Mineral and Energy Resources (Common Provisions) Bill 2014

Explanatory Notes

Short title

The short title of the Bill is the *Mineral and Energy Resources (Common Provisions) Bill 2014*.

Policy objectives and the reasons for them

The Bill contributes to the Queensland Government's goal of developing a four pillar economy by delivering a number of vital reforms that will support economic development in Queensland. This will be achieved by establishing greater certainty through the reduction of the complexity, volume and duplication contained within existing regulations for the resources industry.

As part of the Modernising Queensland's Resources Acts Program (MQRA Program), this Bill is a major component of delivering the government's commitment to support the resources sector.

Queensland's current legislative framework for the resources sector consists of five separate Acts covering the minerals and coal, petroleum and gas, geothermal and greenhouse gas storage sectors. It is some of the most complex and lengthy resources legislation in Australia. The duplicate processes and variances in the regulatory frameworks which fundamentally achieve the same administrative outcome result in unnecessary regulatory costs to the resources sector, landholders and government.

This Bill implements the first stage of the MQRA Program by creating a common provisions Act into which harmonised legislation from the *Mineral Resources Act 1989*, *Petroleum and Gas (Production and Safety) Act 2004*, *Petroleum Act 1923*, *Geothermal Energy Act 2010* and the *Greenhouse Gas Storage Act 2009* will be progressively transferred.

The major elements harmonised in this Bill include provisions relating to dealings, caveats and associated agreements; private and public land access; providing a consistent restricted land framework; and other minor provisions. These changes are anticipated to facilitate faster and more efficient delivery of services for industry and enhance industry and wider community understanding of the regulatory framework.

In addition to the first stage of the MQRA Program, the Bill also implements a number of government priorities. It honours the government's Six Month Action Plan January–June

2014 commitment to introduce legislation for the management of overlapping coal and petroleum (coal seam gas (CSG)) authorities in Queensland to supercharge the State's economy. These industry developed reforms provide a clear framework to minimise planning uncertainty and project delays which will drive investor, industry and community confidence in the resources sector.

The Bill also implements recommendations from the Land Access Implementation Committee Report, which advised on the policy development necessary to support implementation of the government's Six Point Action Plan to improve the private land access framework. Resource companies and landholders will benefit from reduced red tape where long term positive relationships already exist, and by allowing the Land Court to examine the conduct of the parties during the negotiation process to facilitate sustainable long term outcomes for landholders and industry. Prospective landowners will also be able to search for the existence of conduct and compensation agreements on property titles, allowing easier discovery of these agreements prior to the sale of land.

The amendments in the Bill will further deliver on the commitment in the Six Month Action Plan January–June 2013 to reduce red tape for small scale alluvial mining and the wider mining sector.

The Bill has the following major policy objectives which support and implement a number of commitments made by the Queensland Government:

1. Modernise and harmonise Queensland's resources legislation through the Modernising Queensland's Resources Acts Program (**MQRA Program**)
2. Give effect to the recommendations of the Land Access Implementation Committee requiring legislative amendment to improve the land access framework relating to private land (**Land Access – Private Land**)
3. Implement a consistent restricted land framework across all resource sectors (**Land Access – Restricted Land**)
4. Establish a new overlapping tenure framework for Queensland's coal and CSG industries (**Overlapping Tenure Framework – Coal and Petroleum (CSG)**)
5. Repeal the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* (**Repeal of Coal Super Act**)
6. Reduce the regulatory burden for small scale alluvial miners specifically, and the mining sector generally (**Mining Applications**)
7. Remove redundant requirements imposed on holders of a mining tenement, an authority to prospect or petroleum lease (**Amendments to Petroleum and Mineral Legislation**)
8. Enable greater use of CSG produced as a by-product of coal mining (**Incidental CSG**)
9. Amend the *Mount Isa Mines Limited Agreement Act 1985* to reflect the transition of its environmental provisions to the *Environmental Protection Act 1994* and restructure reporting requirements (**Mount Isa Mines Limited Agreement Act 1985**)
10. Support government and industry action to deal with uncontrolled gas emissions from legacy boreholes (**Uncontrolled Gas Emissions from Legacy Boreholes**).

MQRA Program

The MQRA Program will contribute to the State's economic development through improvements to the mineral and energy legislation to foster greater certainty and investor confidence for the industry operating within Queensland. The MQRA Program will deliver on this commitment by reducing legislative complexity through a single, harmonised system of tenures administration, as well as delivering a modern and flexible regulatory framework that will be able to accommodate future innovations within the industry.

In late 2012, the Department of Natural Resources and Mines (the department) commenced targeted consultation on the proposal to modernise the State's resources legislation into a single common resources Act. Key stakeholders supported the government's proposal to undertake a multi-year reform process, conditional upon satisfying three fundamental program principles: phased and engaged reform; the retention of existing legislative principles; and no disadvantage unless agreed.

The changes progressed through this Bill have been developed adhering to these principles, which is reflected in industry's on-going support and largely positive responses at each stage of consultation. Further, this Bill builds on the significant improvements to the State's resources administration that have been established by the Streamlining Approvals Project and the delivery of online services through MyMinesOnline.

Currently, Queensland's resource authority administration framework is provided for across five separate Acts—the *Mineral Resources Act 1989, Petroleum and Gas (Production and Safety) Act 2004, Petroleum Act 1923, Geothermal Energy Act 2010* and the *Greenhouse Gas Storage Act 2009* (Resource Acts). As a result, the framework is highly complex with provisions duplicated across each of the Resource Acts. In addition to the regulatory burden and compliance costs on government and industry that the existing framework imposes, Queensland's competitiveness as an investment destination has also been affected, with potential investors considering investments in Australian States and Territories that have less complex frameworks.

With the potential impact that a loss of investment will have on Queensland's economy, the MQRA Program, through this Bill, is establishing the groundwork for the reforms needed to relieve some of this regulatory burden and re-establish industry confidence.

By progressively combining the five Resource Acts into a single, common resources Act, the MQRA Program will also deliver benefits to government and the community. More streamlined processes will enable government resources to be focussed on high value administration like application assessment. This will result in faster processing times and lower associated costs for industry.

The changes are also likely to facilitate a more flexible public-sector workforce with an integrated skill base across resource types that will allow greater organisational agility within the department to respond to industry needs and changing circumstances.

Members of the community who regularly deal with resource companies and resource authority holders will also benefit from these reforms. Reducing the complexity of the framework will enable owners, occupiers and public land managers to deal with resource companies with a better understanding of their rights and have a greater say in whether resource activities can be undertaken close to their primary residence and certain business infrastructure.

Stage one of the MQRA Program will be implemented through this Bill, creating a common provisions Act that will coexist alongside the existing Resource Acts. The common provisions Act will be used as a 'transitional' Act to simplify the migration process and avoid a large and complicated final amending Bill. Future Bills will continue this process, while incorporating the reforms necessary to support the objectives of the Program and support the development of Queensland's economy. Ultimately, as the completed common resources Act comes into effect, the existing Resource Acts will be repealed.

Land Access – Private Land

Queensland's land access framework provides the statutory and policy framework for accessing private land to undertake resource activities and to compensate for associated impacts.

A review of the Queensland Government's private land access framework undertaken by an independent panel of agricultural and resource industry experts was finalised early in 2012. The purpose of the review was to assess the effectiveness of the framework and make recommendations on improvements that could be made. The review panel made several recommendations to address issues that were identified during stakeholder consultation. The government sought stakeholder feedback on the recommendations, which later informed the government's response to the recommendations. The focus of the government's response was a Six Point Action Plan to improve the framework.

In February 2013, the government established the Land Access Implementation Committee to advise and oversee the policy development necessary to support implementation of the government's Six Point Action Plan. Legislative amendments were recommended for three of the six actions:

- **Action 1(b)** — Legislative change is necessary to expand the jurisdiction of the Land Court to allow the Court to make determinations on matters relating to conduct issues and provide the Land Court with jurisdiction to examine the behaviours of parties during the negotiation of a conduct and compensation agreement.

  The review panel noted there was an identified jurisdictional gap in the role of the Land Court in resolving land access matters. During the consultation process, many landholders indicated they were generally concerned about the conduct of resource companies on their property as it relates to their business, rather than just the issue of compensation. Concerns were raised over the inability of the Land Court to examine the behaviours of parties in relation to the negotiation of a conduct and compensation agreement.

- **Action 3** — Legislative change is necessary to require the existence of an executed conduct and compensation agreement to be noted on the relevant property title by the Registrar of Titles (including when parties elect to opt out of negotiating a formal conduct and compensation agreement). The resource authority holder should be responsible for the costs associated with registering the conduct and compensation agreement, and removing the conduct and compensation agreement from the property title when the agreement ceases to have effect.

  The existence and terms of a conduct and compensation agreement can be difficult to determine through standard due diligence investigations as there is no requirement for them to be noted on the relevant property title, despite their binding nature on future owners. This makes it problematic for a prospective purchaser of a property to be aware that a conduct and compensation agreement exists and understand the terms and conditions of the agreement that may apply to them as a future owner.

- **Action 4** — A policy allowing two willing parties, at the election of the landholder, to opt out of the requirement to negotiate a conduct and compensation agreement should be introduced, provided the conditions of the Land Access Code still apply as a minimum. The Committee recommended key criteria that should be met for parties to exercise the option to opt out of the conduct and compensation agreement requirement, to ensure the option is not able to be used as a regulatory shortcut but to provide flexibility where established relationships already exist.

  In some arrangements, stakeholders had developed historical relationships prior to the land access framework being introduced, and hence the conduct and compensation agreement process was unnecessary where there was already a history of many years of continued positive co-operation and interaction.

The remaining actions contained in the Land Access Implementation Committee Report do not require legislative amendments and will be implemented separately through administrative means.

Amendments are also required to the *Mineral Resources Act 1989* to restore the ability of the State to enable third parties to perform geological investigations on its behalf. An amendment by the *Mining and Other Legislation Amendment Act 2013* inadvertently removed this power, which the department requires to continue increasing the geoscience and resource information available to the government and industry.

Land Access – Restricted Land

The restricted land (or equivalent) provisions under the *Mineral Resources Act 1989* and the *Geothermal Energy Act 2010* afford protections to landholders in relation to resource activities proposed to be undertaken adjacent to residences and other infrastructure. These protections extend to owners and occupiers of land within a resource authority area,

neighbouring residences off-tenure, and infrastructure that is located within the boundary of the restricted land.

Currently, restricted land requirements fall within two categories, depending on the type of infrastructure that is likely to be impacted.

Under the *Mineral Resources Act 1989,* restricted land is either 100 metres from particular permanent buildings (such as a residence) or 50 metres from particular features or infrastructure, such as a bore. The authorised activity can be undertaken within the restricted land only if the landowner has given written consent for the activity to be undertaken.

Under the *Geothermal Energy Act 2010*, an authorised activity for a geothermal tenure may only be carried out within 300 metres of particular permanent buildings (such as a residence) or within 50 metres of a particular feature or infrastructure. The authorised activity can be undertaken within these distances only if the owner or occupier has given written consent for the activity to be undertaken.

In addition to the restricted land provisions in the *Mineral Resources Act 1989* and the *Geothermal Energy Act 2010*, each of the Resource Acts also contain a land access framework for post-grant entry by resource authority holders and for compensation to owners and occupiers of land within a resource authority area. This includes a requirement for a resource authority holder to negotiate a conduct and compensation agreement with an owner and occupier of land, where any resource activity is proposed to be undertaken within 600 metres of an occupied residence or another identified building or infrastructure. This requirement applies even for no impact or low impact activities, such as walking or driving on a track.

However, there is no requirement for a resource authority holder to enter into a conduct and compensation agreement with owners and occupiers on neighbouring land, including off-tenure land. Therefore, where a residence is located immediately adjacent to the boundary of a resource authority area and an activity is proposed to be conducted within 600 metres of that residence, there is no obligation to consult with those neighbours, regardless of the nature of the activities or the potential impacts.

The amendments being progressed in this Bill will address the inconsistent application of restricted land by adopting a single restricted land framework for all resource types. The new framework will replace the current requirement for a conduct and compensation agreement to be negotiated for no impact and low impact activities within 600 metres of a residence or school as the framework gives owners and occupiers a greater say in resource activities near their homes.

The simplicity of the new restricted land framework will also benefit the resources industry, by removing the regulatory burden associated with determining which rules apply to a particular resource authority and the individual activities under those authorities.

Overlapping Tenure Framework – Coal and Petroleum (CSG)

The overlapping tenure framework provides a process for managing situations where a resource authority for one resource type (e.g. mining lease) overlaps a resource authority for another resource type (e.g. petroleum lease). The current framework for managing overlapping tenure for coal and petroleum (CSG) is complex and has uncertain requirements for the grant of a production authority including open-ended timeframes. It also gives the first party to be granted their resource authority a ‘first mover’ advantage, enabling that party to ‘lock out’ the second party, by restricting the resource activities the second party can undertake in the overlapping area. Where this may occur, the resources are unlikely to be developed to their full potential, resulting in an economic loss to the State.

In May 2012, the Queensland Resources Council presented the government with a joint industry proposal for a new legislative framework for managing coal and petroleum (CSG) overlapping tenure in Queensland in a paper titled ‘*Maximising Utilisation of Queensland’s Coal and Coal Seam Gas Resources – A New Approach to Overlapping Tenure in Queensland’* (the White Paper). A government-industry steering group and five technical working groups were established to progress the issues presented.

The White Paper proposed implementing a direct path to grant for overlapping production authorities based on the principle that a mining lease holder will have an overriding ‘right of way’ to develop coal deposits within a defined area of sole occupancy.

The White Paper also identified the need for an alternative dispute resolution process and a structure to enable independent expert determination of matters, without having to resort to legal proceedings in the Land Court. Both the coal and CSG industries support the proposal to develop an alternative dispute resolution framework to enable disputes to be resolved in a fast, final and fair manner.

The Bill establishes a new overlapping tenure framework for the coal and CSG sectors that reduces the complexities of the current framework. By establishing more easily understood requirements and relationships between the different resources authorities, industry’s compliance costs will be reduced as will the costs associated with seeking a determination through the courts.

Increased clarity will reduce the risks associated with investing in developments captured by the overlapping tenure framework which will bolster certainty, and has the potential to attract more development of Queensland’s resources and greater investment in Queensland.

Queenslander's will also benefit more broadly from the contributions made to the economy through increased investment in the resources sector and from royalties collected from the optimised realisation of the State’s mineral resources.

Repeal of Coal Super Act

The *Coal and Oil Shale Mine Workers' Superannuation Act 1989* (Coal Super Act) mandates compulsory employer (7.5%) and employee (2.5%) superannuation contributions for Queensland coal and oil shale mine workers into the AUSCOAL Superannuation Fund.

A review of the Coal Super Act was undertaken by the department in response to representations from several coal miners seeking greater choice with regards to their superannuation fund. The review found that the Coal Super Act is largely inconsistent with the *Superannuation Guarantee (Administration) Act 1992* (Cth) which allows employees to choose the superannuation fund into which their employers pay their superannuation contributions. The extent of the consistency with the Commonwealth Act means that the Coal Super Act is considered redundant and unenforceable.

The superannuation framework for coal and oil shale mine workers, established under the Coal Super Act, is also anomalous to all other identified industry sectors and professions. No other industry is subject to similar legislative requirements for compulsory employee superannuation contributions. Under the current national Fair Work system, the requirement for compulsory employee contributions are identified under a relevant Industry Award or other form of work place agreement.

As a result, the Bill provides coal and oil shale mine workers with greater choice with regards to their superannuation investment.

Mining Applications

The government is committed to reducing red tape for the mining industry. The Bill delivers on this commitment by providing a more flexible application process, reduced costs and greater certainty about assessment timeframes. While these amendments were initiated to assist the small scale alluvial mining sector, their implementation under the *Mineral Resources Act 1989* mining lease tenure and *Environmental Protection Act 1994* environmental authority frameworks will also benefit the broader mining sector.

Boundary identification regime

Currently, the boundaries of a proposed mining lease are identified by physically pegging out the proposed tenure area. While a mandatory application requirement, the pegs have also historically acted as an indicator to alert other parties such as landowners and other potential miners that a mining application is being made.

Contemporary identification methods mean that physically marking the area may not be necessary in all cases. Innovations and improvements in geospatial and mapping systems enable accurate identification of an area of land remotely and Global Positioning System (GPS) tools can also be used to easily identify boundaries on site, if needed. The Bill accommodates these technological advancements and allows for future innovations that may affect the way resource authority boundaries are defined.

The removal of these prescriptive pegging requirements enables the framework to be more outcomes focussed, affording greater flexibility for the department and operators to determine the most effective method of defining a resource authority boundary—in terms of clarity and delineation—based on the location, resource activities and concentration of resource authorities in the locale. Once implemented, the changes are expected to provide substantial savings for mining lease and mining claim applicants.

Lease applications during moratorium

The current moratorium provisions enable small scale miners to access land to peg a proposed mining lease area prior to the land again becoming available for other exploration tenures. To implement the policy as originally intended, the *Mineral Resources Act 1989* established restrictions to limit the area that could be applied for under individual applications to a maximum of 50 hectares, with a cumulative maximum area of 300 hectares per miner. The 50 hectare limit on individual applications imposes substantial regulatory burdens and costs on small miners, by requiring multiple applications where they are seeking to apply for the maximum 300 hectare area.

The amendments made by the Bill will provide greater flexibility and autonomy to small scale miners to determine the most appropriate size and area to achieve their operational objectives when applying for a mining lease. While reducing the costs of a resource operator, the changes will also deliver savings for the government by effectively rolling multiple applications into a single application, which will enable government resources to be focussed on other high value administration requirements.

Notification and objections

The current notification and objection process for a mining operation is overly regulated, with a single approach that does not take into account the size and impact of the mining operation and duplicated requirements under the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994*. As a result, smaller operations that are unlikely to have a significant or widespread impact are required to follow the same process as a large-scale operation anticipated to have extensive impacts. For example, a small scale alluvial gold mine complying with standard conditions under their environmental authority that may only directly impact a single landholder is required to go through the same process as a mid-size coal mining operation requiring assessment as a site-specific application environmental authority that will impact several landholders, the local government and the broader community. The process is further duplicated for large scale mining operations with similar notification and objection requirements under the *State Development and Public Works Organisation Act 1971*.

The Bill removes the duplication between these Acts, ensuring that notification and objection requirements are efficient and provide a level of assessment and scrutiny that is proportionate to the proposed development's potential risks. The changes will establish a streamlined approach for assessing mining activities that will reduce the regulatory costs associated with each application and provide a pathway for faster approvals generally and especially for low

risk approvals. These changes have the potential to encourage investment in Queensland, supporting economic development while ensuring that the resources are responsibly managed.

To support the streamlined and less duplicative process, the Bill will also clarify the matters that the Land Court can make determinations on, to ensure that the matters are appropriate to the purpose of the *Mineral Resources Act 1989* and do not duplicate the Court's jurisdiction under the *Environmental Protection Act 1994*. The breadth of the matters the Land Court can currently consider when hearing an objection to a mining lease application is extensive and includes the right to hear objections on environmental matters—a legacy of the era prior to the commencement of the *Environmental Protection Act 1994*—which increases the complexity of the Land Court processes.

Removing the duplication and clarifying the jurisdiction of the Land Court in hearing objections against mining lease applications will ensure the integrity of the Land Court's role is preserved and will assist the Land Court to process and determine matters more efficiently.

Mining lease - Restricted land

Currently, the *Mineral Resources Act 1989* requires that all restricted land be identified when a mining lease application is lodged with the chief executive. Once the application has been accepted, no further changes can be made to the identified restricted land, irrespective of whether the change is to add to, or amend, restricted land. As a result, if there are any inaccuracies in the information provided when the application is lodged, the application will be terminated and has to be re-lodged. There is no discretion in the legislation to enable the application to be amended or continue to be processed even where an otherwise appropriate solution exists to rectify the 'technical' non-compliance.

The Bill provides amendments to address this issue, which will reduce costs for both industry and the government. The amendments will allow an application to proceed to grant, despite any minor and unintended inaccuracies. The improved process will remove delays for the assessment process, while balancing and protecting the interests of the owners and occupiers of the restricted land.

Currently, when a mining lease has been granted, any identified restricted land is excluded from the mining lease, unless the landowner has given written agreement. As a result, the lease area can be scattered with isolated areas of restricted land that do not form part of the mining lease. If the landowner and the mining lease holder enter an agreement post-grant, a separate application must be lodged for each area of restricted land.

The Bill will reduce the costs to industry associated with submitting additional applications over restricted land areas, by granting tenure over the entire area including the restricted land. The interests of owners and occupiers of the restricted land will be protected by the requirement for written consent to enter the restricted land to carry out authorised activities before the tenure holder can conduct activities on that land.

The Bill will also ensure the responsible management of the State's resources by preventing resource sterilisation, which occurs where an economically viable resource deposit is prevented from being developed. The amendments provide a framework to manage restricted land conflicts where co-existence with the resource activity is not possible. The changes are intended to prevent resource sterilisation, while ensuring that the process is not exploited where co-existence can occur and appropriate compensation is provided to affected owners and occupiers of the land prior to grant.

These changes to the restricted land framework reflect the government's commitment to build a four pillar economy. The changes provide greater certainty for industry and encourage investment, by removing unnecessary red tape, reducing the cost of submitting subsequent applications as restricted land is resolved and preventing business and royalty losses associated with resource sterilisation.

These benefits to industry and the government are balanced by the consideration of the State's agriculture and rural communities, by promoting co-existence between these two industries to the fullest extent possible. This approach will ensure that Queensland's resources—both mineral and agricultural—are balanced and responsibly managed to achieve the most appropriate outcome for the State.

Amendments to Petroleum and Mineral Legislation

The *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* provide for the administration of petroleum tenure or authorities that have been granted to a person or company. A petroleum tenure or authority includes an authority to prospect (the petroleum exploration authority), petroleum lease (the petroleum production authority) or a pipeline licence (an authority to construct or operate petroleum pipelines).

The Bill amends the *Petroleum and Gas (Production and Safety) Act 2004, Petroleum Act 1923* and the *Mineral Resources Act 1989* to clarify and improve the operational effectiveness of certain provisions and remove unnecessary regulation and red tape for the resources sector.

Incidental CSG

Currently, where incidental CSG (gas that is extracted during the process of coal mining) cannot be used beneficially for mining within the area of the mining lease, and there is no overlapping petroleum lease (or the holder of an overlapping petroleum authority has rejected the gas), it may be flared or vented.

The objective of the Bill is to provide greater freedom to coal mining companies in their use of incidental CSG to support the viability of coal mines by enabling them to find more efficient uses of the gas and to encourage future investment in the State by providing an environment for industry to develop lower cost coal production.

Mount Isa Mines Limited Agreement Act 1985

The *Mount Isa Mines Limited Agreement Act 1985* (MIMLAA) is a Special Agreement Act (SAA) containing an agreement between Mount Isa Mines Limited (now Glencore) and the State about the operations of Mining Lease 8058. The agreement can only be varied through legislative amendments with the consent of both parties.

In 2006, a review of the various Special Agreement Acts was undertaken, as part of a broader review of natural resources and mines legislation, which identified that the SAA framework did not reflect contemporary approaches to environmental management. A report on the outcomes of the review recommended that the environmental regulation of SAA mines be administratively transferred to the *Environmental Protection Act 1994*.

After extensive consultation by the government with SAA mining companies, amendments to transition the environmental components from the SAAs to the *Environmental Protection Act 1994* were introduced in the *Environmental Protection and Other Legislation Amendment Act 2008*. Under this Amendment Act, Xstrata (the holder of Mining Lease 8058 at that time) had three years to convert its SAA environmental authority to the *Environmental Protection Act 1994*. This conversion was completed in December 2011 which means that Glencore now operate their mining lease under the environmental provisions of the *Environmental Protection Act 1994*.

If amendments are not made to vary the agreement, Glencore will continue to face regulatory duplication and operational uncertainty.

Uncontrolled Gas Emissions from Legacy Boreholes

Boreholes and wells are drilled by resource companies that have been granted tenure to explore for coal, minerals, petroleum and gas. There are strict standards that apply to tenure holders under current resources legislation for constructing and decommissioning wells and bores that they drill. Application of these standards is designed to prevent uncontrolled gas emissions.

Legacy boreholes are boreholes or wells drilled for the purpose of coal, mineral, petroleum or gas exploration or production but not by the current tenement holders or their related bodies corporate (i.e. land has been relinquished or there is no continuity of tenure to the current tenement holder). In some cases, legacy boreholes are on land that is no longer part of a resource tenement. Legacy boreholes may not have been plugged, plugged inadequately or plugged to the standard required at the time of decommissioning which is no longer effective. Legacy boreholes may give rise to uncontrolled gas emissions.

Uncontrolled gas emissions from legacy boreholes present a potential safety risk, particularly if above the lower flammability limit (LFL). The LFL is the lowest concentration level of a gas at which it can ignite. An incident in August 2012 highlighted the potential risk of uncontrolled gas emissions from a legacy coal borehole that was not plugged effectively. The incident occurred in the Darling Downs where gas seepage from a legacy coal borehole

ignited on state-owned land. Industry and government worked together to extinguish the fire and plug the borehole.

While there has not been a borehole incident since 2012, industry and government developed the *'Protocol for managing uncontrolled gas emissions from legacy boreholes'* to address future potential safety risks. The Protocol relies on existing legislative provisions which do not cover all borehole types or tenure situations. Industry raised concerns about whether land access, indemnity and notice of entry exemptions are adequately provided for in current legislation and sought amendments to support any future action they take to deal with borehole incidents.

The amendments in the Bill provide the statutory means for tenure holders and other authorised persons to access and remediate a legacy borehole. Persons authorised by the State will also be indemnified against liability for taking that action where they are not negligent.

Achievement of policy objectives

To achieve the policy objectives, the Bill repeals the *Coal and Oil Shale Mine Workers' Superannuation Act 1989*, and amends the *Aboriginal Cultural Heritage Act 2003, Environmental Protection Act 1994, Geothermal Energy Act 2010, Greenhouse Gas Storage Act 2009, Land Court Act 2000, Mineral Resources Act 1989, Mineral Resources Regulation 2013, Mount Isa Mines Limited Agreement Act 1985*, *Petroleum Act 1923, Petroleum and Gas (Production and Safety) Act 2004*, *Property Law Act 1974, State Development and Public Works Organisation Act 1971,* and the *Torres Strait Islander Cultural Heritage Act 2003.*

MQRA Program

This Bill creates the new common provisions Act for the resources sector as part of stage one of the MQRA Program. Each chapter in the new Act has been reviewed as part of the migration process and appropriate amendments have been made to establish a contemporary framework that is less prescriptive. The amendments also aim to remove any unnecessary regulatory requirements and instil process improvements, where possible.

A key objective of the MQRA Program is to achieve as much legislative consistency across the different resources sectors as possible. The Bill provides for some legislative content to migrate from the existing Resource Acts into the new Act, and subsequently repeals those migrated provisions from the legislation. Minor amendments were required for the migrated provisions in order to achieve consistency across all resource sectors. A number of other miscellaneous amendments which are minor or mechanical in nature have also been made through the Bill to improve consistency in the administration of the provisions.

The major components being migrated from the existing Resource Acts to the new common provisions Act in this Bill include:

- dealings, caveats and associated agreements; and
- land access.

Dealings, caveats and associated agreements

The Bill migrates the dealings, caveats and associated agreements provisions from the five Resource Acts to the new common provisions Act. Dealings (such as transfers of ownership, mortgages and subleases), caveats and associated agreements were largely harmonised by the *Mines Legislation (Streamlining) Amendment Act 2012*, where amendments were made to achieve consistency and facilitate the online lodgement of applications.

The main sections of the Resource Acts that provide for dealings, caveats and associated agreements that are being migrated include:

- Chapter 7, Parts 1 – 4 of the *Mineral Resources Act 1989*;
- Chapter 5, Parts 10, 10A and 10B of the *Petroleum and Gas (Production and Safety) Act 2004*;
- Parts 6N, 6NA and 6NB of the *Petroleum Act 1923*;
- Chapter 6, Parts 11, 11A and 11B of the *Geothermal Energy Act 2010*; and
- Chapter 5, Parts 14, 14A and 14B of the *Greenhouse Gas Storage Act 2009*.

Other minor MQRA Program amendments

Alternative State Provisions

Alternative State Provisions are native title processes for progressing applications for exploration and mining tenements under the *Mineral Resources Act 1989* lodged between 18 September 2000 and 31 March 2003 inclusive; and before 18 September 2000, but only if notified for commencement under the Alternative State Provisions. The Alternative State Provisions replaced the right to negotiate provisions of the Commonwealth *Native Title Act 1993*.

Due to the specificity of when the Alternative State Provisions apply, there are less than five mining lease applications which remain subject to these provisions. The Bill removes the Alternative State Provisions and replaces them with a short savings provision which retains the applicability of the Alternative State Provisions for the remaining mining lease applications to which they apply. Once the remaining applications progress or expire, the savings provision would then be removed.

Registers

Each of the five Resource Acts contain provisions on the keeping of a register, access to a register, arrangements with other departments for copies of the register, supply of statistical

data from the register and correction of the register. There is also a separate register for each resource type, for example, a Petroleum Register or a Geothermal Register.

The Bill consolidates these provisions in the new common provisions Act, which deals with registers across all resource types. This amendment will better reflect current practice where records are kept in one electronic register.

The Bill also consolidates other provisions dealing with information to be recorded on the register and maintenance of the register.

Practice manuals

Practice manuals contain information about resource authority administration and provide guidance on the relevant requirements and information when dealing with the department. Each of the five Resource Acts contains identical sections regarding the keeping of, and contents of, practice manuals. The Bill repeals these provisions from each of the Resource Acts and consolidates the provisions in the new common provisions Act.

Land Access

Land access provisions for public and private land have been migrated to the new common provisions Act as part of the MQRA Program. There are subsets of these provisions that deal with various access requirements and landholders, for example: public land, private land and notifiable road use.

Entry to public land

Entry to public land is currently administered under the following parts of the Resource Acts:

- Chapter 5, Part 3 of the *Petroleum and Gas (Production and Safety) Act 2004*;
- Part 6I of the *Petroleum Act 1923*;
- Chapter 6, Part 6 of the *Geothermal Energy Act 2010*;
- Chapter 5, Part 8 of the *Greenhouse Gas Storage Act 2009*; and
- Schedule 1 of the *Mineral Resources Act 1989*.

The Resource Acts provide different frameworks and requirements for resource authority holders to undertake activities on public land. Public land is land that is other than private land; or land subject to a mineral, coal, petroleum, geothermal or greenhouse gas tenure; or an occupation right under the *Land Title Act 1994*. It is land that is administered by a road authority, a local government or a State Government Agency that has responsibility for the Act under which the land is administered.

The Bill provides a harmonised framework for entry to public land for resource authority holders by removing any legislative inconsistencies between the Resource Acts and transfers the common public land access provisions into the common provisions Act.

The Bill makes no significant changes to the public land access provisions but has made improvements to processes to harmonise the provisions and provide greater clarity and certainty to the process. Of the five Resource Acts, four have a common framework for how a resource authority holder may gain entry to public land differing from the entry to public land framework in the *Mineral Resources Act 1989*.

The statutory requirement to provide an entry notice to enter public land prior to conducting resource activities is one that applies to the majority of all resource authorities (with the exception of mining claims and mining leases granted under the *Mineral Resources Act 1989*). The amendments in the Bill do not interfere with the need to provide an entry notice but rather seek to create the same framework for all resource authorities (except mining claims and mining leases under the *Mineral Resources Act 1989*) in relation to:

- who receives the entry notice;
- when the entry notice must be provided; and
- the rights of the public land authority.

The public land access framework does not apply to mining claims and mining leases under the *Mineral Resources Act 1989* as these matters must be determined prior to the grant of the tenure.

Also, the amendments do not deal with entry notice requirements for prospecting permits under the *Mineral Resources Act 1989.*

Common entry notice period for public land

The *Mineral Resources Act 1989* provides that a person must not enter public land in an exploration tenement area to carry out any authorised activity unless each owner and occupier is given an entry notice at least 10 business days before entry. Currently, impacts on certain public land are managed through the separate ‘reserve’ provisions, where the consent of the reserve owner is required prior to entering the reserve land.

Under all other Resource Acts, the resource authority holder is required to give an entry notice to the public land authority at least 30 business days before first entry, and the public land authority can condition the entry and subsequent entries.

The amendments in the Bill apply the 30 business day notification period consistently across all resource authorities. This will ensure that the needs of the community and other businesses that use public land can be appropriately considered, and the impacts on those businesses minimised, by allowing the public land authority to place reasonable and relevant conditions on the entry.

Provision of entry notice to occupier of public land

The *Mineral Resources Act 1989* currently provides that a person must not enter public land in an exploration tenement area unless the tenement holder has given each owner and

occupier of public land written notice of the entry. This is inconsistent with the *Petroleum and Gas (Production and Safety) Act 2004*, *Petroleum Act 1923*, *Geothermal Energy Act 2010* and the *Greenhouse Gas Storage Act 2009* which only require the notice to be given to the public land authority. Resource authority holders under the *Mineral Resources Act 1989* have found it onerous to determine the occupiers of public land, especially where they are not registered on title.

The Bill reduces the regulatory burden for the resources sector by applying the *Petroleum and Gas (Production and Safety) Act 2004* framework consistently across the Resource Acts such that an entry notice must only be given to the public land authority. The public land authority retains the ability to consult with and consider the interests of occupiers and impose appropriate conditions on the entry if it is deemed necessary. Importantly, this change does not impact on the requirement to compensate owners and occupiers for any impacts as a result of the entry.

