory designated coastal waters, that the pipeline licensee will only pay the safety case levy once with respect to the jurisdiction where the length of the pipeline is predominantly located.

In the case of a remedial direction given to a person who is not the pipeline licensee, the person who is subject to the direction would be only undertaking work on the part of the pipeline located in Commonwealth waters (as a direction under the OPGGS Act can only require action in Commonwealth waters). Similarly, in the case of a State/Territory remedial

direction given to a person who is not the pipeline licensee, the person who is subject to the direction would only be undertaking work on the part of the pipeline located in the designated coastal waters of the State or Territory. Unlike a pipeline licensee, the person who is subject to the direction would therefore only have a safety case in relation to the part of the pipeline in Commonwealth waters or designated coastal waters. If subsection 21A(5) applied to a person who is not the pipeline licensee and the length of the pipeline was predominantly located in designated coastal waters, no levy would be payable to NOPSEMA in respect of the safety case for decommissioning the pipeline in Commonwealth waters. Similarly, if subsection 29A(5) applied to a person who is not the pipeline licensee and the length of the pipeline was predominantly located in Commonwealth waters, no levy would be payable to NOPSEMA in respect of the safety case for decommissioning the pipeline in designated coastal waters.

Excluding the application of subsections 21A(5) and 29A(5) to a person who is not the pipeline licensee ensures that such a person is required to pay the safety case levy in respect of decommissioning the segment of the pipeline in the area in relation to which the remedial direction applies, regardless of where the length of the pipeline is predominantly located.

It is not necessary to provide for references to an operator of a facility other than a pipeline subject to a pipeline licence to include a reference to another term. If a facility is required to undertake activities to comply with a remedial direction, that facility must have an operator under the requirements of the Safety Regulations, whether or not the remedial direction is given to a person who is the current titleholder.

Division 2—Safety case levy—Commonwealth waters

Section 21 – Amount of levy—facilities other than pipelines subject to pipeline licences

For the purposes of subsection 7(4) of the Levies Act, this section provides for the amount of safety case levy imposed on a safety case in respect of a year if the safety case is in force in relation to one or more facilities (other than a pipeline subject to a pipeline licence) at any time during the year and the facility or facilities are located, or proposed to be located, in Commonwealth waters.

Subsection (2) establishes that the amount of the safety case levy is the "facility amount" for each facility in relation to which the safety case is in force during the year, plus the "SMS amount" for the safety case and the year. Paragraph (2)(c) provides for a proportional facility amount to be applied where a safety case is in force during the year, but not at the start of the year. The amount of facility amount payable will only relate to the number of days in the year for which the safety case is in force.

The division of safety case levy into two amounts is an equity measure. Under the Safety Regulations, a safety case must contain a description of the facility, a formal safety assessment for the facility and a safety management system. While the descriptions of the facility and of the formal safety assessment might be specific to the facility, it is common for

an operator to develop a safety management system that is common to all of that operator's facilities. Consequently, once a full review of the safety management system that applies to a number of facilities has been done, this would not normally need to be repeated for subsequent facilities sharing a common safety management system. For subsequent facilities, in relation to the safety management system, NOPSEMA would focus most of its activity on how the system is implemented for these facilities rather than a full assessment of the safety management system. The proportional reduction in regulatory activity for the second and subsequent facilities is therefore reflected in the structure of the safety case levy that is established in this section.

Subsection (2) does not apply to a "disregarded facility" for a year. The term ***disregarded facility*** is defined in section 4 of the Levies Regulations as a proposed facility of a kind mentioned in paragraph 60(1)(b) and does not enter NOPSEMA waters during the year. A proposed facility of a kind mentioned in paragraph 60(1)(b) is a facility that is proposed to be, or is being, constructed at a location outside NOPSEMA waters, and is proposed to be installed and operated at a location in Commonwealth waters or in the designated coastal waters of a State or the Northern Territory. Until a facility enters NOPSEMA waters, NOPSEMA does not expend any regulatory effort for ongoing compliance monitoring in relation to the facility. Therefore no amount of levy is payable in relation to a disregarded facility. NOPSEMA recovers its costs of assessing a safety case for a disregarded facility under section 60 – see the notes for that section.

Subsection (6) provides that if a safety case in force relates only to one or more facilities that are disregarded facilities, then the amount of levy is zero.

Subsection (3) provides that if a safety case has been accepted (and therefore come into force) in relation to a proposed facility of a kind mentioned in paragraph 60(1)(b), for the purposes of paragraph (2)(c) the safety case is not taken to have come into force until the day the facility first enters NOPSEMA waters. This ensures that a proportional amount of levy will be payable on a proposed facility that enters NOPSEMA water from the date of entry. The facility amount will only be calculated for the number of days in the year starting from that day.

Subsection (4) sets out the SMS amount for the safety case and the year. An operator only has to pay one SMS amount in any year regardless of how many facilities under the management and control of that operator have safety cases in force, and whether the facilities are located in Commonwealth waters, designated coastal waters, or both. Therefore, under paragraph (4)(a) if the person liable to pay the levy is already liable to pay an SMS amount in the year for another safety case, the SMS amount is zero. See discussion on the notes at section 20C.

A lower amount of SMS amount is applied for safety cases that are in force only in relation to one or mobile facilities. This is because the level of complexity of a mobile facility is lower, and therefore requires lower regulatory effort from NOPSEMA to administer. The term

mobile facility is defined in section 20A. For all other facilities the SMS amount is the amount in paragraph 4(c).

Subsection (5) sets out the calculation of the facility amount for each facility in relation to which the safety case is in force. Generally, the facility amount is the facility rating for the facility (see section 19) multiplied by $46,600. However, if the facility is a mobile facility that is first operated in designated coastal waters during a year, and is subsequently operated in Commonwealth waters during the same year, the facility amount for that facility is zero. Although there is no facility amount for the mobile facility calculated under section 21, a facility amount will be calculated for the facility in accordance with section 29. Section 33 then provides for the remittal or refund of levy amounts for mobile facilities in respect of any time during the year when the facility does not operate in either Commonwealth waters or designated coastal waters.

Section 21A – Amount of levy—pipelines subject to pipeline licences

For the purposes of subsection 7(4) of the Levies Act, this section provides for the amount of safety case levy imposed on a safety case in respect of a year if the safety case is in force in relation to one or more facilities that are pipelines subject to a pipeline licence at any time during the year, and the pipeline or pipelines are located, or proposed to be located, in Commonwealth waters.

As a result of section 20D of the Levies Regulations, section 21A also applies so that the amount of safety case levy imposed on a safety case for a pipeline in relation to which a remedial direction is in force is worked out in the same way as the amount of levy imposed on a safety case for a pipeline subject to a pipeline licence. See the notes on section 20D above.

Subsection (2) establishes that the amount of the safety case levy is the "facility amount" for each pipeline in relation to which the safety case is in force during the year, plus the "SMS amount" for the safety case and the year.

The division of safety case levy into two amounts is an equity measure. Under the Safety Regulations, a safety case must contain a description of the facility (which includes a pipeline subject to a pipeline licence), a formal safety assessment for the facility and a safety management system. Whilst the descriptions of the facility and of the formal safety assessment might be specific to the facility, it is common for an operator to develop a safety management system that is common to all of that operator's facilities. Consequently, once a full review of the safety management system that applies to a number of facilities has been done, this would not normally need to be repeated for subsequent facilities sharing a common safety management system. For subsequent facilities, in relation to the safety management system, NOPSEMA would focus most of its activity on how the system is implemented for these facilities rather than a full assessment of the safety management system. The proportional reduction in regulatory activity for the second and subsequent facilities is therefore reflected in the structure of the safety case levy that is established in this section.

Paragraph (2)(b) does not apply to a facility covered by subsection (5). Subsection (5) covers a pipeline subject to a pipeline licence that is located in both Commonwealth waters and the designated coastal waters of one or more States or the Northern Territory, and more of the length of the pipeline is located in designated coastal waters. For pipelines covered by subsection (5), a facility amount will be payable for the pipeline under section 29A. This ensures that levy is payable in one jurisdiction only in relation to a pipeline that is located in both Commonwealth waters and designated coastal waters. It is payable in relation to the jurisdiction where the greatest portion of the length of the pipeline is located. In cases where a pipeline is located in both Commonwealth waters and designated coastal waters, the regulatory effort required by NOPSEMA will not be increased by virtue of the fact that the pipeline is located in more than one area.

Unlike the remainder of this section, the reference in subsection (5) to a pipeline subject to a pipeline licence does not include a reference to a pipeline in relation to which a remedial direction is in force. See the discussion in the notes on section 20D.

Subsection (3) sets out the SMS amount for the safety case and the year. A pipeline licensee only has to pay one SMS amount in any year regardless of whether the licensee holds a licence for more than one pipeline, and whether the pipelines are located in Commonwealth waters, designated coastal waters, or both. Therefore, under paragraph (3)(a) if the person liable to pay the levy is already liable to pay an SMS amount in the year for another safety case under this section or section 29A, the SMS amount is zero. See discussion on the notes at section 20C.

The SMS amount is also zero if there are no acceptance events in relation to the safety case for the year. An ***acceptance event*** is defined in section 4 of the Levies Regulations. An acceptance event occurs if NOPSEMA accepts a safety case or a proposed revision of a safety case in accordance with the Safety Regulations. An amount of levy is only payable by a pipeline licensee if one or more acceptance events occur during a year. This is to reflect the level of regulatory effort required to be expended by NOPSEMA in relation to the safety case.

Where one or more acceptance events occur during a year, the SMS amount is $74,600 regardless of how many acceptance events occur in relation to the safety case during the year.

Subsection (4) sets out the calculation of the facility amount for each facility in relation to which the safety case is in force. If one or more acceptance events occur in relation to the safety case for the year, the facility amount is the facility rating for the facility (see section 19A) multiplied by the number of acceptance events during the year, multiplied by $18,600.

As discussed above, an amount of levy is only payable by a pipeline licensee if one or more acceptance events occur during a year. Therefore, if no acceptance events occur in relation to the safety case during the year, the facility amount is zero.

Section 23 – When levy becomes due and payable

This section provides for when safety case levy imposed in respect of a year on a safety case in relation to a facility located, or proposed to be located, in Commonwealth waters becomes due and payable for the purposes of subsection 687(3) of the OPGGS Act. Broadly, safety case levy is payable:

- in quarterly instalments for a facility that is not a pipeline subject to a pipeline licence; and

- each time a safety case, or a revision of a safety case, is accepted by NOPSEMA for a pipeline subject to a pipeline licence.

Item 1 of the table in subsection (1) applies to safety case levy imposed on a safety case for a facility (that is not a pipeline subject to a pipeline licence) located, or proposed to be located, in Commonwealth waters. Column 2 of item 1 provides that safety case levy becomes payable in instalments at the end of each quarter during which the safety case is in force.

Practically, safety cases tend to be accepted and come into force partway through a year (that is, not at the start of the year). In such a case, the safety case levy imposed on the safety case becomes payable at the end of the first quarter in the year in which the safety case is in force, and at the end of each subsequent quarter in the year. If the safety case is in force at the start of a year (for example, because it came into force in a previous year and remains in force at the start of the subsequent year), safety case levy imposed on the safety case becomes payable at the end of each quarter in the year. Column 3 provides for when NOPSEMA is to provide written notice to the facility operator of the amount of levy that is payable and column 4 provides for when the levy becomes due and payable.

Item 2 of the table in subsection (1) applies to safety case levy imposed on a safety case for a facility that is a pipeline subject to a pipeline licence located, or proposed to be located, in Commonwealth waters. Column 2 of item 2 provides that safety case levy becomes payable on each day during the year on which an acceptance event occurs. An ***acceptance event*** is defined in section 4 of the Levies Regulations. An acceptance event occurs if NOPSEMA accepts a safety case or a proposed revision of a safety case in accordance with the Safety Regulations. An amount of levy is payable by a pipeline licensee in respect of a safety case and a year only if one or more acceptance events occur during that year. Column 3 provides for when NOPSEMA is to provide written notice to the pipeline licensee of the amount of levy that is payable and column 4 provides for when the levy becomes due and payable.

As a result of section 20D of the Levies Regulations, the provisions of section 23 that relate to a safety case in force in relation to a pipeline subject to a pipeline licence also apply in the same manner in relation to safety case levy imposed on a safety case for a pipeline in relation to which a remedial direction is in force. See the notes on section 20D above.

As an example of the application of subsection (1), if safety case levy is imposed on a safety case for a facility that is not a pipeline and a quarterly instalment of levy becomes payable in accordance with column 2 of item 1, NOPSEMA must give the operator of the facility a written notice of the amount of the quarterly instalment, which would typically be in the form of an invoice, within 30 days after the end of the quarter in accordance with column 3 of item 1. In turn, the operator must pay the amount within 30 days after NOPSEMA gives the invoice in accordance with column 4 of item 1, otherwise the operator would be liable to pay a late payment penalty under section 687 of the OPGGS Act.

Subsection (2) clarifies that, in circumstances where NOPSEMA fails to give a written notice to the operator or licensee in accordance with column 3 of the table in subsection (1) in respect of a quarter, the validity of any subsequent notice of the amount payable in respect of that quarter that NOPSEMA gives to the operator or licensee is not affected by that failure. This subsection is to ensure that NOPSEMA does not risk a shortfall in cost recovery by reason of an administrative oversight.. Although the levy becomes payable in accordance with column 2 of the table, payment of the instalment of levy is not due until 30 days after written notice is given to an operator or licensee by NOPSEMA. This timing for payment will still apply if notice is given after the time set out in column 3. The operator or licensee therefore will not be liable to pay an amount of levy until they have been made aware of the requirement to pay by written notice and will have up to 30 days to make the payment.

Division 3 —Safety case levy—designated coastal waters

Section 29 - Amount of levy—facilities other than pipelines subject to pipeline licences

This section, for the purposes of subsection 8(4) of the Levies Act, provides for the amount of safety case levy imposed on a safety case in respect of a year if the safety case is in force in relation to one or more facilities (other than a pipeline subject to a pipeline licence) at any time during the year, and the facility or facilities are located or proposed to be located in the designated coastal waters of a State or the Northern Territory.

Subsection (2) establishes that the amount of the safety case levy is the “facility amount” for each facility in relation to which the safety case is in force during the year, plus the “SMS amount” for the safety case and the year. Paragraph (2)(c) provides for a proportional facility amount to be applied where a safety case is in force during the year, but not at the start of the year. The amount of facility amount payable will only relate to the number of days in the year for which the safety case is in force.

The division of safety case levy into two amounts is an equity measure. Under regulations of a State or Territory that substantially correspond to the Safety Regulations, a safety case must contain a description of the facility, a formal safety assessment for the facility and a safety management system. While the descriptions of the facility and of the formal safety assessment might be specific to the facility, it is common for an operator to develop a safety management system that is common to all of that operator’s facilities. Consequently, once a full review of the safety management system that applies to a number of facilities has been

done, this would not normally need to be repeated for subsequent facilities sharing a common safety management system. For subsequent facilities, in relation the safety management system, NOPSEMA would focus most of its activity on how the system is implemented for these facilities rather than a full assessment of the safety management system. The proportional reduction in regulatory activity for the second and subsequent facilities is therefore reflected in the structure of the safety case levy that is established in this section.

Subsection (2) does not apply to a "disregarded facility" for a year. The term ***disregarded facility*** is defined in section 4 of the Levies Regulations as a proposed facility of a kind mentioned in paragraph 60(1)(b) that does not enter NOPSEMA waters during the year. A proposed facility of a kind mentioned in paragraph 60(1)(b) is a facility that is proposed to be, or is being, constructed at a location outside NOPSEMA waters, and is proposed to be installed and operated at a location in Commonwealth waters or in the designated coastal waters of a State or the Northern Territory. Until a facility enters NOPSEMA waters, NOPSEMA does not expend any regulatory effort for ongoing compliance monitoring in relation to the facility. Therefore no amount of levy is payable in relation to a disregarded facility. NOPSEMA recovers its costs of assessing a safety case for a disregarded facility under section 60 – see the notes for that section.

Subsection (6) provides that if a safety case in force relates only to one or more facilities that are disregarded facilities, then the amount of levy is zero.

Subsection (3) provides that if a safety case has been accepted (and therefore comes into force) in relation to a proposed facility of a kind mentioned in paragraph 60(1)(b), for the purposes of paragraph (2)(c) the safety case is not taken to have come into force until the day the facility first enters NOPSEMA waters. This ensures that a proportional amount of levy will be payable on a proposed facility that enters NOPSEMA water from the date of entry. The facility amount will only be calculated for the number of days in the year starting from that day.

Subsection (4) sets out the SMS amount for the safety case and the year. An operator only has to pay one SMS amount in any year regardless of how many facilities under the management and control of that operator have safety cases in force, and whether the facilities are located in Commonwealth waters, designated coastal waters, or both. Therefore, under paragraph (4)(a) if the person liable to pay the levy is already liable to pay an SMS amount in the year for another safety case, the SMS amount is zero. See discussion on the notes at section 20C.

A lower amount of SMS amount is applied for safety cases that are in force only in relation to one or mobile facilities. This is because the level of complexity of a mobile facility is lower, and therefore requires lower regulatory effort from NOPSEMA to administer. The term ***mobile facility*** is defined in section 20A.

Subsection (5) sets out the calculation of the facility amount for each facility in relation to which the safety case is in force. Generally, the facility amount is the facility rating for the facility (see section 19) multiplied by $46,600. However, if the facility is a mobile facility

that is first operated in Commonwealth waters during a year, and is subsequently operated in designated coastal waters during the same year, the facility amount for that facility is zero. Although there is no facility amount for the mobile facility calculated under section 29, a facility amount will be calculated for the facility in accordance with section 21. Section 33 then provides for the remittal or refund of levy amounts for mobile facilities in respect of any time during the year when the facility does not operate in either Commonwealth waters or designated coastal waters.

Section 29A – Amount of levy—pipelines subject to pipeline licences

For the purposes of subsection 8(4) of the Levies Act, this provides for the amount of safety case levy imposed on a safety case in respect of a year if the safety case is in force in relation to one or more facilities that are pipelines subject to a pipeline licence at any time during the year, and the pipeline or pipelines are located, or proposed to be located, in designated coastal waters.

As a result of section 20D of the Levies Regulations, section 29A also applies so that the amount of safety case levy imposed on a safety case for a pipeline in relation to which a State/Territory remedial direction is in force is worked out in the same way as the amount of levy imposed on a safety case for a pipeline subject to a pipeline licence. See the notes on section 20D above.

Subsection (2) establishes that the amount of safety case levy is the "facility amount" for each pipeline in relation to which the safety case is in force during the year, plus the "SMS amount" for the safety case and the year.

The division of safety case levy into two amounts is an equity measure. Under the regulations of a State or Territory that substantially correspond to the Safety Regulations, a safety case must contain a description of the facility (which includes a pipeline subject to a pipeline licence), a formal safety assessment for the facility and a safety management system. Whilst the descriptions of the facility and of the formal safety assessment might be specific to the facility, it is common for an operator to develop a safety management system that is common to all of that operator's facilities. Consequently, once a full review of the safety management system that applies to a number of facilities has been done, this would not normally need to be repeated for subsequent facilities sharing a common safety management system. For subsequent facilities, in relation to the safety management system, NOPSEMA would focus most of its activity on how the system is implemented for these facilities rather than a full assessment of the safety management system. The proportional reduction in regulatory activity for the second and subsequent facilities is therefore reflected in the structure of the safety case levy that is established in this section.

Paragraph (2)(b) does not apply to a facility covered by subsection (5). Subsection (5) covers a pipeline that is located in both Commonwealth waters and the designated coastal waters of one or more States or the Northern Territory, and more of the length of the pipeline is located in Commonwealth waters. For such pipelines, a facility amount will be payable for the

pipeline under section 21A. This ensures that levy is payable in one jurisdiction only in relation to a pipeline that is located in both Commonwealth waters and designated coastal waters. It is payable in relation to the jurisdiction where the greatest portion of the length of the pipeline is located. In cases where a pipeline is located in both Commonwealth waters and designated coastal waters, the regulatory effort required by NOPSEMA will not be increased by virtue of the fact that the pipeline is located in more than one area.

Unlike the remainder of this section, the reference in subsection (5) to a pipeline subject to a pipeline licence does not include a reference to a pipeline in relation to which a State/Territory remedial direction is in force. See the discussion in the notes on section 20D.

Subsection (3) sets out the SMS amount for the safety case and the year. A pipeline licensee only has to pay one SMS amount in any year regardless of whether the licensee holds a licence for more than one pipeline, and whether the pipelines are located in Commonwealth waters, designated coastal waters, or both. Therefore, under paragraph (3)(a) if the person liable to pay the levy is already liable to pay an SMS amount in the year for another safety case under this section or section 21A, the SMS amount is zero. See discussion on the notes at section 20C.

The SMS amount is also zero if there are no acceptance events in relation to the safety case for the year. An ***acceptance event*** is defined in section 4 of the Levies Regulations. An acceptance event occurs if NOPSEMA accepts a safety case or a proposed revision of a safety case in accordance with regulations of a State or Territory that substantially correspond to the Safety Regulations. An amount of levy is only payable by a pipeline licensee if one or more acceptance events occur during a year. This is to reflect the level of regulatory effort required to be expended by NOPSEMA in relation to the safety case.

Where one or more acceptance events occur during a year, the SMS amount is $74,600 regardless of how many acceptance events occur in relation to the safety case during the year.

Subsection (4) sets out the calculation of the facility amount for each facility in relation to which the safety case is in force. If one or more acceptance events occur in relation to the safety case for the year, the facility amount is the facility rating for the facility (see section 19A) multiplied by the number of acceptance events during the year, multiplied by $18,600.

As discussed above, an amount of levy is only payable by a pipeline licensee if one or more acceptance events occur during a year. Therefore, if no acceptance events occur in relation to the safety case during the year, the facility amount is zero.

Section 31 - When levy becomes due and payable

This section provides for when safety case levy imposed in respect of a year on a safety case in force in relation to a facility located, or proposed to be located, in the designated coastal waters of a State or the Northern Territory becomes due and payable for the purposes of subsection 687(3) of the OPGGS Act. Broadly, safety case levy is payable:

- in quarterly instalments for a facility that is not a pipeline subject to a pipeline licence; and

- each time a safety case, or a revision of a safety case, is accepted by NOPSEMA for a pipeline subject to a pipeline licence.

Item 1 of the table in subsection (1) applies to safety case levy imposed on a safety case for a facility (that is not a pipeline subject to a pipeline licence) located, or proposed to be located, in designated coastal waters. Column 2 of item 1 provides that safety case levy becomes payable in instalments at the end of each quarter during which the safety case is in force.

Practically, safety cases tend to be accepted and come into force partway through a year (that is, not at the start of the year). In such a case, the safety case levy imposed on the safety case becomes payable at the end of the first quarter in the year in which the safety case is in force, and at the end of each subsequent quarter in the year. If the safety case is in force at the start of a year (for example, because it came into force in a previous year and remains in force at the start of the subsequent year), safety case levy imposed on the safety case becomes payable at the end of each quarter in the year. Column 3 provides for when NOPSEMA is to provide written notice to the facility operator of the amount of levy that is payable and column 4 provides for when the levy becomes due and payable.

Item 2 of the table in subsection (1) applies to safety case levy imposed on a safety case for a facility that is a pipeline subject to a pipeline licence located, or proposed to be located, in designated coastal waters. Column 2 of item 2 provides that safety case levy becomes payable on each day during the year on which an acceptance event occurs. An ***acceptance event*** is defined in section 4 of the Levies Regulations. An acceptance event occurs if NOPSEMA accepts a safety case or a proposed revision of a safety case in accordance with the regulations of a State or Territory that substantially correspond to the Safety Regulations. An amount of levy is payable by a pipeline licensee in respect of a safety case and a year only if one or more acceptance events occur during that year. Column 3 provides for when NOPSEMA is to provide written notice to the pipeline licensee of the amount of levy that is payable and column 4 provides for when the levy becomes due and payable.

As a result of section 20D of the Levies Regulations, the provisions of section 23 that relate to a safety case in force in relation to a pipeline subject to a pipeline licence also apply in the same manner in relation to safety case levy imposed on a safety case for a pipeline in relation to which a State/Territorial remedial direction is in force. See the notes on section 20D above.

As an example of the application of subsection (1), if safety case levy is imposed on a safety case for a facility that is not a pipeline and a quarterly instalment of levy becomes payable in accordance with column 2 of item 1, NOPSEMA must give the operator of the facility a written notice of the amount of the quarterly instalment, which would typically be in the form of an invoice, within 30 days after the end of the quarter in accordance with column 3 of item 1. In turn, the operator must pay the amount within 30 days after NOPSEMA gives the

invoice in accordance with column 4 of item 1, otherwise the operator would be liable to pay a late payment penalty under section 687 of the OPGGS Act.

Subsection (2) clarifies that, in circumstances where NOPSEMA fails to give a written notice to the operator or licensee in accordance with column 3 of the table in subsection (1) in respect of a quarter, the validity of any subsequent notice of the amount payable in respect of that quarter that NOPSEMA gives to the operator or licensee is not affected by the failure. This subsection is to ensure that NOPSEMA does not risk a shortfall in cost recovery by reason of an administrative oversight. Although the levy becomes payable in accordance with column 2 of the table, payment of the instalment of levy is not due until 30 days after written notice is given to an operator or licensee by NOPSEMA. This timing for payment will still apply if notice is given after the time set out in column 3. The operator or licensee therefore won't be liable to pay an amount of levy until they have been made aware of the requirement to pay by written notice and will have up to 30 days to make the payment.

Division 4—Safety case levy—reconciliation, remittal, refund and adjustment

Section 32 – Reconciliation of levy recovered by instalments with levy payable

This section provides a mechanism whereby the full amount of safety case levy imposed on a safety case for a year can be recovered when instalments of levy amounts invoiced during the year fall short of amounts that should have been invoiced.

Subsection (1) requires NOPSEMA to ensure, as far as practicable, that the amounts of safety case levy notified to the operator of a facility or the licensee of a pipeline licence under section 23 or 31 recover the whole of the amount of levy that is payable for the year, taking into account such variations as a change in facility rating, any remittal or refund of levy and any previous adjustments of levy.

However, if it becomes evident that the amounts paid by way of instalments during the year are inadequate or will be inadequate to recover the whole of the amount that is payable for the year, NOPSEMA must notify the operator or licensee in writing of the amount of the shortfall. The shortfall amount is due and payable 30 days after NOPSEMA notifies the operator or licensee. A shortfall may occur, for example, if levy is calculated for a quarter on the basis that a facility is described in item 4 of the table in subsection 19(1), but it subsequently becomes apparent that the levy should have been calculated on the basis that the facility was described in item 3 of the table.

As a result of section 20D of the Levies Regulations, the provisions of section 32 that relate to a safety case in force in relation to a pipeline subject to a pipeline licence also apply in the same manner in relation to safety case levy imposed on a safety case for a pipeline in relation to which a remedial direction is in force. See the notes on section 20D above.

Section 33 - Remittal or refund of levy—safety case in force in relation to mobile facilities that operate on an intermittent basis

This section provides for the remittal or refund of part of an amount of safety case levy imposed on a safety case in force in relation to a mobile facility and a year or a part of a year for the purposes of subsections 687(1) and (2). This ensures that NOPSEMA only recovers regulatory costs in respect of periods during which the mobile facility is actually operating in NOPSEMA waters.