Provision of entry notice to owner of public land

Currently under the *Mineral Resources Act 1989*, a resource authority holder must determine who the owner and occupier are of the relevant public land, as in different circumstances it may be the Minister, a trustee or the chief executive. To further streamline the process, the Bill provides that any notice of entry for public land can be made to the defined public land authority (such as a trustee or the chief executive) and further for State agencies the changes provide uniformly, for the chief executive to receive the notice, rather than the relevant Minister.

This approach is more appropriate given the nature of the document being provided and the operational requirements for government that must occur within a set timeframe following receipt of the notice.

A common framework for access and conditions for public reserve owners

The *Mineral Resources Act 1989* currently requires the holder of an exploration permit or a mineral development licence to gain consent from the owner of a reserve to enter that reserve (sections 129 and 181 of the *Mineral Resources Act 1989*). A reserve may be, amongst other things, a road, State forest, timber reserve or a rail corridor. Currently, consent to access reserve land cannot be unreasonably withheld and conditions may be applied to the consent. An entry notice is still required and compensation may be payable.

The other Resource Acts do not have separate provisions for reserves; rather reserves are treated as public land. Prior to entry, a resource authority holder must provide notice to the public land authority that can impose conditions on that access.

The Bill amends the access to reserve land provisions for exploration permits and mineral development licences under the *Mineral Resources Act 1989* aligning them with the public land access provisions under the other Resource Acts (where they apply to post-grant entry to public land).

To provide greater certainty to industry, reserve land will no longer be distinct from other types of public land and the consent of a reserve owner is not required. However, to ensure the public land is responsibly managed, notification of entry is still required and the public land authority may impose relevant and reasonable conditions on the entry, including conditions relevant to any permits and occupancy rights issued over the land. The nature of these conditions will maintain consistency with conditions currently imposed which must not be inconsistent with other resource authority conditions.

To remove the delay for a resource authority holder, between the grant of the resource authority and commencing activities on public land, the Bill provides for applicants to lodge a notice of entry with the public land authority before they are granted a resource authority. Activities cannot occur on public land until a resource authority is issued and compensation is still required for any compensable effect incurred by owners and occupiers of public land.

Access to private land outside a resource authority

The following chapters of the Resource Acts contain provisions that in general terms facilitate the resource authority holder crossing private land to access the granted resource authority:

- Chapter 5, Part 2 of the *Petroleum and Gas (Production and Safety) Act 2004*;
- Chapter 5, Part 7 of the *Greenhouse Gas Storage Act 2009*; and
- Chapter 6, Part 5 of the *Geothermal Energy Act 2010*.

The key aspects of the provisions relating to access to private land that is off-tenure are:

- post-grant rights to cross or carry out activities to cross land in order to access the resource authority;
- an access agreement must be negotiated before entry;
- a landholder cannot unreasonably withhold consent; and
- the Land Court can decide or vary the access agreement.

The provisions are consistent across the abovementioned three Acts but are not mirrored in the *Mineral Resources Act 1989* in relation to an exploration permit or for petroleum tenure granted under the *Petroleum Act 1923*.

As such, the Bill expands the existing rights and obligations in the *Petroleum and Gas (Production and Safety) Act 2004*, *Greenhouse Gas Storage Act 2009* and the *Geothermal Energy Act 2010* to include the *Petroleum Act 1923* and exploration permits under the *Mineral Resources Act 1989*.

The Bill also harmonises the ‘eligible claimant’ definition to provide consistency across all resource authority types to ensure that owners and occupiers of public and private land being used for access to a resource authority are able to seek compensation should a compensable effect occur on that land. This is a change to the *Mineral Resources Act 1989* which currently does not include owners and occupiers of land outside the resource authority area that is used

to access an exploration tenement, within the definition of 'eligible claimant'. Therefore they are not able to seek compensation should a compensable effect occur on that land.

Access to cross land within the area of another resource authority

The ability of a resource authority holder to access land within the area of another resource authority in order to reach its authority area is provided for under the following chapters of the Resource Acts:

- Part 6J of the *Petroleum Act 1923*;
- Chapter 5, Part 4 of the *Petroleum and Gas (Production and Safety) Act 2004*;
- Chapter 5, Part 9 of the *Greenhouse Gas Storage Act 2009*; and
- Chapter 6, Part 7 of the *Geothermal Energy Act 2010*.

However, no such ability is provided to exploration tenement holders under the *Mineral Resources Act 1989*.

Under the *Petroleum Act 1923*, *Petroleum and Gas (Production and Safety) Act 2004*, *Greenhouse Gas Storage Act 2009* and the *Geothermal Energy Act 2010*, if the tenure to be crossed is an exploration tenure, consent from the holder is not required but activities on that exploration tenure must not be unreasonably interfered with. If the tenure to be crossed is a production lease, consent from the lease holder is required before access is permitted.

The Bill aligns access to exploration permits and mineral development licences under the *Mineral Resources Act 1989* with access rights and obligations under the other Resource Acts to achieve consistency and certainty of access across all resource authorities.

Notifiable road use

Notifiable road uses are currently administered under the following chapters of the Resource Acts:

- Chapter 5, Parts 3 and 5 of the *Petroleum and Gas (Production and Safety) Act 2004*;
- Parts 6I and 6K of the *Petroleum Act 1923*;
- Chapter 6, Parts 6 and 8 of the *Geothermal Energy Act 2010*;
- Chapter 5, Parts 8 and 10 of the *Greenhouse Gas Storage Act 2009*; and
- Chapter 10 of the *Mineral Resources Act 1989*.

The notifiable road use provisions include obligations for the resource authority holder to consult with the entity that administers the road, and compensate for impacts and enable the public road authority to impose conditions on the use of the road. There is a large degree of commonality across the Resource Acts in terms of the notifiable road use provisions, with only minor variations for some resource authorities to reflect specific requirements.

The Bill provides a common set of notifiable road use provisions to provide a single point of reference whilst providing for the variations in the types of activities that currently constitute a notifiable road use activity across the resource authority types.

Private Land

The Bill streamlines the land access requirements relating to private land under the following parts of the Resource Acts by moving these provisions into the common provisions Act:

- Schedule 1 of the *Mineral Resources Act 1989*;
- Section 24A and Chapter 5, Part 2 of the *Petroleum and Gas (Production and Safety) Act 2004*;
- Part 6H of the *Petroleum Act 1923*;
- Chapter 5, Part 7 of the *Greenhouse Gas Storage Act 2009*; and
- Chapter 6, Part 5 of the *Geothermal Energy Act 2010*.

The Bill also includes amendments to the private land access framework that implement three of the actions recommended by the Land Access Implementation Committee.

Land Access – Private Land

The Bill amends the land access framework to give effect to the recommendations of the Land Access Implementation Committee, namely Actions 1(b), 3 and 4, that require legislative change. These amendments:

- enable the Land Court to make determinations on matters relating to conduct issues in relation to the negotiation of a conduct and compensation agreement;
- require the existence of an executed conduct and compensation agreement or opt-out agreement to be noted on the relevant property title; and
- allow parties, at the request of the landholder, to opt-out of negotiating a conduct and compensation agreement where an established relationship exists.

These amendments to the land access framework have been harmonised across each of the Resource Acts, and migrated to the common provisions Act.

The Bill also amends the *Mineral Resources Act 1989* to reinsert the State's ability to appoint third parties to enter land under section 342 for the purposes of collecting geoscience and resource information on behalf of the State. The Bill grants the chief executive the ability to limit the functions of such appointments under the Act, and ratifies any appointments made from March 2013.

Land Access – Restricted Land

The Bill expands the existing restricted land provisions beyond the mineral, coal and geothermal sectors, thereby providing a consistent level of protection to owners and occupiers of land, on-tenure and off-tenure, across all resource sectors.

In addition to the restricted land amendments, the Bill also amends the threshold for requiring a conduct and compensation agreement between the resource authority holder and the landholder so that a conduct and compensation agreement is not required for no/low impact activities (such as walking or driving on existing tracks) within 600 metres of a residence. Landholders are still eligible for compensation for a compensatable effect, and a conduct and compensation agreement is still required for any advanced activity (activities that result in an impact) regardless of the distance from the residence.

Overlapping Tenure Framework – Coal and Petroleum (CSG)

The Bill establishes a new framework for managing Queensland's overlapping coal and petroleum (CSG) tenures which is based on a joint coal and CSG industry proposal set out in the paper '*Maximising Utilisation of Queensland's Coal and Coal Seam Gas Resources – A New Approach to Overlapping Tenure in Queensland'* (the White Paper). The concepts and principles outlined in the White Paper and the various technical working group reports provide the basis for the new overlapping tenure framework.

The new framework has been designed to overcome the difficulties of the current framework such as reducing the uncertainty over grant of production tenures; reducing or even eliminating the 'first mover' advantage for production tenure holders; reducing the adversarial approach to conflict resolution; and providing binding timeframes (with access to dispute resolution mechanisms) to ensure production tenure applications can progress to grant without delay. These changes are aimed at facilitating coexistence between Queensland's coal and CSG industries to ensure they work together to achieve the best commercial outcomes for both industries and for Queensland.

The new overlapping tenure framework is prescribed in the new Common Provisions Act and, with the exception of transitional provisions, replaces the existing framework in Chapter 3 of the *Petroleum and Gas (Production and Safety) Act 2004*; and Chapter 8 of the *Mineral Resources Act 1989*. It is based on the following four foundation principles:

- direct path to grant for tenure for both coal and petroleum (CSG) production tenure;
- coal tenure holder to have a 'right of way' to develop coal deposits subject to notice periods, compensation and a first right of refusal for petroleum tenure holders in respect of any incidental CSG produced in the overlapping area;
- an ongoing obligation for overlapping coal and petroleum (CSG) tenure holders to exchange relevant information; and
- the flexibility for the parties to enter into alternative arrangements.

The new framework does not change any existing requirements that resource companies must satisfy in order to gain tenure in Queensland. The resource companies will still be required to, for example, negotiate native title arrangements, obtain an environmental authority prior to grant of the tenure and negotiate access and compensation arrangements with landholders.

Direct path to grant of tenure

The Bill establishes a new legislative framework to enable a direct path to grant of production tenures, regardless of any overlapping tenure. This is achieved by decoupling the requirements for the grant of production tenures from the requirements of the overlapping tenure framework, assuming all other (non-overlapping tenure) application requirements are satisfied. The new legislative framework also removes the requirement to negotiate and agree to a coordination arrangement as a precondition to grant. Instead the flexibility now exists for the parties to reach agreement pre- or post-grant of the overlapping production tenure. Also, the new legislative framework removes the need for Ministerial Preference Decisions, therefore eliminating the requirement for the government to 'pick winners'.

Right of way for coal

The 'right of way' principle will operate by allowing for the coexistence of coal and petroleum (CSG) tenures over the same area, with petroleum (CSG) lease and authority to prospect holder rights to be temporarily suspended (subject to notice periods) within those areas of the coal mining lease where sole occupancy is required for safe and efficient coal mining operations.

The 'right of way' for coal is not intended to be an ambit claim by the coal tenement holder. Instead, to moderate the adverse impacts that granting a coal mining lease holder a 'right of way' will have on underlying petroleum (CSG) operations, the exercise of such a 'right of way' will be subject to a number of conditions including:

- mandatory notice periods and confirmation requirements. It is intended that the notice periods will provide the petroleum (CSG) party with an opportunity to maximise CSG extraction ahead of mining operations taking place;
- compensation for lost petroleum (CSG) production;
- compensation for certain affected petroleum resource authority infrastructure including major gas infrastructure and, in some cases, minor gas infrastructure; and
- a requirement for coal mining lease holders to provide first right of refusal for any incidental CSG produced from the area of sole occupancy to an overlapping petroleum (CSG) resource authority holder.

A model of progressive, advancing and retreating areas of mining production gives effect to the 'right of way' principles outlined in the White Paper.

Information exchange

The requirement to meet at least annually and to exchange information between coal and petroleum (CSG) companies is central to the success of the new overlapping tenure framework. To ensure the workability of the new overlapping tenure framework and to facilitate the efficient conduct of overlapping coal and petroleum (CSG) activities, this Bill introduces a statutory minimum requirement on both coal and petroleum (CSG) tenure holders to meet annually and exchange relevant operational and planning information.

Joint Development Plans

The parties must enter into a joint development plan. To ensure the new overlapping tenure framework is flexible and not unduly restrictive, the coal and petroleum (CSG) parties may negotiate mutually beneficial outcomes in the joint development plans which are outside of the legislative default position of the new framework, subject to some legislative requirements which may not be amended (for example, health and safety requirements).

Alternative dispute resolution

The Bill establishes an alternative dispute resolution framework in the new Common Provisions Act for independent arbitration on the following key areas identified in the White Paper:

- the content of a joint development plan to the extent it relates to the size or location of each initial mining area (IMA), rolling mining area (RMA) or simultaneous operation zone, or the mining commencement date or abandonment date for each IMA or RMA;
- a dispute about whether exceptional circumstances exist for a petroleum (CSG) lease holder warranting an extension of the mining commencement date in an IMA; and
- the amount of compensation to which a petroleum (CSG) lease holder is entitled.

Arbitration entities suitably capable of hearing these types of disputes will be prescribed in the regulation. The Bill requires that the arbitrator choose an expert in each resource (one coal and one CSG) to assist with resolving the dispute. The department will not be involved in any arbitration proceedings and no decision of the arbitration will bind the State including the chief inspector.

Repeal of Coal Super Act

A review of the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* (Coal Super Act) revealed that it is largely inconsistent with the *Superannuation Guarantee (Administration) Act 1992* (Cth) (the Commonwealth Act) which allows employees to choose the superannuation fund into which their employers pay their superannuation contributions. The Commonwealth Act does not apply to employee contributions. Therefore, the requirement in the Coal Super Act relating to compulsory employer contributions into the AUSCOAL Superannuation Fund is invalid and is to be repealed.

Retention of the requirement for employees to make compulsory contributions into the AUSCOAL Superannuation Fund creates an operational inconsistency between the Commonwealth Act and the Coal Super Act in circumstances where an employee nominates a superannuation fund for employer contributions (as permitted by the Commonwealth Act), but the Coal Super Act prevents an employee from similarly nominating the superannuation fund for compulsory personal contributions.

The repeal of the Coal Super Act will therefore remove this requirement, thereby leaving employees the freedom of choice to contribute superannuation on top of the employer contribution at whatever rate they so choose.

Despite the repeal of the Coal Super Act, employees will still be able to make voluntary employee contributions and elect the AUSCOAL Superannuation Fund as their preferred superannuation fund for all contributions, including their compulsory contributions.

Mining Applications

The Bill will modernise the application process for alluvial miners and to a lesser degree, other mining tenure types.

The current mining lease application process is being amended to remove duplicative and redundant provisions and to adopt a risk based approach to regulation, which will reduce costs for industry while maintaining the necessary requirements for government assessment and appropriate community input and appeal rights.

The Bill amends the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994* to:

- provide flexibility in identifying the boundaries of a mining lease or claim by removing the prescriptive requirement to use pegs or stones to define boundaries, while maintaining that the area must still be identified in the application;
- provide for greater flexibility in the size of the lease area that can be applied for during a moratorium up to the maximum 300 hectares;
- limit the notification of the mining lease applications to directly impacted landholders, occupiers, infrastructure providers and local governments;
- remove the requirement under the *Environmental Protection Act 1994* for public notification of standard applications and variation applications for an environmental authority for a mining activity;
- revise the matters the Land Court can consider during a mining lease objection and remove jurisdictional duplication with the *Environmental Protection Act 1994*;
- provide a flexible framework for restricted land which can be adapted and applied for through the mining lease term with the consent of the landholder.

Amendments to Petroleum and Mineral Legislation

A number of the amendments to the *Mineral Resources Act 1989,* the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* will provide for a reduction in the statutory requirements that must be complied with by the applicant or holder of certain mining tenements, or the holder of an authority to prospect or petroleum lease. These requirements are largely administrative in nature and impose unnecessary regulatory burdens on the efficient operation of the subject mining tenements, petroleum tenures and authorities.

These include amendments to:

- omit the requirement to lodge a notice about a petroleum discovery and its commercial viability;
- extend the time allowable before Ministerial approval is required for continuing production or storage testing on a petroleum well;
- allow for an extension of the term of a survey licence or a data acquisition authority;
- remove a duplicate requirement of an application for various petroleum authorities (and for an exploration permit for coal under the *Mineral Resources Act 1989*) to contain a statement about consultation with each owner or occupier of public or private land being entered under the authority or permit; and
- as a consequence of removing the duplicate requirement for certain applications to contain a statement about consultation with owners or occupiers of land proposed to be covered by the application, remove the obligation to consult with particular owners or occupiers of land that may be affected by authorised activities for certain mining tenements and petroleum authorities once granted.

Other amendments

A range of other amendments to the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* are made to clarify definitions and operational provisions, and correct other minor anomalies that have been raised by holders of petroleum tenures and authorities. These amendments are discussed below.

Construction or operation of certain pipelines

The Bill clarifies the types of pipelines that may be authorised to be constructed or operated under a pipeline licence under the *Petroleum and Gas (Production and Safety) Act 2004*.

Definition of end points

The Bill provides for the definition of ‘end points’ for a pipeline or proposed pipeline for which a pipeline licence under the *Petroleum and Gas (Production and Safety) Act 2004* is sought.

Applications

A work plan and a development plan are considered ‘applications’ under the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* and are subject to statutory provisions. It is a condition under this legislation that an authority to prospect has an approved work program and that a petroleum licence has an approved development plan. In some cases, a later work program or a later development plan are required for an authority to prospect or a petroleum licence. It is not clear whether a later work program and a later development plan are ‘applications’ under this legislation. The Bill amends the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* to clarify that these are applications and are subject to any provisions that apply to all applications.

Associated water

Water is usually encountered and produced during petroleum exploration and therefore must be appropriately dealt with in a way that does not interfere with production processes. The *Petroleum and Gas (Production and Safety) Act 2004* allows for this by providing certain water rights for petroleum tenures that allows a tenure holder, within the area of the holder's tenure, to take or interfere with the water without the need for the petroleum tenure holder to also hold a water licence under the *Water Act 2000*. This water is called associated water and includes CSG water.

The '*Coal Seam Gas Water Management Policy 2012*' (CSG water policy) was developed to provide for the use of associated water produced by the expanding CSG industry and a number of amendments were made to the *Petroleum and Gas (Production and Safety) Act 2004* to accommodate the CSG water policy. However, these amendments did not remove the need for a water licence where the associated water will be used off-tenure. The Bill amends the *Petroleum and Gas (Production and Safety) Act 2004* to clarify that the holder of a petroleum tenure may use associated water encountered and produced within the area of the tenure, for any purpose on or off the tenure and proposes consequential amendments resulting from this clarification.

Construction or operation of a pipeline

Currently, under section 802 of the *Petroleum and Gas (Production and Safety) Act 2004*, the construction or operation of a pipeline (other than a distribution pipeline) is restricted unless the construction or operation is carried out under the authority of a petroleum tenure. However, the construction or operation of a pipeline is also authorised, pursuant to the *Petroleum and Gas (Production and Safety) Act 2004*, under a pipeline licence or petroleum facility licence. The Bill amends section 802 to clarify that a restriction on a person to construct or operate a pipeline (other than a distribution pipeline) does not apply to a person constructing or operating a pipeline under a pipeline licence or a petroleum facility licence granted under the *Petroleum and Gas (Production and Safety) Act 2004.*

Time limit for appeals from internal review decisions

Section 824 of the *Petroleum and Gas (Production and Safety) Act 2004* sets a time limit within which an appeal from an internal review decision can be made. The limit is set at 20 business days from either the day a person is given an information notice for the decision or, if a person is not given an information notice, the day the person otherwise becomes aware of the decision. In particular, this provision applies to decisions listed in schedule 1, table 2 of the *Petroleum and Gas (Production and Safety) Act 2004,* however, none of the listed decisions are subject to internal review.

As the decisions listed in schedule 1, table 2 do not have internal review, there is no actual day an appeal must have commenced by. The Bill amends section 824 to provide a stated timeframe for the commencement of appeals from decisions listed in schedule 1, table 2 of the *Petroleum and Gas (Production and Safety) Act 2004.*

Applications for a later work program or later development plan

A legislative anomaly has been identified where an ‘endless loop’ of ‘lodgement-refusal-lodgement’ can occur for applications for a later work program or later development plan. For example, a holder of petroleum tenure may lodge a later work program, or later development plan. If the application for a later work program or later development plan is refused, there is nothing to stop the holder of the petroleum tenure from lodging another later work program or later development plan.

The Bill provides that where a later work program or later development plan is refused, no further application of the same type may be submitted within a stated timeframe.

Authorised activities on an authority to prospect

A holder of an authority to prospect under the *Petroleum and Gas (Production and Safety) Act 2004* is permitted to undertake the following activities within the area of the authority to prospect: explore for petroleum, including CSG; test for petroleum production; or evaluate the feasibility of petroleum production.

Testing for petroleum production is undertaken at the well to determine the commerciality of producing petroleum from the well. For gaseous hydrocarbons, this test involves releasing gas from the well. If it is not commercially or technically feasible to use this gas under the authority to prospect or for an authorised activity for the authority to prospect, the gas is either flared (burnt off in the atmosphere) or vented. However, in some cases it may be possible to commercialise the gas released during production testing by capturing and processing the petroleum gas within the area of the authority to prospect.

The *Petroleum and Gas (Production and Safety) Act 2004* does not currently provide for this activity under an authority to prospect. The Bill amends the *Petroleum and Gas (Production and Safety) Act 2004* to allow the capture and processing of this gas on an authority to prospect to enable its commercialisation where feasible.

Minimal impact

The *Petroleum and Gas (Production and Safety) Act 2004* currently states that the purpose of granting a survey licence is to allow access to land for activities authorised under the survey licence that involve minimal impact on, or disturbance of the land. These activities include surveying for suitable construction and operation sites for pipelines or petroleum facilities and their access routes. However, minimal impacts on, or disturbance of land is not defined in the *Petroleum and Gas (Production and Safety) Act 2004* and is therefore difficult to quantify. This is problematic as initial surveying of a site is not the only activity that may be required to determine suitability. For example, soil sampling may be necessary to determine if the soil can safely contain a pipeline. Activities such as this cannot always be carried out with ‘minimal’ or no disturbance.

The Bill therefore omits the provision on a survey licence for a proposed pipeline that access to land for authorised activities 'involves minimal impact on or disturbance of the land' and allows instead for case-by-case assessment of each survey licence application. Furthermore, the disturbance on any land that may cause environmental harm is more appropriately addressed through an environmental authority granted under the *Environmental Protection Act 1994*, which is itself a condition of the granting of a survey licence.

Safety

Amendments have been made to address safety issues arising from government-petroleum industry discussions in relation to amendments made to the *Petroleum and Gas (Production and Safety) Act 2004* by the *Land, Water and Other Legislation Amendment Act 2013*. These include amendments to provide for the following:

- the drilling of a water observation bore or water supply bore by a petroleum tenure holder is 'operating plant' and is therefore subject to the safety provisions of the *Petroleum and Gas (Production and Safety) Act 2004*;
- the construction of a water injection bore by a petroleum tenure holder is 'operating plant' and is therefore subject to the safety provisions of the *Petroleum and Gas (Production and Safety) Act 2004*; and
- for a water injection bore – its construction and abandonment must be in compliance with the requirements prescribed under a regulation.

Incidental CSG

Incidental coal seam gas (CSG) is a by-product of coal mining. Currently, the *Mineral Resources Act 1989* allows incidental CSG to be used for beneficial purposes such as power generation, within the boundaries of the mining lease but it cannot be transported off the mining lease or commercialised (captured and processed for commercial benefit).

Some amendments to the use of incidental CSG have already been proposed as part of the new framework for overlapping tenure (coal and petroleum (CSG)). Under the new framework, any incidental CSG produced must be offered to any overlapping petroleum authority holder for first right of refusal prior to any use. If the petroleum authority holder refuses to accept the gas, the coal miner will have the right to beneficially use or commercialise the gas.

While these amendments will address the use of incidental CSG in the case of overlapping tenure, restrictions would otherwise still apply for coal mines with no overlapping petroleum authority. This restriction prevents coal miners from finding more efficient uses for incidental CSG and is a lost opportunity for coal miners to reduce operational costs. If a viable beneficial use for this gas cannot be found, it is usually either flared or vented into the atmosphere.

The Bill amends the *Mineral Resources Act 1989* to allow incidental CSG to be used beneficially or commercialised if there is no overlapping petroleum authority, or if the

requirements of the new coal and petroleum (CSG) overlapping tenure framework have been met. For example, the gas could be transported and consolidated in a central area of a mining project, and be used to fuel a power generator to supply electricity for that project.

The Bill also amends the royalty provisions of the *Mineral Resources Regulation 2013* and the *Petroleum and Gas (Production and Safety) Act 2004* to clarify when royalty is payable for incidental CSG and how it is to be accounted for.

Mount Isa Mines Limited Agreement Act 1985

The Bill amends the agreement contained in schedule 1 of the *Mount Isa Mines Limited Agreement Act 1985* to remove superfluous environmental provisions which are no longer required due to the transition of the environmental regulation of Glencore's mining lease to the *Environmental Protection Act 1994*.

In identification of superfluous environmental provisions, it was ascertained that the requirements for a mine plan, which addresses environmental conditions, and the manner and method in which mining activities will be carried out, is either no longer required or is inadequate for stewardship of the targeted resource.

Therefore, the Bill also restructures the reporting requirements which will bring Glencore's reporting requirements in line with the requirements currently provided for other mining leases under the *Mineral Resources Act 1989.*

In addition, the Bill also provides that the formal agreement may be varied only by further agreement between the State and Mount Isa Mines Limited under the authority of an Act.

Uncontrolled gas emissions from legacy boreholes

The Bill amends the resources legislation to enable two approaches for remediating legacy boreholes. This will add to existing safety legislation that requires action by parties responsible for mining and petroleum operations to reduce any unacceptable safety risks if operations are impacted by uncontrolled gas emissions from legacy boreholes.

Under the first approach, amendments are made to the *Petroleum and Gas (Production and Safety) Act 2004* to support government and industry action set out by the Protocol in the event of a legacy borehole incident (fire or gas emissions that present a safety risk). The amendments provide for the chief executive to authorise a person to remediate a legacy borehole. An authorised person will be supported by provision of indemnity against liability where they are not negligent in undertaking the remediation activity. Associated provisions facilitate urgent land access and provide notification requirements. Notification requirements are based on existing provisions in the *Mineral Resources Act 1989* for rehabilitation of abandoned mines.

For the second approach, the Bill also amends each of the Resource Acts to enable tenure holders to remediate a legacy borehole located on their tenure, regardless of its type. Like

some other authorised activities, there is no obligation on tenure holders to remediate legacy boreholes.

In remediating a legacy borehole, an authorised person or tenure holder will be required, as far as practicable, to apply the standards for plugging and abandoning a well or borehole in schedule 3 of the *Petroleum and Gas (Production and Safety) Regulation 2004*.

Alternative ways of achieving policy objectives

MQRA Program

There are no alternative options to achieving the overall objectives of the MQRA Program to harmonise Queensland's resources legislation as it requires amendments to primary legislation to take the five Resource Acts and combine them into a single, common resources Act.

Land Access – Private Land

The Land Access Implementation Committee, which was comprised of peak body representatives from AgForce, Queensland Resources Council, Queensland Farmers' Federation, Australian Petroleum Production and Exploration Association and the GasFields Commission Queensland, considered each of the actions contained in the government's Six Point Action Plan and provided recommendations on the preferred policy approach to implement each action. The Committee noted in its report that the only option to effectively implement Actions 1(b), 3 and 4 is to amend existing legislative requirements under the Resource Acts. As such, legislative change to implement Actions 1(b), 3 and 4 is consistent with the recommendations of the Land Access Implementation Committee.

Land Access – Restricted Land

Retaining the existing restricted land and 600 metre rule framework would not achieve the objectives of the MQRA Program, namely a single, harmonised approach within a common Resource Act.

While the alternative approach identified—to remove restricted land and rely on the conduct and compensation framework and the 600 metre rule—would also deliver a single, consistent framework, this approach would not deliver certainty to landholders. The preferred restricted land approach, which is to be implemented through this Bill, ensures that resource activities cannot occur adjacent to an owner or occupier's home without their consent. It also protects landholders on neighbouring properties from resource activities that could affect their homes and critical infrastructure.

A Consultation Regulatory Impact Statement for this reform was released for public comment. Based on feedback, a consistent restricted land framework was preferred.

Overlapping Tenure Framework – Coal and Petroleum (CSG)

An alternative option of modifying the existing overlapping tenure framework was considered, rather than an overall revision of the framework. The option involved imposing strict timeframes on obtaining a Ministerial Preference Decision where a coordination agreement between the coal and petroleum (CSG) parties was not forthcoming, and giving greater rights to explorers to operate within existing production leases (that is, to reduce the veto power held by the existing production lease holder).

This option was not supported by either the coal or petroleum (CSG) industries as they did not consider that the current framework, with the abovementioned proposed amendments, would provide the security and certainty needed for large, integrated petroleum (CSG) to Liquefied Natural Gas projects nor address the coal industry's key concern about obtaining access to the resource. Also industry considered that this option represented a missed opportunity to harmonise safety provisions and optimise the extraction of resources. This option would also mean that overlapping tenure provisions would remain split between two separate Acts, and not deliver the regulatory simplification benefits of the new tenure framework in the one common provisions Act.

The coal and petroleum (CSG) industries are major pillars of the Queensland economy. Concurrent operation of coal mining and petroleum (CSG) extraction from the same area is highly complex. To effectively maximise the benefits from the State's energy resources, the regulatory regime needs to allow flexibility for both industries to co-operate to achieve the best commercial outcomes for both industries and for the State. The proposed option in this Bill provides this as well as delivering regulatory simplification benefits.

Repeal of Coal Super Act

The department considered three options to address the inconsistency between the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* (Coal Super Act) and the *Superannuation Guarantee (Administration) Act 1992* (Cth) (the Commonwealth Act).

The first option was to maintain the status quo. If the Coal Super Act remained in force, it would have no effect on limiting a mine worker's choice of superannuation fund, as the Commonwealth Act would override the Coal Super Act and require a choice of fund to be provided for employer contributions.

The only operational effect of the Coal Super Act would be to require a compulsory 2.5% employee contribution. Retention of this requirement would perpetuate the operational inconsistency between the Coal Super Act and the Commonwealth Act in the event that and to the extent a worker chooses to have their employer's contributions paid into another fund. This option was not preferred, and does not meet the needs of stakeholders to have freedom of choice and control over their superannuation.

The second option was to amend the Coal Super Act to clarify that coal and oil shale mine workers can nominate a superannuation fund of their choice for employer and employee

contributions, and set the AUSCOAL Superannuation Fund a default fund in the event the employee does not nominate an alternative fund. Compulsory employee contributions would still be required but a mine worker can nominate a fund of their choice.

By establishing these requirements in State legislation, the superannuation framework for coal and oil shale mine workers would be anomalous to all other identified industry sectors and professions. No other industry is subject to similar legislation requiring compulsory employee superannuation contributions.

As such, this option was not preferred as it does not remove red tape for coal and oil shale mine workers through the retention of compulsory employee contributions, and does not provide for the freedom of superannuation investment.

The third option was to repeal the Coal Super Act. This was the preferred option as the repeal of the Coal Super Act reduces red tape for coal and oil shale mine workers as it would provide employees with more control over their superannuation investment and with the ability to make voluntary employee contributions of an amount and to a fund of their choosing.

Employees who have elected to make contributions to the AUSCOAL Superannuation Fund will still be able to continue doing so even if the legislation is repealed because the AUSCOAL Superannuation Fund exists independently of the Act.

Mining Applications

There are no alternative options other than legislative amendments to achieve the government's commitment to reduce red tape for the small scale alluvial mining sector and mining industry. Retaining the existing regulatory requirements will not address the government's policy objectives or reduce regulatory burden for the small scale alluvial mining sector or the mining sector generally.

Amendments to Petroleum and Mineral Legislation

There are no alternative options to achieving the reduction in statutory requirements other than amendments to primary legislation.

Incidental CSG

Removing any legislative framework providing guidance for the use of incidental CSG was considered. This option was rejected as it would create significant uncertainty for industry and negatively impact future investment.

The preferred option provides certainty for the use of incidental CSG, enabling industry to find more efficient uses, reduces operational costs and allows industry to incorporate the use of incidental CSG into future mining plans.

Mount Isa Mines Limited Agreement Act 1985

There are no alternative options to achieving the objective, as the *Mount Isa Mines Limited Agreement Act 1985* provides that the agreement between Mount Isa Mines (now Glencore) and the State about the operations of Mining Lease 8058 can only be varied through legislative amendments with the consent of both parties.

Uncontrolled Gas Emissions from Legacy Boreholes

Four alternate options were considered:

1. Existing legislation (status quo).
2. Expand the Abandoned Mines Land Program to include remediation of at risk legacy boreholes.
3. Require current and future tenure holders to remediate legacy boreholes that present a safety risk.
4. Negotiate with landholders for access to land where a legacy borehole presents a safety risk (non-regulatory).

1. Existing legislation

Existing safety legislation requirements provide for tenure holders to take action where their operations are at risk. While section 344A of the *Mineral Resources Act 1989* would allow the appointment of an authorised person to remediate coal and mineral boreholes, there are many scenarios in which uncontrolled gas emissions from legacy boreholes would not be addressed without further amendment. Existing legislation is not sufficient to deal with the range of situations and types of boreholes that could result in legacy borehole incidents.

While the borehole incident in 2012 was resolved through co-operation between government and industry and led to the development of the Protocol, industry has expressed concerns about ongoing support without legislative certainty for indemnity and land access.

2. Expand the Abandoned Mines Land Program

Under this option, legislative amendments are required to incorporate different borehole types. The Program is not authorised to deal with petroleum or gas wells and associated boreholes (e.g. water supply or water monitoring bores drilled to support petroleum and gas exploration and production). This option does not allow tenure holders to remediate legacy boreholes on their tenure.

3. Oblige tenure holders to remediate legacy boreholes that present a safety risk

This option would ensure all legacy borehole types on tenure were covered. However, some legacy boreholes (like the one in the 2012 incident) are not located on tenure and amendments would be needed to authorise action for petroleum and gas boreholes not located on current tenure. Under this option, new obligations on tenure holders would be retrospective and would increase regulatory burden and costs for industry. This option is likely to evoke significant resistance from industry and does not make provision for all legacy boreholes that present a risk of uncontrolled gas emissions.

4. *Negotiate with landholders for access to land where a legacy borehole presents a safety risk (non-regulatory)*

This option does not address industry concerns regarding legal liability for remediation work at legacy boreholes and increases the level of uncertainty for both landholders/occupiers and industry parties in a potential emergency.

The preferred option, in this Bill, to deal with uncontrolled gas emissions from legacy boreholes relies on existing legislation where possible, applies to all borehole and tenure types (including no tenure), enables tenure holders to voluntarily remediate legacy boreholes and ensures there is authorisation to deal with any legacy borehole that presents a safety risk.

Estimated cost for government implementation

There will not be any implementation costs associated with the majority of legislative amendments in the Bill. Any implementation costs will, however, be managed within the existing budget of the Department of Natural Resources and Mines.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* and is generally consistent with these provisions. However, the Bill does include a number of provisions that may be regarded as departures from FLPs. Clauses of the Bill in which FLP issues arise, together with the justification for any departure are outlined below.

Whether legislation has sufficient regard to the rights and liberties of individuals—*Legislative Standards Act 1992,* section 4(2)(a)

Standardised Restricted Land Framework

Chapter 3 of the Bill under Clause 68 provides for a refinement of the infrastructure that restricted land applies to such that landholder consent will no longer be required before resource activities can be undertaken within a specified distance from certain infrastructure types. Specifically, restricted land no longer applies to principal stockyards, bores, artesian wells, dams and other artificial water storages connected to a water supply. Potential impacts to these infrastructure types from resource activities are managed through the negotiation of a conduct and compensation agreement between the landholder and the resource authority holder prior to any advanced activities (that is, those likely to cause an impact) being undertaken.

Arguably, the fact that restricted land no longer applies to these infrastructure types could be seen as a breach of a FLP under the *Legislative Standards Act 1992* section 4(2)(a) which requires legislation to have sufficient regard to the rights and liberties of individuals.

The proposed changes are not considered a breach of a FLP as potential impacts on these infrastructure types are managed through the negotiation of a conduct and compensation agreement between the landholder and the resource authority holder.

Potential impacts on these infrastructure types from all non-coal and mineral resource activities are already managed under the conduct and compensation agreement framework. The proposed changes ensure that this approach is consistent across the mineral and coal sectors as well.

The conduct and compensation agreement framework is the appropriate mechanism to manage potential impacts on these infrastructure types as a range of potential solutions exist to ensure appropriate conduct and compensation. It is not a mechanism for compulsory acquisition, but a mechanism to facilitate coexistence wherever possible. Importantly, the conduct and compensation agreement framework provides for compensation to relocate infrastructure if necessary.

In contrast, restricted land applies to infrastructure that in most cases cannot coexist with resource activities and cannot reasonably be relocated. Examples include homes, places of business and feedlots. The Bill provides landholders with new and increased protections across all resource sectors for these specified infrastructure types.

Mining Applications

The proposed amendments relate to the notification and objection requirements for the issuing of an environmental authority under the *Environmental Protection Act 1994* (Clause 245) and the grant of a mining lease under the *Mineral Resources Act 1989* (Clause 420). Due to changes to existing objection rights, there are potential breaches of FLPs in the *Legislative Standards Act 1992* in particular section 4(2)(a) which requires legislation to have sufficient regard to the rights and liberties of individuals. It requires that any abrogation of established statute law rights and liberties must be justified.

The amendments in the Bill remove established statute law rights for some individuals in that:

1. the mining lease application will not be publically notified, but will be sent directly to affected landowners, occupiers, infrastructure providers and local governments. This, in turn, affects the rights of the general community outside of those parties to object to the grant of the mining lease through the Land Court; and

2. the environmental authority application associated with the mining lease will not be publically notified for low risk activities which can instead be applied for via a standard or variation application. This, in turn, affects the rights of the general community to object to the issuing of an environmental authority for those low risk activities.

The removal of these established statute law rights (i.e. the broader public right to object to a mining lease or a low risk environmental authority) is justified on the basis that:

- the current situation is inequitable to miners;
- provides no proportionality of assessment based on risk; and
- where low impact mining lease applications do attract objections about highly technical and financial matters, they are regularly lodged where no evidence is brought to the court by the objector.

The general community tends to be more concerned about high impact and very high impact proposals, which attract multiple submissions and objections. These proposals will continue to be subject to public notification and third party objection rights. Objections against these proposals are typically supported by consultant reports and other expert evidence.

Those directly affected by the mining operation (i.e. landholders, occupiers, infrastructure providers and local governments) will still be notified of the project via direct notification of the mining lease application, and landholders and local government will have a right to object under the *Mineral Resources Act 1989*. These rights are provided to landholders due to a direct impact on the person's ability to use and/or access their land. Local government is included due to the potential for impact on the services and infrastructure they deliver.

An occupier's interest in the land will be addressed through a requirement for the applicant to gain the occupier's consent to enter into restricted land and comply with any conditions of consent. Where a utility provider is impacted, the applicant must enter into negotiations with the infrastructure provider and not unreasonably interfere with the infrastructure, other Acts provide for compensation or, in the case of water infrastructure, the owners of the infrastructure retain a civil right to be compensated for any impacts.

As adjoining landholders or community members are not affected in this direct way, and the risk of environmental impacts are assessed as low and the level of development is insufficient to trigger broad scale social impacts, no notification or objection rights are proposed for these entities for low risk applications under either the *Mineral Resources Act 1989* or the *Environmental Protection Act 1994*.

In addition, low risk environmental authority applications (which can be lodged as standard or variation applications), must comply with eligibility criteria in order to meet the threshold test for this lower level of assessment. The eligibility criteria and standard conditions for each type of activity must be published prior to implementation, so the general community has the opportunity to have their say on the thresholds and the standard conditions to be applied for these low risk activities.

Therefore, the right to influence standard conditions and eligibility criteria for low risk applications is retained through the process by which they are developed and are reviewed.

The eligibility criteria and standard conditions for mining activities are currently being reviewed by the Department of Environment and Heritage Protection, and the *Environmental Protection Act 1994* requires that the draft standard conditions and eligibility criteria are

advertised with a period for comment from both industry and the community before they are finalised. Due to transitional arrangements in the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, this review must be completed by 31 March 2016. The review provides the community with the opportunity to have standard conditions and eligibility criteria which better address issues of concern to them.

Eligibility criteria and standard criteria for low risk mining environmental authorities provides a suitable mechanism, commensurate with the risk of impact, by which environmental conditions can be set, and against which environmental performance can be measured. The need for a mechanism to object to these low risk activities on a case by case basis is arguably redundant.

The broad right to lodge objections for standard applications and variation applications is disproportionate to the risk and impact of projects that qualify for these types of environmental authority and places unnecessary costs and uncertainty on industry. The proposed amendments bring low risk mining activity standard applications and variation applications into line with other low risk environmental authority applications.

Retaining a right to object to these low risk applications is contrary to the reason for developing the eligibility criteria and standard conditions in the first place and creates inequity between different industry types and in particular mining resource industries.

This approach is considered to be more equitable and appropriate than current arrangements as it more closely aligns with the processes for other resource types and development generally, utilising the existing risk assessment rather than creating another layer of assessment and complexity.

The amendments introduce a greater level of equity between and for miners in that, as for other resource and non-resource developments, it provides for a proportional response to lower impact and more intensive and higher impact mining activities.

The amendments continue to maintain pathways to consider and address a broad range of views and issues, but cater more appropriately, for the level of broad public interest that is directly linked to an evaluation of whether or not the relevant proposal is of a lower impact and is of an appropriate intensity for standard conditions, or requires approved variations to the standard conditions. The notification requirements and the right to lodge a submission, under the *Environmental Protection Act 1994* for site-specific application environmental authorities for higher impact and intensive activities, are also being retained. Therefore, applications that are likely to attract broad community interest, will retain the public right to participate through either an environmental impact statement or broad notification process for the environmental authority which includes public submissions and objection rights, while objection rights under the *Mineral Resources Act 1989* will be clearly defined.

As a result, the application processes across the two Acts will be streamlined and less costly. The cumulative quantitative and qualitative benefits of the model proposed have been considered against the current regulatory burden and have been determined to provide the greatest net benefit of the options available.

Therefore, it is considered that in this case any abrogation of established statute law rights through proposed amendments under the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994* is justified and has sufficient regard to the rights of individuals.

Amendments to Petroleum and Mineral Legislation

The Bill omits an obligation to which certain mining tenement, petroleum authority and petroleum tenure holders must comply. This obligation currently applies to the holder of the following mining tenements, petroleum tenure and petroleum authorities (the 'subject authorities'):

- an exploration permit or mineral development licence granted under the *Mineral Resources Act 1989*, or
- an authority to prospect or petroleum lease administered under the *Petroleum Act 1923*, or
- an authority to prospect, petroleum lease, pipeline licence or petroleum facility licence administered under the *Petroleum and Gas (Production and Safety) Act 2004*.

This obligation provides that the subject authority holders must consult or use reasonable endeavours to consult with each owner and occupier of private or public land on which authorised activities for the subject authorities are proposed to be carried out or are being carried out.

It could be argued whether the omission of this obligation has sufficient regard to the rights and liberties of individuals.

A number of amendments are proposed to be made to the land access provisions in this Bill. These will provide certain obligations on a resource authority holder in dealing with a landowner or occupier of private and public land, whose land may be affected by activities authorised to be carried out under the authority.

In addition, each of the Resource Acts requires a resource authority holder to comply with the land access code.

The current land access code states best practice guidelines for communication between the subject authority holders, and owners and occupiers of private land. The code also imposes on the holder of a subject authority mandatory conditions concerning the conduct of authorised activities on private land.

The proposed provisions and the requirement to comply with the land access code do not impose a disparate obligation to consult with a landowner/occupier. However, to ensure compliance with all the obligations and requirements of the proposed amendments and the land access code, the resource authority holder must necessarily consult regularly with the affected landowner/occupier.

Further, there were no rights for landowners/occupiers attached to the obligation proposed to be omitted. These sections merely imposed an obligation on the subject authority holder to consult with landowners or occupiers, on whose land exploration activities were proposed to be carried out, about:

- access to the land;
- authorised activities that may be carried out on the land; and
- compensation liability to the owner or occupier.

If the proposed authorised activity was one that, in the belief of the landowner/occupier, had an adverse impact on the landowner/occupier, there was no obligation imposed on a subject authority holder to change, or not carry out, the type of activity.

The land access code contains requirements to maintain 'good relations' with landowners/occupiers, including:

- to liaise closely with the landholder in good faith; and
- advise the landholder of the holder's intentions relating to authorised activities well in advance of them being undertaken.

The *Mineral Resources Act 1989*, the *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004* all provide that the holder of a subject authority must also comply with the mandatory conditions of the land access code.

All of these checks and balances provide a more meaningful and robust approach to subject authority holder and landowner/occupier relationships, compared to a nebulous obligation that is meaningless in isolation, and is hard to quantify if deciding levels of non-compliance with this obligation.

Legislation should confer power to enter premises only with a warrant issued by a judge or other judicial officer—*Legislative Standards Act 1992*, section 4(3)(e)

Public and private land access

The right to enter land without a warrant is conferred on the resource authority holder under the grant of tenure and is a fundamental concept of granting access to extract resources owned by the State. Chapter 3 of the Bill balances the breach of this FLP by restricting an authority holder from entering land and carrying out particular activities without first notifying the relevant parties and in many instances entering into a consented agreement with the owner, occupier or public land authority (as appropriate). The entry rights and notification and agreement requirements vary depending on whether the land is public or private, and whether or not it is within the area of the resource authority. There is also a dispute resolution process should agreement not be reached.

Uncontrolled Gas Emissions from Legacy Boreholes

The Bill proposes to amend the *Petroleum and Gas (Production and Safety) Act 2004* to enable the State to authorise a person to access land without consent or a warrant to remediate a legacy borehole where it presents a safety risk.

Arguably, these provisions breach the FLP that the power to enter premises should be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate.

The provisions are considered justified as they will authorise action to be taken to resolve safety concerns of legacy boreholes. The amendments establish safety concerns as being a threat to life or property, a fire, or gas emission that exceeds the lower flammability limit.

The authorisation is subject to requirements to notify the landholder and the occupier, and a requirement for consent to enter a structure or part of a structure used for residential purposes.

A similar amendment to the *Mineral Resources Act 1989* was made in 2011 to expand abandoned mines provisions including conditions for entering land. The then Scrutiny of Legislation Committee considered these provisions to breach the FLP for access. The Committee also noted, with approval, the requirement for notice of entry to the owner and occupier of the land.

Legislation should only allow the delegation of legislative power only in appropriate cases and to appropriate persons—*Legislative Standards Act 1992,* section 4(4)(a)

Appropriate use of subordinate legislation

The Bill in providing for the Common Provisions Act, generally adopts a less prescriptive and outcome-based drafting style. This has resulted in many requirements that were previously provided for in the primary legislation, to now be prescribed in subordinate legislation. This may be perceived as an inappropriate delegation of legislative power and to some extent a departure from the FLP under section 4(4)(c) of the *Legislative Standards Act 1992*.

The various Resource Acts have historically been highly prescriptive and burdened by technical detail and detailed processes. An example of overly prescriptive detail in the current resources legislation is the physical marking requirements for the boundary of a mining lease under the *Mineral Resources Act 1989.* Instead of merely requiring the area of a proposed mining lease to be identified in the application, the Act provides lengthy detailed rules on the size, dimension and colour of pegs to be used.

The existing level of detail and rigidity does not allow government to adequately respond to the changing conditions within the resources sector. The drafting style adopted in the common provisions Act recognises the dynamic environment within which the resources sector operates by including detailed technical and procedural matters in subordinate legislation.

Chapter 3 of the Bill under Clause 68 allows for certain buildings and areas to be prescribed by regulation as invoking, or not invoking, restricted land requirements. This is necessary to ensure certainty of land access requirements can be provided to both resource authority holders and owners and occupiers by clarifying whether restricted land requirements apply in particular cases.

Chapter 4 of the Bill allows for definitions and additional information to be prescribed by regulation. This is considered necessary to accommodate innovation in the industry which is likely to result in changes required for definitions and processes as the industry evolves. Providing this information in the regulation will allow for a more efficient and streamlined process to optimise the development and use of the State's coal and CSG resources.

Chapter 5 of the Bill under Clause 183 allows decision criteria to be prescribed by regulation. This is necessary to allow the detail specific to some resource authorities to be provided for but also to allow different levels of criteria to apply to different types of applications. Providing this level of detail in the Act has resulted in the existing resources legislation being overly prescriptive and burdensome.

Therefore, the department considers that the drafting style adopted in the common provisions Act achieves the appropriate balance having regard for the institution of Parliament and the effective use of subordinate legislation.

Legislation should only authorise the amendment of an Act by another Act—*Legislative Standards Act 1992*, section 4(4)(c)

Transitional regulation-making power

The Bill includes a transitional regulation-making power in Chapter 6 under Clause 200. This is a broad power to make transitional regulations with a retrospective operation. This provision is necessary to ensure that any transitional issues which might arise because of the introduction of the new framework, under which the new common provisions Act will operate alongside the existing Resource Acts, can be addressed in a timely manner through regulation. Although this provision may be considered a departure from the FLP, its operation is limited. Regulations may only be made in relation to matters for which it is necessary or convenient to assist the transition where the Act does not make provision or enough provision. In addition, a one year sunset clause applies to the provision and any transitional regulations made pursuant to the transitional regulation-making power.

Prescribed dealings

Under Clause 19 in Chapter 2 of the Bill, the process for registering a dealing provides that the ordinary rule is that a holder of a resource authority may apply to the Minister, or another person may apply with the consent of the affected resource authority holder.

In addition, a regulation may change the ordinary rule in certain circumstances by prescribing who may or must make an application for a prescribed dealing where the prescribed dealing is required to be executed by operation of a law. This provision facilitates the administration

of resource authorities by other legislation. These circumstances may arise on: the death of a holder under the *Succession Act 1981*; sale by mortgagee under the *Property Law Act 1974*; administration, receivership and liquidation of a corporation under the *Corporations Act 2001* (Cth); bankruptcy under the *Bankruptcy Act 1966* (Cth); or by a court order.

While the provision breaches an FLP by effectively amending the application of the Act by a regulation contrary to the *Legislative Standards Act 1992*, section 4(4)(c), this is considered justified as it only applies in situations where it is not practicable for the holder to apply or to give consent (e.g. they have died, or no longer exist) and avoids burdening the legislation with several provisions to address these procedural matters. The changes are also related to processes governed under other legislation where powers and procedures have been established e.g. executor of a deceased estate under the *Succession Act 1981.* Therefore, while the regulation is effectively amending the application of the Act, it is as a result of processes established under other Acts.

This cannot be avoided by allowing any entity to apply to register a prescribed dealing because this would result in the registered interest of the holder being potentially compromised without significant additional regulatory processes to ensure they are protected. For example, someone might register an unauthorised dealing with the aim of delaying or risking a business transaction to their advantage.

Consultation

Community

MQRA Program

Industry was initially consulted on the proposal to harmonise the existing Resource Acts into a common resources Act. Industry provided general support for the proposal conditional on it being implemented on three fundamental principles: phased and engaged reform; retention of existing tenure frameworks; and no disadvantage without agreement. Subsequently, the department has utilised government-industry working groups to consider specific provisions to be migrated to the new Act and released several consultation documents on policy matters and draft provisions. Generally, these have been made available to all stakeholders through the department's website, whole of government Get Involved website, and distributed by email to stakeholders that have registered their interest in the MQRA Program.

Land Access – Public Land

The department emailed the proposed amendments to key stakeholders that had registered their interest in the MQRA Program, providing them with the opportunity to make submissions to the department.

Land Access – Private Land

The Land Access Review Panel (the review panel) adopted a two-stage process for stakeholder consultation. Firstly, the Chair wrote to key stakeholders seeking written feedback. This call resulted in 68 responses being received from a variety of stakeholders. The panel then met with over 100 individuals representing peak bodies, community groups, landholders, resource companies, lawyers and other land access professionals.

The government released the review panel's report in early 2012 and sought public submissions on the recommendations. Considering the stakeholder feedback received and the government's election commitments, the government released a Six Point Action Plan of reforms in late 2012, and appointed an Implementation Committee to provide direction on implementing the action plan.

The Land Access Implementation Committee was independently chaired, and consisted of peak resource and rural industry representatives from:

- AgForce Grains Ltd
- Association of Mining and Exploration Companies
- Queensland Farmers' Federation
- Queensland Resources Council
- GasFields Commission Queensland
- Australian Petroleum Production and Exploration Association.

The department emailed the proposed amendments to key stakeholders that had registered their interest in the MQRA Program, providing them with the opportunity to make submissions to the department. Extensive consultation also occurred with the Land Court and Titles Registry.

Land Access – Restricted Land

Proposed changes to the 600 metre rule were canvassed by a Consultation Regulatory Impact Statement titled '*Towards a standardised consent framework for restricted land across all resources types*'. This was released on 28 February 2014 and remained open for feedback until 28 March 2014. This was followed by a statement by the Minister for Natural Resources and Mines on 4 March 2014 and the Consultation Regulatory Impact Statement was posted on the department's website and the whole of government Get Involved website. It was also emailed to key stakeholders and others who had registered their interest in the MQRA Program.

Overlapping Tenure Framework – Coal and Petroleum (CSG)

In May 2012, the Queensland Resources Council presented the government with a joint industry proposal for a new legislative framework for managing coal and petroleum (CSG) overlapping tenure in Queensland (the White Paper). A government-industry steering group

and five technical working groups were established to further progress some outstanding technical issues. The final meeting of the government-industry steering group was held in April 2013. At this meeting, the Chairs of the technical working groups provided the final position papers on the outstanding matters and outlined that some policy and technical matters remained unresolved. The remaining unresolved matters were considered by a high-level industry working group which reported back to government in June 2013 with a final industry position.

The department has worked closely with external stakeholders in the development of this legislation and have met with the representatives from the peak industry bodies including the Queensland Resources Council, Association of Mining and Exploration Companies and the Australian Petroleum Production and Exploration Association.

Repeal of Coal Super Act

Given the provisions of the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* (Coal Super Act) are largely invalid, no community consultation was undertaken by the department. However, several coal and oil shale miners wrote to the government asking for more freedom with regards to their superannuation fund. The repeal of the Coal Super Act will not significantly impact on the rights and obligations of coal and oil shale mine workers.

The AUSCOAL Superannuation Fund Pty Ltd (AUSCOAL); the Construction, Forestry, Mining and Energy Union (CFMEU); NSW Mining (peak body) and the Queensland Resources Council have been consulted by the department of the proposal to repeal the Coal Super Act.

Mining Applications

A discussion paper titled '*Reducing Red Tape for Small Scale Alluvial Mining*' was released directly to peak resource industry bodies, and the Queensland Farmers Federation, AgForce and the Local Government Association of Queensland on 5 July 2013 seeking views on proposals. The Minister for Natural Resources and Mines noted that the discussion paper applied to the mining sector generally and not just to the small scale alluvial mining sector, and that any interested party should review the paper. Feedback was requested by 26 July 2013. It was also posted on the whole of government Get Involved and Department of Natural Resources and Mines websites.

Additional meetings were held with the Queensland Resources Council, North Queensland Miners Association, AgForce, Queensland Farmers Federation and the Local Government Association of Queensland and key state agencies. Submissions were received by individual miners and mining companies, Queensland Resources Council, North Queensland Miners Association, AgForce, Queensland Farmers Federation, Local Government Association of Queensland, Environmental Defenders Office, Queensland Law Society and the Cape York Land Council Aboriginal Corporation and several state agencies.

An additional discussion paper titled '*Mining lease notification and objection initiative discussion paper including regulatory assessment*' was released on 28 February 2014 for a 28 day consultation period. This was posted on both the websites of the Department of Natural Resources and Mines and the Department of Environment and Heritage Protection, and the whole of government Get Involved website. It was also emailed to stakeholders that had registered their interest in the MQRA Program.

Amendments to Petroleum and Mineral Legislation

Some of the anomalies and redundant provisions were identified by industry through continuous government-industry consultation.

Incidental CSG

Direct consultation has been undertaken with representatives of major CSG and petroleum producers in Queensland. A related discussion paper was released through peak industry associations in addition to an exposure draft of the provisions.

Mount Isa Mines Limited Agreement Act 1985

The amendments to the *Mount Isa Mines Limited Agreement Act 1985* have been negotiated between the State and Mount Isa Mines (now Glencore) specifically for the operation of Mining Lease 8058.

Uncontrolled Gas Emissions from Legacy Boreholes

The department has been consulting with mining and petroleum companies and the respective industry associations since August 2012. Discussions have focused on the development of the '*Protocol for managing uncontrolled gas emissions from legacy boreholes'* and legislative proposals to support the Protocol's operation. The Queensland GasFields Commission and landholder groups (such as AgForce and the Queensland Farmers Federation) have also been informed of the proposed amendments. Stakeholders were provided the opportunity to comment on intended legislative proposals and a consultation draft of the amendments. Feedback received contributed to the final form of the amendments.

Government

All government agencies with an interest in the Bill were consulted.

Results of Consultation

Community

MQRA Program

Industry and community responses to discussion papers have been largely positive as the majority of provisions proposed to be migrated do not involve any significant policy changes. However, some community groups were concerned environmental protection and sustainability were not a specific focus of the MQRA Program. Stakeholders generally supported the idea of simplified legislation; however, they also sought certainty with regards to the appropriate use of regulations for prescribing matters for the Act.

Land Access – Public Land

Industry and community responses to the consultation draft provisions have been largely supportive of the amendments made to the public land access framework. However, in response to the draft provisions, the Local Government Association of Queensland and the Queensland Law Society raised concerns over the amendment enabling an applicant to provide an entry notice to a public land authority prior to the grant of tenure, and the distinction between the notification requirements between owners and occupiers of public land. The department has incorporated the feedback and comments where appropriate in the new legislative framework.

Land Access – Private Land

Industry and community responses to the consultation draft provisions were largely supportive of the consolidation and streamlining of the private land access provisions. The Land Court, Local Government Association of Queensland and the Queensland Law Society had some reservations particularly in relation to the amendments that implement the Land Access Implementation Committee recommendations and the transfer of the prescriptive requirements to the regulations. The department has incorporated the feedback and comments where appropriate to clarify the application of the new provisions. The department will engage with stakeholders during the development of the regulations to ensure all relevant concerns are considered or addressed.

Land Access – Restricted Land

Industry, landholder and community feedback on the Consultation Regulatory Impact Statement was largely supportive of a consistent restricted land framework across all resource types.

Some industry feedback sought further clarity on the resource activities that restricted land will apply to and on the definitions of residences and buildings for business purposes. The Bill provides for additional guidance on applicable exemptions and on determining the applicability of restricted land to particular infrastructure to address this feedback.

Landholder and community feedback identified concerns with the changes to infrastructure that restricted land applies to; in particular that restricted land will no longer apply to stockyards, bores, dams and other water infrastructure. Some stakeholders are also concerned about the changes to conduct and compensation agreement requirements, in particular that a conduct and compensation agreement will not be required prior to entering land to undertake preliminary (that is, no or low impact) activities within 600 metres of a residence (although landholder consent will now be required within 200 metres of a residence). After considering this feedback, it was considered that an appropriate balance has been achieved between the application of restricted land and conduct and compensation agreements.

Overlapping Tenure Framework – Coal and Petroleum (CSG)

Industry responses following consultation workshops were largely positive and supportive of policy positions. The department reviewed the feedback received from industry, which was largely addressed through the drafting process.

Repeal of Coal Super Act

The AUSCOAL Superannuation Fund Pty Ltd; NSW Mining and the Queensland Resources Council were supportive of the government's decision to repeal the Coal Super Act. The department will liaise with AUSCOAL on the timing of the commencement of the repeal to ensure that AUSCOAL has been provided with sufficient time to consult with its board and members of the repeal and to manage its administrative processes.

No response was received from the CFMEU.

Mining Applications

The results of consultation from the initial consultation paper titled '*Reducing Red Tape for Small Scale Alluvial Mining'* released in July 2013 were that:

- there was widespread or unanimous support for most initiatives in the discussion paper including legislative amendments for greater flexibility in the requirement for physical monuments to identify a tenement boundary and the size of a lease that could be applied for during a moratorium.
- further more-detailed, targeted and specific consultation was required on proposed changes to the notification and objection process for mining lease applications.

Feedback from the second consultation document titled '*Mining lease notification and objection initiative discussion paper including regulatory assessment'* released in February 2014 totalled 176 submissions. These were received from individuals, community groups, landholders or landholder representatives, environmental and community groups, miners, peak bodies, indigenous representative bodies, law firms, infrastructure providers, and other representative organisations.

Industry, local government and some peak body submissions were generally supportive of the notification and objection and restricted land proposals as common sense initiatives that achieve a balance between the opportunity for community participation in the granting of a mining lease and environmental authority, and reducing regulatory burden and simplifying process.

Although some submitters either did not support amendments to the notification and objection provisions or only provided limited support, it is considered that the proposed amendments continue to maintain pathways to consider and address a broad range of views and issues taking into account the level of intensity and scale of the proposed mining operation and the environmental impacts. Additionally, it is also considered that the amendments will continue to ensure that environmental impacts will be appropriately managed and mitigated.

Amendments to Petroleum and Mineral Legislation

Industry is generally supportive of the amendments.

Incidental CSG

Industry support the proposal for incidental CSG to be used more broadly as it aligns with the negotiated principles for incidental CSG under the proposed new framework for overlapping tenures for coal and petroleum (CSG).

Mount Isa Mines Limited Agreement Act 1985

Mount Isa Mines (now Glencore) are supportive of the amendments.

Uncontrolled Gas Emissions from Legacy Boreholes

Industry expressed ongoing support to a collaborative approach with the government to remediate legacy boreholes that present a safety risk as set out in the '*Protocol for managing uncontrolled gas emissions from legacy boreholes'*. The support is based on legislative assurance for land access, indemnity from liability and reimbursement of costs. The Bill does not include amendments for reimbursement of costs. Costs for remediation of legacy boreholes will be negotiated on a case by case basis. This is appropriate given that the origins and type of remediation required may not be evident prior to the remediation action being taken.

Government

All agencies consulted support the Bill.

Consistency with legislation of other jurisdictions

MQRA Program

Some jurisdictions that have similar resource development to Queensland are comparable to the direction taken under the MQRA Program of establishing a single common resources Act. For example, New Zealand and some Canadian provinces such as Alberta and Ontario have single pieces of resources legislation. Queensland is leading in this approach in comparison to other Australian states and territories, however some Australian jurisdictions have resource legislation that reflects simplified frameworks e.g. the Victorian *Mineral Resources (Sustainable Development) Act 1990* and provides for multiple resource types e.g. the South Australian *Petroleum and Geothermal Energy Act 2000.*

Land Access – Private Land

In many ways, Queensland is the national leader in terms of land access policy and legislation, particularly in terms of CSG exploration and development. It is likely that other states experiencing similar issues may follow Queensland's lead.

In New South Wales (NSW), similar access agreements are required, however, there is no similar notification requirement on title as the agreements do not bind successors in title. In recent times, NSW have indicated that it may pursue a similar path to Queensland and make agreements publicly available.

In South Australia, access and compensation agreements prior to entry are neither mandatory nor required to be recorded on title.

In Western Australia, compensation must be determined and paid prior to access but no formal agreement document is required.

Overlapping Tenure Framework – Coal and Petroleum (CSG)

Within Australia, Queensland has the most advanced legislative framework for managing overlapping coal and CSG tenures. There is no specific legislative framework for dealing with overlapping coal and CSG tenures in New South Wales, which is closest to Queensland in terms of its resource base for coal and CSG.

Repeal of Coal Super Act

The New South Wales *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* does not appear to operate in the same way as the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* (Queensland Coal Super Act) and does not require employer and employee superannuation contributions to the AUSCOAL Superannuation Fund. Therefore, there does not appear to be any constitutional issues similar to that applying to the Queensland Coal Super Act. The Victorian *Coal Mines (Pensions) Act 1958* does not raise

any constitutional issues of the kind that arise in relation to the Queensland Coal Super Act, as it does not mention superannuation.

Mining Applications

New boundary identification regime

Most Australian jurisdictions require the boundaries of a mining lease or claim, or their jurisdictional equivalent, to be marked prior to applying for the tenement. South Australia provides for an alternative to physically marking the boundary and the discretion of the chief executive to require marking if an alternative methodology to physical marking is used to identify tenement boundaries.

In New Zealand and the Canadian Province of Alberta, there is no requirement to mark a tenement prior to application.

A common provision is the discretion for an entity, either the chief executive or Minister, to require a survey of tenement boundaries by a licensed surveyor prior to or post grant of a tenement.

Those Australian jurisdictions that require a tenement to be marked prior to lodging an application provide legislative (pre-requisite tenure, miners right, etc.) or non-legislative (negotiation, performance based application process) access to mark boundaries through a variety of mechanisms or a combination of mechanisms including pre-requisite tenure or a separate entitlement to access land such as the Western Australian miner's right. In Victoria, a right of access can be granted if access to mark land for an application cannot be negotiated with the landowner/s.

No jurisdiction has such highly prescriptive requirements for boundary marking in primary legislation as Queensland. All other Australian jurisdictions use subordinate legislation or quasi-regulation to establish boundary mark minimum requirements. Each Australian jurisdiction has slightly different requirements for marking boundaries.

Notification and objections

Each Australian jurisdiction's notification and objection regime reflects the relationship between their respective mining and environmental legislation and in some jurisdictions also their planning legislation (e.g. Victoria).

All Australian jurisdictions include a requirement to publicly notify applications either under mining legislation, environmental legislation or planning legislation. In South Australia and Western Australia, if notice is given under either the mining or environmental Act it is taken to be notice under the other Act. In some jurisdictions (South Australia), notice is given by the government not by the applicant.

South Australia does not have a general objection provision rather it relies on an outcome based application process whereby the applicant is obliged to deal with all issues raised until they are resolved or until no further corrective action is possible, practicable or will provide any additional benefit. In the event there are outstanding/unresolved issues then either the application will not be progressed by the administering authority until performance standards are met or, if no further action can realistically be taken to further mitigate the issue, then the application is either approved or refused. In this event there are only limited appeal rights – i.e. to affected landholders.