Subsections (2) and (3) provide that part of an amount of safety case levy must be remitted or refunded if a safety case is in force in relation to a mobile facility during the year, a quarterly instalment of levy is payable in accordance with section 23 or 31, and the facility did not operate in NOPSEMA waters on one or more days in the relevant quarter. If the part of an amount of levy has not been paid, NOPSEMA must remit that part. If the part has been paid, the Commonwealth must refund that part.

Amounts of safety case levy are paid into the Consolidated Revenue Fund, and subsequently paid by the Commonwealth to NOPSEMA. While NOPSEMA is able to remit part of an amount of a safety case levy that has not yet been paid, only the Commonwealth can refund levy amounts that have already been paid.

Subsection (4) provides that, for amounts of facility amount, the amount remitted or refunded for the relevant quarter is worked out under subsection (6) (subject to subsection (7)). Subsection (5) provides that, for amounts of SMS amount, the amount to be refunded or remitted for the relevant quarter is worked out under subsection (8) (subject to subsection (9)). Remittals and refunds of facility amount and SMS amount are worked out separately, as the basis of the remittal or refund is slightly different.

Subsection (6) sets out the formula for the amount of quarterly facility amount to be remitted or refunded for the facility and the relevant quarter by reference to the number of days in the quarter that the mobile facility did not operate in NOPSEMA waters. The term ***quarterly facility amount*** is defined in section 4 of the Levies Regulations to mean the facility rating for the facility (see section 19) multiplied by $11,650.

Subsection (7) provides that part of an amount of safety case levy will not be remitted or refunded if the remittal or refund would mean that less than one quarterly instalment across a period of four consecutive quarters is paid. That is, the combined maximum remittal or refund of facility amount over a period of four consecutive quarters is three quarters of the total facility amount for the year. The minimum one quarter levy is to recover NOPSEMA's administration costs for the year.

Subsection (8) sets out the formula for working out the remittal or refund of an amount of quarterly SMS amount for the safety case and the relevant quarter. The remittal or refund is in reference to the number of days in the quarter in which no facility of the operator of the mobile facility is in operation in NOPSEMA waters. As only one SMS amount is paid by an

operator in any year, it is not appropriate to remit or refund an amount of SMS amount if the operator still has at least one facility operating in NOPSEMA waters during a quarter.

The term ***quarterly SMS amount*** is defined in section 4 of the Levies Regulations. If the SMS amount for the safety case and the year is zero, the quarterly SMS amount is also zero. If each facility in relation to which the safety case is in force for the year is a mobile facility, the quarterly SMS amount is $37,600. Otherwise the quarterly SMS amount is $56,575.

Subsection (9) provides that part of an amount of safety case levy will not be remitted or refunded if the remittal or refund would mean that less than one quarterly instalment across a period of four consecutive quarters is paid. That is, the combined maximum remittal or refund of SMS amount over a period of four consecutive quarters is three quarters of the total SMS amount for the year. This minimum one quarter levy is to recover NOPSEMA's administration costs for the year.

Section 34 - Adjustment of amount of instalments of levy

This section establishes mechanisms to adjust the amount of the instalments of safety case levy to take account of operations at a facility that affect the amount of levy that is payable. These mechanisms are in addition to the provision for remittal or refund of amounts of safety case levy under section 33.

Subsection 34(1) provides that section 34 applies if the circumstances in paragraphs 34(1), (a), (b) or (c) apply. Paragraph (1)(a) applies if the operator of a facility or licensee of a pipeline licence informs NOPSEMA about operations at the facility, having not previously informed NOPSEMA about the operation of the facility, and that may affect the facility rating or change an amount of safety case levy calculated for the facility but not yet paid. Paragraph (1)(b) applies if the operator of a facility or licensee of a pipeline licence having previously informed NOPSEMA about the operation of the facility, informs NOPSEMA that operations at the facility are different or likely to differ and that nature of the operations at the facility would change the amount of safety case levy. Paragraph (1)(c) applies if NOPSEMA becomes aware by other means that operations at the facility may affect the facility rating. In all cases, the nature of the operation would change an amount of safety case levy that has been calculated in relation to the facility but not yet paid.

Subsection (2) provides that NOPSEMA must make necessary increases or decreases to the subsequent instalment or instalments to take account of the nature of the operations at the facility. Under subsection (3), NOPSEMA is required to notify the operator or licensee of the adjustment at least 14 days prior to the date on which that instalment is due and payable. This ensures information transparency by ensuring operators and licensees understand the reasons for the amounts of levies they are required to pay.

As a result of section 20D of the Levies Regulations, the provisions of section 34 that relate to a safety case in force in relation to a pipeline subject to a pipeline licence also apply in the

same manner in relation to safety case levy imposed on a safety case for a pipeline in relation to which a remedial direction is in force. See the notes on section 20D above.

Part 4—Well investigation levy

Division 1—Well investigation levy—Commonwealth waters

Well investigation levy is imposed under section 9 of the Levies Act on a compliance investigation in relation to a contravention or possible contravention of subclause 13A(1) or (2) or 13B(1) or (2) of Schedule 3 to the OPGGS Act. These provisions impose duties of care in relation to wells on petroleum and greenhouse gas titleholders. Well investigation levy is payable by the registered holder of the current title (see subsection 9(3) of the Levies Act).

The purpose of well investigation levy is to recover from the registered holder of a petroleum or greenhouse gas title the costs and expenses reasonably incurred by NOPSEMA in relation to the conduct of a compliance investigation into a contravention or possible contravention of subclause 13A(1) or (2) or 13B(1) or (2) of Schedule 3 to the OPGGS Act that has required a substantial commitment of resources by NOPSEMA. Ordinarily, annual well levy covers the costs and expenses of NOPSEMA's performance of its regulatory activities in relation to well integrity, including for routine investigations into compliance with a well-related duty of care. However, if the reasonable costs and expenses in respect of a compliance investigation in relation to a contravention or possible contravention of a well-related duty of care exceeds a threshold amount of $30,000 (see paragraph 9(1)(d) of the Levies Act), well investigation levy is imposed on the investigation.

Well investigation levy avoids inequitable cross-subsidisation by titleholders who have a good performance in relation to well integrity of a titleholder which is non-compliant with its health and safety duties in relation to wells.

A ***compliance investigation*** is defined in section 3 of the Levies Act to mean an investigation under Part 3 of the Regulatory Powers Act in its application under Division 1 of Part 6.5 of the OPGGS Act. The application of these provisions empower NOPSEMA inspectors to exercise powers to investigate offences that have been committed or civil penalty provisions that have been contravened, and include powers of entry, search, inspection and seizure.
A ***well*** is defined as including well-related equipment associated with a well (see subsection 9(5) of the Levies Act).

The ***costs and expenses reasonably incurred by NOPSEMA*** in relation to the conduct of a compliance investigation is defined in section 4 of the Levies Regulations.
(See the discussion on the definition at the notes on that section)**.** Well investigation levy recovers the excess cost of the investigation, that is, the costs that NOPSEMA would not have incurred had the investigation not taken place.

Well investigation levy is imposed the first time (referred to as the ***threshold time***) when the amount of the costs and expenses reasonably incurred by NOPSEMA in relation to the conduct of the investigation exceeds a threshold amount of $30,000 (see subsection 9(1) of the Levies Act). Levy is imposed in respect of a period of 3 months beginning at the threshold time and each successive 3-month period during which a NOPSEMA inspector continues to conduct the investigation (see paragraphs 9(1)(f) and (g) of the Levies Act).

The provisions in this division set out how the amount of the levy is derived and when it becomes due and payable.

Section 38 – Amount of levy

This section specifies the amount of well investigation levy imposed on a compliance investigation for a levy period for the purposes of subsection 9(4) of the Levies Act. The amount of levy payable for a levy period is the amount of the costs and expenses reasonably incurred by NOPSEMA in relation to the conduct of the investigation during the levy period.

Section 39 – Amount of costs and expenses—advice of independent expert

This section enables the titleholder who is required to pay well investigation levy imposed on a compliance investigation (referred to as the ***liable holder***) and NOPSEMA to agree to the selection and appointment of an independent expert for the purpose of assessing the costs and expenses NOPSEMA reasonably incurred in conducting the compliance investigation. The ***liable holder*** for well investigation levy is defined in section 4 of the Levies Regulations. See the notes at section 4 for discussion of the term ***liable holder***.

Selecting and appointing an independent expert for these purposes ensures transparency and rigour in the costing of NOPSEMA's performance of the investigation and therefore in the working out of the amount of the levy. It also ensures that the review is carried out by a person who has specialist expertise in the technology involved and is familiar with proper investigatory processes.

This section sets out a number of procedural matters for the selection and appointment of an independent expert:

- Subsection (1) provides that the liable holder and NOPSEMA may agree to the selection and appointment of the independent expert at any time after the threshold time, which is defined in paragraph 9(1)(d) of the Levies Act.

- Subsection (2) provides that NOPSEMA must not unreasonably withhold agreement to the selection or appointment.

- Subsection (3) provides that the costs incurred for the services of the independent expert are required to be borne by the liable holder.

- Subsection (4) provides that, as soon as practicable after NOPSEMA receives a report from the independent expert of its assessment, NOPSEMA is required to give a copy of the report to the liable holder, and consider the report in determining the amount of the costs and expenses reasonably incurred in conducting the investigation.

Section 40 – When levy becomes due and payable

This section provides for when well investigation levy becomes due and payable for the purposes of subsection 688(1) of the OPGGS Act.

Subsection (2) provides that well investigation levy for a levy period (as defined in section 4 of the Levies Regulations – see also discussion in the notes on section 38) becomes payable either:

- at the end of the day the inspector ceases to conduct the investigation, if the investigation ceases during the levy period;

- at the end of the levy period.

Subsection (3) provides for when a NOPSEMA inspector is taken to have ceased to conduct a compliance investigation for the purposes of subsection (2), which is the earlier of:

- the day NOPSEMA refers a brief of evidence to a prosecuting agency, such as the Commonwealth Director of Public Prosecutions, in relation to the proposed prosecution of a person in connection with the contravention or possible contravention to which the investigation relates;

- the day NOPSEMA informs the liable holder, by written notice, that the investigation is complete.

The investigation in relation to the contravention or possible contravention may continue or resume beyond either point, but no further well investigation levy will be payable in respect of the investigation once it is taken to have ceased in accordance with subsection (3).

Subsection (4) provides that, if NOPSEMA refers a brief of evidence to a prosecuting agency in relation to the proposed prosecution of a person in connection with a contravention or possible contravention to which the investigation relates, NOPSEMA is required to notify the liable holder, in writing, as soon as practicable after the referral. For levy purposes, this will ensure that the liable holder is aware that the investigation is taken to have ceased in accordance with paragraph (3)(a), and that no further levy will be payable in respect of the investigation after that point.

Subsection (5) provides that an amount of well investigation levy becomes due and payable by the end of the period of 30 days after the day NOPSEMA gives a written notice to the liable holder under subsection (6). Subsection (6) provides that, if an amount of levy becomes

payable under subsection (2) in respect of a levy period, NOPSEMA is required to give a written notice of the amount to the liable holder either:

- if an independent expert is appointed under section 39, within 14 days after the independent expert provides a report to NOPSEMA on the assessment of the costs and expenses reasonably incurred by NOPSEMA during that period in relation to the conduct of the investigation;

- within 14 days after the day the amount becomes payable.

If an independent expert has been appointed, providing for an amount of levy to become due and payable after the expert has provided a report on the assessment of costs and expenses will ensure that any revisions of the costs and expenses as a result of the assessment can be taken into account in the amount actually paid by the liable holder.

Subsection (7) provides that, in circumstances where NOPSEMA fails to give a written notice in accordance with subsection (6) in respect of a levy period, any subsequent notice of the amount payable in respect of that levy period that NOPSEMA gives to the liable holder is valid. This subsection is to ensure that NOPSEMA does not risk a shortfall in cost recovery by reason of an administrative oversight. NOPSEMA has processes in place to ensure compliance with time limits so that notices are given in a timely manner in accordance with the requirements of the Levies Regulations. Although the levy becomes payable in accordance with subsection (2), payment of the levy is not due until 30 days after written notice is given to a liable holder by NOPSEMA. This timing for payment will still apply if notice is given after the time set out in subsection (6). The liable holder therefore won't be liable to pay an amount of levy until they have been made aware of the requirement to pay by written notice and will have up to 30 days to make the payment.

Division 2—Well investigation levy—designated coastal waters

Well investigation levy is imposed under section 10 of the Levies Act on an inspection in relation to a contravention or possible contravention of a provision of a State PSLA or Territory PSLA that substantially corresponds to subclause 13A(1) or (2) or 13B(1) or (2) of Schedule 3 to the OPGGS Act. These provisions impose duties of care in relation to wells on petroleum and greenhouse gas titleholders. Well investigation levy is payable by the registered holder of the current title (see subsection 10(3) of the Levies Act).

The levy would apply where regulatory functions and powers have been conferred on NOPSEMA under a State PSLA or Territory PSLA in respect of the designated coastal waters of that State or Territory. Section 3A of the Levies Act sets out the definition of ***designated coastal waters*** in relation to a State or the Northern Territory. ***State PSLA*** and ***Territory PSLA*** are defined in section 643 of the OPGGS Act.

The purpose of well investigation levy is to recover from the registered holder of a petroleum or greenhouse gas title the costs and expenses reasonably incurred by NOPSEMA in relation to the conduct of an inspection in relation to a contravention or possible contravention that has required a substantial commitment of resources by NOPSEMA. Ordinarily, annual well levy covers the costs and expenses of NOPSEMA's performance of its regulatory activities in relation to well integrity, including for routine investigations into compliance with a well-related duty of care. However, if the reasonable costs and expenses in respect of an inspection in relation to a contravention or possible contravention of a well-related duty of care exceeds a threshold amount of $30,000 (see paragraph 10(1)(d) of the Levies Act), well investigation levy is imposed on the inspection.

Well investigation levy avoids inequitable cross-subsidisation by titleholders who have a good performance in relation to well integrity of a titleholder which is non-compliant with its health and safety duties in relation to wells.