Other jurisdictions identify grounds for an appeal against a mining tenement.

All researched jurisdictions require landowners to be advised and consulted and provide a mechanism for the affected landowner to appeal or object. Most jurisdictions also have specific provisions in regard to local government although inclusion of a specific right to object is not as universal as for landowners.

Amendments to Petroleum and Mineral Legislation

A review of how other jurisdictions deal with the amendments that are correcting legislative anomalies did not reveal comparable issues and consequent solutions. For the other amendments that are removing redundant provisions and clarifying existing requirements, there is no rationale to compare with other jurisdictions.

Incidental CSG

New South Wales (NSW) is the only other state that has any comparable activity in coal mining and CSG development. Under the NSW *Mining Act 1992*, a mining lease may be amended to include petroleum (including gas) as an entitlement to mine from the coal. However, this cannot be approved if there is an overlapping petroleum authority holder under the NSW *Petroleum (Onshore) Act 1991*. When granting the inclusion of petroleum in the mining lease, the Minister may apply conditions related to the use to which any petroleum recovered may be put. There are no prescriptive laws that prevent use off-tenure as part of a project or commercialisation.

Mount Isa Mines Limited Agreement Act 1985

The agreement in the *Mount Isa Mines Limited Agreement Act 1985* is an agreement specific between the government and Mount Isa Mines (now Glencore). As such, there was no rationale for comparing it to other jurisdictions.

Uncontrolled Gas Emissions from Legacy Boreholes

Several jurisdictions in Canada and the United States charge an industry levy for remediating legacy or orphan oil and gas wells as part of an approach that aims to properly decommission all legacy wells. In some jurisdictions, funding limits remediation of wells to those with emissions near waterways, fragile habitats, or residential areas.

Most Australian states have requirements in place for plugging and decommissioning wells and boreholes drilled by companies as part of their resources exploration or production entitlement. No other state has specific legislation for remediating legacy boreholes.

Notes on provisions

Chapter 1 Preliminary

This chapter outlines the purposes of the legislation, how those purposes are to be achieved, and the relationship with the Resource Acts. The chapter also defines important terms used.

Part 1 Introduction

Short title

Clause 1 states that this Act may be cited as the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Commencement

Clause 2 provides for the provisions of the Act to commence on a day to be fixed by proclamation.

Part 2 Purposes and application of Act

Main purposes

Clause 3 states the main purposes of the Act. These are: to consolidate particular provisions in the Resource Acts; to provide for particular common processes that apply to all resource authorities; and to manage overlapping coal and petroleum resource authorities for coal seam gas.

The clause also states that the Act assists in achieving the legislative purposes of the Resource Acts being the: *Geothermal Energy Act 2010*; *Greenhouse Gas Storage Act 2009*; *Mineral Resources Act 1989*; *Petroleum Act 1923*; and the *Petroleum and Gas (Production and Safety) Act 2004*.

How main purposes are achieved

Clause 4 states how the main purposes are achieved—by providing mainly in this Act rather than in each of the Resource Acts for dealings, caveats and associated agreements; land access; the new framework for overlapping coal and petroleum resource authorities for coal seam gas; the resource authority register; and other miscellaneous matters. Some of these matters will continue to be dealt with to a limited extent by the Resource Acts.

These common provisions provide for common processes which apply generally to resource authorities.

The clause also states that it is the intention of Parliament for this Act to be the first step in a process which will replace the five Resource Acts with a simplified common framework that will apply to all resource authorities.

Act binds all persons

Clause 5 provides that the Act binds all persons including the State (and the Commonwealth and the other States to the extent the legislative power of the Parliament permits). However, the State, the Commonwealth or another State can be prosecuted for an offence against the Act.

Relationship with Resource Acts

Clause 6 provides for the relationship with the Resource Acts. This provision is complemented by amendments to each Resource Act to provide that section 6 of this Act governs the relationship with the Resource Acts.

The clause provides that this Act is to be read and construed with, and as if it formed part of, each Resource Act. It is therefore not to be read in isolation. The clause also specifically provides that a reference in a Resource Act to “this Act” includes a reference to the *Mineral and Energy Resources (Common Provisions) Act 2014*, where the context permits.

The aim of these provisions is to ensure that the common provisions are read as part of each Resource Act, for example, for the purposes of the provisions in these Acts about investigations, enforcement, general offences, evidence and legal proceedings, and appeals and reviews.

A specific provision is also included about the relationship with particular provisions in the Resource Acts relating to the functions and powers of both authorised officers and the Minister, and proceedings for offences. The aim of this provision is to remove any doubt that action may be taken under an appropriate provision of a Resource Act where there is a failure to comply with the common provisions.

In addition to these general provisions, in some cases the relationship with the Resource Acts is specifically provided for, for example, in the context of dealings Clause 21 clarifies the application of provisions of the relevant Resource Acts relating to security.

The clause also states that this Act is not intended to exclude, limit or otherwise affect the operation of a Resource Act (such as in relation to granting a resource authority, carrying out authorised activities for a resource authority, or imposing duties, obligations, requirements or restrictions on the holder of a resource authority) unless this Act otherwise expressly provides. The aim of these provisions is to limit any unintended effects the common provisions may have on the operation of the Resource Acts.

However, the clause states that in cases where there may be inconsistency between a Resource Act and this Act, this Act prevails to the extent of any inconsistency. It also states

how a person must act when the common provisions and a Resource Act deal with the same matter.

Reference to a Resource Act includes reference to this Act

Clause 7 provides that, if the context permits, references in another Act or document to a Resource Act is to be read as including a reference to this Act. This clause was included because the particular matters now mainly dealt with in the common provisions were previously dealt with by the Resource Acts.

Part 3 Interpretation

Division 1 Dictionary

Definitions

Clause 8 provides that the dictionary in schedule 2 defines particular words used in this Act.

Division 2 Key definitions

What is a *Resource Act*

Clause 9 identifies a Resource Act as the *Mineral Resources Act 1989, Petroleum and Gas (Production and Safety) Act 2004*, *Petroleum Act 1923, Geothermal Energy Act 2010* and *Greenhouse Gas Storage Act 2009.*

What is a *resource authority*

Clause 10 defines the term 'resource authority'. The term is a new term not used in any of the five existing Resource Acts, but refers collectively to the various leases, permits, licences and other authorities granted under each of the five existing Resource Acts.

What is the *authorised area*

Clause 11 defines the term 'authorised area' to be the area to which the resource authority relates. The term is intended to correlate with the definition of 'area' in each of the five existing Resource Acts.

Who is an *owner* of land and other things

Clause 12 defines the term 'owner' by reference to the provisions of schedule 1. These provisions adopt and expand upon the definitions of 'owner' set out in each of the five existing Resource Acts.

The clause clarifies that a mortgagee in possession of the land, or a person appointed by the mortgagee is the owner if they have exclusive possession and control of the land, and recognises that land or another thing may have more than one owner.

What is *private land*

Clause 13 defines the term 'private land' and adopts the definition of 'private land' contained in the *Geothermal Energy Act 2010, Greenhouse Gas Storage Act 2009* and the *Mineral Resources Act 1989.* It also notes that land owned by a public land authority is not private land.

What is *public land*

Clause 14 defines the term 'public land' and adopts the definition of 'public land' used in each of the five existing Resource Acts.

What is a *public road*

Clause 15 defines the term 'public road' and adopts the definition of 'public road' used in the *Geothermal Energy Act 2010, Greenhouse Gas Storage Act 2009, Petroleum Act 1923* and *Petroleum and Gas (Production and Safety) Act 2004.*

Chapter 2 Dealings, caveats and associated agreements

Part 1 Dealings

What is a *dealing*

Clause 16 defines a dealing in relation to a resource authority broadly to be any transaction or arrangement that causes the creation, variation, transfer or extinguishment of an interest in a resource authority.

Another transaction or arrangement that affects a resource authority and which is prescribed by regulation will also be a dealing in relation to a resource authority.

The prescription of other transactions or arrangements under this section will provide certainty by removing any doubt about whether a transaction is a dealing.

Prescribed dealings require registration

Clause 17 makes it clear that although there are many types of post-grant transactions or arrangements which may affect an interest in a resource authority, the only ones that require registration are prescribed in a regulation as prescribed dealings. This replaces the prescriptiveness of the current resources legislation.

The types of dealings that are currently required to be registered under the Resource Acts and are likely to be prescribed dealings under a regulation are:

- a transfer of the resource authority or of a share in the resource authority;
- a mortgage over the resource authority or over a share in the resource authority;
- a release, transfer or surrender of a mortgage;
- a change to the resource authority holder's name even if the holder continues to be the same person after the change;
- if the resource authority is a lease:
  - a sublease of the lease;
  - a transfer of a sublease of the lease or of a share in a sublease of the lease; or
  - ending of a sublease.

This clause also provides that Ministerial approval is required before a prescribed dealing will be registered and that a prescribed dealing must be registered to take effect.

Prohibited dealings have no effect

Clause 18 provides that certain dealings are prohibited and cannot be registered. In particular this clause states that a dealing that transfers an area (the 'divided part') of the authority is prohibited, unless the dealing is a sublease, or a transfer of a sublease or share in a sublease.

This maintains the status quo for prohibited dealings of divided parts of resource authorities as provided under the Resource Acts. Examples of a divided part of an area include a particular part of the surface of the area or particular strata beneath the surface of the area. Effectively, this clause establishes that a dealing that transfers legal ownership of a divided part of an authority is prohibited. Any transaction or commercial agreement that does not transfer legal ownership in an authority is not prohibited.

Other dealings to be prohibited will be prescribed by regulation. The types of dealings prohibited under the existing Resource Acts and likely to be prescribed as prohibited under a regulation include the following examples:

- a transfer of a prospecting permit;
- a transfer of a survey licence;
- a transfer of a pipeline authorised under section 33 or 110 of the *Petroleum and Gas (Production and Safety) Act 2004*, and section 31 or 111 of the *Greenhouse Gas Storage Act 2009*;
- a transfer of a pipeline licence, unless the pipeline the subject of the licence and the pipeline land for the licence are also to be transferred to the transferee of the pipeline licence;
- a transfer of a petroleum facility licence, unless the petroleum facility and petroleum facility land the subject of the licence are also to be transferred to the transferee of the licence;

- a transfer of a water monitoring authority, or a share in a water monitoring authority, other than a transfer by operation of law under section 201 of the *Petroleum and Gas (Production and Safety) Act 2004*; and
- a transfer of a data acquisition authority, or of a share in a data acquisition authority, other than a transfer by operation of law under section 182 of the *Petroleum and Gas (Production and Safety) Act 2004* and section 240 of the *Greenhouse Gas Storage Act 2009*.

Application for Minister's approval to register dealing

Clause 19 provides who may apply to the Minister for approval to register a prescribed dealing and for the Minister to refuse or grant approval, with or without conditions. It also provides for another entity to make the application, with the consent of the resource authority holder. Depending on whether the prescribed dealing affects the whole resource authority or only a share in it, the consent of all holders of the resource authority may also be required.

For example, if a holder of a share of a resource authority wishes to mortgage their share, they would not need consent from all other shareholders to register the mortgage. Similarly, if the holder of a share wishes another entity to register that mortgage on their behalf, the entity would only need that shareholder's consent.

However, if a shareholder wishes to transfer all or part of their share that would result in a change in holders, the consent of all of the holders would be required. The consent of each holder would be required as the addition or loss of a holder may impact on the interests of all holders. Detail on what consents are required for a prescribed dealing will be prescribed under a regulation as part of the application requirements.

A regulation may prescribe additional entities who may or must apply for approval and timeframes for making applications where the prescribed dealing is required to be executed because of the operation of a law. These requirements are likely to apply when it is not practicable for the holder to apply, for example on the death of a holder where an interest forms part of an estate administered under the *Succession Act 1981*. A regulation may require the executor, administrator or public trustee to apply to the Minister for approval to register a prescribed dealing after a specified time has passed since the individual died.

Unpaid royalties prevent transfer of resource authority

Clause 20 prevents the Minister from approving a transfer of a resource authority or transfer of a share in a resource authority if any royalty remains unpaid by the holder of the resource authority. However, a royalty assessment is not required if the transfer does not result in a change of holders, such as a dealing to transfer parts of shares among existing holders.

Security may be required

Clause 21 enables the Minister to require a proposed transferee of a resource authority, or a share in a resource authority, to provide security for the resource authority. Once the transfer

is approved, the provisions under the relevant Resource Acts will apply as if the security had been given under those provisions.

Effect of registration and Minister's approval

Clause 22 makes it clear that neither Ministerial approval to register nor registration of a prescribed dealing gives the transaction any more effect or validity than it would otherwise have. This provision puts beyond doubt that the Minister's approval to register a dealing is not taken to validate or give effect to that dealing. The subsequent steps that are required must be undertaken and satisfied before the dealing or the effect of the dealing takes effect or is valid.

Indication of Minister's approval to register

Clause 23 provides that an applicant may apply to the Minister for an indication about whether a proposed prescribed dealing would be approved and the conditions, if any, likely to be imposed.

The process and requirements for the application for an indicative approval are provided in chapter 5, part 1. The Minister must give indicative approval, with or without conditions, or refuse to give indicative approval.

If the Minister gives an indicative approval, with or without conditions, and the applicant applies for registration within the prescribed time, the approval must be granted in accordance with the indicative approval.

The Minister must not grant approval if the proposed transferee of a resource authority is not an eligible holder under the relevant Resource Act; the indicative approval was based on incorrect or omitted material information; or any pre-conditions imposed by the Minister have not been met.

Additionally, this clause confirms that sections dealing with unpaid royalties and with security requirements, apply to the granting of approval.

Part 2 Caveats

Definition for pt 2

Clause 24 provides a definition of 'affected resource authority' which clarifies that a caveat only affects the resource authority over which it is lodged.

Lodging of caveat

Clause 25 simplifies the provisions of the current Resource Acts and details when a person claiming an interest in a resource authority may lodge a caveat. To have effect a caveat must

comply with the prescribed requirements, must not be a prohibited caveat and be accompanied by the fee prescribed by regulation.

The prescribed requirements for compliance will be provided for in a regulation. By way of example, prescribed requirements may include, that the caveat:

- be lodged in the approved form;
- be signed by the caveator, the caveator's solicitor or another person authorised in writing by the caveator;
- state the name and address for service, of one person upon whom any notice may be served in order to serve the caveator;
- state the purpose of the caveat;
- identify the authorisation the subject of the caveat;
- state the nature of the right or interest claimed by the caveator;
- state the period for which the caveat is to continue in force; and
- if a person consents to the lodging of the caveat, be endorsed with the person's caveat.

This clause provides the actions that the chief executive must undertake on receipt of a caveat, including recording the caveat in the register and notifying all affected resource authority holders and persons who have a registered interest in the resource authority. A registered interest is defined to mean an interest in a resource authority which is recorded in the register.

This clause clarifies that a prohibited caveat will be prescribed in a regulation. Caveats which are non-compliant with the prescribed requirements or are prohibited caveats will have no effect.

The types of caveats that are to be prohibited will be prescribed in a regulation and by way of example, may include caveats over a resource authority for which:

- an application has already been lodged for an indicative approval;
- an indicative approval has already been given by the Minister;
- an application has already been lodged for approval to register a prescribed dealing; and
- a change to the authorisation holder's name has been made even if the holder continues to be the same person after the change.

Effect of lodging caveat

Clause 26 details the effect of lodging a caveat. This clause simplifies existing provisions of the Resource Acts and provides that, subject to limited exceptions, a caveat will prevent registration of a dealing in relation to the affected resource authority until a caveat lapses, or is removed or withdrawn. This clause clarifies that lodgement of a caveat will not prevent registration of certain dealings prescribed by a regulation and, where the caveat is registered over a share in a resource authority, it will not prevent registration of a dealing in respect of

the other shares in that resource authority. This clause also puts beyond doubt that a caveat does not create an interest in the affected dealing.

By way of example, the regulations may prescribe that registration of the following types of instruments is not prevented by lodgement of a caveat (as aligned with the current Resource Acts):

- an instrument stated in the caveat as an instrument to which the caveat does not apply;
- an instrument in the approved form, if the caveator consents, to its registration and the consent is lodged with the chief executive;
- an instrument executed by a mortgagee whose interest was registered before lodgement of the caveat if –
    - the mortgagee has power under the mortgage to execute the instrument; and
    - the caveator claims an interest in the resource authority as security for the payment of money or money's worth;
- an instrument of transfer of mortgage executed by a mortgagee whose interest was registered before lodgement of the caveat (does not apply to the holder of the resource authority); and
- another interest that, if registered, will not affect the interest claimed by the caveator.

Lapsing of caveat

Clauses 27 provides for the lapsing of a caveat. The clause distinguishes between a caveat that was consented to and one which was not. A 'consent' caveat lapses at the expiry of its stated term, otherwise it continues until it is withdrawn or removed. A 'non-consent' caveat lapses after three months from lodgement or any shorter term stated in the caveat, or at the expiration of an order of the Land Court where one is in force in relation to the caveat.

Withdrawal or removal of caveat

Clause 28 allows for the caveator to withdraw a caveat by written notice to the chief executive. Additionally, a person with a right or interest in the affected resource authority, or a person with a right to deal with the affected resource authority, may also have a caveat withdrawn by applying to the Land Court for orders for a caveat to be removed.

Recording of lapsing, withdrawal or removal of caveat

Clause 29 requires the chief executive to record in the register the withdrawal, lapse or order to remove a caveat, as soon as practicable.

Further caveat not available to same person

Clause 30 provides that where a caveat is lodged in relation to an interest in an affected resource authority, the same caveator cannot lodge a further caveat over that interest on the same or substantially the same grounds stated in the original caveat unless the caveator has the leave of the Court or the consent of each holder of the affected resource authority.

Compensation for lodging caveat without reasonable cause

Clause 31 makes a person who lodges a caveat over a resource authority, without reasonable cause, liable to compensate for any loss or damage suffered by a person because of the caveat.

Part 3 Associated agreements

What is an *associated agreement*

Clause 32 replicates the common provisions in each of the Resource Acts that describe an associated agreement. It provides the head of power for agreements that are not associated agreements to be prescribed in a regulation.

In particular, this clause provides a broad definition of associated agreement and excludes from the definition agreements which are a prescribed dealing, or another agreement prescribed by regulation.

Recording associated agreements

Clause 33 provides for an associated agreement to be recorded against a resource authority. A holder may apply to the chief executive to record an associated agreement on the register and the chief executive must record the agreement on the register against the authority to which the agreement relates.

However, the chief executive is not required to examine or to determine the validity of an associated agreement prior to the agreement being recorded. In making the application, the holder may nominate an expiry date on which the agreement expires and is to be automatically removed from the register. There is no mandatory requirement for a resource authority holder to make an application to have an associated agreement recorded against the resource authority.

The process and requirements for an application for the recording of an associated agreement against a resource authority are provided in chapter 5, part 1.

Effect of recording associated agreements

Clause 34 makes it clear that the recording of an associated agreement does not confer further effect or validity upon the agreement, and does not create an interest in the resource authority.

Removing associated agreements from register

Clause 35 provides that a holder may also apply to the chief executive to remove an associated agreement from the register. The chief executive is required to remove the

associated agreement from the register where the holder has lodged a valid application. Chapter 5, part 1 applies to the processing of the application.

Chapter 3 Land access

Part 1 Land access codes

Making of land access codes

Clause 36 provides that a regulation may make one or more codes for all Resource Acts that provide for best practice guidelines for communication between the holders of resource authorities, owners and occupiers of land, public land authorities, and public road authorities. A code may also impose mandatory conditions on authorities concerning the conduct of authorised activities on land.

Part 2 Private land

Division 1 Application of pt 2

Application of pt 2

Clause 37 provides that this part does not apply to prospecting permits, mining claims or mining leases granted under the *Mineral Resources Act 1989*. Private land access for these authorities is dealt with under the application-grant provisions in the *Mineral Resources Act 1989* and are required to be determined pre-grant unless a provision otherwise provides.

Division 2 Entry for authorised activities requires entry notice

Application of div 2

Clause 38 establishes that this division applies to an entry to private land for the purpose of carrying out an authorised activity for a resource authority, including crossing access land for the resource authority.

Obligation to give entry notice to owners and occupiers

Clause 39 provides that a person must not enter private land to carry out an authorised activity for a resource authority unless the resource authority holder has given each owner and occupier of the land an entry notice regarding the entry. A maximum penalty of 500 penalty units applies if the resource authority holder breaches this requirement.

The entry notice is invalid if it does not comply with the requirements prescribed under a regulation; states a period for entry that is longer that the maximum permitted; or is not given to the owner or occupier at least 10 business days before the entry.

An entry notice is not invalid if it is given less than10 business days before the entry if the owner or occupier agrees to the shorter period in writing.

Exemptions from obligations under div 2

Clause 40 provides that an entry notice does not need to be given in the listed circumstances. A notice is not required where an alternative arrangement has been made under the relevant Resource Act for the resource authority holder to access the land. This includes, for example, where an easement or other written permission has been given in relation to a pipeline licence under the *Petroleum and Gas (Production and Safety) Act 2004*.

An independent legal right is a right enforceable under any law, including a common law right, but does not include a right to enter the land under this Act or a Resource Act. An example of an independent legal right is a contractual arrangement allowing a party to the contract to enter particular land.

Approval to give entry notices by publication

Clause 41 enables a resource authority holder to apply to the chief executive for approval to give an entry notice, by publishing it in a stated way. The application may relate to more than one entry notice or to a particular type of entry.

The chief executive must only give the approval if satisfied that the publication will happen at least 20 business days before the entry and it is impracticable to give the notice personally to an owner or occupier who is an individual.

Right to give waiver of entry notice

Clause 42 permits an owner or occupier of land to waive the requirement for an entry notice to be given. The waiver is invalid if it does not comply with the requirements prescribed under a regulation. The waiver cannot be withdrawn during the period stated in the notice and ceases to have effect at the end of the stated notification period.

Division 3 Entry for advanced activities requires agreement

Carrying out advanced activities on private land requires agreement

Clause 43 provides that a resource authority holder must not enter private land to carry out advanced activities for a resource authority unless:

- a conduct and compensation agreement about the advanced activity and its effects has been entered into with each owner or occupier of the land;
- a deferral agreement has been entered into with each owner or occupier of the land;
- an opt-out agreement has been entered into with each owner or occupier of the land; or

- each owner and occupier of the land is an applicant or respondent to an application relating to the land being considered by the Land Court.

The requirement for an agreement with each owner and occupier of the land may be satisfied by entering a single agreement with all parties or by entering multiple agreements with one or more owners and occupiers.

This clause does not apply to an entry to private land to carry out an advanced activity for a resource authority if:

- the resource authority holder owns the land;
- the resource authority holder has an independent legal right to enter the land to carry out the activity;
- the entry is to preserve life or property or because of an emergency that exists or may exist;
- the entry is authorised under the relevant Resource Act for the resource authority; or
- the entry is a type prescribed under a regulation.

An independent legal right is a right enforceable under any law, including a common law right, but does not include a right to enter the land under this Act or a Resource Act.

Deferral agreements

Clause 44 provides that an owner or occupier of land may enter into a deferral agreement with a resource authority holder, committing to enter into a conduct and compensation agreement at a later date, while allowing the resource authority holder to enter the land and undertake activities in the interim. A deferral agreement must meet the requirements prescribed under a regulation to be valid.

Right to elect to opt out

Clause 45 provides that an owner or occupier of land may elect to opt out of entering into either a conduct and compensation agreement or deferral agreement with a resource authority holder. Opt-out agreements are designed to provide parties with a longstanding, positive relationship, the opportunity to determine their own, suitable agreement without needing a conduct and compensation agreement. These arrangements must be formalised in a written ‘opt-out agreement’ which meets the requirements prescribed under a regulation.

Regardless of the terms of an opt-out agreement, either party can terminate it by providing written notice to the other party within 10 business days of a signed copy of the agreement being given to the owner or occupier of land. An opt-out agreement ends:

- according to its terms;
- if the resource authority ends;

- if it is terminated by the parties within 10 business days of a signed copy of the agreement being given to the owner or occupier of land as provided for in the clause; or
- if the parties enter into a deferral, conduct and compensation or another opt-out agreement.

An opt-out agreement does not negate a resource authority holder's liability to compensate an eligible claimant.

Division 4 Access to private land outside authorised area

Subdivision 1 Application

Application of div 4

Clause 46 provides that this division does not apply to mineral development licences under the *Mineral Resources Act 1989*. The *Mineral Resources Act 1989* requires—through the application-grant provisions—access land for a mineral development licence to be identified prior to grant.

Subdivision 2 Access rights and access agreements

Limited access to private land outside authorised area

Clause 47 provides that a resource authority holder may obtain access rights from an owner or occupier to cross or conduct certain activities on land outside the resource authority area (the access land). Depending on the potential level of impact to the land, agreement must be given by an owner, occupier or both. Access rights include activities reasonably necessary to allow crossing the land such as constructing a track or opening and closing gates. An access agreement is a written or oral agreement about the exercise of the access rights.

The agreement of an owner and occupier to access land is not required where entry is required to preserve life or property or because of an emergency that exists or may exist.

A 'permanent impact' on the land is defined in the clause. An example of a permanent impact is the building of a road, as opposed to opening a gate to gain access, which is unlikely to have a permanent impact.

Owner or occupier must not unreasonably refuse to make access agreement

Clause 48 provides that an owner or occupier of access land must not unreasonably refuse to make an access agreement with a resource authority holder. Reasonable and relevant conditions may be offered by an owner or occupier to form part of the access agreement. If an access agreement is not made within 20 business days after it has been requested by a resource authority holder, the owner or occupier is taken to have refused to make the agreement.

Criteria for deciding whether access is reasonable

Clause 49 provides for certain matters to be considered in determining whether access is reasonably necessary for the resource authority holder to cross or carry out activities on the access land to gain entry to the resource authority area; or whether the owner or occupier has unreasonably refused to make an access agreement.

The holder of the resource authority must first show that it is not possible or reasonable to use formed roads to exercise the access rights. Where access using formed roads is not possible, consideration must be given to:

- the nature and extent of any impact the exercise of the access rights will have on the access land;
- the nature and extent of any impacts on the owner or occupier's use and enjoyment of the land to be used for access; and
- the details of how, when and where and the period during which the resource authority holder proposes to exercise the access rights.

Additional topics for access agreements

Clause 50 provides that an access agreement may contain alternative obligations for notification of entry or matters relevant to a conduct and compensation agreement. Any alternative provisions that are contained in the access agreement will take effect as an exemption to the notification and conduct and compensation requirements under *Clause 39* and *Clause 81*, to the extent they meet the statutory requirements and that they apply.

Other rights to grant entry not affected

Clause 51 clarifies that this subdivision does not limit an owner or occupier granting an authority holder a right of access to the land by other means, for example, by the grant of an easement.

Subdivision 3 Land Court resolution

Power of Land Court to decide access agreement

Clause 52 enables a resource authority holder or an owner or occupier of access land to apply to the Land Court about whether the access or activity to allow crossing of the land is reasonably necessary, or an owner or occupier has unreasonably refused to make an access agreement. When deciding the matter, the Land Court must have regard to the considerations for deciding whether access is reasonable. Conditions may be imposed by the Land Court on an agreement entered by the parties, or if no agreement has been entered into by the parties, the Land Court conditions are taken to be an access agreement between the parties.

Power of Land Court to vary access agreement

Clause 53 enables a resource authority holder or an owner or occupier of access land to apply to the Land Court to vary an access agreement. The Land Court may vary the access agreement only if it considers the change is appropriate because of a material change in circumstances. The Land Court must have regard to the criteria for deciding whether access is reasonable when making its decision. The power of the Land Court to vary an access agreement is not limited by part 6.

This clause does not prevent the parties consensually varying an access agreement.

Division 5 Periodic notice after entry of land

Notice to owners and occupiers

Clause 54 applies when a resource authority holder has entered private land to conduct authorised activities, or access land has been entered to exercise the rights over the land.

The resource authority holder is required to give each owner and occupier a notice complying with the prescribed requirements. The regulation will identify particular requirements that the notice must comply with, including the time periods by which the notice is to be given.

Division 6 Access to carry out rehabilitation and environmental management

Right of access for authorised activities includes access for rehabilitation and environmental management

Clause 55 provides that a resource authority holder also has the right to enter the land to carry out rehabilitation or environmental management activities required of the holder under the *Environmental Protection Act 1994,* if the resource authority holder has the right to enter private land to carry out authorised activities under the resource authority.

Part 3 Public land

Division 1 Entry to public lands and particular uses of public roads

Application of div 1

Clause 56 clarifies that the division applies for entry to public land and the use of a public road that is not considered a notifiable road use and does not apply to prospecting permits, mining claims or mining leases under the Mineral Resources Act 1989. Land access for these authority types are dealt with under the application-grant provisions of the *Mineral Resources Act 1989* and are in most instances required to be determined pre-grant.

What is a *periodic entry notice*

Clause 57 provides that a '*periodic entry notice'* is to be given as the first notice about an entry, or series of entries, to public land. A valid notice must be given to the public land authority within the period prescribed under a regulation and otherwise comply with the requirements prescribed under a regulation. At the end of the period stated in the notice or the prescribed period, if further entry is required to conduct resource activities a new periodic entry notice must be given to the public land authority.

Any entry period cannot be longer than the prescribed period unless the public land authority agrees to a longer period.

Entry to public land to carry out authorised activity is conditional

Clause 58 provides that a resource authority holder may enter public land to carry out an authorised activity only if at least one of the following stated criteria is met:

- the activity may be carried out by a member of the public without a specific approval from the relevant public land authority, such as travelling on a public road;
- the public land authority has given the resource authority holder a waiver of entry notice;
- a valid periodic entry notice has been given to the public land authority within the specified timeframe prior to the proposed entry; or
- entry is to preserve life or property or because of an emergency that exists or may exist.

A periodic entry notice must be given for each entry period.

To minimise any delays to resource authority holders in commencing authorised activities on public land, an applicant for a resource authority may give a periodic notice of entry to, or request a waiver of entry notice from, the public land authority as if the applicant were a resource authority holder. However, entry to public land can only occur after the grant of the relevant resource authority even if the applicant meets the requirements of this clause.

Conditions public land authority may impose

Clause 59 applies if a resource authority holder has given a public land authority a periodic entry notice. The public land authority may impose reasonable and relevant conditions on a resource authority holder about the entry to public land or the carrying out of the authorised activity.

The conditions may for example, require further notice to be given when particular activities are undertaken or for subsequent entries during the entry period. Where third party rights have been granted over the land, such as rights to occupy or use the land, the public land authority may impose conditions that may consider those rights. For example a condition may

reasonably be imposed to facilitate coexistence between the two uses or to mitigate the impacts on an owner or occupier of that land.

However, the public land authority cannot impose conditions that are the same, substantially the same or inconsistent with existing conditions of the resource authority and its relevant environmental authority, unless the public land authority is the chief executive of the department by which the *Nature Conservation Act 1992* is administered. In this case, more stringent conditions than the environmental authority's conditions may be imposed.

Where the public land authority conditions are imposed prior to the grant of the resource authority, the conditions may be amended post-grant to remove any inconsistencies or duplication between the conditions and the resource authority or relevant environmental authority. Additionally, where a condition on the resource authority or the relevant environmental authority is amended, the public land authority may vary the conditions it has imposed to ensure that the conditions continue to comply with this requirement.

The resource authority holder must comply with the conditions imposed by the public land authority. If the public land authority decides to impose a condition that is not agreed to or requested by the resource authority holder, it must give the holder an information notice about its decision. A maximum penalty of 100 penalty units applies if the resource authority holder fails to comply with the conditions imposed by the public land authority.

Right to give waiver of entry notice

Clause 60 permits a public land authority to waive the requirement for an entry notice to be given to carry out an authorised activity on land. The waiver cannot be withdrawn during the notified period stated in the notice during which the land may be entered; is invalid if it does not comply with the requirements prescribed under a regulation; and ceases to have effect at the end of the notified period.

Division 2 Notifiable road use

Application of div 2

Clause 61 provides that this division applies to the use of a public road if the use is a notifiable road use.

What is a ***notifiable road use***

Clause 62 provides that a notifiable road use is the use of a public road that is prescribed under a regulation.

Use of public roads for notifiable road use

Clause 63 prohibits a resource authority holder from using a public road for a notifiable road use, unless a notice has been given to the public road authority and one of the following has occurred:

- the holder and the relevant public road authority have either signed a compensation agreement for the use;
- the public road authority has given written consent to the carrying out of the use; or
- a compensation application has been made to decide the holder's compensation liability to the public road authority relating to the road.

The notice given to the public land authority must comply with the requirements prescribed under a regulation. This requirement is a condition of the resource authority and its contravention is a breach of the relevant Resource Act for that authority.

Directions about notifiable road use

Clause 64 enables the public road authority to give a resource authority holder a road use direction about the way the holder may use the road for notifiable road uses. A direction may, for example, be about when the road may be used; the route for the movement of heavy vehicles; or safety precautions that the holder must take.

The direction may also require the holder to carry out an assessment of the impacts likely to arise from the notifiable road use and consult with the public road authority in carrying out the assessment. An assessment cannot be required if the notifiable road use is transport relating to a seismic survey or a drilling activity, where the impact has already been assessed under an environmental impact statement under the *Environmental Protection Act 1994* or a similar document under another Act. Where an impact has been assessed under an environmental impact statement, an assessment may be required, for example, to expand on or clarify the environmental impact statement or similar, but cannot relate to the specifics identified in the previous assessment document.

A direction is invalid if it is about more than preserving the condition of the road, the safety of road users and the public; and if it is does not include an information notice about the decision to give the direction. Compliance with a road use direction given to the resource authority holder is taken to be a condition of the resource authority.

Exemptions from div 2

Clause 65 provides that a resource authority or project may be exempted from some or all of the provisions of this division where it is prescribed under a regulation. The regulation may stipulate conditions that must be complied with for the exemption to apply.

Part 4 Restricted Land

Currently the Resource Acts provide different protections for landholders in relation to resource activities being undertaken adjacent to residences and other infrastructure. This part establishes a consistent approach across the relevant resource activity types, giving effect to a single restricted land framework that offers greater protections to owners and occupiers.

As a consequence of the amended framework, a resource company will no longer be required to enter into a conduct and compensation agreement with an owner or occupier of the land, to carry out preliminary activities within 600 metres of a school or occupied residence. Instead the restricted land protections under this part will apply.

Division 1 Preliminary

Subdivision 1 Application

Application of pt 4

Clause 66 clarifies that the relevant public and private land access requirements under parts 2 and 3 of this chapter continue to apply to land that is restricted land.

Subdivision 2 Interpretation

Definitions for pt 4

Clause 67 defines terms used throughout this part.

Restricted land applies to *prescribed activities* that are defined in this clause as authorised activities carried out on the surface of the land or below the surface of the land in a way likely to cause an impact on the surface of the land. An example of an impact on the surface of the land from an authorised activity below the surface is subsidence.

However, restricted land does not apply where the authorised activity is the installation of an underground pipeline or cable, including backfilling of any trench or hole required as part of the installation, provided the installation is completed within 30 days. Restricted land also does not apply where the authorised activity is the operation or maintenance of underground pipelines and cables. Examples include water or gas pipelines and electricity or communications cables.

The terms ‘pipeline’ and ‘cable’ have their ordinary meaning in this context, and do not include any ancillary surface infrastructure such as pumping stations, electricity substations, or vents.

While the results of the installations may be long-term or permanent, the expected impact on the owner or occupier will be minimal in terms of disturbance and time period. Therefore, the

owner or occupier’s consent is not required under this part, but the requirements of the private and public land access chapter must be met.

Restricted land also does not apply to an activity that may be carried out on land by a member of the public without requiring the specific approval of an entity. For example, the consent of the owner or occupier is not required for a resource authority holder to a conduct notifiable road use on a public road, even where the road is within the prescribed distance of a residence. The owners’ and occupiers’ consent is not required because any person may drive on the road, including to transport materials and equipment. However, this does not preclude the person from requiring the necessary permits or approvals under another Act, such as a driver’s licence or heavy haulage permit.

A regulation may provide for activities not to be defined as a *prescribed activity.* Where the activity is listed in the regulation, the restricted land entry requirements do not apply to. A regulation may also prescribe the distance from a residence or affected infrastructure where restricted land will apply.

A residence is defined as a primary dwelling. More than one residence may be located on a particular parcel of land if each is a primary dwelling.

What is ***restricted land***

Clause 68 defines *restricted land* in relation to particular permanent buildings, such as residences, and areas of particular activities, such as schools. Restricted land also applies to land within a prescribed distance of a building for a business or other purpose if it is reasonably considered that the building can not be easily relocated and can not co-exist with any activity authorised under a resource authority. It is intended that holders of resource authorities and relevant owners and occupiers of potential restricted land use this test to determine whether restricted land applies to particular cases that are not identified either in the Act or in a regulation.

The application of restricted land to a particular building or area is based on the use of the building or area at the date the resource authority was granted. For the purposes of applying restricted land, the date the resource authority was granted is not changed as a result of any renewal of the resource authority.

A regulation may prescribe for additional buildings and areas that will invoke the restricted land requirements. For example, a regulation could prescribe a building used for a veterinary practice or for retail activities.

A regulation may also prescribe buildings or areas that will not invoke the restricted land requirements. For example, a regulation could prescribe a pump shed, a hayshed, a roadside stall, or a building used for temporary accommodation.

This clause defines a *place of worship* which may include a church, chapel, mosque, synagogue, or temple. The definition also includes places that are used for associated

charitable, educational and social activities. This clause also defines a residence as a primary dwelling.

Who is a *relevant owner or occupier*

Clause 69 clarifies that the relevant persons for giving consent to enter restricted land to carry out a prescribed activity are the owner and occupier of the building or area of restricted land.

Division 2 Entry for particular authorised activities requires consent

Consent required for entry on restricted land

Clause 70 prohibits a person from entering restricted land to carry out a prescribed activity, unless each owner and occupier of the land has given their written consent for the activity to be undertaken. The consent cannot be withdrawn during the period stated in the consent, and if the consent is given on conditions, the conditions are taken to be conditions of the resource authority.

Consent not required for entry on particular land to carry out prescribed activities for mining lease

Clause 71 allows a mining lease holder to access restricted land without the consent of the owner or occupier of the restricted land, where the Minister has determined activities on the restricted land cannot co-exist and a compensation agreement under the *Mineral Resources Act 1989* has been entered into with the relevant owners and occupiers.

Declaration about whether particular land is restricted land

Clause 72 enables an owner, occupier or holder of a resource authority to apply to the Land Court to make a declaration about whether land is restricted land for the resource authority. The Court may also make other relevant orders. However, any orders made by the Court cannot replace or abrogate the need for the owners or occupiers' consent to be given under this division.

Part 5 Other resource authorities' authorised areas

Application of pt 5

Clause 73 details that this part applies to land outside the area of a resource authority (called 'the first authority') that is within the area of another resource authority (called 'the second authority'). Where the land is also private or public land under this chapter, then this part applies in addition to the requirements of parts 2, 3 or 4.

This part does not apply if the first resource authority is a prospecting permit, mining claim or mining lease under the *Mineral Resources Act 1989*. The *Mineral Resources Act 1989*

already provides for access requirements to a mining claim, mineral development licence or mining lease to be addressed under those particular resource authorities.

Definitions for pt 5

Clause 74 defines the terms 'first resource authority' and 'second resource authority' for this part.

Access if second resource authority is a lease

Clause 75 requires that where the holder of the first resource authority wishes to enter land within the area of a lease, then the first authority holder must obtain the written consent of the second authority (lease) holder before entering the subject land.

Access if second resource authority is not a lease

Clause 76 provides that the consent of the second resource authority holder is not required where the second resource authority is not a lease (for example, a resource authority for exploration purposes) and it is reasonably necessary for the first authority holder to cross and conduct activities in the area of the second authority to allow access to the first resource authority area. However, the right of entry cannot be exercised it if would adversely affect the carrying out of an authorised activity or proposed authorised activity for the second resource authority.

Part 6 Enduring effect of particular agreements, notices and waivers

Access agreements, entry notices and waivers not affected by dealing

Clause 77 prescribes that a dealing in relation to a resource authority does not affect an access agreement, an entry notice, or a waiver of entry notice, given or made for the resource authority.

Entry notice and waivers not affected by change in ownership or occupancy

Clause 78 provides the procedure where there is a change in occupancy or ownership of the relevant land and the resource authority holder had given an entry notice to the previous owners or occupiers of the relevant land. After the change, the resource authority holder is taken to have given that notice to each new owner or occupier.

Where a waiver of entry notice has previously been given by the relevant owners and occupiers of the land to the resource authority holder, and that ownership or occupancy of that land changes, the new owners and occupiers of the relevant land are taken to have agreed to that waiver of entry notice.

Once the resource authority holder becomes aware that there has been a change to an owner or occupier, the resource authority holder must within 15 business days, supply a copy of the entry notice or waiver of entry notice to the new owners and occupiers. The change of ownership or occupancy does not affect the entry period stated in the entry notice.

If the resource authority holder does not give a copy of the entry notice or waiver of entry notice to the new owners and occupiers within the prescribed period after becoming aware of the change in ownership or occupancy, a new entry notice or waiver of entry notice must be given or negotiated with the new owners and occupiers.

Access agreement binds successors and assigns

Clause 79 prescribes that an access agreement binds all parties to it, including the landholder or occupier and each of their personal representatives. The agreement also binds all future holders in any relevant title and assigns.

Part 7 Compensation and negotiated access

Division 1 Compensation relating to private and public land

General liability to compensate

Clause 80 imposes a liability on the resource authority holder to compensate each owner and occupier of private or public land that is in the area of, or is access land for the resource authority for any compensatable effect caused by the authorised activities. Each owner or occupier of land within the resource authority area is defined as an 'eligible claimant'.

A compensatable effect is a cost or impact that arises from the authorised activities being carried out on the land or entering an agreement for the chapter. The reasonable costs incurred preparing or negotiating an agreement may also be claimed, except the costs of a person facilitating an ADR process. For example, the eligible claimant's travel and accommodation costs may be claimed where travel is required to meet and negotiate an agreement, but the fees payable to a mediator, facilitator or arbitrator are not compensatable effects that can be claimed. Instead these costs must be covered by the party calling the ADR.

This section does not apply to a public land authority for a notifiable road use.

Division 2 Provisions for conduct and compensation agreements

Subdivision 1 Conduct and compensation agreement

Conduct and compensation agreement

Clause 81 provides that an eligible claimant and a resource authority holder may enter into a conduct and compensation agreement setting out:

- how and when the holder may enter the land relevant to the eligible claimant;
- how authorised activities that relate to the eligible claimant may be carried out; and
- the holder's compensation liability or future compensation liability to the claimant.

A conduct and compensation agreement must comply with the prescribed requirements in the regulation to be valid and cannot be inconsistent with this Act, a relevant Resource Act, a condition of the resource authority or a mandatory provision of the relevant land access code. A conduct and compensation agreement that is inconsistent or does not comply with these requirements is unenforceable to the extent of any inconsistency.

A conduct and compensation agreement may relate to all or part of the current or future liability, and may be incorporated into another agreement.

Subdivision 2 Negotiation process

Notice of intent to negotiate

Clause 82 provides that a resource authority holder may give an eligible claimant a negotiation notice that the holder wishes to negotiate a conduct and compensation agreement or a deferral agreement. The notice is invalid if it does not comply with the requirements prescribed in a regulation.

Negotiations

Clause 83 provides that if a negotiation notice is given, the resource authority holder and the eligible claimant must use all reasonable endeavours to negotiate a conduct and compensation agreement or a deferral agreement. The negotiations must be for at least the period prescribed in a regulation but may continue for longer by agreement between the parties. The negotiations will end if parties enter into an opt-out agreement.

No entry during minimum negotiation period

Clause 84 provides that a resource authority holder cannot enter the relevant land to carry out advanced activities until the minimum negotiation period expires, even if the parties enter into an agreement before the end of the period.

The agreement entered into between the parties cannot displace the operation of this clause, by permitting, for example, entry prior to the end of the minimum negotiation period.

Cooling-off during minimum negotiation period

Clause 85 provides that where the parties enter into a conduct and compensation agreement or a deferral agreement, either party may terminate the agreement during the minimum negotiation period by written notice to the other party. When the written notice is given, the terminated agreement is taken to have never had any effect. However, this does not affect the timing of the minimum negotiation period that commenced when the negotiation notice was given. Therefore, terminating an agreement during the cooling-off period will not affect the ability of a party to seek a conference or ADR under the applicable clauses, at the end of the minimum negotiation period.

Parties may seek conference or ADR

Clause 86 provides that if the parties have not entered into a conduct and compensation agreement or deferral agreement at the end of the minimum negotiation period, either party may by written notice ask for an authorised officer to call a conference to negotiate a conduct and compensation agreement or request the other party to agree to an ADR process. If a conference is sought, the written notice must also be given to the other party.

If an ADR is called, the notice must be given to the other party and state the type of ADR proposed to be used and that the party giving the notice agrees to bear the costs of the person who will facilitate the ADR. The ADR may be of any type including arbitration, conciliation, mediation or negotiation.

The corresponding conference chapters in the Resource Acts apply to the land access chapter, in addition to the subsequent clauses of this Bill.

Conduct of conference

Clause 87 requires a conference, if called, to be conducted according to the requirements prescribed under a regulation. The authorised officer conducting the conference must take all reasonable steps to ensure the conference is finished within 20 business days (‘usual period’) after the notice is given. If the parties negotiate an agreement at the conference, the agreement must be in writing and signed by or for the parties.

During the usual period, either party may ask the other party to agree to a period longer than the usual period due to reasonable or unforeseen circumstances. If the parties agree, the longer period applies.

Nothing said by a person at a conference is admissible in evidence in a proceeding without that person’s consent. If the parties negotiate an agreement at the conference, the agreement must be written and signed by or for the parties.

Conduct of ADR

Clause 88 requires the parties where an ADR is called, to use reasonable endeavours to finish the ADR within 20 business days after giving the relevant notice (‘usual period’). During the usual period either party may ask the other party to agree to a period longer than the usual period due to reasonable or unforeseen circumstances. If the parties agree, the longer period applies.

The facilitator must be independent of either party and nothing said by a person at the ADR is admissible in evidence in a proceeding without that person’s consent. If an agreement is made during the ADR, it must be written and signed by or for the parties.

Nonattendance at a conference or ADR

Clause 89 provides that if a party does not attend a properly called conference or ADR, the party who did attend may apply to the Land Court for an order requiring the non-attending party to pay their reasonable costs of attending. The Land Court cannot order the non-attending party to pay costs if it is satisfied that the party has a reasonable excuse for not attending. If the Land Court makes the order, it must decide the amount of the costs.

If the notice called for a conference, the authorised officer may hold the conference even though the party given the notice does not attend.

Subdivision 3 Recording particular agreements

Particular agreements to be recorded on titles

Clause 90 provides that a resource authority holder that is a party to a conduct and compensation or opt-out agreement must give the registrar of titles notice of the existence or termination of the agreement in the appropriate form within 28 days of entering into the agreement or the agreement ending. The resource authority holder bears the costs of recording and removing the record from the register. This record will enable prospective purchasers of land in the property market to readily identify if an agreement that is binding on successors, exists.

The requirements under subsection (1) and (3) are a condition of the resource authority. A failure to comply is a breach of the resource authority under the relevant Resource Act.

The registrar of titles must amend the relevant register in a way that a search of the register will show the existence or non-existence of the agreement. The registrar must remove the particulars of the agreement from the relevant register if requested to do so by a party to the agreement and if satisfied that the agreement has ended or is no longer relevant for the land.

A notice is invalid if it does not comply with the requirements prescribed under a regulation for a notice.

Division 3 Compensation for notifiable road uses

Liability to compensate public road authority

Clause 91 provides for compensation to be paid by a resource authority holder, to a public road authority for any cost, damage or loss caused or that will be caused, by notifiable road uses. This liability is called the holder's 'compensation liability' to the public road authority and it applies whether or not the holder has given notice of the use and in addition to and without impact on the holder's liability under another provision of this Act regarding compensating the public road authority or anyone else.

Road compensation agreement

Clause 92 provides that a resource authority holder and the relevant public road authority for a public road may enter into a road compensation agreement, regarding the resource authority holder's compensation liability in relation to the public authority's road.

A regulation prescribes any matters that the road compensation must detail, what the compensation agreement relates to, and other matters that may be addressed in the agreement. The road compensation agreement must comply with any requirements prescribed under a regulation to be valid.

Division 4 Changes not affecting compensation

Compensation not affected by change in administration or of resource authority holder

Clause 93 provides that a conduct and compensation agreement or road compensation agreement or a Land Court decision about compensation liability binds all parties to it and each of their personal representatives, regardless of any change in the tenure holder or public road authority. The agreement also binds all successors and assigns.

Division 5 Land Court jurisdiction for compensation and conduct

Subdivision 1 Negotiation process

Land Court may decide if negotiation process unsuccessful

Clause 94 provides that if a conference or ADR is called and it is not finished within the required period or, if only one party attended or, if both parties attended but no conduct and compensation agreement was agreed, an eligible party may apply to the Land Court for a decision as to the resource authority holder's compensation liability now or in the future, to the extent that it is not subject to a conduct and compensation agreement or, obligations or limitations when carrying out the authorised activities.

The Land Court may have regard to the conduct of the parties in the processes leading up to the application being made to the Land Court and must also as much as possible, ensure that the hearing occurs together with or as closely as possible to, the hearing of any relevant environmental compensation application. This ability of the Land Court to have regard to the conduct of the parties is to work in conjunction with Clause 87 and Clause 88, which stipulate that nothing said by a party at a conference or during ADR is admissible in a proceeding without that person's consent. The behaviour that the Land Court may have regard to includes but is not limited to, the refusal to supply key information or documents, or any unreasonable delays in attendance or supplying information or documents.

Orders Land Court may make

Clause 95 provides that the Land Court may make any order it considers appropriate in order to meet or enforce its decision on an application. For example, the Land Court may order non-monetary and monetary compensation; that a party not engage in particular conduct; or that the parties attend a conference or engage in further ADR.

Subdivision 2 Additional jurisdiction

Additional jurisdiction for compensation, conduct and related matters

Clause 96 provides additional jurisdiction for the Land Court in relation to the public land access provisions in this chapter. This clause applies where the holder has carried out a preliminary activity; the parties cannot reach agreement about a conduct and compensation agreement; or there is a conduct and compensation agreement or deferral agreement between the parties.

Where applicable, the Land Court may assess all or part of the relevant resource authority holder's compensation liability to the eligible claimant; decide a matter related to the compensation liability; declare whether or not a proposed resource authority activity would interfere with the carrying out of lawful activities by the eligible claimant; or make any order it considers necessary or desirable for such matters.

Jurisdiction to impose or vary conditions

Clause 97 provides for the Land Court under its additional jurisdictions, to impose any condition it considers appropriate for the exercise of the parties' rights or vary an existing agreement between the parties. The condition imposed or varied by the Court becomes a condition of an existing agreement or where no agreement exists, becomes an agreement between the parties.

Subdivision 3 Compensation for notifiable road use

Deciding compensation by Land Court

Clause 98 provides that a public road authority or resource authority holder may apply to the Land Court for a decision as to the resource authority holder's compensation liability to a public road authority. The Land Court may decide the compensation liability, but only to the extent it is not subject to a road compensation agreement. The Land Court's decision must have regard to all criteria prescribed under a regulation relating to the public road authority, resource authority and notifiable road use; whether the applicant has attempted to mediate or negotiate compensation liability; and may have regard to any other matter the Court considers relevant to making its decision.

Subdivision 4 Later review of compensation by Land Court

Review of compensation by Land Court

Clause 99 establishes that this clause applies if the compensation liability or future compensation liability of a resource authority holder to an eligible claimant or public road authority has been agreed to under a compensation agreement or decided by the Land Court and a material change in circumstances has occurred since the agreement or decision was made.

The resource authority holder, eligible claimant or public road authority may apply to the Land Court for a review of a conduct and compensation agreement or road compensation agreement. In carrying out a review, the Land Court may review the original agreement only to the extent that it is affected by the change and if the Court considers the agreement is not affected by the change. If the Court considers that the original agreement is not affected by the change, it must not carry out or continue with the review.

After carrying out the review, the Land Court may decide to confirm the original agreement or amend it in a way that it considers appropriate. In making this decision, the Court must have regard to all criteria prescribed under a regulation that is relevant to the compensation, and may have regard to whether or not the applicant has attempted to mediate or negotiate the compensation liability and any other matter the Court considers relevant to making the decision.

If the Court decides to amend the original agreement, the amended agreement is taken to be the original compensation for this Act.

Chapter 4 Overlapping coal and petroleum resource authorities

Part 1 Preliminary

Division 1 Purposes of chapter

Main purposes of ch 4

Clause 100 describes the purposes of this chapter and how these purposes will be achieved. This chapter provides a regulatory framework which enables the State's coal and coal seam gas (CSG) industries to co-exist. This chapter also encourages the coal and CSG industries to work collaboratively with each other to optimise the development and use of the State's resources for the benefit of all Queenslanders.

This chapter achieves this by establishing a framework that allows a direct path to grant of resource authorities for coal and CSG production, regardless of any overlapping tenure. It also provides that coal production has priority for developing coal deposits in a sole occupancy area subject to notice and compensation requirements. Overlapping resource authority holders have on-going obligations to exchange information which will facilitate the efficient conduct of overlapping coal and CSG activities. This chapter also provides the industries with flexibility to negotiate arrangements as an alternative to particular legislative requirements.

Division 2 Interpretation

Definitions for ch 4

Clause 101 describes the definitions that apply to chapter 4.

What is an *overlapping area*

Clause 102 establishes a definition for overlapping area. The definition provides that an overlapping area is an area that forms part of both a resource authority listed in column 1 of a table in chapter 4 and a corresponding resource authority listed in column 2 of the same table, only where the resource authority mentioned in column 1 was granted after the resource authority mentioned in column 2.

Subsection (3) provides that an overlapping area includes an area that will become an overlapping subject to the grant of an application for a column 1 resource authority.

What is an *ML (coal) holder*

Clause 103 defines a ML (coal) holder is both a holder of a ML under the *Mineral Resource Act 1989* and where the circumstances permit, an applicant for a ML (coal) under the *Mineral Resource Act 1989*.

What is a *PL holder*

Clause 104 defines a PL holder as both a holder of a PL under the *Petroleum and Gas (Production and Safety) Act 2004* and, where the circumstances permit, an applicant for a PL under the *Petroleum and Gas (Production and Safety) Act 2004*.

Extended meaning of ML (coal) and PL

Clause 105 provides that where the circumstances permit, a reference to a ML (coal) or PL in this chapter may include a reference to a ML (coal) or a PL which has been applied for but not yet granted.

Division 3 Other key provisions

Purpose of div 3

Clause 106 the purpose of this division is to define relevant terms which are applicable to the operation of part 2.

What is an *initial mining area* or *IMA*

Clause 107 describes that an initial mining area (IMA) is all or part of an overlapping area in which the ML (coal) holder intends to establish sole occupancy to conduct authorised activities as identified in a joint development plan.

Subsection (2) provides that the minimum area of an IMA represents an area equivalent to a minimum of 10 years of safe coal mining operations. This is not intended to be a timeframe for which coal mining must be completed but is to identify the size of the area to be mined, that is, the area reasonably required for 10 years of mining.

Subsection (3) provides that there may be more than one IMA in an overlapping area.

What is a *future mining area* or *FMA*

Clause 108 describes that a future mining area (FMA) is an area within an overlapping area in which the ML (coal) holder intends to carry out authorised activities. The FMA is identified in a joint development plan. The FMA is a collective term for all the rolling mining areas (RMAs) for an IMA.

Subsection (2) provides that an FMA must be an area adjacent to an IMA.

What is a *rolling mining area* or *RMA*

Clause 109 describes that a rolling mining area (RMA) is an area within an overlapping area in which the ML (coal) holder intends on establishing sole occupancy to carry out authorised

activities. A RMA is outside an IMA but within an FMA. The RMA is as identified in a joint development plan,

Subsection (2) provides that the RMA is to be an area equivalent to a minimum of 1 year of safe mining. This is not intended to be a timeframe for which coal mining must be completed but is to identify the size of the area to be mined, that is, the area reasonably required for 1 year of mining.

Subsection (4) provides that the RMA consists of incremental areas which are created as mining operations advance beyond the IMA and into the FMA.

Subsection (5) provides that the RMA must not be more than 10% of the total IMA or FMA for the overlapping area in a particular year.

What is the *simultaneous operations zone* or *SOZ*

Clause 110 describes that a simultaneous operations zone (SOZ) for an overlapping area is an area which is adjacent with an IMA or RMA. It is an area which is a 'buffer zone' around the mining activity in which joint occupancy can be established. To ensure the safe operations for the co-existence of a ML (coal) and a petroleum resource authority holder in a SOZ, safety and health arrangements must be established in accordance with existing legislation when considered reasonably required.

What is *sole occupancy*

Clause 111 provides that for a surface mine, sole occupancy an IMA or RMA means an overlapping petroleum resource authority holder will be temporarily suspended from carrying out authorised activities within that area of the IMA or RMA. Whereas, an ML (coal) holder has the 'right of way' to safely develop coal resources.

Subsection (2) provides that for an underground mine, sole occupancy means the ML (coal) holder has 'right of way' to safely develop coal resources in the IMA or RMA, and also allows a petroleum resource authority holder to carry out authorised activities in the IMA or RMA. The petroleum resource authority may carry out the authorised activates unless the site senior executive of the coal mine reasonably prohibits the petroleum resource authority holder from undertaking activities until safety and health arrangements can be made.

Subsection (3) provides that sole occupancy of an IMA or RMA by the ML (coal) holder does not limit a petroleum resource authority holder from carrying out authorised activities within the overlapping area outside the IMA or RMA.

Subsection (4) provides that the PL holder is not required to abandon the use of PL major gas infrastructure if an ML (coal) holder requires the infrastructure to be moved from within the IMA or RMA until the replacement PL major gas infrastructure is constructed and commissioned, and is in operation. This is to ensure that the PL holder does not experience production losses unnecessarily.

What is *joint occupancy*

Clause 112 establishes that joint occupancy of a SOZ for an IMA or RMA is when the carrying out of authorised activities can be undertaken by both a ML (coal) holder and a petroleum resource authority holder, subject to the SOZ safety and health arrangements for the co-existence of the overlapping ML (coal) and petroleum resource authority.

What is the *proposed mining commencement date*

Clause 113 describes that the proposed mining commencement date is the date an ML (coal) holder proposes to start carrying out authorised activities in an IMA or RMA. The proposed mining commencement date is identified in the proposed joint development plan.

Subsection (2) provides that the proposed mining commencement date for an IMA must be at least 18 months after the ML (coal) holder has given an advance notice to a column 2 resource authority that is an ATP holder. Where the ML (coal) overlaps a PL, the proposed mining commencement date for an IMA must be at least 11 years after the ML (coal) holder has given the advance notice to the PL holder.

Subsection (3) provides that the proposed mining commencement date for an RMA in an overlapping area must be at least 10 years after the proposed mining commencement date for an IMA to which the RMA is adjacent. For each subsequent RMA for the overlapping area, the date must be at least 1 year after the proposed mining commencement date for the immediately preceding RMA. Subsection (3) applies to an overlap with an ATP or a PL.

What is the *agreed mining commencement date*

Clause 114 describes that the agreed mining commencement date is the date in which an ML (coal) holder may start carrying out authorised activities in the IMA or RMA. The agreed mining commencement date is identified in the agreed joint development plan.

Subsection (2) provides that the agreed mining commencement date can be earlier date than is otherwise statutorily required for a proposed mining commencement date for the IMA or RMA, either by agreement between the parties, by acceleration or by arbitration of a relevant matter.

Part 2 Right of way for coal

Division 1 Preliminary

Definitions for pt 2

Clause 115 describes the definitions that apply for part 2 of chapter 4.

Table for pt 2

Clause 116 provides a table containing the column 1 and corresponding column 2 resource authorities to which this part applies. This part applies to an overlap where a ML (coal) is applied for over either an existing ATP or a PL.

Division 2 Sole occupancy

Sole occupancy of IMA

Clause 117 provides the framework for an ML (coal) holder's sole occupancy of the overlapping area to undertake authorised activities in one or more IMAs which are provided for in the agreed joint development plan. It establishes the notices that must be provided to an ATP or PL holder in order for a ML (coal) holder to establish sole occupancy.

Subsection (2) requires that if the ML (coal), once granted, is overlapping with an existing ATP, the ML (coal) holder will only have sole occupancy of an IMA if it provides the ATP holder with an advance notice and an 18 months notice.

Subsection (3) requires that if the ML (coal), once granted, is overlapping with an existing PL, the ML (coal) holder will only have sole occupancy of an IMA if it provides the PL holder with an advance notice and a confirmation notice. Once these notices are provided, sole occupancy over an area occurs on the agreed mining commencement date.

Parties cannot contract out of providing required notices under this division.

Advance notice

Clause 118 outlines the required content of an advance notice to be provided by an applicant for a ML (coal) to a petroleum resource authority holder within 10 business days of making the application. An advance notice includes a joint development plan for the overlapping area. As the advance notice may be given before any agreed joint development plan is in place, the joint development plan may only have 'proposed' information about the size and location for each IMA, each RMA and each SOZ.

18 months notice

Clause 119 establishes the content of an 18 months notice to be provided by an ML (coal) applicant or holder to the ATP holder. This notice confirms the intention of the ML (coal) applicant or holder to start mining in the IMA at least 18 months from the date of the notice.

It is envisaged that there will be circumstances where an ML (coal) holder may intend to start work within 18 months of providing an advance notice whereby an 18 months notice would also need to be provided at the same time. To reduce the burden of having to provide two notices which effectively state the same information, subsection (3) allows the ML (coal) holder to combine the advance notice and 18 months notice.

Confirmation notice

Clause 120 establishes the content of a confirmation notice to be provided by an ML (coal) applicant or holder to a PL holder. This notice confirms the agreed mining commencement date, which must be between 18 months and 2 years from the date of the notice.

Sole occupancy of RMA

Clause 121 establishes that an ML (coal) holder has sole occupancy of each RMA in an overlapping area from the agreed mining commencement date for the RMA as provided for in an agreed joint development plan. The establishment of sole occupancy is subject to the provision of an RMA notice by the ML (coal) holder to the petroleum resource authority holder.

RMA notice

Clause 122 requires that an RMA notice be given to a petroleum resource authority at least 18 months before the agreed mining commencement date for the RMA. The notice must outline the intention of the ML (coal) holder to take sole occupancy of the RMA on the agreed mining commencement date and include any other information that is prescribed by regulation.

Resource authority holders cannot contract out of providing an RMA notice.

Joint occupancy of SOZ

Clause 123 allows both an ML (coal) holder and a petroleum resource authority holder to undertake authorised activities in the SOZ for each IMA or RMA upon the agreed mining commencement date of the IMA or RMA. No notices are required to establish joint occupancy of a SOZ.

Exceptional circumstances notice may be given by PL holder

Clause 124 allows a PL holder who receives an advanced notice from an ML (coal) holder 3 months to give an exceptional circumstances notice to the ML (coal) holder. This notice triggers negotiations for an extension of the proposed mining commencement date for an IMA on the basis of ‘exceptional circumstances’ faced by the relevant PL holder.

Subsection (2) provides that exceptional circumstances are limited to circumstances where the PL holder has or will have high performing wells or fields in the IMA and certain CSG production recovery levels, as prescribed by regulation, cannot be met before the mining commencement date stated in the advanced notice. Technical data must be included in the exceptional circumstances notice to justify the extension of the mining commencement date. The PL holder can recommend a mining commencement date in this notice but it must not be more than 5 years after the proposed IMA mining commencement date stated in the advance

notice. The ML (coal) holder must respond to an exceptional circumstances notice within 3 months of receiving it to either accept or reject the offer. The parties are free to negotiate timeframes during the 3 month period. A rejection by the ML (coal) holder of the extended mining commencement date proposed by the PL holder, or a lack of agreement about exceptional circumstances within the 3 months, may be arbitrated.

There is no impediment to the PL holder and the ML (coal) holder jointly applying for arbitration at any time to resolve matters under this clause by arbitration.

Acceleration notice may be given by ML (coal) holder

Clause 125 allows an ML (coal) holder, which has already given an advance notice outlining a proposed or agreed mining commencement date, to make the mining commencement date earlier than 11 years from the date of the advance notice for an IMA, or 18 months from the date of an RMA notice for an RMA, through an acceleration notice for an IMA or RMA.

Subsection (3) provides that an acceleration notice may only be given to a PL holder during the period from when the advance notice is given to the PL holder and 18 months before the proposed mining commencement date for the IMA or RMA, as stated in the advance notice.

Subsection (6) specifies that the joint development plan must be amended by the ML (coal) holder to ensure it is consistent with the earlier mining commencement date stated in the acceleration notice.

Any dispute regarding the accelerated mining commencement date cannot be arbitrated. Any compensation payable is negotiable between parties, and may be resolved through arbitration. Any negotiation of compensation does not preclude the ML (coal) holder from amending the proposed or agreed joint development plan with the earlier mining commencement date and providing the amended plan to the chief executive within 20 business days of the acceleration notice. Negotiation about compensation does not need to be finalised prior to the ML (coal) holder commencing authorised activities under the amended agreed joint development plan.

An acceleration notice cannot be given to an ATP holder on the basis that the ATP holder only has 18 months to wind up exploration in the IMA.

This provision notes an acceleration notice is linked to compensation liability to the PL holder.

Abandonment of sole occupancy of IMA or RMA

Clause 126 requires a ML (coal) holder to provide an abandonment notice to an overlapping petroleum resource authority holder identifying the date on which it will no longer require sole occupancy of an IMA or RMA in an overlapping area. The notice must identify the area each IMA or RMA (whole or part thereof) on which the ML holder proposes to abandon sole occupancy as well as the date. The site senior executive for the coal mine must facilitate access for the petroleum resource authority holder to the proposed abandoned IMA or RMA

area from the date stated in the notice. Once sole occupancy is abandoned, the petroleum resource authority holder will be able to resume authorised activities in the abandoned overlap area. It is envisaged that areas of IMA and RMA will be abandoned progressively, as mining is completed and operations are moved to another IMA or RMA.

Subsection (4)(a) obligates the ML (coal) holder to undertake its responsibilities under the *Environmental Protection Act 1994* regardless of whether it holds sole occupancy of the area. Subsection (4)(b) gives the ML (coal) holder the right to occupy the area to undertake these environmental obligations regardless of whether it has abandoned sole occupancy.