The ***costs and expenses reasonably incurred by NOPSEMA*** in relation to the conduct of an inspection is defined in section 4 of the Levies Regulations. (See the discussion on the definition at the notes on that section)**.** Well investigation levy recovers the excess cost of the inspection, that is, the costs that NOPSEMA would not have incurred had the inspection not taken place.

Well investigation levy is imposed the first time (referred to as the ***threshold time***) when the amount of the costs and expenses reasonably incurred by NOPSEMA in relation to the conduct of the inspection exceeds a threshold amount of $30,000 (see subsection 10(1) of the Levies Act). Levy is imposed in respect of a period of 3 months beginning at the threshold time and each successive 3-month period during which a NOPSEMA inspector continues to conduct the inspection (see paragraphs 10(1)(f) and (g) of the Levies Act).

The provisions in this division set out how the amount of the levy is derived and when it becomes due and payable.

Section 44 – Amount of levy

This section specifies the amount of well investigation levy imposed on an inspection for a levy period for the purposes of subsection 10(4) of the Levies Act. A ***levy period*** for an inspection is defined in section 4 of the Levies Regulations. The first levy period is the period of 3 months beginning at the threshold time, which is the first time when the amount of the costs and expenses reasonably incurred by NOPSEMA in relation to the inspection exceeds $30,000. Each successive 3-month period during which a NOPSEMA inspector continues to conduct the inspection is also a levy period.

The amount of levy payable for a levy period is the amount of the costs and expenses reasonably incurred by NOPSEMA in relation to the conduct of the inspection during the levy period.

Section 45 – Amount of costs and expenses—advice of independent expert

This section enables the titleholder who is required to pay well investigation levy imposed on an inspection (referred to as the ***liable holder***) and NOPSEMA to agree to the selection and appointment of an independent expert for the purpose of assessing the costs and expenses NOPSEMA reasonably incurred in conducting the inspection. The ***liable holder*** for well investigation levy is defined in section 4 of the Levies Regulations. See the notes at section 4 for discussion of the term ***liable holder***.

Selecting and appointing an independent expert for these purposes ensures transparency and rigour in the costing of NOPSEMA's performance of the inspection and therefore in the working out of the amount of the levy. It also ensures that the review is carried out by a person who has specialist expertise in the technology involved and is familiar with proper investigatory processes.

This section sets out a number of procedural matters for the selection and appointment of an independent expert:

- Subsection (1) provides that the liable holder and NOPSEMA may agree to the selection and appointment of the independent expert at any time after the threshold time, which is defined in paragraph 10(1)(d) of the Levies Act.

- Subsection (2) provides that NOPSEMA must not unreasonably withhold agreement to the selection or appointment.

- Subsection (3) provides that the costs incurred for the services of the independent expert are required to be borne by the liable holder.

- Subsection (4) provides that, as soon as practicable after NOPSEMA receives a report from the independent expert of its assessment, NOPSEMA is required to give a copy of the report to the liable holder, and consider the report in determining the amount of the costs and expenses reasonably incurred in conducting the inspection.

Section 46 – When levy becomes due and payable

This section provides for when well investigation levy becomes due and payable for the purposes of subsection 688(1) of the OPGGS Act.

Subsection (2) provides that well investigation levy for a levy period (as defined in section 4 of the Levies Regulations – see also discussion in the notes on section 44) becomes payable either:

- at the end of the day the inspector ceases to conduct the inspection, if the inspection ceases during the levy period;

- at the end of the levy period.

Subsection (3) provides for when a NOPSEMA inspector is taken to have ceased to conduct an inspection for the purposes of subsection (2), which is the earlier of:

- the day NOPSEMA refers a brief of evidence to a prosecuting agency, such as a State or Territory prosecuting agency, in relation to the proposed prosecution of a person in connection with the contravention or possible contravention to which the inspection relates;

- the day NOPSEMA informs the liable holder, by written notice, that the inspection is complete.

The inspection in relation to the contravention or possible contravention may continue or resume beyond either point, but no further well investigation levy will be payable in respect of the inspection once it is taken to have ceased in accordance with subsection (3).

Subsection (4) provides that, if NOPSEMA refers a brief of evidence to a prosecuting agency in relation to the proposed prosecution of a person in connection with a contravention or possible contravention to which the inspection relates, NOPSEMA is required to notify the liable holder, in writing, as soon as practicable after the referral. For levy purposes, this will ensure that the liable holder is aware that the inspection is taken to have ceased in accordance with paragraph (3)(a), and that no further levy will be payable in respect of the inspection after that point.

Subsection (5) provides that an amount of well investigation levy becomes due and payable by the end of the period of 30 days after the day NOPSEMA gives a written notice to the liable holder under subsection (6). Subsection (6) provides that, if an amount of levy becomes payable under subsection (2) in respect of a levy period, NOPSEMA is required to give a written notice of the amount to the liable holder either:

- if an independent expert is appointed under section 45, within 14 days after the independent expert provides a report to NOPSEMA on the assessment of the costs and expenses reasonably incurred by NOPSEMA during that period in relation to the conduct of the inspection;

- within 14 days after the day the amount becomes payable.

If an independent expert has been appointed, providing for an amount of levy to become due and payable after the expert has provided a report on the assessment of costs and expenses will ensure that any revisions of the costs and expenses as a result of the assessment can be taken into account in the amount actually paid by the liable holder.

Subsection (7) provides that, in circumstances where NOPSEMA fails to give a written notice in accordance with subsection (6) in respect of a levy period, any subsequent notice of the amount payable in respect of that levy period that NOPSEMA gives to the liable holder is valid. This subsection is to ensure that NOPSEMA does not risk a shortfall in cost recovery by reason of an administrative oversight. NOPSEMA has processes in place to ensure

compliance with time limits so that notices are given in a timely manner in accordance with the requirements of the Levies Regulations. Although the levy becomes payable in accordance with subsection (2), payment of the levy is not due until 30 days after written notice is given to a liable holder by NOPSEMA. This timing for payment will still apply if notice is given after the time set out in subsection (6). The liable holder therefore won't be liable to pay an amount of levy until they have been made aware of the requirement to pay by written notice and will have up to 30 days to make the payment.

Part 5—Annual well levy

Division 1—Annual well levy—Commonwealth titles

Annual well levy is imposed under section 10A of the Levies Act on wells wholly or partly situated in the title areas of certain Commonwealth petroleum and greenhouse gas titles (referred to as an ***eligible title***) for a year. Annual well levy is imposed on each well (referred to as an ***eligible well***) in relation to an eligible title, and is payable by the registered holder of the eligible title.

An ***eligible well*** in relation to an eligible title is defined in subsections 10A(5) and (6) of the Levies Act. Under subsection 10A(5), any well that is wholly or partly situated in the title area immediately before the start of a year, that is or was drilled under the current title or an eligible title from which the current title is derived, and that is not abandoned, is an eligible well in relation to the current title for that year. Under subsection 10A(6), if a well began to be drilled in a title area during a year, under the authority of the current title or an eligible title from which the current title is derived, and the well was abandoned during that same year, the well is an eligible well in relation to the current title for the following year.

The term ***derived*** is defined in clauses 8A and 8B of the OPGGS Act. Generally, each title in a chain of titles is derived from each of the earlier titles in that chain. For example, if a title is renewed one or more times, each title is derived from each of the earlier titles in that series. If a petroleum production licence is granted to the holder of a petroleum retention lease, that licence is derived from the lease, any earlier leases that were renewed, and the petroleum exploration permit from which the lease was granted (and any earlier permits from which that permit was renewed).

An ***eligible title*** is defined in subsection 10A(8) of the Levies Act to mean either a petroleum title or a greenhouse gas title. Those terms are also defined in subsection 10A(8) to have the same meaning as in Schedule 3 to the OPGGS Act. In clause 3 of Schedule 3 to the OPGGS Act, a ***petroleum title*** is defined to mean a petroleum exploration permit, a petroleum retention lease or a petroleum production licence, and a ***greenhouse gas title*** is defined to mean a greenhouse gas assessment permit, a greenhouse gas holding lease or a greenhouse gas injection licence. These are titles under which wells can be drilled.

The purpose of annual well levy is to recover the costs associated with NOPSEMA's performance of its regulatory activities in relation to well integrity, including compliance monitoring and enforcement. This includes routine inspections into compliance with titleholders' duties of care in relation to wells under clauses 13A and 13B of Schedule 3 to the OPGGS Act and compliance with a titleholder's well operations management plan accepted under the *Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011* (the RMA Regulations).

The provisions in this division set out the amount of the annual well levy and when it becomes due and payable. The division also prescribes regulations for the purposes of the Levies Act.

Section 49 – Amount of levy

This section provides for the amount of annual well levy imposed in respect of each eligible well in relation to an eligible title for a year for the purposes of subsection 10A(4) of the Levies Act. The amount of annual well levy is $5,500 for each eligible well.

For example if, on 31 December 2023, there are three non-abandoned wells in a title area, and also during 2023 a fourth well was commenced to be drilled in the title area but was abandoned during the same year, an annual well levy would apply to the title area on 1 January 2024 in respect of four wells (the three non-abandoned wells plus the well that was drilled and abandoned). The amount of levy imposed on the titleholder in relation to the title for 2024 would be $22,000 ($5,500 multiplied by four wells).

Section 50 – When levy becomes due and payable

This section provides for when annual well levy becomes due and payable for the purposes of subsection 688A(1) of the OPGGS Act. Annual well levy becomes due and payable by the end of the period of 30 days after the start of the year in respect of which levy is imposed. This means that, for each eligible well in relation to an eligible title for a year, levy essentially becomes payable at the beginning of the year (that is, on 1 January), and the registered holder of the eligible title is required to pay the applicable amount of levy for each eligible well within a 30-day period.

In the example above in the notes on section 49, the amount of $22,000 would become payable on 1 January 2024. The registered holder of the title would then have 30 days to pay that amount.

Section 51 – Abandoned wells—prescribed regulations

This section is made for the purposes of subsection 10A(6A) of the Levies Act. Subsection 10A(6A) provides that, for the purposes of whether an eligible well is taken to have been abandoned for the purposes of paragraph 10A(5)(c) or (6)(c), the abandonment of the well should be disregarded unless the well was the subject of a notification under a prescribed provision of regulations made under the OPGGS Act.

This section provides that paragraph 5.17(c) of the RMA Regulations is the prescribed provision for the purposes of subsection 10A(6A) of the Levies Act. Paragraph 5.17(c) of the RMA Regulations provides that the operation of a well operations management plan ends when NOPSEMA notifies the titleholder for which the plan is in force, in writing, that NOPSEMA is reasonably satisfied that the process of abandoning the well or wells to which the plan applies has been undertaken in accordance with the plan.

Division 2—Annual well levy—State/Territory titles

Annual well levy is imposed under section 10B of the Levies Act on wells that are wholly or partly situated in the title areas of certain State/Territory petroleum and greenhouse gas titles for a year. The levy is only imposed if, at the start of the year, NOPSEMA has functions or powers under regulations of the State or Territory that substantially correspond to prescribed regulations, or a provision of prescribed regulations, made under the OPGGS Act.
(See the notes on section 53A below.)

Annual well levy is imposed on each well (referred to as an ***eligible well***) in relation to a State/Territory title, and is payable by the registered holder of the title. An ***eligible well*** in relation to a State/Territory title is defined in subsections 10B(5) and (6) of the Levies Act. Under subsection 10B(5), any well that is wholly or partly situated in the title area immediately before the start of a year, that is or was drilled under the current title or a State/Territory title from which the current title is derived, and that is not abandoned, is an eligible well in relation to the current title for that year. Under subsection 10B(6), if a well began to be drilled in a title area during a year, under the authority of the current title or a State/Territory title from which the current title is derived, and the well was abandoned during that same year, the well is an eligible well in relation to the current title for the following year.

The term ***derived*** has the same meaning as in the provisions of the relevant State PSLA or Territory PSLA that substantially correspond to Schedule 3 to the OPGGS Act. ***State PSLA*** and ***Territory PSLA*** are defined in section 643 of the OPGGS Act. In Schedule 3 to the OPGGS Act, ***derived*** is defined in clauses 8A and 8B. Generally, each title in a chain of titles is derived from each of the earlier titles in that chain. For example, if a title is renewed one or more times, each title is derived from each of the earlier titles in that series. If a State/Territory petroleum production licence is granted to the holder of a State/Territory petroleum retention lease, that licence is derived from the lease, any earlier leases that were renewed, and the State/Territory petroleum exploration permit from which the lease was granted (and any earlier permits from which that permit was renewed).

A ***State/Territory title*** is defined in subsection 10B(8) of the Levies Act to mean either a State/Territory petroleum title or a State/Territory greenhouse gas title. Those terms are also defined in subsection 10B(8) to mean an instrument under a State PSLA or Territory PSLA that confers, in relation to the designated coastal waters of a State or Territory, some or all of the rights that a Commonwealth petroleum title or a Commonwealth greenhouse gas title (as applicable) confers in relation to Commonwealth waters. ***Commonwealth petroleum title***

and ***Commonwealth greenhouse gas title*** means a petroleum title or greenhouse gas title within the meaning of Schedule 3 to the OPGGS Act. In clause 3 of Schedule 3 to the OPGGS Act, a ***petroleum title*** is defined to mean a petroleum exploration permit, a petroleum retention lease or a petroleum production licence, and a ***greenhouse gas title*** is defined to mean a greenhouse gas assessment permit, a greenhouse gas holding lease or a greenhouse gas injection licence. These are titles under which wells can be drilled.

Essentially a State/Territory title is a title granted under a State PSLA or Territory PSLA in relation to designated coastal waters that is equivalent to a petroleum exploration permit, petroleum retention lease, petroleum production licence, greenhouse gas assessment permit, greenhouse gas holding lease or greenhouse gas injection licence granted under the OPGGS Act. Section 3A of the Levies Act sets out the definition of ***designated coastal waters*** in relation to a State or the Northern Territory.