Division 3 Joint development plan

Requirement for agreed joint development plan

Clause 127 establishes the content for an agreed joint development plan. A proposed joint development plan only becomes an agreed joint development plan for the purposes of the Act once the ML (coal) holder and petroleum resource authority holder agree on the content and the ML (coal) holder lodges the plan with the chief executive. The ML (coal) holder must lodge the agreed joint development plan with the chief executive within 12 months after giving the advance notice to the petroleum resource authority holder.

One of the functions of an agreed joint development plan is to identify each IMA, RMA and SOZ, agreed mining commencement date as well as other information setting out the authorised activities that will be, or are proposed to be conducted in the overlapping area.

Subsection (3) provides the flexibility for an ML (coal) holder to lodge a single agreed joint development plan or separate agreed joint development plans where the ML (coal) overlaps more than one petroleum resource authority.

Negotiation of agreed joint development plan

Clause 128 requires that negotiation of an agreed joint development plan be in good faith and provides a framework for arbitration where agreement cannot be reached to the extent it relates to a relevant matter, as defined in part 1. The obligation is on the ML (coal) holder to lodge an agreed joint development plan under this part. The ML (coal) holder must apply for arbitration if there is no agreement within 6 months of the advance notice, although this does not prevent the petroleum resource authority holder from applying jointly with the ML (coal) holder to refer a relevant matter to arbitration at an earlier time.

Consistency of development plans

Clause 129 requires both of the resource authority holders to produce an agreed joint development plan that is as consistent as possible with any development plans under the relevant legislation for the overlapping area (*Mineral Resources Act 1989* or *Petroleum and Gas (Production and Safety) Act 2004*). Subsection (3) ensures that the obligation to maintain consistency with development plans continues if a ML (coal) or petroleum resource authority

holder has applied for a renewal, transfer or a complete or partial subletting of all or part of the overlapping area.

Amendment of agreed joint development plan

Clause 130 allows parties to negotiate to change an agreed joint development plan at any time, which provides flexibility to parties as circumstances change. This clause requires both resource authority holders to provide an amended agreed joint development plan to the chief executive within 20 business days of the amendment. The resource authorities must negotiate a proposed amendment to an agreed joint development plan in good faith in order to facilitate an agreed position between parties.

Subsection (4) requires that, if the amendments negatively impact on the rate of production, exploration or testing activities, the statement must explain the reasonable steps taken to prevent the cessation or reduction of mining or production or exploration and testing activities which has or will occur.

A resource authority holder may apply for arbitration of the dispute, only to the extent it relates to a relevant matter as defined in part 1, if the holder can not obtain a proposed amendment of an agreed joint development under this section. No timeframes are set in this provision for seeking arbitration on the basis that the amendment does not prevent agreed activities from continuing as per the existing agreed joint development plan.

Subsection (5) indicates that an amendment does not take effect unless it has been lodged and, if required, a statement is made in accordance with subsection (4). However, subsection (5) excludes amendments to identifying an area of a SOZ, which can take effect without lodgement with the chief executive. This is in recognition of the fact that the SOZ is likely to change on a regular basis to accommodate changing circumstances and removes the burden on parties to constantly lodge updates with the chief executive.

Authorised activities allowed only if consistent with agreed joint development plan

Clause 131 requires that an agreed joint development plan must be in place in order for the ML (coal) holder and the petroleum resource authority holder to conduct activities within the overlap area. This includes lodging the agreed joint development plan with the chief executive (which, under this part, falls with the ML (coal) holder) and ensuring that the activities carried out are consistent with the agreed plan. Any activities outside the agreed plan are prohibited.

Condition of authorities

Clause 132 makes it a condition of tenure to comply with an agreed joint development plan for an overlapping area.

Division 4 Incidental coal seam gas

Definitions for div 4

Clause 133 inserts definitions for diluted incidental coal seam gas (CSG) and undiluted incidental CSG that apply to division 4.

Resource optimisation

Clause 134 provides an obligation on the ML (coal) holder to ensure that it does not unnecessarily contaminate or dilute incidental CSG and that it maximises the production of the incidental CSG.

Right of first refusal

Clause 135 provides that the ML (coal) holder must first offer the petroleum resource authority holder (either the PL or ATP holder) the first right to accept incidental CSG produced in the IMAs and RMAs as mining is undertaken in those areas. Therefore, the first offer will be for incidental CSG within an IMA, where initial mining occurs. The ML (coal) holder will make the offer to the petroleum resource authority holder and the petroleum resource authority holder will have up to 12 months to accept the offer, unless the parties agree to a longer period.

Subsection (2) provides for when the offer is to be given, depending on the type and location of the incidental CSG – where it is undiluted in an IMA, the offer is made once the ML (coal) holder is aware of it; where it is diluted in an IMA, and regardless of whether it is undiluted or diluted in an RMA, one offer is made at the time of the confirmation notice (for an IMA on a PL overlap), 18 months notice (for an IMA on an ATP overlap) or RMA notice (for an RMA on either an PL or ATP overlap), which is approximately 18 months before the mining commencement date in the IMA or RMA respectively.

Subsection (3) allows the petroleum resource authority holder a period of 12 months after receiving a written notice accept an offer for undiluted or diluted incidental CSG in an IMA, or 3 months for undiluted or diluted incidental CSG in an RMA. The parties may agree to a longer period.

Subsections (4) and (5) provides that, if the offer of incidental CSG is accepted, the petroleum resource authority holder is to enter into a contract for delivery of the incidental CSG (the content of which may be set out in regulation), reimburse the ML (coal) holder for the amount of royalties that that the ML (coal) holder remains liable to pay under the *Mineral Resource Act 1989*, and take supply of the incidental CSG within 2 years of the acceptance of the offer, unless the parties agree to a longer period.

Subsection (6) provides that if the petroleum resource authority holder does not accept the offer or does not take supply of the gas within 2 years, the ML (coal) holder may use the incidental CSG in the ways provided for in section 318CN of the *Mineral Resources Act 1989*.

Subsection (7) provides that if the petroleum resource authority holder has not accepted an offer for undiluted incidental CSG in an IMA, the gas is to be reoffered within 12 months of the petroleum resource authority holder receiving the offer, if the ML (coal) holder has not used it or committed the incidental CSG in the ways provided for in section 318CN of the *Mineral Resources Act 1989* in that time. The petroleum resource authority holder will have 90 business days to accept the reoffer, or a later period, if agreed between the parties.

Subsection (8) provides that the content of written notice of offer and a notice of reoffer will be prescribed by regulation.

Subsection (9) clarifies that the provisions under the *Petroleum and Gas (Production and Safety) Act 2004* upon the petroleum resource authority holder are not changed by this clause.

Division 5 Subsequent petroleum production

Definitions of div 5

Clause 136 identifies this part as applying to a situation where an application is made for a PL in all or part of the same area as an existing ML (coal), creating an overlapping area in consequence. This is most likely to occur where there is an existing ATP already overlapping with the ML (coal), whereby a relationship between the ATP holder and the ML (coal) holder has been established under part 2.

Part 3 applies when the relationship changes from an overlapping exploration resource authority and a production resource authority to two overlapping production resource authorities, which may trigger an amendment to an existing agreed joint development plan.

Where an application is made for a PL by an applicant that has not held an ATP in the same overlapping area, a new overlapping relationship is established between the PL applicant and the ML (coal) holder under this part.

Petroleum production notice

Clause 137 outlines the mandatory minimum content of a petroleum production notice required to be provided to a ML (coal) holder within 10 business days of making the PL application.

A notice should include a joint development plan in accordance with subsection (1) (c), (d) or (e) of the section. In the circumstances where there is an existing ATP overlapping with a ML (coal), the ML (coal) holder already has right of way and may already have sole occupancy over all or part of the overlap areas in accordance with the existing agreed joint development plan between the ATP holder and the ML (coal) holder. Under subsection (1)(d), the petroleum production notice allows the PL applicant to make amendments to an agreed joint development plan to account for proposed or intended production activities. Under subsection (1)(c), if there is no agreed joint development plan because, at the time of making the PL

application, the existing ATP holder is still negotiating or arbitrating with the ML (coal) holder/applicant under part 2, then the PL applicant can propose to add or change content of a proposed joint development plan. Under subsection (1)(e), if the PL applicant does not have an existing ATP in the overlapping area, it must provide a proposed joint development plan which will establish right of way for coal, as well as other prescribed information.
The PL applicant is only required to provide as much detail in a proposed joint development plan as is available to the PL applicant at the time of giving the petroleum production notice. Information exchange will assist to facilitate this process where there is an existing relationship between parties under part 2 (ML (coal) overlapping an ATP).

Requirement for agreed joint development plan

Clause 138 establishes the content of an agreed joint development plan where a PL applicant does not hold an ATP for the area. This places the onus on the applicant for the PL, which is the overlapping tenure in this part, to ensure that the content of the agreed joint development plan is agreed and lodge with the chief executive within 12 months after giving a petroleum production notice to the ML (coal) holder. The content mirrors the required content of an agreed joint development plan under part 2, division 3.

Negotiation of agreed joint development plan

Clause 139 requires that negotiation of the joint development plan by the ML (coal) holder and PL applicant to be in good faith in order to facilitate agreement within 6 months. If agreement cannot be reached between the parties, the provision provides a framework for arbitration to the extent it relates to a relevant matter, as defined in part 1. The obligation is on the PL applicant or holder to lodge an agreed joint development plan under this part. The PL applicant or holder must apply for arbitration if there is no agreement within 6 months of the petroleum production notice, although this does not prevent the PL holder from applying jointly with the ML applicant or holder to resolve a relevant matter by arbitration at an earlier time

Consistency of development plans

Clause 140 requires both resource authority holders to produce an agreed joint development plan that is as consistent as possible with their own development plans under the relevant legislation (*Mineral Resources Act* or *Petroleum and Gas (Production and Safety) Act 2004*). Subsection (4) ensures that the obligation to maintain consistency with development plans continues if a ML (coal) or PL holder has applied for a renewal, transfer or a complete or partial subletting of all or part of the overlapping area.

Amendment of agreed joint development plan

Clause 141 allows parties to negotiate to change an agreed joint development plan at any time to provide flexibility to parties as circumstances change. This clause requires both resource authority holders to provide an amended agreed joint development plan to the chief executive within 20 business days of the amendment. The resource authorities must negotiate a

proposed amendment to an agreed joint development plan in good faith in order to facilitate an agreed position between parties.

Subsection (4) requires that, if the amendments negatively impact on the rate of production, exploration or testing activities, the statement must explain the reasonable steps taken to prevent the cessation or reduction of mining or production or exploration and testing activities which has or will occur. A resource authority holder may apply for arbitration of the dispute, only to the extent it relates to a relevant matter defined under part 1, if the holder cannot obtain a proposed amendment of an agreed joint development under this section. No timeframes are set in this provision for seeking arbitration on the basis that the amendment does not prevent agreed activities from continuing as per the existing agreed joint development plan.

Subsection (5) indicates that an amendment does not take effect unless it has been lodged and, if required, a statement is made in accordance with subsection (4). However, subsection (5) excludes amendments to identifying an area of a SOZ, which can take effect without lodgement with the chief executive. This is in recognition of the fact that the SOZ is likely to change on a regular basis to accommodate changing circumstances and removes the burden on parties to constantly lodge updates with the chief executive.

Authorised activities allowed only if consistent with agreed joint development plan lodged

Clause 142 requires that an agreed joint development plan must be in place, and the production lease granted, in order for the PL holder and the ML (coal) holder to conduct authorised activities within the overlap area. This includes lodging the agreed joint development plan with the chief executive, by the PL holder under this part, and ensuring that the activities carried out by both parties are consistent with the agreed plan. Any activities outside the agreed plan are prohibited.

Condition of authorities

Clause 143 makes it a condition of a resource authority to comply with an agreed joint development plan for an overlapping area.

Part 3 Adverse effects test

Table for pt 3

Clause 144 provides a table that set out the column 1 resource authorities and the corresponding column 2 resource authorities to which the part applies.

Authorised activities allowed only if no adverse effects

Clause 145 establishes that the column 1 resource authority may carry out authorised activities in the overlapping area only if the authorised activities do not adversely affect the

underlying resource authority. This is only a factor where the underlying resource authority has commenced the authorised activities in the overlapping area.

Expedited land access for ATP holders

Clause 146 provides that an ATP holder may provide an ML (coal) holder, which is the owner or occupier of land that forms part of an overlapping area which is the subject of the ATP with an expedited entry notice if the parties have not been able to reach an agreement for land access under chapter 3 before the end of the minimum negotiation period.

The ATP holder may enter and carry out authorised activities in the overlapping area 10 business days after the ATP holder has given the ML (coal) holder an expedited entry notice.

Nothing in this section limits the application of the land access framework or the land access code.

Part 4 General Provisions

Division 1 Information exchange

Resource authority holders must exchange information

Clause 147 requires resource authority holders for an overlapping area to give each other, at least once during each year, all information reasonably necessary to allow them to optimise the development and use of resources in the overlapping area.

Subsection (2) identifies the specific information that must be given.

Subsection (3) provides that the information is not required to be given if it is in draft form.

Annual meetings

Clause 148 requires resource authority holders for an overlapping area to convene a meeting at least once a year in order to facilitate compliance with the requirement in this section to exchange information.

Confidentiality

Clause 149 applies to information exchanged under this chapter, and provides that recipients must not disclose the information to another person except in specified circumstances or use the information for a purpose other than for which it is given.

Subsection (4) provides that a recipient that fails to comply with these requirements is liable to pay the giver of the information compensation and the amount of any commercial gain the recipient makes. The provision also clarifies the application of these requirements in relation to a person that receives the information from the original recipient.

Division 2 Ministerial Powers

Amendment of agreed joint development plan

Clause 150 gives the Minister a power to require a holder to amend an agreed joint development plan. In making the decision about the amendment, the Minister must consider whether there is potential for the resource authority holder can maximise the benefits to all Queenslanders by the amendment, whether the resource authority holder has complied with the joint development plan and the content of the relevant resource authority holders' development plans, to which the agreed joint development plan should be consistent.

Request for information

Clause 151 gives the Minister a power to request information from a holder to optimise the development of the State's coal and petroleum resources or to ensure safe mining in the overlapping area. To avoid the regulatory burden associated with requiring resource authority holders to provide this information each time the agreed joint development plan is amended or whenever the SOZ area has changed, this power allows the Minister to request the information only when the Minister deems that it is required.

Division 3 Compensation

Subdivision 1 Preliminary

Definitions for div 3

Clause 152 provides for the definition of various terms that apply to this division.

What is *lost production*

Clause 153 provides a definition for lost CSG production. Subsection (2) specifies that the principles for the calculation of the value of lost production will be prescribed in a regulation.

What is PL *major gas infrastructure*

Clause 154 provides a definition of PL major gas infrastructure. Subsection (2) specifies that the way and principles for determining the cost of the replacement of the PL major gas infrastructure will be prescribed in a regulation.

What is PL *minor gas infrastructure*

Clause 155 provides a definition for PL minor gas infrastructure. Subsection (2) specifies that the way and the principles for determining the cost of the replacement of PL minor gas infrastructure will be prescribed in a regulation.

What is *PL connecting infrastructure*

Clause 156 describes the infrastructure which connects the PL holder's major gas infrastructure to the petroleum well. Principles for the cost of replacing the PL connecting infrastructure will be provided for in a regulation.

What is *ATP major gas infrastructure*

Clause 157 provides a definition for ATP major gas infrastructure. Subsection (2) specifies that the way and the principles for determining the cost of ATP major gas infrastructure will be provided for in a regulation.

Subdivision 2 Liability to compensate

Liability of ML (coal) holder to compensate PL holder

Clause 158 establishes that subsection (1)(a) applies where a ML (coal) holder gives an acceleration notice to a PL holder, and the PL suffers lost production or is required to replace PL minor gas infrastructure resulting from the acceleration of a mining commencement date for an IMA or an RMA. Subsection (1)(b) applies where a holder of a ML (coal) through the carrying out of the authorised activities of in an IMA or RMA, causes the physical severing of PL connecting infrastructure or the need for PL major gas infrastructure to be replaced. For this purpose replaced is defined to include removed and relocated.

Subsection (2) provides the compensation liability of the ML (coal) holder to the PL holder for the lost CSG production, the cost of the replacement of PL major gas infrastructure, the cost of the replacement of PL minor gas infrastructure and the cost of replacement for PL connecting infrastructure.

Liability of ML (coal) holder to compensate ATP holder

Clause 159 establishes the compensation liability of a holder of a ML (coal) to compensate a holder of an ATP for certain effects resulting from an ML (coal) holder carrying out their authorised activities in and IMA or RMA.

Duty of mitigation

Clause 160 imposes a requirement on a ML (coal) holder and a PL holder or an ATP holder to take all reasonable steps to minimise compensation liability. Compensation liability for lost CSG production is to be based on a hierarchy of preferences (in descending order) mitigation of loss, replacement CSG and then financial compensation.

Offsetting of compensation liability

Clause 161 provides that the compensation liability of a ML (coal) holder is reduced to extent of the value of an offer of incidental CSG under part 2, division 4 that is accepted by the PL

holder, and an offer of undiluted incidental CSG offered to the PL holder, but not accepted by the PL holder. The value of the incidental CSG must be calculated according to the principles and way prescribed by regulation.

Reconciliation payments and replacement gas

Clause 162 provides that where a PL holder has received compensation for the value of lost CSG production and the PL holder later recovers CSG for which the compensation was received, the PL holder must repay the ML (coal) holder an amount of compensation for the CSG recovered (a reconciliation payment) or replace the CSG taken as compensation (replacement gas).

Calculating reconciliation payment must be calculated in accordance with principles in regulation.

Dispute resolution

Clause 163 establishes a pathway to the resolution of certain disputes under this division. Subsection (1) provides that a petroleum resource authority holder must advise the ML (coal) holder, as soon as reasonably practicable, of an event that the petroleum resource authority considers to have occurred which is likely to result in a claim for compensation under this division. The petroleum resource authority holder must include with the advice a written proposal calculating the amount of compensation payable.

Subsection (2) provides that the proposal given by the PL holder may be accepted by the ML (coal) holder, or a ML (coal) holder may respond with a written counter proposal.

Subsection (3) provides that the petroleum tenure holder may apply for arbitration if agreement cannot be reached with the ML (coal) holder about the amount of compensation or timeframe for payment of compensation under this division.

Subsection (4) provides that the petroleum tenure holder may apply for arbitration if agreement cannot be reached with the ML (coal) holder about the amount of reconciliation payment or the timeframe for making a reconciliation payment or the amount of replacement gas or the timeframe for providing replacement gas under this division.

Division 4 Dispute resolution

Application of div 4

Clause 164 establishes the types of disputes that may be referred for arbitration.

Definition for div 4

Clause 165 provides a definition for prescribed arbitration institute.

Nomination of arbitrator

Clause 166 establishes that an arbitrator under this division must be nominated by a prescribed arbitration institute at the request of one or both resource authority holders.

Arbitrator's functions

Clause 167 subsection (1) establishes the authority for the arbitrator appointed to decide the dispute.

Subsection (2) provides that in deciding the award the arbitrator must give consideration to the optimising the development of the state's coal and petroleum resources to maximise the benefit of all Queenslanders, and to the obligations of the resource authority holders under Queensland's mining safety legislation.

Subsection (3) provides that the arbitrator must decide the award within 6 months following the appointment of the arbitrator by the prescribed arbitration institute. Subsection (3)(b) allows the arbitrator to make an award after an additional 3 months if the arbitrator decides that such an extension is necessary, for instance, where there have been unavoidable delays in the process.

Expert appointed by arbitrator

Clause 168 subsection (1) provides that an arbitrator must appoint one qualified expert in the coal mining industry and one qualified expert in the petroleum extraction industry (called 'appointed experts'). The arbitrator may also appoint another appropriately qualified person to report on specific issues as required, for example a financial expert. The resource authority holders that are party to the dispute may, at the request of the arbitrator, be required to provide the appointed expert any information, documents or property relevant to the dispute to the appointed expert for their inspection.

Subsection (2) provides that the appointed expert may be required to provide written or oral reports outlining their findings and the appointed expert is to participate in the hearing on the request of a resource authority holder or where the arbitrator considers it appropriate.

Subsection (3) provides that the qualifications or experience of an appointed expert is to be prescribed by regulation to provide further guidance to the arbitrator in choosing experts.

Application of Commercial Arbitration Act 2013

Clause 169 provides that the *Commercial Arbitration Act 2013* applies to the arbitration to the extent it is not inconsistent with this chapter.

Costs of arbitration

Clause 170 establishes a general requirement for costs to be borne equally by the resource authority holders who are the parties to the arbitration unless the arbitrator decides differently.

Effect of arbitrator’s decision

Clause 171 provides that the arbitrator’s decision is final with no ability to further appeal or review the arbitrator’s decision. This will ensure that there is a level of finality for the resolution of disputes without lengthy and expensive court procedures. The arbitrator’s decision is taken to have the same effect as if the parties entered into a binding and enforceable agreement.

The clause makes it clear that the arbitrator’s decision does not impact on or limit the powers of the Minister under part 4, division 2 of this Act, or an inspector under the mining safety legislation.

Copy of award and reasons for award

Clause 172 provides that the resources authority holders must jointly give the chief executive a copy of the arbitrator’s decision (as expressed in an award) and the reasons for the decision.

Lodgement of joint development plan after arbitration

Clause 173 provides that the resource authority holder who is responsible for lodging the agreed joint development plan under this chapter (the ML (coal) holder under part 2 and the PL holder under part 3) must lodge the agreed joint development plan that is the subject of dispute resolution within 10 business days after the arbitration is complete. This provides an extension of time from the 12 months required for lodgement requirements for an agreed joint development plan, parts 2, divisions 3 and 5, where the 6 months negotiation and 6 months arbitration are fully exhausted.

Division 5 Miscellaneous provision

Copy of notice to chief executive

Clause 174 requires resource authority holders who give notices under chapter 4 to provide a copy of the notice to the chief executive within 10 business days of giving the notice.

Chapter 5 Applications and other documents

Part 1 Processing applications

Division 1 Preliminary

Part 1 sets out the process for making, amending, withdrawing and deciding all applications under the Act. This creates a consistent approach to dealing with applications under the Act.

Definitions for pt 1

Clause 175 outlines the definitions for this part.

Application of pt 1

Clause 176 provides that this part applies to an application made under this Act to the extent provided by the authorising provision (i.e. the provision of this Act that authorises the making of the application). This allows a particular application under the Act to utilise part or all of the application process as necessary.

Division 2 Making, amending and withdrawing applications

Requirements for applications

Clause 177 outlines the requirements for making an application. The application must comply with all requirements in the authorising provision, all prescribed requirements under a regulation, be accompanied by all other things prescribed by the regulation and comply with any practice manual. The application must be in the approved form, if there is one.

Invalid applications

Clause 178 outlines when an application will be invalid and what must occur in relation to an invalid application. An application is invalid and will have no effect where it does not comply with the requirements for an application, or is an application of a type prescribed by regulation as an application that cannot be made. However, an application with no effect will not be invalid if the deciding authority allows it to proceed as being substantially compliant with the requirements for making an application under this Act.

If an application is invalid, it must be returned to the entity that lodged it together with reasons as to why it was being returned and a refund of any fee that accompanied the application.

To remove any doubt, this clause states that any person charged with the task of accepting applications for lodgement may refuse the application if it is invalid because it is not complete or is not accompanied by the necessary information, fees or other things required to accompany the application, and return the application accordingly.

Substantial compliance

Clause 179 enables the deciding authority to allow an application to proceed where the application otherwise substantially complies with the requirements for an application. These

circumstances are where the deciding authority is reasonably satisfied that the application complies with the requirements stated for it in its authorising provision and substantially complies with the other requirements. However, all fees prescribed by a regulation must accompany the application.

Amending applications

Clause 180 provides that an applicant may amend an application or accompanying document if the application has not been decided and the applicant has complied with the requirements for amending an application as prescribed under a regulation.

Withdrawing applications

Clause 181 provides that an application may be withdrawn at any time before a decision about the application takes effect. To withdraw the application, a written notice must be lodged in the manner prescribed by a regulation. The withdrawal will take effect once the written notice is lodged. If an application is withdrawn the deciding authority may refund all or part of any fee paid for the application.

Division 3 Directions about applications

Deciding authority may make directions about applications

Clause 182 allows the deciding authority to make directions about an application. By written notice, a deciding authority may direct an applicant to do a number of things within a stated period.

The deciding authority may direct an applicant to complete or correct their application, do anything required under the Act or another Act to allow the application to be decided and give additional information about or relevant to the application. A regulation may prescribe examples of the additional information that may be required.

The deciding authority may also direct the applicant to provide an independent report, statement or statutory declaration verifying certain information relating to the application. The deciding authority may specify who this independent report, statement or statutory declaration is to be made by.

A regulation may prescribe the minimum period for complying with a direction.

The deciding authority may make one or more directions under this clause, as well as extend the period for complying with any direction.

The costs of complying with this clause are to be borne by the applicant. If the applicant fails to comply with a direction they are taken to have withdrawn their application.

Division 4 Deciding applications

Criteria for considering applications

Clause 183 stipulates that a deciding authority must consider the criteria prescribed by regulation when deciding an application. Unless the authorising provision states that the criteria are exhaustive the deciding authority may also consider any other criteria or matter that the deciding authority considers relevant to deciding the application.

Notice of decisions

Clause 184 provides that if a decision is made about an application by a deciding authority, notice of the decision must be given to the applicant. If the decision is the decision sought under the application the notice is to be a written notice of the decision. If the decision is not the decision sought under the application, or the decision includes conditions, the notice is to be an information notice about the decision. The deciding authority is to also notify any other entities of its decision, as prescribed by a regulation.

A refusal to accept an invalid application is not a decision about an application.

Part 2 Lodging documents

Lodging documents

Clause 185 sets out the requirements for lodging a document. It applies if, under the Act, a document is to be given to the Minister, chief executive or another entity prescribed by regulation.

A regulation may prescribe the places at and the way in which the document may or must be lodged. The requirements for lodging an application under this clause are taken to be part of the prescribed requirements for the application.

Failure to comply with the prescribed requirements for lodging documents may result in the document being of no effect.

Chapter 6 Miscellaneous

Part 1 Resource authority register

Register to be kept

Clause 186 consolidates the provisions of the current Resource Acts to provide for one register to be kept by the chief executive for all resource types. This clause stipulates what the register must contain details about. The chief executive may decide the form in which the

register is kept and keep other information in the register the chief executive considers appropriate.

Access to register

Clause 187 allows for the public to be given access to the register. This clause stipulates that the register must be open during office hours on business days at the places the chief executive considers appropriate, and that a person must be allowed to search and take extracts from the register and be given a copy of all documents, notices and information held on the register, upon payment of a fee. The fee will be prescribed under a regulation. The requirement for fees is subject to the section immediately following.

Arrangements with other departments for copies from register

Clause 188 allows for arrangements to be made between the chief executive and other departments to allow for another department to carry out searches of, take extracts from or obtain copies of, particulars recorded in the register without payment of the prescribed fees. The chief executive can only make this arrangement if reasonably satisfied that the information obtained from the search or copy will not be used for a commercial purpose or included in another database of information, other than with the chief executive's approval.

Supply of statistical data from register

Clause 189 allows for the chief executive to enter into an agreement to supply statistical data derived from instruments or information kept in the register. This clause provides for the agreement to stipulate the fees and charges applicable for the supply of the data and that the agreement may also state how the fees and charges are to be calculated and how payment of the fees is to be made. This section also regulates what must be included in an agreement for the supply of statistical data, including:

- limiting the use which the data supplied may be put;
- a provision allowing for the chief executive to exclude particulars from data supplied under the agreement if their inclusion may result in the particulars being inappropriately disclosed or used; and
- a provision allowing the chief executive to prohibit disclosure or to limit distribution or use of data supplied under the agreement.

An agreement for the supply of statistical data must not provide for the obtaining of information or anything else that may be obtained from a search of the register permitted by the Act, and must exclude resource authority particulars and personal information from data supplied under the agreement. Resource authority particulars and personal information are defined.

Chief executive may correct register

Clause 190 provides power to the chief executive to correct the register. This power can be exercised if the chief executive is satisfied that the register is incorrect and the correction will not prejudice any rights recorded in the register. The clause clarifies that a right is not prejudiced if the person acquired or dealt with the right with constructive knowledge that the register was incorrect and how it was incorrect. The chief executive's power to correct the register includes a power to correct information in the register or a document forming part of the register. The chief executive must record details of the correction. If a correction is made then it has the same effect as if the relevant error had not been made.

Part 2 Other provisions

Practice manual

Clause 191 consolidates the provisions of the current Resource Acts to provide for the keeping and contents of a practice manual for all resource types. The practice manual contains information about administration practice to guide and inform people dealing with the department. This clause provides that the manual may include practices to ensure there is consistency and efficiency in administration processes. The manual may also include directions about what material may or must be given, how the material must be given and the format of the material.

This clause also sets out when a person is taken to have given information for the purpose of the Act. This information is taken to be given if it is given in a way permitted under the manual or, if the information is a document, in the place or way for making applications, lodging documents or making submissions. The chief executive must keep:

- a copy of the manual;
- a record of each part of the manual including when each part was published or superseded;
- a free up-to-date copy of the manual and the record on the department's website; and
- if information relates to a particular application, keep a free up-to-date copy of the manual at the department's office where the application was made.

Fees—payment methods

Clause 192 provides that a regulation or the chief executive in the approved form may fix the approved methods to be used for payment of fees under this Act. If there is an inconsistency between the regulation and the approved form, the approved payment method is that fixed by regulation.

Fees—evidence and timing of payment

Clause 193 provides that if a document must be accompanied by a fee when lodged, an approved payment method has been used to pay the fee, and the fee is received within the

prescribed period for the approved payment method, then the fee is taken to accompany the document if the document is accompanied by evidence of the fee having been paid using the approved payment method.

Chief executive may require particular information

Clause 194 the chief executive may, at his or her discretion, request that a relevant entity provide a copy of any notice or consent given by or to the relevant entity under chapter 3. This discretionary provision is intended to reduce the regulatory burden on industry by requesting a copy when this is required to respond to a public inquiry, in order to take compliance action or in relation to other administrative action.

References to right to enter

Clause 195 clarifies the right to enter under the Act. A right to enter a place under this includes the right to leave and re-enter the place from time to time, remain on the place for the necessary time to achieve the purpose of the entry, and take on items which are reasonably necessary to exercise a power under this Act. Such items may include equipment, materials, vehicles or other objects.

Delegation of functions or powers

Clause 196 provides for the Minister to delegate a function or power under this Act to an appropriately qualified public service employee. There are no limitations on the powers that may be delegated. It also provides for the chief executive to delegate a function or power under this Act to an appropriately qualified public service employee. There are no limitations on the powers that may be delegated.

Functions or powers carried out through agents

Clause 197 provides that a public service employee may act as agent to carry out the functions and power of the Minister, the chief executive, or the delegate of the Minister or chief executive.

Approved forms

Clause 198 provides that the chief executive may approve forms for use under this Act and may fix in an approved form a method to be used for the payment of a fee under this Act.

Regulation-making power

Clause 199 provides that the Governor in Council may make regulations under this Act. It also clarifies that a regulation may prescribe fees payable under the Act or provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

Transitional regulation-making power

Clause 200 provides that a regulation may make a provision about a matter for which it is necessary or convenient to assist the transition to a simplified common framework for managing resource authorities in relation to the particular matters dealt with in this Act. These matters are specified in Clause 4. This provision clarifies that it only applies where this Act does not make provision or enough provision. The transitional regulation may have limited retrospective operation to the date of commencement but this section and any transitional regulations expire one year after commencement.

Chapter 7 Savings and transitional provisions

Part 1 Preliminary

Definitions for ch 7

Clause 201 inserts definitions for this chapter.

Part 2 Provisions for dealings

Incomplete registration of dealings

Clause 202 provides the means of managing incomplete registration of dealings on commencement. Notices of dealings for registration, applications for indicative approvals and applications for assessable transfers under the Resource Acts not completed or decided on commencement will continue to be dealt with under the previous provisions of the Resource Acts. However, the dealings, if able to be registered, can be registered under this Act. In this clause, assessable transfer is defined to exclude an application transfer under the *Mineral Resources Act 1989*. Additionally, a dealing is as defined under the provisions of the Resource Acts prior to commencement.

Continuing effect of indicative approval

Clause 203 saves the effect of an indicative approval of an assessable transfer given before commencement or after commencement for an application that had not been decided under the former provisions. The indicative approval is binding on the Minister if the approval to register the transfer would have been given under the relevant provisions of the Resource Acts.

Unrecorded associated agreements

Clause 204 provides that associated agreements notified to the chief executive for registration under the Resource Act provisions and which had not been registered on commencement may be included in the new register. The associated agreement may only be included in the new

register if it would have been recorded under the provisions of the Resource Act before commencement.

Transfer of matters to new register

Clause 205 requires that anything recorded in a register under a Resource Act is to be recorded in the new register.

A caveat recorded under the previous register continues to have effect in its registration under the new register.

The caveat provisions under the existing Resource Acts allow a caveat to be lodged to prevent a change of name. This was an unintended outcome of the provision. This clause provides that a caveat could never have this effect.

A caveat lodged but not recorded on commencement is to be recorded under the new register.

A caveat recorded in the new register under this clause is taken to be an original caveat for the purposes of a further caveat not being available to the same person under Clause 30.

Part 3 Provisions for land access

Continuation of former land access code

Clause 206 provides that the land access code made under section 24A of the *Petroleum and Gas (Production and Safety) Act 2004* continues in force, despite the repeal of that section, until a new code is made under this Act.

Continuation of past conduct and compensation agreements

Clause 207 provides that conduct and compensation agreements executed (‘continuing agreement’) or in the process of being negotiated (‘incomplete agreement’) prior to the commencement of this clause continue to have effect under the Common Provisions Act.

A continuing agreement continues to have effect in accordance with its terms. Once noted on title, Clause 90 applies to the conduct and compensation agreement and authorisation holder.

An incomplete agreement is to be completed under the provisions of the relevant Resource Act that was applicable prior to the commencement of this Act. Once finalised, Clause 90 applies to the conduct and compensation agreement and the authorisation holder, including the requirement to give the registrar of titles the appropriate 28 days notice after entering into the agreement.

An authorisation holder to a continuing agreement is required to give the registrar of titles written notice of the agreement within 6 months of the commencement of this clause. This requirement is a condition of the resource authority.

A special agreement under the *Petroleum and Gas (Production and Safety) Act 2004*, section 923 cannot be the subject of an application to the Land Court for review of compensation under Clause 99.

Continuation of past deferral agreements

Clause 208 provides that deferral agreements executed (a ‘continuing agreement’) or in the process of being negotiated (‘incomplete agreement’) prior to the commencement of this clause continue to have effect under the Common Provisions Act. A continuing agreement continues to have effect in accordance with its terms, and an incomplete agreement is to be completed with reference to the provisions of the relevant Resource Act that was applicable prior to the commencement of this Act. An incomplete agreement that is finalised is taken to be a deferral agreement for the parties.

Continuation of past access agreements

Clause 209 provides that a past access agreement in force immediately before the commencement of this clause continues in force under the Common Provisions Act according to its terms, and is taken to be an access agreement for the parties to the agreement.

An incomplete agreement being negotiated immediately before the commencement of this clause is to be completed in accordance with the provisions of the relevant Resource Act that applied before the commencement of this clause, despite the repeal of the relevant sections. An incomplete agreement that is completed is taken to be an access agreement for the parties.

Continuation of past entry notices

Clause 210 provides that an entry notice still in force and given prior to the commencement of this clause continues in force according to its terms and is taken to be an entry notice issued under the Common Provisions Act.

Continuation of past consent

Clause 211 provides that any consent to enter land still in force and given prior to the commencement of this clause continues in force according to its terms and is taken to be consent to enter land for the Common Provisions Act. All conditions of the past consent continue to apply.

Continuation of past waiver of entry notice

Clause 212 provides that a past waiver of entry notice given to a resource authority holder before the commencement of this clause and still in force immediately before commencement continues in force under the Common Provisions Act according to its terms, and is taken to be a waiver of entry notice under the Common Provisions Act.

Continuation of conditions imposed by public land authority

Clause 213 provides that any past conditions imposed by a public land authority before the commencement of this clause and still in force immediately before commencement continue in force and are taken to be conditions imposed under the Common Provisions Act.

Continuation of past compensation agreements

Clause 214 provides that a past compensation agreement in force immediately before the commencement of this clause continues in force according to its terms, and is taken for the Common Provisions Act to be a road compensation agreement.

A past compensation agreement that was in the process of being negotiated immediately before the commencement of this clause is required to be completed under the provisions of the relevant Resource Act. This is despite the repeal of the relevant provisions. Once completed, it is taken to be a road compensation agreement for the parties under the Common Provisions Act.

Continuation of past road use directions

Clause 215 provides that a past road use direction given to a resource authority holder under a Resource Act before the commencement of this clause, and still in force immediately before the commencement of this clause, continues in force according to its terms and is taken to be a road use direction under the Common Provisions Act.

Validity of continuing matters

Clause 216 provides that the validity of specified matters cannot be challenged on the grounds that they do not comply with any requirements of the Common Provisions Act for entry notices. This is to ensure the ongoing validity of the matters previously settled under the previous Resource Acts.

Application of new restricted land entry provisions

Clause 217 provides that the new restricted land entry provisions under chapter 3, part 4 of the Act will apply to resource authorities applied for after the commencement of the new provisions.

The new restricted land entry provisions will not apply to resource authorities that were granted or applied for prior to commencement of these provisions. In these cases, the pre-amended Resource Acts will continue to apply for any consent requirements to enter land to undertake an authorised activity.

Part 4 Provisions for overlapping coal and petroleum resource authorities

Division 1 Preliminary

Definitions for div 1

Clause 218 the clause outlines the definitions used in this division.

Ch 4 definitions

Clause 219 provides that definitions in chapter 4 will have the same meaning in this division unless the context provides otherwise.

Overlapping resource authorities

Clause 220 clarifies that explains what the term ‘overlapping resource authorities’ relates to in this part.

Division 2 Exploration resource authorities granted over existing production resource authorities

Exploration permit (coal) or mineral development licence (coal) granted over PL

Clause 221 provides that where an exploration permit (coal) or a mineral development licence (coal) is either, granted before commencement or applied for before commencement and granted following commencement and overlaps a PL granted before commencement, then the *Mineral Resources Act 1989* will continue to apply to the exploration permit (coal) or a mineral development licence (coal).

ATP granted over existing ML (coal)

Clause 222 provides that where an ATP is either, granted before commencement or applied for before commencement and granted following commencement and overlaps an ML (coal) granted before commencement, then the *Petroleum and Gas (Production and Safety) Act 2004* will continue to apply to the ATP.

Division 3 Existing applications under the Mineral Resources Act, chapter 8

Application for ML (coal) over land in area of ATP (without consent)

Clause *223* subsection (1) and (2) provides that where a person has made an application for the grant of an ML (coal) that under section 318AO of the pre-amended *Mineral Resources*

Act 1989 and included additional requirements under section 318AP, and the application was not decided before the commencement of this division, then chapter 4 will apply.

Subsection (3) provides that ML holder must give an advance notice as under required under part 2 of chapter 4 to the underlying ATP holder within 10 business days from the commencement of this division.

Subsection (4) allows the ML (coal) holder to establish a mining commencement date that is at least 18 months from the date that the ML (coal) holder provided a copy of the ML application to the ATP holder under section 318AT(1)(a) of the *Mineral Resources Act 1989*. However subsection (4)(b) requires that the mining commencement date must still be at least 3 months after commencement of this division.

Subsection (5) clarifies that reference to an ATP is in reference to exploration for CSG.

Application for ML (coal) over land in are of ATP (with consent)

Clause 224 subsection (1) and (2) provides that where a person has made an application for the grant of an ML (coal) that under section 318BO of the pre-amended *Mineral Resources Act 1989* and included additional requirements under section 318BP, and the application was not decided before the commencement of this Act, then chapter 4 will apply.

Subsection (3) provides that ML holder must give an advance notice as under required under part 2 of chapter 4 to the underlying ATP holder within 10 business days from the commencement of this division.

Subsection (4) allows the ML (coal) holder to establish a mining commencement date by agreement with the ATP holder.

Subsection (5) clarifies that reference to an ATP is in reference to exploration for CSG.

Application for ML (coal) over land in area of PL (without consent)

Clause 225 applies where a person made an application for the grant of ML (coal) that is intended to overlap with an existing PL and the application was made under section 318 BW of the pre-amended *Mineral Resources Act 1989* and included additional requirements under section 318BX, and the application was not decided before the commencement of this division. The *Mineral Resources Act 1989* will continue to apply, unless the ML (coal) holder and PL holder agree to the new overlap provisions in chapter 4 and must advise the chief executive of the agreement.

Subsection (4) clarifies that reference to a PL is in reference to a production lease for the production of CSG.

Application for ML (coal) over land in area of PL (with consent)

Clause 226 applies where a person made an application for the grant of ML (coal) that overlaps an existing PL and the application was made under section 318 CC of the pre-amended *Mineral Resources Act 1989* and the application included the additional requirements under section 318CD, and the application was not decided before the commencement of this division. The *Mineral Resources Act 1989* will continue to apply. However the ML (coal) holder and PL may agree to opt-in to the new overlapping provisions in chapter 4 and advise the chief executive of the agreement.

Division 4 Existing applications under P&G Act, chapter 3

Application for PL over land in area of coal exploration resource authority (without consent)

Clause 227 applies applies where a person made an application for the grant of a PL which overlaps an existing exploration permit (coal) or mineral development licence (coal) and the application was made under section 304 of the pre-amended *Petroleum and Gas (Production and Safety) Act 2004* and the application included additional requirements mentioned in section 305, and the application was not decided before the commencement of this division.

The overlapping resource authority provisions in chapter 4 apply for the overlap of the PL with an exploration permit (coal) or mineral development licence (coal).

Application for PL over land in area of coal exploration authority (with consent)

Clause 228 applies where a person made an application for the grant of a PL that overlaps with an existing exploration permit (coal) or mineral development licence (coal), and the application was made under section 331 of the pre-amended *Petroleum and Gas (Production and Safety) Act 2004* and the application included the additional requirements mentioned in section 333, and the application was not decided before the commencement of this division.

The overlapping resource authority provisions under chapter 4 apply to the overlapping PL and exploration permit (coal) or mineral development licence (coal).

Application for PL over land in area of ML (coal) (without consent)

Clause 229 applies where a person made an application for the grant of a PL that overlaps with an existing ML (coal), and the application was made under section 344 of the pre-amended *Petroleum and Gas (Production and Safety) Act 2004* and the application the included additional requirements mentioned in section 345, and was not decided before the commencement of this division. The *Petroleum and Gas (Production and Safety) Act 2004* is taken to apply to the PL and the ML (coal), unless the PL and the ML (coal) agree to opt-in to the new overlap provisions under chapter 4 and advise the chief executive of the agreement.

Subsection (4) clarifies that an ML (coal) is a mining lease granted for the mining of coal to which section 344 of the *Petroleum and Gas (Production and Safety) Act 2004* applies.

Application for PL over land in area of ML (coal) (with consent)

*Claus*e *230* applies where a person made an application for the grant of a PL that overlaps with an existing ML (coal), and the application was made under section 351 of the pre-amended *Petroleum and Gas (Production and Safety) Act 2004* and the application included the additional requirements mentioned in section 353, and was not decided before the commencement of this division. The *Petroleum and Gas (Production and Safety) Act 2004* is taken to apply to the PL and the ML (coal). However the PL and ML (coal) holder may agree to opt-in to the new overlapping provisions in chapter 4 and must advise the chief executive of the agreement.

Subsection (4) clarifies that an ML (coal) is a mining lease granted for the mining of coal to which section 351 of the *Petroleum and Gas (Production and Safety) Act 2004* applies.

Division 5 Modification of particular provisions of Common Provisions Act for Surat Basin area

Application of div 5

Clause 231 provides that this division applies where a PL is granted between the commencement of this division and 31 December 2016, and an application for a ML (coal) is made after commencement, and PL and ML (coal) overlap the overlapping area is located in the Surat Basin Transitional Area. Subsection (2) provides that the Surat Basin Transitional Area will be described in regulation.

Extension of period until mining commencement date

Clause 232 provides that a mining commencement date for an IMA or a RMA included in an advance notice given by a ML (coal) applicant must not be less than 16 years after the date on which the application for the ML (coal) is made. The extended mining commencmet date applies despite any provision under chapter 4, part 2.

Certain provisions do not apply

Clause 233 provides that the sections listed will not apply to the ML (coal) holder or a PL holder for the overlapping area.

Chapter 8 Repeal of Coal and Oil Shale Mine Workers' Superannuation Act 1989

Repeal

Clause 234 provides for the repeal of the *Coal and Oil Shale Mine Workers' Superannuation Act 1989*. Employees who have elected to make contributions to the AUSCOAL Superannuation Fund will still be able to continue doing so despite the repeal of the Act because the AUSCOAL Superannuation Fund exists independently of the Act.

Chapter 9 Amendments of legislation

Part 1 Amendment of this Act

Act amended

Clause 235 states that this part amends the Mineral and Energy Resources (Common Provisions) Act.

Amendment of long title

Clause 236 amends the long title of the Act to remove the references to the repeal and amendment of other legislation. This clause modifies the long title so that it is an Act to provide for the first step in creating a simplified common framework for managing resource authorities in order to optimise development and use of Queensland's mineral and energy resources and to manage overlapping coal and petroleum resource authorities for coal seam gas.

Part 2 Amendment of Aboriginal Cultural Heritage Act 2003

Act amended

Clause 237 states that this part amends the *Aboriginal Cultural Heritage Act 2003.*

Amendment of sch 2 (Dictionary)

Clause 238 provides that this part omits the definition of 'native title mining provisions' and amends the definition of 'native title agreement' in schedule 2 of the *Aboriginal Cultural Heritage Act 2003* as a consequence of removing Schedule 1A of the *Mineral Resources Act 1989*. These provisions relate to native title processes for progressing applications for exploration and mining tenements under the *Mineral Resources Act 1989*, lodged between 18 September 2000 and 31 March 2003 inclusive; and before 18 September 2000, but only if notified for commencement under the Alternative State Provisions. No future applications

will rely on the Alternative State Provisions and there are now less than five mining lease applications that remain subject to these provisions.

Part 3 Amendment of Environmental Protection Act 1994

Division 1 Preliminary

Act amended

Clause 239 provides that this part amends the *Environmental Protection Act 1994*.

Division 2 Amendments relating to the Common Provisions Act, chapter 2

Omission of s 427 (Offence to operate under environmental authority if not a registered suitable operator in particular circumstances)

Clause 240 omits section 427. This offence provision was introduced under the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* as a consequence of the introduction of non-assessable transfers under the *Mines Legislation (Streamlining) Amendment Act 2012* to prevent environmentally relevant activities being carried out if the holder is not a registered suitable operator. The provision is no longer required as the Mineral and Energy Resources (Common Provisions) Act 2014 removes of the categorisation of assessable and non-assessable transfers so that all transfers will be assessed and a transferee must now be a registered suitable operator under the *Environmental Protection Act 1994* prior to a transfer being approved.

Insertion of new ch 13, pt 22

Clause 241 inserts a new transitional provision under chapter 13.

Part 22 Transitional provisions for Mineral and Energy Resources (Common Provisions) Act 2014

New section 717 Contraventions of s 427 before its repeal

This new section provides a transitional provision so that the omission of section 427 does not prevent the Department of Environment and Heritage Protection from bringing a prosecution while the offence was in force. The Department of Environment and Heritage Protection still need to ensure that holders who obtained the resource authority and environmental authority through a non-assessable transfer do not carry out environmentally relevant activities without being a registered suitable operator.

Division 3 Amendments relating to gas emissions

Amendment of s 426 (Environmental authority required for particular environmentally relevant activities)

Clause 242 amends section 426(2) to exempt a State authorised remediation activity under section 294B of the *Petroleum and Gas (Production and Safety) Act 2004* from requiring an environmental authority.

Amendment of s 493A (When environmental harm or related acts are unlawful)

Clause 243 amends section 493A(2) to exempt a State authorised remediation activity from being an act that causes serious or material environmental harm. The exemption is limited to authorisations issued to deal with a bore or well that poses a risk to life or property and/or a bore or well that is on fire or emitting gas causing a gas concentration in the surrounding area to be greater than the lower flammability limit. This exemption allows emergency access, and action, to remediate a borehole presenting a safety concern which if there was no safety threat might otherwise trigger possible liability for environmental harm under this Act.

Division 4 Amendments relating to mining applications

Amendment of s 139 (Information stage does not apply if EIS process complete)

Clause 244 amends section 139 of the *Environmental Protection Act 1994* so that the information stage does not apply to the extent that the application relates to conditions that have been imposed through the Coordinator-General's report via an EIS under the *State Development and Public Works Organisation Act 1971*. Currently, this section applies if the EIS process under the *Environmental Protection Act 1994* has been completed. This exemption is being extended to an EIS under the *State Development and Public Works Organisation Act 1971*, but only to the extent that the application relates to conditions that were imposed through the Coordinator-General's report. This is because the Coordinator-General's report may not have assessed some aspects of the project, and further information may be required for the administering authority to assess those aspects.

Amendment of s 149 (When notification stage applies)

Clause 245 amends section 149 of the *Environmental Protection Act 1994* so that the notification stage of an environmental authority application applies if the application is a site-specific application and any part of the application is for a resource activity. A resource activity is defined to include a mining activity, a geothermal activity, greenhouse gas storage activity or petroleum activity.

Under the existing provisions, the notification and Land Court process for environmental authority applications for mining leases is based on principles that: every application is subject to the notification process (and therefore, third party appeal rights), regardless of the

environmental risks associated with the environmental authority application; and the notification process under the *Environmental Protection Act 1994* must occur at the same time as the notification process under the *Mineral Resources Act 1989*, which restricts the flexibility of notification under the *Environmental Protection Act 1994*.

This amendment ensures that public notification of the application for an environmental authority for a mining lease is only for the higher risk activities that are most likely to attract public comment.

Amendment of s 150 (Notification stage does not apply if EIS process complete)

Clause 246 amends section 150 of the *Environmental Protection Act 1994* so that the section also applies if the EIS has been completed under the *State Development and Public Works Organisation Act 1971*.

Currently, section 150 provides an exemption from the notification stage if the EIS process has been completed under chapter 3 of the *Environmental Protection Act 1994,* the environmental risks of the activity have not changed since the EIS was completed, and the administering authority is satisfied any changes to the proposal would not be likely to attract a submission objecting to the change.

However, this exemption only applies to an EIS completed under the *Environmental Protection Act 1994*, and not to an EIS completed under the *State Development and Public Works Organisation Act 1971*.

In order to remove the duplication that occurs if an EIS has been completed under the *State Development and Public Works Organisation Act 1971*, this section is being amended so that notification is not required to be duplicated, regardless of which EIS process has been completed.

The other criteria regarding assessment of environmental risk and likelihood of submissions will also apply.

Amendment of s 152 (Public notice of application)

Clause 247 amends section 152 of the *Environmental Protection Act 1994* to provide that the timing of the notification of the environmental authority application will now be determined by the applicant, and not by receipt of a notice under the *Mineral Resources Act 1989*.

Since the mining lease notification will now be via direct communication with the affected persons, and not via public notice in a newspaper, there is no longer any need to link these provisions.

Omission of s 154 (Submission period for application—mining activities)

Clause 248 omits section 154 of the *Environmental Protection Act 1994*. The timing of the notification on the environmental authority will now be determined by the applicant and is not dependant on the objection period under the *Mineral Resources Act 1989*, therefore, the submission period in section 155 can apply to all resource activities.

Amendment of s 155 (Submission period for application—other resource activities)

Clause 249 amends section 155 of the *Environmental Protection Act 1994* so that this section will apply to all resource activities that require public notification. There is no longer any need to differentiate between mining activities and other resource activities in how the submission period is determined.

Amendment of s 156 (Publication of application notice and documents on website)

Clause 250 amends section 156 of the *Environmental Protection Act 1994* to remove the limitation of this section to only site-specific applications. Since the entire notification stage will only apply to site-specific applications now, there is no need to restate that limitation in this section.

Amendment of s 158 (Declaration of compliance)

Clause 251 amends section 158 of the *Environmental Protection Act 1994* to remove the limitation of subsection (1)(b) to only site-specific applications. Since the entire notification stage will only apply to site-specific applications now, there is no need to restate that limitation in this section.

This clause also corrects an incorrect cross-reference in this section.

Amendment of s 170 (Deciding standard application)

Clause 252 amends section 170 of the *Environmental Protection Act 1994* to remove provisions regarding the deciding of standard applications where submissions have been made. Since the proposed new provisions only require the notification stage to apply to site-specific applications and will not apply to standard applications, there will be no properly made submissions to be considered for individual standard applications.

Omission of s 175 (Criteria for decision—standard application)

Clause 253 omits section 175 of the *Environmental Protection Act 1994* which stipulates criteria for decisions about standard applications. These criteria only applied where a properly made submission had been made about a standard application. Since the proposed new provisions only require the notification stage to apply to site-specific applications and

will not apply to standard applications, there will be no properly made submissions to be considered for individual standard applications.

Amendment of ch 5, pt 5, div 3, hdg (Applications for mining activities relating to a mining lease)

Clause 254 amends the heading of this division of the *Environmental Protection Act 1994*. This division currently refers to applications for mining activities relating to a mining lease. Since this division will now only apply to site-specific applications, the heading is amended to reflect this change.

Amendment of s 180 (Application of div 3)

Clause 255 amends section 180 of the *Environmental Protection Act 1994* as a consequence of the amendments to section 149 which provides that the notification stage only applies to a site-specific application for an environmental authority. This division equally only applies where there has been notification of an environmental authority, so it should now be limited to site-specific applications for an environmental authority.

Amendment of s 181 (Notice of decision)

Clause 256 amends section 181 of the *Environmental Protection Act 1994* to correct cross-references. The reference to division 2, subdivision 2 is being replaced with a reference to section 172, since this division only applies to site-specific applications therefore, section 172 is the only section which now applies. Similarly, the reference to subsection 170(2)(b) is being deleted since the notification stage does not apply to standard applications. Therefore, this cross-reference is obsolete.

Amendment of s 182 (Submitter may give objection notice)

Clause 257 amends section 182 of the *Environmental Protection Act 1994* to remove the reference to section 170(2)(b). This subsection is being deleted since the notification stage does not apply to standard applications. Therefore, this cross-reference is obsolete.

Amendment of s 184 (Application of sdiv 3)

Clause 258 amends section 184 of the *Environmental Protection Act 1994* to refer to a site-specific application. This division only applies to site-specific applications for an environmental authority and this amendment carries that concept through to this subdivision.

Amendment of s 185 (Referral to Land Court)

Clause 259 amends section 185 of the *Environmental Protection Act 1994* to ensure that there is no overlap between referral to the Land Court under this section and referral to the Land Court under section 265 of the *Mineral Resources Act 1989*.

Amendment of section 188 (Objections decision hearing)

Clause 260 amends section 188 of the *Environmental Protection Act 1994* to ensure that the objections decision hearing under the *Environmental Protection Act 1994* must be heard by the Land Court at the same time as the hearing on the objections under the *Mineral Resources Act 1989*. This mirrors section 265(9) of the *Mineral Resources Act 1989* (as amended by this Bill).

Amendment of s 195 (Issuing environmental authority)

Clause 261 amends section 195 of the *Environmental Protection Act 1994* to fix the cross referencing to section 170(2)(b) which has been replaced by section 170(2).

Amendment of s 230 (Administering authority may require public notification for particular amendment applications)

Clause 262 amends section 230 of the *Environmental Protection Act 1994* so that not every amendment for an environmental authority application for a mining lease will require public notification.

With the omission of section 233 of the *Environmental Protection Act 1994*, the amendment to this section permits the administering authority to require public notification if the amendment meets certain criteria.

This approach has been taken given the changes to notification requirements for applications for an environmental authority application for a mining lease are proposed to only apply to site-specific applications.

Omission of s 233 (Public notice of amendment application)

Clause 263 omits section 233 of the *Environmental Protection Act 1994*. This section provided that every amendment application relating to a mining lease required public notification. With the changes to the notification requirements for applications relating to a mining lease (i.e. to be limited to only site-specific applications), it follows that not every amendment to an environmental authority relating to a mining lease will require public notification. Consequently, the usual provisions in section 230 will apply to those amendment applications.

Amendment of s 234 (Submission period)

Clause 264 amends section 234 of the *Environmental Protection Act 1994* to no longer refer to the submission period that runs under the *Mineral Resources Act 1989* given the proposal is for the *Mineral Resources Act 1989* to no longer determine when a public notice will be required on an environmental authority application.

This then means that the same rules regarding the submission period apply to all resource activities.

Insertion of new s 718

Clause 265 inserts a transitional provision into the *Environmental Protection Act 1994* for the changes in this division of the Bill.

New section 718 Applications yet notified before commencement

Section 718 ensures that an application for an environmental authority which has been lodged, but has not yet reached the notification stage, will complete the application process (i.e. the notification stage and the decision stage) through the amended process.

Amendment of sch 2 (Original decisions)

Clause 266 amends schedule 2 of the *Environmental Protection Act 1994* to exclude the Coordinator-General's conditions from being an 'original decision' under section 519 of the *Environmental Protection Act 1994*.

Under section 519 of the *Environmental Protection Act 1994*, an 'original decision' is a decision mentioned in schedule 2 of the *Environmental Protection Act 1994*. By listing a decision in schedule 2, this means that the review and appeal provisions of the Act are enlivened and the normal appeal process applies.

This clause amends schedule 2 to clarify the rights of appeal to the Land Court for a decision about an environmental authority for a resource activity. Currently, a proponent or submitter has the right to appeal to the Land Court about the conditions imposed on an environmental authority by a Coordinator-General's report under the *State Development and Public Works Organisation Act 1971*. However, the Land Court has no grounds to vary these conditions, therefore the appeal is groundless. Consequently, this section is amended so that a review decision cannot be appealed to the Land Court where the only grounds of the appeal relate to the conditions that have been imposed by a Coordinator-General's report on an environmental impact statement.

This clause also permits an applicant to appeal a variation application for an environmental authority relating to a mining lease. Since the notification and third party objection process will only apply to site-specific applications, there needs to be a process to enable the applicant to appeal a decision.

Division 5 Amendments relating to native title

Amendment of s 210 (Inconsistencies between particular conditions)

Clause 267 amends section 210 of the *Environmental Protection Act 1994* to remove reference to native title provisions. This amendment is as a consequence of removing Schedule 1A from the *Mineral Resources Act 1989*. These provisions relate to native title processes for progressing applications for exploration and mining tenements under the

Mineral Resources Act 1989, lodged between 18 September 2000 and 31 March 2003 inclusive; and before 18 September 2000, but only if notified for commencement under the Alternative State Provisions. No future applications will rely on the Alternative State Provisions and there are less than five mining lease applications that remain subject to these provisions.

Insertion of new s 719

Clause 268 inserts a savings provision under chapter 13, part 22.

New section 719 Pre-amended Act continues to apply for particular mining leases

New section 719 is a savings provision to ensure that the Alternative State Provisions will continue to apply to the mining lease applications that remain subject to these provisions.

Part 4 Amendment of Geothermal Energy Act 2010

Division 1 Preliminary

Act amended

Clause 269 provides that this part amends the *Geothermal Energy Act 2010.*

Division 2 Amendments relating to the Common Provisions Act, chapter 1

Insertion of new s 8AA

Clause 270 inserts a new section into the Act.

New section 8AA Relationship with Common Provisions Act

New section 8AA explains that the relationship between the *Geothermal Energy Act 2010* and the Common Provisions Act is provided for by section 6 of the Common Provisions Act.

Amendment of sch 2 (Dictionary)

Clause 271 amends the dictionary to insert a definition of ‘Common Provisions Act’.

Division 3 Amendments relating to the Common Provisions Act, chapter 2

Omission of ch 6, pts 11-11B

Clause 272 omits parts of the Act relating to dealings, caveats and associated agreements that will now be provided under the Common Provisions Act.

Amendment of s 351 (Joint holders of a geothermal tenure)

Clause 273 amends section 351 to reflect that transfers will be registered under the Common Provisions Act.

Amendment of s 369 (Amending applications)

Clause 274 amends section 369 so that a fee may be prescribed under a regulation to amend an application.

Insertion of new ch 9, pt 4

Clause 275 inserts a new transitional provision related to amendments in this Bill.

Part 4 Transitional provision for Mineral and Energy Resources (Common Provisions) Act 2014

New section 411 Continued appeal right for particular decisions

The new chapter 9, part 4 inserts a transitional provision for continued rights to appeal against decisions in compliance with chapter 7, part 4 for a decision to give a road use direction under the previous section 237; the imposition of conditions on entry to public land under previous section 242, other than a condition agreed to or requested by the relevant geothermal tenure holder; and a refusal to approve an assessable transfer under previous section 286.

Amendment of sch 1 (Decisions subject to appeal)

Clause 276 amends schedule 1 to remove the entries for sections 237, 242 and 286 as these provisions are being moved into the Common Provisions Act.

The clause also inserts references to decisions under sections 19(3), 23(3) and 59(2) and 64(1) of the Common Provisions Act in order to provide a right of appeal.

Amendment of sch 2 (Dictionary)

Clause 277 removes the definitions of ‘assessable transfer’, ‘associated agreement’, ‘dealing’, ‘indicative approval’ and ‘non-assessable transfer’ from schedule 2 of the Act.

This clause also inserts a new definition for ‘dealing’ in schedule 2 of the Act.

Division 4 Amendments relating to the Common Provisions Act, chapter 3

Amendment of s 30 (Operation of pt 1)

Clause 278 amends the note to section 30 to replace the reference to the omitted chapter 6, part 5, division 2, with the equivalent division in the Common Provisions Act; chapter 3, part 2, division 4.

Amendment of s 74 (Operation of pt 1)

Clause 279 amends the note to section 74 to replace the reference to the omitted chapter 6, part 5, division 2, with the equivalent division in the Common Provisions Act; chapter 3, part 2, division 4.

Replacement of ch 6, pts 5–8

Clause 280 omits the parts of the *Geothermal Energy Act 2010* that relate to the land access framework and replaces these with a new part 5. These parts will now be provided for in the Common Provisions Act.

Part 5 Direction by Minister

New section 233 Direction to ease concerns of owner or occupier

Apart from the *Mineral Resources Act 1989*, the other Resource Acts do not contain provisions that are similar to section 233 (Direction to ease concerns of owner or occupier), therefore this power of the Minister is to be retained in the *Geothermal Energy Act 2010*. This will ensure that the ability of the Minister to give a direction to ease the concern of an owner or occupier can still be applied to relevant resource authorities granted under the *Geothermal Energy Act 2010*.

Amendment of s 315 (What happens if a party does not attend)

Clause 281 amends the note to subsection 315(2) to reference the Common Provisions Act by indicating an election notice is given under section 86 of the Common Provisions Act, and also replaces the reference to the omitted section 256 with the equivalent section in the Common Provisions Act, section 89.

Amendment of s 316 (Authorised officer's role)

Clause 282 amends section 316 to replace the reference to the omitted section 255 with the equivalent section under the Common Provisions Act, section 87.

Amendment of s 331 (Obstruction of geothermal tenure holder)

Clause 283 amends section 331 to replace the reference to omitted chapter 6, part 5, 6 or 7, with the equivalent chapter of the Common Provisions Act, chapter 3.

Amendment of s 333A (Executive officer may be taken to have committed offence)

Clause 284 amends the definition of 'deemed executive liability provision' to include the relevant reference to the Common Provisions Act.

Omission of s 358 (Restrictions on carrying out authorised activities on particular land)

Clause 285 omits section 358 as these are replaced by requirements in chapter 3 of the Common Provisions Act.

Amendment of s 362 (Authorisation to enter to facilitate compliance)

Clause 286 amends section 362 to replace the references to the omitted chapter 6, parts 5 (other than division 4), 6 and 8, with the equivalent parts of the Common Provisions Act; chapter 3, parts 2 (other than division 5), 3 and 7, and sections 20 and 132 of the Common Provisions Act.

Amendment of sch 2 (Dictionary)

Clause 287 amends the definition of a 'land access code' to refer to the definition of a land access code in the Common Provisions Act. The clause also amends the definition of a 'preliminary activity' to provide that an authorised activity carried out within 600 metres of a school or occupied residence may be a preliminary activity if the activity meets the remaining parts of this definition.

Division 5 Amendments relating to the Common Provisions Act, chapter 6

Omission of ch 6, pt 10 (Geothermal register)

Clause 288 removes chapter 6, part 10 that contains the provisions in relation to the geothermal register. This will now be provided under chapter 6, part 1 of the Common Provisions Act.

Amendment of s 325 (Notice and taking effect of decision)

Clause 289 removes the reference to 'geothermal' in relation to the geothermal register, to require the Minister to give an information notice about a decision to any person who holds

an interest in the geothermal tenure. This allows for a register for all resource authority types to be established under the Common Provisions Act.

Amendment of s 345 (Other evidentiary aids)

Clause 290 removes the reference to 'geothermal' to enable a document kept in a register to be certified by the chief executive as an evidentiary aid. This allows for a register for all resource authority types to be established under the Common Provisions Act.

Amendment of s 350A (Extinguishing geothermal interests on the taking of land in a geothermal tenure's area (other than by an easement))

Clause 291 removes the reference to 'geothermal' in relation to the geothermal register, so that the recording of the extinguishment can be recorded in the relevant register. This allows for a register for all resource authority types to be established under the Common Provisions Act.

Amendment of s 351 (Joint holders of a geothermal tenure)

Clause 292 removes the reference to 'geothermal' in relation to the geothermal register, so that the Minister must record that the applicants hold the geothermal tenure in the relevant register. This allows for a register for all resource authority types to be established under the Common Provisions Act.

Omission of s 383 (Practice manual)

Clause 293 omits section 383 from the *Geothermal Energy Act 2010*, as practice manuals will be provided under the Common Provisions Act.

Insertion of new s 412

Clause 294 inserts a transitional provision to ensure that a practice manual in existence at the time of commencement continues in effect until it is replaced.

New section 412 Existing practice manuals

New section 412 provides that a practice manual kept under former section 383 will have effect until another practice manual is made available by the chief executive under the Common Provisions Act and that the associated requirements under section 383 will also continue to apply.

Amendment of sch 2 (Dictionary)

Clause 295 amends the definitions of 'area', 'holder', and 'registration' in schedule 2 to remove the reference to 'geothermal' with respect to the geothermal register. The definition

of geothermal register is also replaced by a definition for 'register' which refers to the register kept under the Common Provisions Act.