The purpose of annual well levy is to recover the costs associated with NOPSEMA's performance of its regulatory activities in relation to well integrity, including compliance monitoring and enforcement. This includes routine inspections into compliance with titleholders' duties of care in relation to wells under provisions of a State PSLA or Territory PSLA that substantially correspond to clauses 13A and 13B of Schedule 3 to the OPGGS Act and compliance with a titleholder's well operations management plan accepted under regulations of a State or Territory that substantially correspond to Part 5 of the Commonwealth RMA Regulations.

The provisions in this division set out the amount of the annual well levy and when it becomes due and payable. The division also prescribes regulations for the purposes of the Levies Act.

Section 52 – Amount of levy

This section provides for the amount of annual well levy imposed in respect of each eligible well in relation to a State/Territory title for a year for the purposes of subsection 10B(4) of the Levies Act. The amount of annual well levy is $5,500 for each eligible well.

For example if, on 31 December 2023, there are three non-abandoned wells in a title area, and also during 2023 a fourth well was commenced to be drilled in the title area but was abandoned during the same year, an annual well levy would apply to the title area on 1 January 2024 in respect of four wells (the three non-abandoned wells plus the well that was drilled and abandoned). The amount of levy imposed on the titleholder in relation to the title for 2024 would be $22,000 ($5,500 multiplied by four wells).

Section 53 – When levy becomes due and payable

This section provides for when annual well levy becomes due and payable for the purposes of subsection 688A(1) of the OPGGS Act. Annual well levy becomes due and payable by the end of the period of 30 days after the start of the year in respect of which levy is imposed. This means that, for each eligible well in relation to a State/Territory title for a year, levy

essentially becomes payable at the beginning of the year (that is, on 1 January), and the registered holder of the State/Territory title is required to pay the applicable amount of levy for each eligible well within a 30-day period.

In the example above in the notes on section 52, the amount of $22,000 would become payable on 1 January 2024. The registered holder of the title would then have 30 days to pay that amount.

Section 53A – Functions and powers of NOPSEMA under State and Territory laws—prescribed regulations

This section is made for the purposes of paragraph 10B(1)(c) of the Levies Act. Paragraph 10B(1)(c) provides that annual well levy is imposed on an eligible well in relation to a State/Territory title for a year only if, at the start of the year, NOPSEMA has functions or powers under regulations of the State or Territory that substantially correspond to prescribed regulations, or a prescribed provision of regulations, made under the OPGGS Act. This ensures that NOPSEMA will only collect annual well levies in respect of wells in State/Territory titles when actually exercising regulatory functions and powers in relation to wells in the designated coastal waters of that State or Territory.

This section provides that Part 5 of the RMA Regulations is prescribed. Part 5 of the RMA Regulations provides for the regulation of integrity of offshore petroleum and greenhouse gas wells. In order to effectively confer regulatory functions in relation to well integrity on NOPSEMA under State or Territory legislation, there must be in place regulations of the State or Territory that substantially to Part 5 of the RMA Regulations. This assures that NOPSEMA is regulating consistent requirements across the Commonwealth and any State or Territory that has conferred functions.

Part 6—Well activity levy

Well activity levy is imposed under section 10C of the Levies Act on applications or submissions made by registered holders of certain Commonwealth petroleum and greenhouse gas titles (referred to as an ***eligible title***) under the RMA Regulations for NOPSEMA's acceptance of a well operations management plan or a five-yearly proposed revision of a well operations management plan. Well activity levy is payable by the registered holder of the eligible title.

An ***eligible title*** is defined in subsection 10C(6) of the Levies Act to mean either a petroleum title or a greenhouse gas title. A ***petroleum title*** is defined in subsection 10C(6) to mean a petroleum exploration permit, a petroleum retention lease or a petroleum production licence. A ***greenhouse gas title*** is defined to mean a greenhouse gas assessment permit, a greenhouse gas holding lease or a greenhouse gas injection licence. These are titles under which wells can be drilled.

Well activity levy is also imposed under section 10C of the Levies Act on an application or submission to NOPSEMA of a well operations management plan or a five-yearly proposed revision of a well operations management plan by a person who is subject to a remedial direction. A ***remedial direction*** is defined in section 3 of the Levies Act to mean a direction under section 586, 586A, 587, 587A, 591B, 592, 594A or 595 of the OPGGS Act. These sections enable NOPSEMA or the responsible Commonwealth Minister to give directions to provide for decommissioning of infrastructure and the restoration of the environment in a current or former title area, and may include directions requiring the plugging or closing off of wells.

Well activity levy is imposed under section 10D of the Levies Act on applications or submissions made by the registered holders of certain State/Territory petroleum and greenhouse gas titles under regulations of a State or Territory that substantially correspond to the RMA Regulations for NOPSEMA's acceptance of a well operations management plan or a five-yearly proposed revision of a well operations management program, or for NOPSEMA's approval to commence an activity relating to a well. Well activity levy is payable by the registered holder of the State/Territory petroleum or greenhouse gas title.

Under subsection 10D(6) of the Levies Act, a ***State/Territory petroleum title*** is defined as an instrument under a State PSLA or Territory PSLA that confers, in relation to the designated coastal waters of a State or Territory, some or all of the rights that a Commonwealth petroleum title confers in relation to the Commonwealth waters. A ***Commonwealth petroleum title*** is defined under this subsection as meaning a petroleum exploration permit, a petroleum retention lease or a petroleum production licence. Essentially a State/Territory petroleum title is a title granted under a State PSLA or Territory PSLA in relation to designated coastal waters that is equivalent to a petroleum exploration permit, petroleum retention lease, petroleum production licence granted under the OPGGS Act.

Under subsection 10D(6) of the Levies Act, a ***State/Territory greenhouse gas title*** is defined as an instrument under a State PSLA or a Territory PSLA that confers, in relation to the designed coastal waters of a State or Territory, some or all of the rights that a Commonwealth greenhouse gas title confers in relation to Commonwealth waters. A ***Commonwealth greenhouse gas title*** is defined under this subsection as meaning a greenhouse gas assessment permit, a greenhouse gas holding lease or a greenhouse gas injection licence. Essentially a State/Territory greenhouse gas title is a title granted under a State PSLA or Territory PSLA in relation to designated coastal waters that is equivalent to a greenhouse gas assessment permit, greenhouse gas holding lease or greenhouse gas injection licence granted under the OPGGS Act.

Section 3 of the Levies Act defines ***State PSLA*** and ***Territory PSLA*** as having the same meaning as in Part 6.9 of the OPGGS Act. Under that Part of the OPGGS Act, section 643 provides for definitions of both terms in relation to each State and the Northern Territory. Section 3A of the Levies Act sets out the definition of ***designated coastal waters*** in relation to a State or the Northern Territory.

Well activity levy is also imposed under section 10D on an application or submission to NOPSEMA of a well operations management plan or a five-yearly proposed revision of a well operations management plan, or an application for approval to commence an activity relating to a well, by a person who is subject to a State/Territory remedial direction. A ***State/Territory remedial direction*** is defined in section 3 of the Levies Act to mean a direction under a provision of a State PSLA or Territory PSLA that substantially corresponds to section 586, 586A, 587, 587A, 591B, 592, 594A or 595 of the OPGGS Act. These sections enable directions to be given to a person to provide for decommissioning of infrastructure and the restoration of the environment in a current or former title area, and may include directions requiring the plugging or closing off of wells.

The purpose of well activity levy is to recover the costs associated with NOPSEMA's regulatory oversight of well activities carried out by titleholders or persons subject to remedial directions. A well activity is regulated by a well operations management plan. The titleholder or person who will undertake a well activity is required to:

- have an accepted well operations management plan in force for the well activity (see regulation 5.04 of the RMA Regulations); and
- undertake the activity in accordance with the plan (see regulation 5.05 of the RMA Regulations).

The titleholder or person subject to a remedial direction is also required to submit a proposed revision of a well operations management plan to NOPSEMA at the end of each five year period as specified in regulation 5.13 of the RMA Regulations.

For well activities carried out by State/Territory titleholders or persons subject to State/Territory remedial directions in designated coastal waters where the State or Territory has conferred regulatory functions and powers on NOPSEMA, and has in place regulations of the State or Territory that substantially correspond to the RMA Regulations before it was amended in 2016, the titleholder or person is also required to obtain approval from NOPSEMA prior to undertaking certain well activities.

The provisions in this Part set out the amount of the well activity levy and when it becomes due and payable (see Divisions 2 and 3). Division 1 of this Part prescribes regulations for the purposes of the Levies Act.

Division 1—Preliminary

Section 54 – Applications and submissions—prescribed regulations

Subsection (1) is made for the purposes of subparagraphs 10C(1)(a)(i) and 10D(1)(a)(i) of the Levies Act, which provide for the imposition of well activity levy on applications to NOPSEMA for its acceptance of a well operations management plan under:

- prescribed regulations, or a prescribed provision of regulations, made under the OPGGS Act;

- the regulations of a State or Territory that substantially correspond to prescribed regulations, or a prescribed provision of regulations, made under the OPGGS Act.

Subsection (1) provides that regulation 5.06 of the RMA Regulations is the prescribed provision of regulations made under the OPGGS Act. This regulation enables a titleholder to apply to NOPSEMA for its acceptance of a well operations management plan.

Similarly, subsection (2) is made for the purposes of subparagraphs 10C(1)(a)(ii) and 10D(1)(a)(iv) of the Levies Act, which provide for the imposition of well activity levy on submissions to NOPSEMA of a proposed revision of a well operations management plan under:

- a prescribed provision of regulations made under the OPGGS Act;

- a regulation of a State or Territory that substantially corresponds to a prescribed provision of regulations made under the OPGGS Act.

Subsection (2) provides that regulation 5.13 of the RMA Regulations is the prescribed provision of regulations made under the OPGGS Act. This regulation requires the submission to NOPSEMA of a proposed revision of a well operations management plan at the end of each 5-year period as specified in that regulation.

Division 2—Well activity levy—Commonwealth titles

Section 55 – Amount of levy

This section provides for the amount of well activity levy imposed on an application for acceptance of a well operations management plan, or a submission of a five-yearly proposed revision of a well operations management plan, for the purposes of subsection 10C(4) of the Levies Act. The amount of levy imposed is $46,600.

Section 56 – When levy becomes due and payable

This section provides for when well activity levy becomes due and payable for the purposes of subsection 688B(1) of the OPGGS Act. Well activity levy imposed on either an application for acceptance of a well operations management plan or a submission of a proposed revision of a well operations management plan becomes due and payable 30 days after the day on which the application is made or the revision is submitted to NOPSEMA.

Division 3—Well activity levy—State/Territory titles

Section 58 – Amount of levy

This section provides for the amount of well activity levy imposed on an application for acceptance of a well operations management plan, or a submission of a five-yearly proposed revision of a well operations management plan, for the purposes of subsection 10D(4) of the Levies Act. The amount of levy imposed is $46,600.

This section also provides for the amount of well activity levy imposed on an application for approval to commence an activity relating to a well. The amount of levy imposed is $10,000. The levy imposed on an application for approval to commence an activity relating to a well only applies in limited circumstances. Amendments to the RMA Regulations which commenced on 1 January 2016 removed the requirement under Commonwealth law for titleholders to apply for approval to commence particular well activities. However, until any State or Territory that has conferred regulatory functions and powers on NOPSEMA for wells in designated coastal waters (currently only Victoria) amends its regulations to correspond to the amended RMA Regulations, the requirement to apply to NOPSEMA for approval to commence a well activity continues to apply in that jurisdiction. Until the relevant State or Territory has amended its regulations, the levy imposed on those applications will remain in place to ensure that NOPSEMA is cost recovered for its assessment of the applications.

Section 59 – When levy becomes due and payable

This section provides for when well activity levy becomes due and payable for the purposes of subsection 688B(1) of the OPGGS Act. Well activity levy imposed on either an application for acceptance of a well operations management plan, a submission of a five-yearly proposed revision of a well operations management plan or an application for approval to commence an activity relating to a well becomes due and payable 30 days after the day on which the application is made or the revision is submitted to NOPSEMA.

Part 7—Annual titles administration levy

Section 10E of the Levies Act imposes annual titles administration levy on petroleum and greenhouse gas titles (referred to as an ***eligible title***). The levy is imposed for the year beginning on the day the title comes into force, and for each subsequent year beginning on the anniversary of that day if the title is still in force at the start of the anniversary. Levy is imposed even if the eligible title is not in force for the whole of the year.

Under subsection 10D(7) of the Levies Act, the definition of ***eligible title*** lists the petroleum and greenhouse gas titles on which levy is imposed. Annual titles administration levy is payable by the registered holder of the title (see subsection 10E(3) of the Levies Act).

The purpose of annual titles administration levy is to recover the Titles Administrator's costs for the administration of petroleum and greenhouse gas titles under the OPGGS Act and regulations. Levies are used to fund the Titles Administrator's activities where it is not possible or practical to attribute costs to a specific title (e.g. data management, resource management, compliance monitoring).

The provisions in this Part set out definitions relevant to the Part and the amount of the annual titles administration levy. This Part also provides for remittal or refund of levies in certain circumstances.

Section 59A – Definitions

This section provides for definitions of terms used in this Part.

The term ***eligible title*** is defined as having the same meaning as in subsection 10E(7) of the Levies Act. The definition of this term in this subsection of the Levies Act lists a number of petroleum and greenhouse gas titles granted under the OPGGS Act. Subsection 10E(1) of the Levies Act imposes annual titles administration levy on eligible titles.

The term ***title*** is defined as meaning a title within the meaning of section 695M of the OPGGS Act. Subsection 695M(1) lists a number of petroleum and greenhouse gas titles (each of which is a ***title***), which include the same titles listed in the definition of an ***eligible title*** in subsection 10E(7) of the Levies Act. Section 695M provides for when annual titles administration levy becomes due and payable.

Section 59AA – Amount of levy

This section provides for the amount of annual titles administration levy imposed on eligible titles for the purposes of subsection 10E(4) of the Levies Act. Under subsection 10E(1), levy is imposed on an eligible title for the year beginning on the day the title comes into force and for each subsequent year beginning on the anniversary of that day, if the title is still in force at the start of the anniversary, regardless of whether or not the eligible title is in force for the whole year.

The amount of annual titles administration levy imposed on an eligible title in respect of a year is the amount specified in, or worked out in accordance with, the table in this section. These amounts include:

- a work-bid, special, cash-bid or boundary-change petroleum exploration permit or a work-bid or cross-boundary greenhouse gas assessment permit is $11,000 (see items 1 to 4, 9 and 10 of the table);

- a petroleum retention lease, a petroleum production licence, a greenhouse gas holding lease or a greenhouse gas injection licence is $22,000 for each block to which the lease or licence relates (see items 5, 6, 11 and 12 of the table);

- an infrastructure licence is $27,500 (see item 7 of the table);
- a pipeline licence is $110 for each kilometre, or part of a kilometre, of the pipeline's length (see item 8 of the table).

The note to this section explains that section 695M of the OPGGS Act sets out when annual titles administration levy becomes due and payable, which is at the end of 30 days after the first day of the year for which the levy is imposed (see subsection 695M(2)). The registered holder of the title must pay the applicable amount of levy before the end of that 30 day period.

Section 59AB – Remittal or refund of levy—title wholly ceases to be in force during year

This section provides for the remittal and refund of an amount of annual titles administration levy for a title that wholly ceases to be in force during a year, including the amount of levy to be remitted or refunded, for the purposes of subsection 695M(3) of the OPGGS Act. This ensures that a titleholder is required to pay an amount of levy, and the Titles Administrator recovers costs, only with respect to any period during which the title is in force.

Subsections (1) and (2) provide that the Titles Administrator is required to remit an amount of levy that has not yet been paid, or to refund an amount of levy that has already been paid, if the title on which levy is imposed for a year wholly ceases to be in force during that year, other than in circumstances mentioned in subsection (4). The amount to be remitted or refunded is worked out under subsection (3).

The amount of levy to be remitted or refunded by the Titles Administrator, worked out in accordance with the formula in subsection (3), is pro-rata based on the number of days that an eligible title is not in force for the year. The formula provides that the number of days in the year that an eligible title is not in force is to be divided by 365 (that is, the number of days in a non-leap year), and this result is multiplied by the amount of annual titles administration levy imposed on the title for the year (as set out in the table in section 59AA). The calculation ensures that the amount of levy actually required to be paid by a titleholder for the year in which the title wholly ceases to be in force is the amount applicable to the number of days for which the title is in force during that year.

As an example, a work-bid petroleum exploration permit comes into force on 1 March 2023. On 1 March 2028, the permit is still in force, so that annual titles administration levy is imposed on the permit for the year commencing on 1 March 2028. Subsequently the permit wholly ceases to be in force on 1 December 2028 (otherwise than by way of cancellation or surrender – see discussion below).

Applying the formula in subsection (3), the number of days in the year that the permit is not in force is 89 days. The amount of levy imposed on the permit for the year is $11,000. The amount of levy to be refunded is 89 divided by 365, multiplied by $11,000 (i.e. $2,682.19). In effect, the amount of levy that the permittee pays for the year is $8,317.81.

Subsection (4) provides that a remittal or refund of an amount of levy is not applicable under this section if the title wholly ceases to be in force either because it is cancelled or surrendered.

If the title is wholly cancelled under section 275 or 447 of the OPGGS Act during a year, none of the amount of levy for that year will be remitted or refunded and the titleholder will be required to pay the full amount of levy imposed for that year. The rationale is that the titleholder should continue to be liable to pay the full amount of levy in respect of the year in which the title is cancelled because of serious non-compliance by the titleholder, such as non-compliance with a condition of the title or certain provisions of the OPGGS Act or regulations. Additionally, an increased level of regulatory activity would be triggered by the detection, assessment and enforcement of serious non-compliance of a nature that may lead to cancellation of a title, so that payment of the full amount of levy for the year will enable the Titles Administrator to recover the full costs of the increased regulatory activity.

Similarly, if the title is wholly surrendered under section 271 or 443 of the OPGGS Act during a year, and the application for consent to surrender was made in that year, none of the amount of levy for that year will be remitted or refunded. Applications for consent to surrender a title are usually submitted near the end of a year beginning on the day the title comes into force, or an anniversary of that day, as the titleholder will have completed the work program for that year prior to submitting the application. If consent to the surrender is subsequently given and the title surrendered during that same year, the Titles Administrator will still require the full amount of levy for that year to recover the costs of its titles administration activities.

Under section 59AD, however, the full amount of levy is required to be remitted or refunded if the title is wholly surrendered during a year and the application for consent to surrender the title was made before the beginning of that year (see the notes to that section below). For the rationale as to why an amount of levy is remitted or refunded in this case, see the notes on section 59AD.

Section 59AC – Remittal or refund of levy—title partly ceases to be in force during year

This section provides for the remittal and refund of an amount of annual titles administration levy for a title that partly ceases to be in force during a year, including the amount of levy to be remitted or refunded, for the purposes of subsection 695M(3) of the OPGGS Act. This ensures that a titleholder is required to pay an amount of levy, and the Titles Administrator recovers costs, only to the extent to which a title remains in force during a year.

Subsections (1) and (2) provide that the Titles Administrator is required to remit an amount of levy that has not yet been paid, or to refund an amount of levy that has already been paid, if the title on which levy is imposed for a year partly ceases to be in force during that year, other than in circumstances mentioned in subsection (6). The amount to be remitted or refunded is worked out under subsection (3).

Subsection (3) provides that the amount to be remitted or refunded is worked out in accordance with subsection (4) or (5) as applicable. Under subsection (4), the remittal or refund is worked out on a per block basis for titles for which the levy is calculated on a per block basis (see the table in section 59AA). Under subsection (5), the remittal or refund is worked out on a per kilometre basis for a pipeline licence. The calculation ensures that the amount of levy actually required to be paid by a titleholder for the year in which the title partly ceases to be in force includes a reduced amount for the number of days during which the title has partly ceased to be in force, rather than requiring the full amount to be paid for the whole year.

The amount of levy to be remitted or refunded by the Titles Administrator, worked out in accordance with the formula in subsection (4), is pro-rata based on the number of days that an eligible title is not in force with respect to the relevant number of blocks for the year. The formula provides that for each block in relation to which the title ceases to be in force during the year, the number of days in the year that the block is not the subject of the title is to be divided by 365 (that is, the number of days in a non-leap year), and this result is multiplied by $22,000 (that is, the amount of annual titles administration levy imposed per block for certain titles as set out in the table in section 59AA).

As an example, a petroleum retention lease comes into force in relation to eight blocks on 1 March 2023. On 1 March 2027, the lease is still in force in relation to those eight blocks, so that annual titles administration levy is imposed on the lease for the year commencing on 1 March 2027. Subsequently the lease ceases to be in force in relation to three blocks on 1 December 2027 (otherwise than by way of cancellation or surrender – see discussion below).

Applying the formula in subsection (4), the number of days in the year that the three blocks are not the subject of the lease is 89 days. The amount of levy to be refunded for each block is 89 divided by 365, multiplied by $22,000 (i.e. $5,364.38 is refunded for each block). In effect, the amount of levy that the lessee pays for the year in relation to each of the relevant blocks is $16,635.62. The full amount of $22,000 per block remains payable for the five blocks over which the lease remains in force for the whole year.

The amount of levy to be remitted or refunded by the Titles Administrator, worked out in accordance with the formula in subsection (5), is pro-rata based on the number of days in the year that a pipeline licence is not in force with respect to the relevant number of kilometres (or part of a kilometre) of pipeline. The formula provides that the number of days in the year that the kilometre or part of a kilometre of pipeline is not covered by the licence is to be divided by 365 (that is, the number of days in a non-leap year), and this result is multiplied by $110 (i.e. the amount of annual titles administration levy imposed per kilometre for pipeline licences as set out in the table in section 59AA).

As an example, a pipeline licence comes into force in relation to 500km of pipeline on 1 March 2023. On 1 March 2033, the licence is still in force in relation to those 500kms, so that annual titles administration levy is imposed on the licence for the year commencing on

1 March 2033. Subsequently the licence ceases to be in force in relation to 50kms of the pipeline on 1 December 2033 (otherwise than by way of cancellation or surrender – see discussion below).

Applying the formula in subsection (5), the number of days in the year that the 50kms of pipeline is not the subject of the licence is 89 days. The amount of levy to be refunded for each kilometre is 89 divided by 365, multiplied by $110 (i.e. $26.82 is refunded for each kilometre). In effect, the amount of levy that the lessee pays for the year in relation to each of the relevant kilometres is $83.18. The full amount of $110 per kilometre remains payable for the 450 kilometres of pipeline over which the licence remains in force for the whole year.

The remittal or refund does not apply to titles for which levy is imposed on a per title basis, such as a work-bid petroleum exploration permit or a work-bid greenhouse gas assessment permit (see the table at section 59AA). For these titles, no amount or part of an amount of levy will be remitted or refunded if the title ceased in part to be in force, as the titleholder is required to pay the same amount of levy regardless of the number of blocks to which the title relates.

Subsection (6) provides that a remittal or refund of an amount of levy is not applicable under this section if the title partly ceases to be in force either because it is partly cancelled or partly surrendered.

If the title is partly cancelled under section 275 or 447 of the OPGGS Act during a year, none of the amount of levy for that year will be remitted or refunded and the titleholder will be required to pay the full amount of levy imposed for that year. For the rationale as to why an amount of levy is not remitted or refunded if a title is cancelled, see the notes on section 59AB.

Similarly, if the title is partly surrendered under section 271 or 443 of the OPGGS Act during a year, and the application for consent to surrender was made in that year, none of the amount of levy for that year will be remitted or refunded. For the rationale as to why an amount of levy is not remitted or refunded in these circumstances, see the notes on section 59AB.

Under section 59AE, however, an amount of levy is required to be remitted or refunded if the title is partly surrendered during a year and the application for consent to surrender the title was made before the beginning of that year (see the notes to that section below). For the rationale as to why an amount of levy is remitted or refunded in this case, see the notes on section 59AE.

Section 59AD - Remittal or refund of levy—title wholly surrendered during year and application for consent to surrender made before that year

This section provides for the remittal and refund of an amount of annual titles administration levy imposed on an eligible title for a year if the title has been wholly surrendered during the year under section 271 or 443 of the OPGGS Act and the application for consent to surrender

was made before the start of that year, for the purposes of subsection 695M(3) of the OPGGS Act.

Where an application is made for consent to surrender a title in one year and the title is surrendered in a subsequent year, the full amount of the levy will be remitted or refunded for the year in which the title is surrendered.

Occasionally, the time it takes for an application for consent to surrender a title to be assessed and decided on means that the title passes its anniversary date, and levy is therefore imposed on the title for another year. In the event that the application is subsequently consented to and the title surrendered, the Titles Administrator's regulatory activities that are cost recovered by the levy will not be undertaken in relation to that year, and levy imposed for that year will therefore be remitted or refunded.

Section 59AE - Remittal or refund of levy—title partly surrendered during year and application for consent to surrender made before that year

This section provides for the remittal and refund of an amount of annual titles administration levy imposed on an eligible title for a year if the title has been partly surrendered during the year under section 271 or 443 of the OPGGS Act and the application for consent to surrender was made before the start of that year, for the purposes of subsection 695M(3) of the OPGGS Act.

Where an application is made for consent to surrender a title in one year and the title is partly surrendered in a subsequent year, an amount of levy will be remitted or refunded for the year in which the title is partly surrendered, calculated in accordance with subsection (3).

Under subsection (3), the amount to be remitted or refunded for a title in relation to which levy is charged on a per block basis is the amount of levy per block multiplied by the number of blocks in respect of which the title is surrendered (currently $22,000 per block). The amount to be remitted or refunded for a pipeline licence is the amount of levy per kilometre (or part of a kilometre) of pipeline in respect of which the title is surrendered (currently $110 per kilometre or part of a kilometre).

Occasionally, the time it takes for an application for consent to surrender a title to be assessed and decided on means that the title passes its anniversary date, and levy is therefore imposed on the title for another year. In the event that the application is subsequently consented to and the title is partly surrendered, the Titles Administrator's regulatory activities that are cost recovered by the levy will not be undertaken in relation to that year in respect of the part of the title that is surrendered, and levy imposed for that year in respect of that part will therefore be remitted or refunded.

Remittal or refund of an amount of levy that is partly surrendered only applies to titles for which levy is imposed on a per block basis or a per kilometre basis. For these titles, no amount or part of an amount of levy will be remitted or refunded if the title ceased in part to

be in force, as the titleholder is required to pay the same amount of levy regardless of the number of blocks to which the title relates.

Part 8—Environment plan levy

The environment plan levy is imposed by the Levies Act. The purpose of environment plan levy is to recover the costs associated with NOPSEMA's performance of its regulatory activities in relation to environmental management, including compliance monitoring and enforcement. The environmental impacts and risks of an offshore petroleum or greenhouse gas activity are regulated by an environment plan. The titleholder or person subject to a remedial direction who will undertake the activity is required to:

- have an accepted environment plan in force for the activity (see regulation 6 of the Environment Regulations); and
- undertake the activity in accordance with the plan (see regulation 7).

The titleholder or person subject to a remedial direction is also required to submit a proposed revision of an environment plan in certain circumstances, including as a result of a change or proposed change in circumstances or operations, on request by NOPSEMA or at the end of each five years (see regulations 17, 18 and 19 of the Environment Regulations).

The provisions in this Part set out the manner of calculating the environment plan levy, when it becomes due and payable and provides for remittal and refund of levy in certain circumstances. Division 1 of this Part also prescribes regulations for the purposes of the Levies Act.

Division 1—Preliminary

Section 59B – Ratings for activities to which environment plans relate

This section sets out the activity ratings and the compliance ratings for each kind of activity to which an environment plan may relate. The amount of environment plan levy, which is worked out under section 59C in relation to Commonwealth titles, and section 59G in relation to State/Territory titles, is dependent on the activity rating and the compliance rating applicable to each activity or activities to which the environment plan relates.

In the table in this section:

- column 1 specifies each activity to which an environment plan may relate; and
- columns 2 and 3 specify the activity rating and the compliance rating respectively applicable to each activity.

Subsections (2) and (3) apply where a remedial direction has been given to a person and ensures that the references in the table also apply to activities carried out for the purposes of complying with a remedial direction. The Levies Act imposes environment plan levy if an environment plan, or a proposed revision of an environment plan, is submitted to NOPSEMA, and the activities to which the plan or revised plan relates are carried out for the purpose of complying with a remedial direction or a State/Territory remedial direction.

Section 59BA – Submissions to NOPSEMA—prescribed regulations

Subsection (1) is made for the purposes of subparagraphs 10F(1)(a)(i), (c)(i) and (d)(i) and 10G(1)(a)(i), (c)(i) and (d)(i) of the Levies Act, which relate to the imposition of environment plan levy on submissions of an environment plan to NOPSEMA under:

- a prescribed provision of regulations made under the OPGGS Act;
- a regulation of a State or Territory that substantially corresponds to a prescribed provision of regulations made under the OPGGS Act.

Subsection (1) provides that regulation 9 of the Environment Regulations is the prescribed provision of regulations made under the OPGGS Act. This regulation enables the submission of an environment plan for an activity to NOPSEMA.

Subsection (2) is made for the purposes of subparagraphs 10F(1)(b)(i) and (e)(i) and 10G(1)(b)(i) and (e)(i) of the Levies Act, which relate to the imposition of environment plan levy on submissions of a proposed revision of an environment plan to NOPSEMA under:

- a prescribed provision of regulations made under the OPGGS Act;
- a regulation of a State or Territory that substantially corresponds to a prescribed provision of regulations made under the OPGGS Act.

Subsection (2) provides that regulations 17, 18 and 19 of the Environment Regulations are the prescribed provisions of regulations made under the OPGGS Act. These regulations enable or require the submission of a proposed revision of an environment plan to NOPSEMA for different reasons, such as a change, or a proposed change, in circumstances or operations, on the request of NOPSEMA or at the end of each 5-year period.

Division 2—Environment plan levy—Commonwealth titles

Section 59C – Amount of levy

This section sets out the method for working out the amount of environment plan levy imposed on the submission of an environment plan or a proposed revision of an environment plan for the purposes of subsection 10F(4) of the Levies Act.

Subsection (1) provides that the amount of environment plan levy is the sum of the total activity amount (defined in subsection (2)) and the total compliance amount (defined in subsection (3)) for the submission. The purpose of the activity amount is to recover NOPSEMA's costs to assess the environment plan or the proposed revision. The purpose of the compliance amount is to recover the costs associated with NOPSEMA's carrying out ongoing compliance monitoring and enforcement in relation to the activity or activities to which the plan or revised plan relates, and this amount is therefore paid in annual instalments (see section 59D).

Subsection (2) provides that the ***total activity amount*** for the submission is the sum of the activity amounts for all of the activities to which the plan or revised plan relates. Subsection (4) sets out the manner of working out the activity amounts for activities. Subsection (4) provides that the ***activity amount*** for an activity (specified in column 1 in the table in section 59B) is worked out by:

- multiplying the activity rating (specified in column 2 in the table in section 59B) for the activity by $4,800; and

- if the activity is not a ***survey activity*** (see the definition of this term in section 4 of the Levies Regulations) and is not carried out for the purposes of complying with a remedial direction, multiplying the result of that amount by the number of Commonwealth titles that authorise the activity (see paragraph 9(7)(d) of the Environment Regulations, which provides that an activity to which an environment plan relates may be undertaken under two or more titles held by different titleholders).

If an activity is a survey activity, the activity amount for the activity is essentially multiplied by 1, regardless of the number of titles that authorise the activity.

If an activity is carried out for the purposes of complying with a remedial direction, it may not be the case that the activity is carried out by a current titleholder under the authority of a title. The activity amount for an activity carried out for the purposes of complying with a remedial direction will therefore be the activity rating multiplied by $4,800.

Subsection (3) provides that the ***total compliance amount*** for the submission is the sum of the compliance amounts for all of the activities to which the plan or revised plan relates. Subsection (5) sets out the manner of working out the compliance amounts for activities. Subsection (5) provides that the ***compliance amount*** for an activity (specified in column 1 in the table in section 59B) to which the plan or revised plan relates is worked out by:

- multiplying the compliance rating (specified in column 3 in the table in section 59B) for the activity by $4,800; and

- multiplying the resulting amount by the lesser of either the expected duration of the activity as specified in the plan or revised plan (expressed in whole years and rounding part years up to the next whole year) or 5; and

- if the activity is not a ***survey activity*** (see the definition of this term in section 4 of the Levies Regulations) and is not carried out for the purposes of complying with a remedial direction, multiplying the resulting amount by the number of Commonwealth titles that authorise the activity.

For the compliance amount applicable to an activity, the maximum number of 5 in relation to the expected duration of an activity reflects that an environment plan is in force for a maximum of five years before a person is required to submit a proposed revision of the plan to NOPSEMA (see regulation 19 of the Environment Regulations).

If an activity is a survey activity, the compliance amount for the activity is essentially multiplied by 1, regardless of the number of titles that authorise the activity.

If an activity is carried out for the purposes of complying with a remedial direction, it may not be the case that the activity is carried out by a current titleholder under the authority of a title. The compliance amount for an activity carried out for the purposes of complying with a remedial direction will therefore be the compliance rating multiplied by $4,800, with the resulting amount multiplied by the lesser of the expected duration of the activity or 5.

Section 59D – When levy becomes due and payable

This section provides for when environment plan levy becomes due and payable for the purposes of subsection 688C(1) of the OPGGS Act.

Under subsection (2), the total activity amount (see subsection 59C(2)) for the submission of an environment plan, or a proposed revision of an environment plan, becomes due and payable by the end of the period of 30 days after the day the plan or proposed revision is submitted.

Under subsection (3), the total compliance amount (see subsection 59C(3)) for the submission becomes due and payable in annual instalments during the period that the plan (or revised plan) is in force. Subsection (4) provides that the first instalment of this amount becomes due and payable by the end of the period of 30 days after the day the plan or proposed revision is submitted. Subsection (5) provides that each subsequent instalment of the total compliance amount becomes due and payable at the beginning of each calendar year (that is, on 1 January) after the year the plan or proposed revision is submitted.

Section 59E – Remittal or refund of levy

This section provides for the remittal or refund of instalments of the compliance amount of environment plan levy imposed by the Levies Act for the purposes of subsection 688C(1A) of the OPGGS Act. There is no provision for refund or remittal of the activity amount, as this

amount relates to the costs NOPSEMA would have incurred in assessing an environment plan or proposed revision of an environment plan.

Subsection (2) provides that, if a person withdraws a submitted environment plan in accordance with subregulation 11AA(1) of the Environment Regulations before NOPSEMA has made a decision to accept or refuse the plan:

- NOPSEMA must remit each instalment of the total compliance amount for the submission that has not yet been paid; and
- the Commonwealth must refund each instalment of the total compliance amount for the submission that has already been paid (if any).

In effect, the person is only required to pay the activity amount.

It is an offence for a person to undertake an activity without an accepted environment plan in force for the activity. If a submitted environment plan is withdrawn before NOPSEMA makes a decision to accept or refuse to accept the plan, the activities to which the plan relates cannot be carried out (unless a new plan is subsequently submitted in relation to which a separate environment plan levy will be imposed). NOPSEMA therefore will not incur any costs in relation to ongoing compliance monitoring and enforcement of the activities.

Amounts of environment plan levy are paid into the Consolidated Revenue Fund, and subsequently paid by the Commonwealth to NOPSEMA. While NOPSEMA is able to remit part of an amount of an environment plan levy that has not yet been paid, only the Commonwealth can refund levy amounts that have already been paid.

Subsection (3) provides that, if NOPSEMA refuses to accept an environment plan or proposed revision under regulation 10 of the Environment Regulations:

- NOPSEMA must remit each instalment of the total compliance amount for the submission that has not yet been paid, and
- the Commonwealth must refund each instalment of the total compliance amount for the submission that has already been paid (if any).

It is an offence for a person to undertake an activity without an accepted environment plan in force for the activity. If NOPSEMA refuses to accept an environment plan, the activities to which the plan relates cannot be carried out (unless a new plan is subsequently submitted in relation to which a separate environment plan levy will be imposed). NOPSEMA therefore will not incur any costs in relation to ongoing compliance monitoring and enforcement of the activities.

If a proposed revision is not accepted, the provisions of the environment plan in force for the activity existing immediately before the proposed revision was submitted remain in force as if the revision had not been proposed. Any unpaid instalments of compliance amount in

relation to the activity or activities to which that plan relates will continue to become due and payable in accordance with section 59D.

Subsection (4) provides that, if NOPSEMA accepts a proposed revision of an environment plan under regulation 10 of the Environment Regulations and, at the time of acceptance, one or more instalments of the total compliance amount applicable to the previous plan has not yet been paid, NOPSEMA is required to remit the instalment or instalments.

The intention of this provision is to ensure that a person is not required to pay instalments of the total compliance amount applicable to an activity to which an environment plan relates where that plan has been superseded by a revised plan, and therefore be charged twice for the remaining years of the superseded plan. This is because, unless remitted, these instalments would otherwise continue to become due and payable under section 59D in respect of the superseded plan which is no longer in force, but instalments of compliance amount would also become due and payable in respect of the revised plan in force.

Division 3—Environment plan levy—State/Territory titles

Section 59G – Amount of levy

This section sets out how the environment plan levy is calculated for submissions of environment plans or proposed revisions of environment plan that relate to activities in designated coastal waters, for the purposes of subsection 10G(4) of the Levies Act.

Subsection (1) provides that the amount of environment plan levy is the sum of the total activity amount (defined in subsection (2)) and the total compliance amount (defined in subsection (3)) for the submission. The purpose of the activity amount is to recover the costs associated with NOPSEMA's assessing environment plans and proposed revisions of environment plans. The purpose of the compliance amount is to recover the ongoing costs associated with NOPSEMA's carrying out compliance monitoring and enforcement in relation to the activity or activities carried out under the plan, and this amount is therefore paid in annual instalments (see section 59H).

Subsection (2) provides that the ***total activity amount*** for the submission is the sum of the activity amounts for all of the activities to which the plan or revised plan relates. Subsection (4) sets out the manner of working out the activity amounts for activities. Subsection (4) provides that the ***activity amount*** for an activity (specified in column 1 in the table in section 59B) is worked out by:

- multiplying the activity rating (specified in column 2 in the table in section 59B) for the activity by $4,800; and

- if the activity is not a ***survey activity*** (see the definition of this term in section 4 of the Levies Regulations) and is not carried out for the purposes of complying with a State/Territory remedial direction, multiplying the result of that amount by the number of State/Territory titles that authorise the activity.

If an activity is a survey activity, the activity amount for the activity is essentially multiplied by 1, regardless of the number of titles that authorise the activity.

If an activity is carried out for the purposes of complying with a State/Territory remedial direction, it may not be the case that the activity is carried out by a current titleholder under the authority of a title. The activity amount for an activity carried out for the purposes of complying with a State/Territory remedial direction will therefore be the activity rating multiplied by $4,800.

Subsection (3) provides that the ***total compliance amount*** for the submission is the sum of the compliance amounts for all of the activities to which the plan or revised plan relates. Subsection (5) sets out the manner of working out the compliance amounts for activities. Subsection (5) provides that the ***compliance amount*** for an activity (specified in column 1 in the table in section 59B) to which the plan or revised plan relates is worked out by:

- multiplying the compliance rating (specified in column 3 in the table in section 59B) for the activity by $4,800; and

- multiplying the resulting amount by the lesser of either the expected duration of the activity as specified in the plan or revised plan (expressed in whole years and rounding part years up to the next whole year) or 5; and

- if the activity is not a ***survey activity*** (see the definition of this term in section 4 of the Levies Regulations) and is not carried out for the purposes of complying with a State/Territory remedial direction, multiplying the resulting amount by the number of State/Territory titles that authorise the activity.

For the compliance amount applicable to an activity, the maximum number of 5 in relation to the expected duration of an activity reflects that an environment plan is in force for a maximum of five years before a person is required to submit a proposed revision of the plan to NOPSEMA.

If an activity is a survey activity, the compliance amount for the activity is essentially multiplied by 1, regardless of the number of titles that authorise the activity.

If an activity is carried out for the purposes of complying with a remedial direction, it may not be the case that the activity is carried out by a current titleholder under the authority of a title. The compliance amount for an activity carried out for the purposes of complying with a remedial direction will therefore be the compliance rating multiplied by $4,800, with the resulting amount multiplied by the lesser of the expected duration of the activity or 5.

Section 59H – When levy becomes due and payable

This section sets out when environment plan levy imposed on the submission of an environment plan or proposed revision becomes due and payable, for the purposes of subsection 688C(1) of the OPGGS Act.

Under subsection (2), the total activity amount (see subsection 59G(2)) for the submission of an environment plan, or a proposed revision of an environment plan, becomes due and payable by the end of the period of 30 days after the day the environment plan, or proposed revision, is submitted to NOPSEMA.

Under subsection (3), the total compliance amount (see subsection 59G(3)) for the submission becomes due and payable in annual instalments during the period that the environment plan (or revised plan) is in force. Subsection (4) provides that the first instalment becomes due and payable by the end of the period of 30 days after the day the plan or proposed revision is submitted. Subsection (5) provides that each subsequent instalment of the total compliance amount becomes due and payable at the beginning of each calendar year (that is, on 1 January) after the year the environment plan or proposed revision is submitted.

Section 59I – Remittal or refund of levy

This section, for the purposes of subsection 688C(1A) of the OPGGS Act, sets out the circumstances under which a person is entitled to a remittal or refund of instalments of the compliance amount of an environment plan levy. There is no provision for refund or remittal of the activity amount, as this amount relates to the costs NOPSEMA would have incurred in assessing an environment plan or proposed revision of an environment plan.

Subsection (2) provides that if a person withdraws a submitted environment plan, under a provision in a law of a State or Territory that substantially corresponds to subregulation 11AA(1) of the Environment Regulations, before NOPSEMA makes a decision to accept or refuse to accept the plan, the Commonwealth is required to refund each instalment of the total compliance amount that has already been paid (if any), and NOPSEMA is required to remit each instalment of the total compliance amount that has not yet been paid. In effect, the person is only required to pay the activity amount.

It is an offence for a person to undertake an activity without an accepted environment plan in force for the activity. If a submitted environment plan is withdrawn before NOPSEMA makes a decision to accept or refuse to accept the plan, the activities to which the plan relates cannot be carried out (unless a new plan is subsequently submitted in relation to which a separate environment plan levy will be imposed). NOPSEMA therefore will not incur any costs in relation to ongoing compliance monitoring and enforcement of the activities.

Amounts of environment plan levy are paid into the Consolidated Revenue Fund, and subsequently paid by the Commonwealth to NOPSEMA. While NOPSEMA is able to remit part of an amount of an environment plan levy that has not yet been paid, only the Commonwealth can refund levy amounts that have already been paid.

Subsection (3) provides for a refund or remittal of instalments of the compliance amount if NOPSEMA refuses to accept an environment plan, or a proposed revision of an environment plan, under a provision of a State or Territory law that substantially corresponds to

regulation 10 of the Environment Regulations. In these circumstances, the Commonwealth is required to refund each instalment of the total compliance amount that has been paid and NOPSEMA is required to remit each instalment of the total compliance amount that has not yet been paid.

It is an offence for a person to undertake an activity without an accepted environment plan in force for the activity. If NOPSEMA refuses to accept an environment plan, the activities to which the plan relates cannot be carried out (unless a new plan is subsequently submitted in relation to which a separate environment plan levy will be imposed). NOPSEMA therefore will not incur any costs in relation to ongoing compliance monitoring and enforcement of the activities.

If a proposed revision is not accepted, the provisions of the environment plan in force for the activity existing immediately before the proposed revision was submitted remain in force as if the revision had not been proposed. Any unpaid instalments of compliance amount in relation to the activity or activities to which that plan relates will continue to become due and payable in accordance with section 59H.

Subsection (4) provides if NOPSEMA accepts a proposed revision of an environment plan under a provision of a law of a State or Territory that substantially corresponds to regulation 10 of the Environment Regulations and, at the time of acceptance, one or more instalments of the total compliance amount applicable to the previous plan has not yet been paid, NOPSEMA is required to remit the instalment or instalments.

The intention of this provision is to ensure that a person is not required to pay instalments of the total compliance amount applicable to an activity or activities to which the plan relates where that plan has been superseded by a revised plan, and therefore be charged twice for the remaining years of the superseded plan. This is because, unless remitted, these instalments would otherwise continue to become due and payable under section 59H in respect of the superseded plan which is no longer in force, but instalments of compliance amount would also become due and payable in respect of the revised plan in force.

Part 9—NOPSEMA

Section 60 – Fee for assessing safety case

This section provides that, for the purposes of section 685 of the OPGGS Act, a fee is payable to NOPSEMA by the operator of a facility that will be or is being constructed outside of NOPSEMA waters, and will be installed and operated in either Commonwealth waters or the designated coastal waters of a State or the Northern Territory. ***NOPSEMA waters*** is defined in section 4 of the Levies Regulations as having the same meaning as in Part 6.9 of the OPGGS Act. In Part 6.9 of that Act, section 643 defines ***NOPSEMA waters*** as meaning Commonwealth waters and the designated coastal waters of each State and the

Northern Territory. ***Commonwealth waters*** and ***designated coastal waters*** are defined in the Levies Act.

Subsection (1) provides that a fee is payable to NOPSEMA by the facility operator if NOPSEMA assesses a safety case for the facility submitted under regulation 2.24 of the Safety Regulations, or the applicable State or Territory safety law that substantially corresponds to that regulation. See the discussion regarding the definition of ***applicable State or Territory safety law*** at the notes on the definition of ***facility*** in section 4.

Neither the OPGGS Act nor the Safety Regulations require a safety case for a facility that will be or is being constructed outside of NOPSEMA waters, but will be installed and operated in NOPSEMA waters, to be assessed by NOPSEMA at this stage in the life of a facility (that is, prior to the relocation of the facility to NOPSEMA waters). However, the operator of such a facility may, for commercial reasons, wish for a safety case for the facility to be assessed by NOPSEMA. For example, a company that is planning to use new technology in a new project may wish to engage with NOPSEMA from the beginning of the facility design process to begin addressing the safety regulation approval processes at an earlier stage.

Therefore, the purpose of this provision is to enable NOPSEMA to recover its costs for assessment of the safety case. Normally there is no application fee for the assessment of a safety case, as the costs are recovered by the safety case levy imposed by the Levies Act. This section does not change that situation as far as ordinary safety cases are concerned, including where the facility is constructed outside NOPSEMA waters.

Subsection (2) provides that the amount or rate of the fee is to be determined by the CEO of NOPSEMA, but it must not exceed the total of the expenses incurred by NOPSEMA for the purposes of assessing the safety case. Once the safety case assessment process reaches the point where it is much the same as an ordinary safety case assessment, NOPSEMA will cease charging the fee for service.

Subsection (3) provides that the fee is payable at the time or times agreed in writing between the CEO of NOPSEMA and the operator of the facility.

Section 61 – Review of cost-recovery arrangements—periodic reviews

Subsection (1) requires the CEO of NOPSEMA to conduct periodic reviews of NOPSEMA's cost recovery arrangements in relation to its operations. Subsection (2) provides that a periodic review must include a comparison of the costs and expenses incurred by NOPSEMA in undertaking its regulatory activities during the review period against the fees and levies collected by NOPSEMA during that period.

The purpose of periodic reviews is to ensure that the fees and levies collected are adequate for the funding of NOPSEMA's regulatory activities and can assist to determine whether the amounts of fees and levies need to be adjusted in future to ensure adequate cost recovery.

Section 62 – Review of cost-recovery arrangements—financial report

Subsections (1) and (2) require that the CEO of NOPSEMA must prepare a financial report assessing the cost-effectiveness of NOPSEMA's operations in respect of each financial year, and the report is to be audited by an independent auditor.

Subsection (3) provides that the CEO of NOPSEMA must give a copy of the report, and the auditor's certification, to the following persons at least one month before the meeting required under section 63 (see notes on that section below):

- the Australian Petroleum Production & Exploration Association Limited, which is the peak body for the offshore petroleum industry;
- each operator of a facility, and each licensee of a pipeline licence, in relation to which levy has been due and payable in accordance with the Levies Regulations during the financial year;
- each registered holder of a Commonwealth title, or a holder of a State/Territory title, liable to pay levy in accordance with the Levies Regulations during the financial year;
- each person subject to a remedial direction or a State/Territory remedial direction liable to pay levy in accordance with the Levies Regulations during the financial year; and
- any other person to whom the CEO of NOPSEMA believes it would be appropriate to give the report.

The note under subsection (3) advises that these requirements are in addition to the requirements provided for in Division 4 of Part 2-3 of the *Public Governance, Performance and Accountability Act 2013*, which deals with financial reporting and auditing for Commonwealth entities.

This section ensures transparency for levy payers, provides assurance that NOPSEMA's regulatory operations are undertaken in a cost-effective manner, and ensures that the amount of fees and levies collected are appropriate for NOPSEMA to perform its functions and exercise its powers.

Section 63 – Meetings about operations of NOPSEMA

This section requires the CEO of NOPSEMA to meet with the offshore petroleum and offshore greenhouse gas storage industries each year to discuss the cost-effectiveness of NOPEMA's operations. At the meeting, the CEO must present the following:

- the costs of, and budget projections for, NOPSEMA's operations;
- NOPSEMA's operating budget for the following year; and

- a cost-effectiveness assessment based on the most recent periodic review conducted under section 61 and the financial report prepared under section 62 for the preceding financial year.

This section ensures transparency for levy payers, provides assurance that NOPSEMA's regulatory operations are undertaken in a cost-effective manner, and ensures that the amount of fees and levies collected are appropriate for NOPSEMA to perform its functions and exercise its powers.

Section 64 – NOPSEMA to make and keep records of costs and expenses incurred in conducting compliance investigations and inspections

This section requires NOPSEMA to make and maintain records of its costs and expenses in relation to the conduct of:

- a compliance investigation or inspection in respect of a notifiable accident or occurrence on which safety investigation levy is imposed (see Part 2 of the Levies Regulations);

- a compliance investigation or inspection on which well investigation levy is imposed (see Part 4 of the Levies Regulations).

The records must include all costs and expenses incurred in relation to the conduct of the compliance investigation or inspection, both prior to and after reaching the $30,000 threshold.

NOPSEMA is required to keep the records for at least seven years after the day the investigation or inspection is taken to have ceased (see column 2 in the table in this section; see also subsections 11(4), 18(4), 40(3) and 46(3) for when a NOPSEMA inspector is taken to have ceased the conduct of an investigation or inspection).

NOPSEMA is also required to make the records available if requested by the operator of the facility in respect of which the notifiable accident or occurrence happened (in relation to safety investigation levy) or by the liable holder for the well investigation levy (in relation to well investigation levy) (see column 3 in the table in this section). If requested, NOPSEMA is required to make the record available to the operator or liable holder for inspection at any time during business hours and give a copy of the record to the person.

Part 10—Application, saving and transitional provisions

Division 1—Provisions relating to the commencement of this instrument

Section 65 – Definitions for Division

This section provides for a definition of the term ***old instrument***, which is used in this Division in relation to the commencement of the Levies Regulations, as meaning the 2004 Levies Regulations as in force immediately before 1 January 2023 (i.e. the commencement date of the Levies Regulations).

Section 66 – Levies and fees payable under the old instrument

This section provides for how levies imposed before 1 January 2023, or in respect of a period that starts before 1 January 2023, and fees payable for the assessment of a safety case that is submitted before 1 January 2023 should be treated on and after the commencement of the Levies Regulations.

The 2004 Levies Regulations will continue to apply to those levies and fees as if the repeal of those Regulations by the *Offshore Petroleum and Greenhouse Gas Storage Legislation (Repeal and Other Measures) Regulations 2022* had not happened, and the 2004 Levies Regulations were still in force. This ensures that the Levies Regulations will not have retrospective effect.

As there is no substantive policy change between the Levies Regulations and the 2004 Levies Regulations there will be no change in effect for administration of the levies and fees. Levy amounts updated in accordance with NOPSEMA's approved CRIS will only apply on and after 1 January 2023.

Section 67 – Amounts under the old instrument for remitting or refunding safety case levy

This section provides that amounts worked out for the purposes of calculating remittals and refunds of safety case levy under the 2004 Levies Regulations can be taken into account when determining whether an amount of safety case levy should not be remitted or refunded under subsections 33(7) and (9) of the Levies Regulations.

When determining whether an amount of safety case levy should not be remitted or refunded for a quarter in a year, both the amount remitted or refunded for the four consecutive quarters ending at the relevant quarter, and the total of the quarterly amounts for the three consecutive quarters ending immediately before the relevant quarter, are to be taken into account. This provision has been included because subsections 33(7) and (9) of the Levies Regulations will, for the first three quarters of 2023, need to refer to amounts calculated under the equivalent provision of the 2004 Levies Regulations for the last three quarters of 2022.

Section 68 – Keeping old records of costs and expenses incurred in conducting compliance investigations and inspections

This section provides that records of costs and expenses reasonably incurred by NOPSEMA in respect of a compliance investigation or inspection that were made under the 2004 Levies Regulations must continue to be held under section 64 of the Levies Regulations. The same period for retaining the records will apply, that is at least 7 years after the day the compliance investigation or inspection is taken to have ceased.

This section also ensures that the operator of the facility in respect of which a notifiable accident or occurrence happened (for safety investigation levy) and the liable holder (for well investigation levy) can continue to request access to records made by NOPSEMA under the 2004 Levies Regulations.

Attachment B

Statement of Compatibility with Human Rights

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

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2022

This Instrument 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 Legislative Instrument

The *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2022* (the Regulations) is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations provide for matters relating to levies imposed by the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* in relation to offshore petroleum and greenhouse gas activities, facilities or titles, including the amounts of levies and when levies are due and payable. The levies are collected by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and the National Offshore Petroleum Titles Administrator to fund their operations on a cost-recovery basis.

The purpose of the Regulations is to remake the sunsetting *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Regulations 2004* (the 2004 Levies Regulations) in substantially the same form, with minor amendments to ensure consistency with current drafting practices, simplify language, update references where necessary and remove provisions that are superfluous or redundant. The 2004 Levies Regulations sunset on 1 April 2024.

The remake also includes increases to the amounts of safety case levies, annual well levies, well activity levies and environment plan levies, and sets amounts for greenhouse gas titles and activities commensurate with the amounts imposed in relation to petroleum. The levy amount increases implement the outcomes of the 2022 review of NOPSEMA's Cost Recovery Implementation Statement, and ensures that the cost recovery arrangements are adequate to enable them to continue to effectively discharge their regulatory functions.

Human rights implications

The Regulations does not engage any of the applicable rights or freedoms.

Conclusion

The Regulations are compatible with human rights as they do not raise any human rights issues.

The Hon Madeleine King MP

Minister for Resources