Division 6 Amendments relating to gas emissions

Amendment of s 31 (Principal authorised activities)

Clause 296 amends section 31 to insert remediation of legacy boreholes as a principal authorised activity for the holder of a geothermal exploration permit. This will allow the holder of a geothermal exploration permit to plug, abandon or otherwise remediate a legacy borehole as defined in schedule 2. There are circumstances where the particular history of a specific borehole is difficult to verify. The words 'reasonably believes' are included to provide that the permit holder can take remediation action if they are satisfied the borehole meets the conditions of the definition in schedule 2.

Existing regulatory requirements for notification, land access and land use that generally apply to authorised activities may be relevant and need to be considered by a tenement holder if they decide to remediate a legacy borehole.

Remediation of the legacy borehole includes activities to rehabilitate the surrounding area where it is disturbed by activities to plug and abandon the borehole. The standard for remediation of a legacy borehole is to be prescribed by regulation.

Amendment of s 75 (Principal authorised activities)

Clause 297 amends section 75 to insert remediation of legacy boreholes as a principal authorised activity for the holder of a geothermal production lease. This will allow the holder of a geothermal production lease to plug, abandon or otherwise remediate a legacy borehole as defined in schedule 2. There are circumstances where the particular history of a specific borehole is difficult to verify. The words 'reasonably believes' are included to provide that the lease holder can take remediation action if they are satisfied the borehole meets the conditions of the definition in schedule 2.

Existing regulatory requirements for notification, land access and land use that generally apply to authorised activities may be relevant and need to be considered by a tenement holder if they decide to remediate a legacy borehole.

Remediation of the legacy borehole includes activities to rehabilitate the surrounding area where it is disturbed by activities to plug and abandon the borehole. The standard for remediation of a legacy borehole is to be prescribed by regulation.

Amendment of sch 2 (Dictionary)

Clause 298 inserts a definition for legacy borehole into the dictionary. The intention is to capture boreholes or wells drilled for the purpose of resources exploration or production, or to inform resources exploration, but not drilled by the current tenement holders or their

related bodies corporate (i.e. land has been relinquished or there is no continuity of tenure to the current tenement holder).

Division 7 Miscellaneous amendments

Amendment of sch 2 (Dictionary)

Clause 299 updates the section references in the definition of owner.

Part 5 Amendment of Greenhouse Gas Storage Act 2009

Division 1 Preliminary

Act amended

Clause 300 provides that this part amends the *Greenhouse Gas Storage Act 2009.*

Division 2 Amendments relating to the Common Provisions Act, chapter 1

Insertion of new s 8AA

Clause 301 inserts a new section into the Act.

New section 8AA Relationship with Common Provisions Act

New section 8AA explains that the relationship between the *Greenhouse Gas Storage Act 2009* and the Common Provisions Act is provided for by section 6 of the Common Provisions Act.

Amendment of sch 2 (Dictionary)

Clause 302 amends the dictionary to include a definition of Common Provisions Act.

Division 3 Amendments relating to the Common Provisions Act, chapter 2

Omission of ch 5, pt 14-14B

Clause 303 omits chapter 5, parts 14 -14B. Part 14 relating to dealings, part 14A relating to recording associated agreements, and part 14B relating to caveats will be provided under the Common Provisions Act.

Amendment of s 370 (Joint holders of a GHG authority)

Clause 304 makes a minor amendment to remove 'under this Act' so that section 370 of the *Greenhouse Gas Storage Act 2009* also applies to the Common Provisions Act. It also removes the reference to an assessable transfer as the distinction between non-assessable and assessable transfers will no longer apply with the commencement of the Common Provisions Act.

Amendment of s 416 (Amending applications)

Clause 305 inserts the provision for a fee to be paid to amend an application.

Insertion of new ch 8, pt 4

Clause 306 inserts transitional provision relating to amendments in this Bill.

Part 4 Transitional provisions for Mineral and Energy Resources (Common Provisions) Act 2014

New section 448 Continued appeal right for particular decisions

The new section provides for continued rights to appeal against decisions in compliance with chapter 6, part 3: for a decision to give a road use direction under previous section 303; the imposition of condition on entry on public land under previous section 315, other than a condition agreed to or requested by the relevant GHG resource authority holder; and a refusal to approve an assessable transfer under previous section 354.

Amendment of sch 1 (Decisions subject to appeal)

Clause 307 removes schedule 1 entries for sections 303, 315 and 354 as these provisions are being removed.

The clause also inserts references to decisions under sections 19(3), 23(3), 59(2) and 64(1) of the Common Provisions Act in order to provide a right of appeal.

Amendment of sch 2 (Dictionary)

Clause 308 removes the definitions of 'assessable transfer', 'associated agreement', 'dealing', 'indicative approval', 'non-assessable transfer' from schedule 2 of the *Greenhouse Gas Storage Act 2009*.

This clause also inserts a new definition for 'dealing' in schedule 2.

Division 4 Amendments relating to the Common Provisions Act, chapter 3

Amendment of s 29 (Operation of pt 1)

Clause 309 amends section 29 to replace the reference to the omitted chapter 5, part 7, division 2, with the equivalent division of the Common Provisions Act; chapter 3, part 2, division 4.

Amendment of s 109 (Operation of pt 1)

Clause 310 amends section 109 to replace the reference to the omitted chapter 5, part 7, division 2, with the equivalent division of the Common Provisions Act; chapter 3, part 2, division 4.

Omission of ch 5, pts 7–10

Clause 311 removes chapter 5 parts 7 – 10 of the Act, which is replaced by chapter 3 of this Bill.

Amendment of s 377D (What happens if a party does not attend)

Clause 312 amends section 377D to insert a reference to an election notice served under the Common Provisions Act section 86. The clause also amends section 377D(2) to remove the omitted section 325B referred to in the note and replace the reference in the note with the equivalent section of the Common Provisions Act; section 89.

Amendment of s 377E (Authorised officer's role)

Clause 313 amends section 377E to replace the reference to the omitted 325AB, with the equivalent section of the Common Provisions Act; section 87.

Amendment of s 389 (Obstruction of GHG authority holder)

Clause 314 amends section 389 to replace the reference to the omitted chapter 5, part 7 or 8, with the equivalent chapter of the Common Provisions Act; chapter 3.

Amendment of sch 2 (Dictionary)

Clause 315 omits the definitions 'ADR', 'compensation application', 'compensation liability', 'conduct and compensation agreement', 'conduct and compensation agreement requirement', 'deferral agreement', 'eligible claimant', 'entry notice', 'first authority', 'land access code', 'minimum negotiation period', 'negotiation notice', 'notifiable road use', 'parties', 'relevant owner or occupier', 'second authority' and 'waiver of entry notice'.

The clause inserts new definitions for ‘compensation liability’, ‘conduct and compensation agreement’, ‘deferral agreement’, ‘election notice’, ‘eligible claimant’, ‘land access code’ and ‘parties’ in schedule 2 of the Act.

The clause also amends the definition of a preliminary activity to provide that an authorised activity carried out within 600 metres of a school or occupied residence may be a preliminary activity if the activity meets the remaining parts of this definition.

Division 5 Amendments relating to the Common Provisions Act, chapter 6

Omission of ch 5, pt 13 (GHG register)

Clause 316 removes chapter 5, part 13 that are the provisions for the GHG register as the register provisions are now dealt with under chapter 6, part 1 of the Common Provisions Act.

Amendment of s 369A (Extinguishing GHG interests on the taking of land in a GHG authority’s area (other than by an easement)

Clause 317 removes the reference to ‘GHG register’ so that the provision for the extinguishment of interests on the taking of land in a resource authority area applies to all resource authority types.

Amendment of s 370 (Joint holders of a GHG authority)

Clause 318 makes a minor amendment to remove the reference to ‘GHG register’ so that section 370 of the *Greenhouse Gas Storage Act 2009* also applies to the Common Provisions Act.

Amendment of s 384 (Notice and taking effect of decision)

Clause 319 removes the reference to ‘GHG register’ so that the provision that requires the Minister to give an information notice about a decision refers to the register under the Common Provisions Act.

Amendment of s 406 (Other evidentiary aids)

Clause 320 removes the reference to ‘GHG register’ so that the provision includes a document that is given, issued, kept or made in the register under the Common Provisions Act.

Omission of s 427 (Practice manual)

Clause 321 removes the existing practice manual provisions as they are now dealt with under chapter 6, part 2 of the Common Provisions Act.

Insertion of new s 449

Clause 322 inserts a transitional provision.

New section 449 Existing practice manuals

New section 449 provides that a practice manual kept under former section 427 will have effect until another practice manual is made available by the chief executive under the Common Provisions Act and that the provisions about the place or way for information to be kept under a manual or is required to be given under section 411 will continue to apply.

Amendment of sch 2 (Dictionary)

Clause 323 amends the definitions of ‘area’, ‘holder’ and ‘registration’ in schedule 2 to remove the reference to ‘GHG register’ and replace the meaning of ‘register’ to be the register kept under the Common Provisions Act. The definition ‘GHG register’ is omitted and a new definition of register is inserted that refers to the Common Provisions Act.

Division 6 Amendments relating to gas emissions

Amendment of s 30 (Principal authorised activities)

Clause 324 amends section 30 to insert remediation of legacy boreholes as a principal authorised activity for the holder of a GHG exploration permit. This will allow the holder of a GHG exploration permit to plug, abandon or otherwise remediate a legacy borehole as defined in schedule 2. There are circumstances where the particular history of a specific borehole is difficult to verify. The words ‘reasonably believes’ are included to provide that the permit holder can take remediation action if they are satisfied the borehole meets the conditions of the definition in schedule 2.

Existing regulatory requirements for notification, land access and land use that generally apply to authorised activities may be relevant and need to be considered by a tenement holder if they decide to remediate a legacy borehole.

Remediation of the legacy borehole includes activities to rehabilitate the surrounding area where it is disturbed by activities to plug and abandon the borehole. The standard for remediation of a legacy borehole is to be prescribed by regulation.

Amendment of s 110 (Principal authorised activities)

Clause 325 amends section 110 to insert remediation of legacy boreholes as a principal authorised activity for the holder of a GHG injection and storage lease. This will allow the holder of a GHG injection and storage lease to plug, abandon or otherwise remediate a legacy borehole as defined in schedule 2. There are circumstances where the particular history of a specific borehole is difficult to verify. The words ‘reasonably believes’ are included to

provide that the lease holder can take remediation action if they are satisfied the borehole meets the conditions of the definition in schedule 2.

Existing regulatory requirements for notification, land access and land use that generally apply to authorised activities may be relevant and need to be considered by a tenement holder if they decide to remediate a legacy borehole.

Remediation of the legacy borehole includes activities to rehabilitate the surrounding area where it is disturbed by activities to plug and abandon the borehole. The standard for remediation of a legacy borehole is to be prescribed by regulation.

Amendment of sch 2 (Dictionary)

Clause 326 inserts a definition for legacy borehole into the dictionary. The intention is to capture boreholes or wells drilled for the purpose of resources exploration or production, or to inform resources exploration, but not drilled by the current tenement holders or their related bodies corporate (i.e. land has been relinquished or there is no continuity of tenure to the current tenement holder).

Division 7 Miscellaneous amendments

Amendment of sch 2 (Dictionary)

Clause 327 updates the section references in the definition of owner.

Part 6 Amendment of the Land Court Act 2000

Act amended

Clause 328 provides that this part amends the *Land Court Act 2000*.

Amendment of s 32G (Jurisdiction for negotiated agreements)

Clause 329 removes references to native title provisions and native title agreements from the jurisdiction of the Land Court for a relevant person to apply for an order for the enforcement of a negotiated agreement; or deciding a matter arising under a negotiated agreement; or making a declaration about the interpretation of a negotiated agreement.

Omission of s 32I (Jurisdiction for contract conditions)

Clause 330 omits the provision for a relevant person to apply to the Land Court for an order for the enforcement of contract conditions; or decide a matter under contract conditions; or making a declaration about the interpretation of contract conditions in relation to the resource authorities that are administered under the *Mineral Resources Act 1989*, Schedule 1A.

These amendments are as a consequence of removing Schedule 1A from the *Mineral Resources Act 1989*. These provisions relate to native title processes for progressing applications for exploration and mining tenements under the *Mineral Resources Act 1989*, lodged between 18 September 2000 and 31 March 2003 inclusive; and before 18 September 2000, but only if notified for commencement under the Alternative State Provisions. No future applications will rely on the Alternative State Provisions and there are now less than five mining lease applications that remain subject to these provisions.

Insertion of new pt 6, div 4

Clause 331 inserts a transitional provision.

Division 4 Transitional provisions for the Mineral and Energy Resources (Common Provisions) Act 2014

New section 95 Pre-amended Act continues to apply for particular negotiated agreements and contract conditions

New section 95 ensures the Alternative State Provisions will continue to apply to these mining lease applications.

Part 7 Amendment of Mineral Resources Act 1989

Division 1 Preliminary

Act amended

Clause 332 states that this part amends the *Mineral Resources Act 1989.*

Division 2 Amendments relating to the Common Provisions Act, chapter 1

Insertion of new s 3BA

Clause 333 inserts a new section into the Act.

New section 3BA Relationship with Common Provisions Act

New section 3BA explains that the relationship between the *Mineral Resources Act 1989* and the Common Provisions Act is provided for by section 6 of the Common Provisions Act.

Amendment of sch 2 (Dictionary)

Clause 334 amends the dictionary to add a definition of ‘Common Provisions Act’.

Division 3 Amendments relating to the Common Provisions Act, chapter 2

Amendment of s 10AA (Joint holders of mining tenement)

Clause 335 makes a minor amendment to remove ‘under this Act’ so that section 10AA of the *Mineral Resources Act 1989* also applies to the Common Provisions Act.

This clause also states that the requirements for registering applicants as joint holders under section 10AA apply for a mining tenement, an application transfer, and to register a transfer of a resource authority under the Common Provisions Act.

Amendment of s 93D (Renewal of claim must be in name of last recorded transferee)

Clause 336 replaces the reference to section 318AAT of the *Mineral Resources Act 1989* with ‘the Common Provisions Act’ for the registration of the transfer of a mining claim.

Amendment of s 147F (Renewal of permit must be in name of last recorded transferee)

Clause 337 replaces the reference to section 318AAT of the *Mineral Resources Act 1989* with the ‘Common Provisions Act’ for the registration of the transfer of an exploration permit.

Amendment of s 160 (Contravention by holder of exploration permit)

Clause 338 replaces the reference to associated agreements in section 160(5) ‘chapter 7, part 2’ of the *Mineral Resources Act 1989* with ‘the Common Provisions Act’.

Amendment of s 193 (Rental payable on mineral development licence)

Clause 339 replaces the reference to associated agreements in section 193(5) (a) ‘chapter 7, part 2’ of the *Mineral Resources Act 1989* with ‘the Common Provisions Act’.

Amendment of s 197F (Renewal of licence must be in name of last recorded transferee)

Clause 340 replaces the reference to section 318AAT of the *Mineral Resources Act 1989* with ‘the Common Provisions Act’ for the registration of the transfer of a mineral development licence.

Amendment of s 209 (Contravention by holder of mineral development licence)

Clause 341 amends the provision to refer to an associated agreement for the licence recorded in the register under the Common Provisions Act.

Amendment of s 231I (Requirements for transferring or mortgaging mineral development licences)

Clause 342 replaces the reference to 'chapter 7, part 1, division 2 and 3' with 'the Common Provisions Act' for the requirements for transferring or mortgaging mineral development licences.

Amendment of s 286F (Renewal of lease must be in name of last recorded transferee)

Clause 343 replaces the reference to section 318AAT of the *Mineral Resources Act 1989* with 'the Common Provisions Act' for the registration of the transfer of a mining lease.

Amendment of s 318AAK (Requirements for transferring, mortgaging or subleasing mining leases)

Clause 344 replaces the reference to chapter 7, part 1, division 2 and 3 in section 318AAK (1) of the *Mineral Resources Act 1989* to refer to any requirements under 'the Common Provisions Act'.

Replacement of ch 7, hdg (Common provisions for mining tenements)

Clause 345 amends the heading of chapter 7 to limit it to transfers affecting applications for mining leases.

Replacement of ch 7, pts 1-3

Clause 346 replaces chapter 7, parts 1 to 3 of the *Mineral Resources Act 1989* with a new part 1. This amendment facilitates the transfer of provisions relating to dealings, caveats and associated agreements to the Common Provisions Act. The new part 1 provides for indications and transfer of mining leases applications only. This is specific to the *Mineral Resources Act 1989* only.

Amendment of ch 7, pt 4, hdg (Appeals about approvals of assessable transfers)

Clause 347 amends the heading so that it refers to appeals about transfers.

Amendment of s 318AAZM (Who may appeal)

Clause 348 amends section 318AAZM so that it provides for appeals for application transfers under the *Mineral Resources Act 1989*. Dealings and indicative approvals will be provided for under the Common Provisions Act.

Amendment of s 318AB (Relationship with ch 4-6 and ch 7, pt 1)

Clause 349 amends the heading of section 318AB to refer to 'the Common Provisions Act' for the requirements and restrictions for the coal seam gas provisions.

Section 318AB(1) is amended to refer to 'the Common Provisions Act' for the requirements and restrictions for the coal seam gas provisions.

It also removes the reference to chapter 7, part 1 in section 318AB(3) and replaces the reference to chapter 7, part 1 in section 318AB(4) to 'the Common Provisions Act'.

This is because chapter 7 is being removed and the reference to it is now redundant.

Amendment of s 318DO (Requirement for coordination arrangement to transfer or sublet mining lease in area of petroleum lease)

Clause 350 replaces the reference to section 318AAT with a reference to the 'Common Provisions Act'.

Amendment of s 401A (Protection against liability as condition of approval)

Clause 351 amends section 401A as a consequential to the migration of the dealings provisions to the Common Provisions Act.

Amendment of s 406 (Land Court may review direction or requirement)

Clause 352 amends section 406(1) to enable a person that is aggrieved by a road use direction given by a public road authority or a condition imposed by a public land authority under the Common Provisions Act.

Insertion of new ch 15, pt 10

Clause 353 inserts transitional provisions related to changes made by the Bill.

Part 10 Transitional provisions for Mineral and Energy Resources (Common Provisions) Act 2014

New section 824 Continued appeal right for particular decisions

The new section provides for continued rights for a person to appeal for review of a decision of the Minister to refuse to approve an assessable transfer under previous section 318AAZM in compliance with chapter 7, part 4 and rights to appeal for review of a decision to give a road use direction under previous section 406 in compliance with section 406(2) to (7).

Amendment of sch 2 (Dictionary)

Clause 354 omits the definitions of ‘assessable transfer’, ‘associated agreement’, ‘dealing’, ‘indicative approval’, and ‘non-assessable transfer’ from schedule 2 of the *Mineral Resources Act 1989*.

New definitions for ‘application transfer, ‘dealing’ and ‘indicative approval’ are inserted in schedule 2 of the *Mineral Resources Act 1989*.

Division 4 Amendments relating to the Common Provisions Act, chapter 3

Insertion of s 7A and 7B

Clause 355 provides definitions for the terms 'preliminary activity’ and ‘advanced activity’. These terms were previously defined in schedule 1 of this Act.

Amendment of s 129 (Entitlements under exploration permit)

Clause 356 omits requirements for the holder of an exploration permit to gain the consent of the owner of reserve land to enter the land prior to undertaking authorised activities. Entry on to public land, including land that was previously reserve land, by exploration permit holders will now be administered under chapter 3, part 3 of this Bill. This is consistent with post-grant entry requirements for other resource authorities.

This clause also includes provisions referenced in Clause 381 to enable a staged commencement of provisions.

Replacement of s 163 (Access and compensation provisions—sch 1)

Clause 357 replaces the reference to the omitted Schedule 1, with a reference to chapter 3 of the Bill.

Amendment of s 181 (Obligations and entitlement under mineral development licence)

Clause 358 omits requirements for the holder of a mineral development licence to gain the consent of the owner of reserve land to enter the land prior to undertaking authorised activities. Entry on to public land, including land that was previously reserve land, by mineral development licence holders will now be administered under chapter 3, part 3 of this Bill. This is consistent with post-grant entry requirements for other resource authorities.

This clause also includes provisions referenced in Clause 382 to enable a staged commencement of provisions.

Replacement of s 211 (Access and compensation provisions—sch 1)

Clause 359 replaces the reference to the omitted Schedule 1, with a reference to chapter 3 of the Bill.

Omission of ch 10 (Roads)

Clause 360 omits chapter 10 of the Act as these provisions are replaced by requirements in Chapter 3 of the Bill.

Amendment of s 335I (What happens if a party does not attend)

Clause 361 replaces the references to the omitted schedule 1, with the relevant sections in Chapter 3 of the Bill.

Amendment of s 335J (Authorised officer's role)

Clause 362 replaces the reference to the omitted schedule 1, with the relevant section in Chapter 3 of the Bill.

Omission of s 391B (Right of access for authorised activities includes access for rehabilitation and environmental management)

Clause 363 omits section 391B as this right of access will now be provided for in the Common Provisions Act.

Amendment of s 397B (Obstruction of mining tenement holder)

Clause 364 replaces the reference to the omitted schedule 1, with a reference to chapter 3 of the Bill.

Amendment of s 412B (Executive officer may be taken to have committed offence)

Clause 365 replaces the references to schedule 1 in s 412B of the *Mineral Resources Act 1989* with the equivalent sections in chapter 3 of the Bill. Section 412B identifies the offences that each executive officer of the company may be taken to have also committed.

Amendment of s 781 (Additional exemption to conduct and compensation agreement requirement)

Clause 366 replaces the reference to the omitted schedule 1, with a reference to chapter 3 of the Bill.

Omission of sch 1 (Access and compensation provisions for exploration permits and mineral development licences)

Clause 367 omits schedule 1 as these provisions are replaced by requirements in chapter 3 of the Bill.

Amendment of sch 2 (Dictionary)

Clause 368 amends the definitions in schedule 2. This clause includes an amendment to the definition of a land access code to refer to the definition of a land access code in this Bill.

Division 5 Amendments relating to the Common Provisions Act, chapter 4

Omission of ss 318A and 318AA

Clause 369 omits section 318A and section 318AA as these provisions are now provided in chapter 4.

Amendment of s 318AE (What is a *coal exploration tenement*, a *coal mining lease* and a *special coal mining lease*)

Clause 370 amends section 318AE to insert new subsection (4) to clarify that a coal exploration tenement or coal mining lease referenced under parts 1 to 7 of the *Mineral Resources Act 1989* does not include an exploration permit (coal), mineral development licence (coal) or ML (coal) to which chapter 4 of the Common Provisions Act applies.

Amendment of s 318AI (Petroleum tenures)

Clause 371 amends section 318AI to insert a new subection(4) to clarify that a petroleum lease or authority to propospct referenced under parts 1 to 7 of the *Mineral Resources Act 1989* does not include a petroleum lease or authority to prospect to which chapter 4 of the Common Provisions Act applies.

Division 6 Amendments relating to the Common Provisions Act, chapter 6

Amendment of s 103 (Correction of certificate of grant of mining claim)

Clause 372 removes the reference to the register of mining claims kept by the chief executive as there will be only one register for all resource authorities under the Common Provisions Act.

Amendment of s 149 (Correction of instrument of exploration permit)

Clause 373 removes the reference to the register of exploration permits kept by the chief executive as there will be only one register for all resource authorities under the Common Provisions Act.

Amendment of s 206 (Correction of instrument of mineral development licence)

Clause 374 removes the reference to the register of mineral development licences kept by the chief executive as there will be only one register for all resource authorities under the Common Provisions Act.

Amendment of s 230 (Plant remaining on former mineral development licence may be sold etc.)

Clause 375 removes the reference to 'this Act' so that the provision also refers to the Common Provisions Act.

Amendment of s 314 (Property remaining on former mining lease may be sold)

Clause 376 removes the reference to 'this Act' so that the provision also refers to the Common Provisions Act.

Omission of ss 387–387D

Clause 377 removes the existing register provisions as these will be replaced with the new provisions are under chapter 6, part 1 of the Common Provisions Act.

Omission of s 416B (Practice manual)

Clause 378 removes the existing practice manual provisions as these will be replaced with new provisions under chapter 6, part 2 of the Common Provisions Act.

Insertion of new s 825

Clause 379 inserts a transitional provision.

New section 825 Existing practice manuals

New section 825 provides a transitional for an existing practice manual kept under former section 416B that are now under chapter 6, part 2 of the Common Provisions Act.

Amendment of sch 2 (Dictionary)

Clause 380 amends the definitions of area and register in the relevant Resource Acts so that the register referred to is the register under the Common Provisions Act.

Division 7 Amendments relating to gas emissions

Amendment of s 129 (Entitlements under exploration permit)

Clause 381 amends section 129(1)(a) to insert remediation of legacy boreholes as an entitlement for the holder of an exploration permit. This will allow the holder of an exploration permit to plug, abandon or otherwise remediate a legacy borehole as defined in schedule 2. There are circumstances where the particular history of a specific borehole is difficult to verify. The words ‘reasonably believes’ included in the definition at schedule 2 provide that the permit holder can take remediation action if they are satisfied the borehole meets the conditions of a legacy borehole in the definition.

Existing regulatory requirements for notification, land access and land use that generally apply to authorised activities may be relevant and need to be considered by a tenement holder if they decide to remediate a legacy borehole.

Remediation of the legacy borehole includes activities to rehabilitate the surrounding area where it is disturbed by activities to plug and abandon the borehole. The standard for remediation of a legacy borehole is to be prescribed by regulation.

Amendment of s 181 (Obligations and entitlement under mineral development licence)

Clause 382 amends section 181(4)(a) to insert remediation of legacy boreholes as an entitlement for the holder of a mineral development licence. This will allow the holder of a mineral development licence to plug, abandon or otherwise remediate a legacy borehole as defined in schedule 2. There are circumstances where the particular history of a specific borehole is difficult to verify. The words ‘reasonably believes’ included in the definition at schedule 2 provide that the licence holder can take remediation action if they are satisfied the borehole meets the conditions of a legacy borehole in the definition.

Existing regulatory requirements for notification, land access and land use that generally apply to authorised activities may be relevant and need to be considered by a tenement holder if they decide to remediate a legacy borehole.

Remediation of the legacy borehole includes activities to rehabilitate the surrounding area where it is disturbed by activities to plug and abandon the borehole. The standard for remediation of a legacy borehole is to be prescribed by regulation.

Amendment of s 235 (General entitlements of holder of mining lease)

Clause 383 amends section 235(1)(b) to insert remediation of legacy boreholes as an entitlement for the holder of a mining lease. This will allow the holder of a mining lease to plug, abandon or otherwise remediate a legacy borehole as defined in schedule 2. There are circumstances where the particular history of a specific borehole is difficult to verify. The words 'reasonably believes' included in the definition at schedule 2 provide that the lease holder can take remediation action if they are satisfied the borehole meets the conditions of a legacy borehole in the definition.

Existing regulatory requirements for notification, land access and land use that generally apply to authorised activities may be relevant and need to be considered by a tenement holder if they decide to remediate a legacy borehole.

Remediation of the legacy borehole includes activities to rehabilitate the surrounding area where it is disturbed by activities to plug and abandon the borehole. The standard for remediation of a legacy borehole is to be prescribed by regulation.

Amendment of s 344B (Entering land to carry out rehabilitation activities)

Clause 384 amends section 344B(2)(b) to extend the period of entry for activities to rehabilitate abandoned mines. Under the existing provision, a person may enter and re-enter land to carry out rehabilitation activities within a 5 business day period from the day notice is given to the land owner or occupier (whichever occurs first). If rehabilitation activities take longer than 5 days to complete, the authorised person must provide another notice. Extending the period of entry to 10 business days will limit the number of notices the authorised person will need to provide about a single rehabilitation activity.

This clause also redrafts section 344B(3) to be consistent with notification entry requirement provisions in resources legislation. There is no change to the operation of the provision that restricts access to land used for residential purposes unless the land occupier provides consent.

Amendment of sch 2 (Dictionary)

Clause 385 inserts a definition for *legacy borehole* into the dictionary. The intention is to capture boreholes or wells drilled for the purpose of resources exploration or production, or to inform resources exploration, but not drilled by the current tenement holders or their related bodies corporate (i.e. land has been relinquished or there is no continuity of tenure to the current tenement holder). The inclusion of the provision for holders to 'reasonably believe' supports remediation activity authorised by amendments to sections 129(1)(a), 181(4)(a) and 235(1)(b).

Division 8 Amendments relating to incidental coal seam gas

Amendment of s 316 (Mining lease for transportation through land)

Clause 386 amends section 316 to clarify that the provisions relating to mining leases for transportation do not apply for the transportation of incidental coal seam gas through land. The clause also inserts a note to provide that a pipeline licence under the *Petroleum and Gas (Production and Safety) Act 2004* may be obtained for this purpose.

Amendment of s 318CL (Application of pt 8)

Clause 387 amends section 318CL so that the application of the Act as it relates to the use of incidental coal seam gas is subject to the requirements for incidental coal seam gas under the Common Provisions Act for coal and CSG overlapping, to the extent that it applies. In other words, if the Common Provisions Act requirements apply for incidental coal seam gas, then the coal mining lease holder must first satisfy those requirements before use of the incidental coal seam gas can be made under this Act.

Replacement of s 318CN (Use that may be made under mining lease of incidental coal seam gas)

Clause 388 replaces section 318CN and inserts new section 318CNA. Both amended section 318CN and new section 318CNA clarify that some minor processing is inherently needed to allow for these uses. It is not intended that a holder requires further approvals under the *Petroleum and Gas (Production and Safety) Act 2004* in these cases.

New section 318CN Use that may be made under coal mining lease of incidental coal seam gas

Replacement section 318CN seeks to reduce the amount of incidental coal seam gas that is vented or flared, by allowing a mining lease holder to commercialise incidental coal seam gas or use it beneficially, after the requirements of the new coal and coal seam gas overlapping scheme under the common provisions Act have been met. It also lists how a holder of a coal mining lease may use incidental coal seam gas.

Unless the incidental coal seam gas is being used beneficially within the area of a coal mining lease, or being processed, transported or stored within the area of a coal mining lease, a relevant petroleum authority under the *Petroleum and Gas (Production and Safety) Act 2004* may be required (or indeed an approval under another Act). In particular, a pipeline licence would be required if the gas is to be transported by pipeline outside the area of non-contiguous mining leases. If the holder wishes to use the incidental coal seam gas to generate power to supply to another entity, the holder must comply with the *Electricity Act 1994*.

New section 318CNA Use that may be made under oil shale mining lease of incidental coal seam gas

The clause also inserts new section 318CNA to maintain the existing requirements on the use of incidental coal seam gas by oil shale mining leases. These include using it beneficially for mining, for example, for power generation or heating, or processing, transporting or storing it within the area of the lease so it can be used beneficially.

Amendment of s 318CO (Restriction on flaring or venting of incidental coal seam gas)

Clause 389 amends section 318CO to reflect the changes to section 318CN and new section 318CNA to allow the flaring of incidental coal seam gas if it is not commercially or technically feasible to use it. The clause also clarifies that the restrictions on flaring or venting in relation to making an offer to an overlapping petroleum lease only apply to oil shale mining leases. The definition of 'greenhouse abatement scheme' is simplified to mean a scheme prescribed by regulation.

Insertion of new s 826

Clause 390 inserts a transitional provision to the Act.

New section 826 Application of incidental coal seam gas provisions

This new section inserts a transitional provision to the Act to account for the changes regarding the use of incidental coal seam gas by a coal mining lease holder. Existing coal mining leases that overlap with existing petroleum authorities (including a petroleum lease later granted from an existing authority to prospect) will be subject to the former provisions under the *Mineral Resources Act 1989* relating to the use of incidental coal seam gas for that part of the coal mining lease that overlaps.

However, on commencement if an existing coal mining lease complies with the requirements for incidental coal seam gas as prescribed under the Common Provisions Act, and the overlapping petroleum lease or authority to prospect refuses the gas under that Act, the holder of the coal mining lease may then use the incidental coal seam gas under the amended provisions of the *Mineral Resources Act 1989*. For clarity, an existing coal mining lease on commencement without an overlapping petroleum authority is able to make use of incidental coal seam gas under the amended provisions of the *Mineral Resources Act 1989*, and continue to do so even if a petroleum authority is later granted over the lease.

The relevant sections as amended apply to any oil shale mining lease granted before or after commencement as the amendments maintain the status quo for the use of incidental coal seam gas for this type of mining lease.

Division 9 Amendments relating to mining applications

Amendment of s 19 (Consent required to enter certain land)

Clause 391 amends section 19 as parts of this section are replaced by requirements in chapter 3 of the Bill.

Amendment of s 20 (Provisions about consents to enter land)

Clause 392 amends section 20 to clarify that, for prospecting permits, a consent given by an owner or occupier to enter restricted land may be amended or withdrawn by written notice to the holder and the chief executive.

Replacement of s 48 (Land in area of mining claim)

Clause 393 replaces section 48.

New section 48 Grant of mining claim

New section 48 enables a mining claim to be granted over an area of land to any eligible person, rather than limiting it to parties that have a pre-requisite permit such as a prospecting permit or exploration permit. This enables an eligible person to apply for the claim without first acquiring a prospecting or exploration permit.

Subsection (2) requires the application for a mining claim to include the entire surface area of the land within the proposed boundaries of the mining claim.

Amendment of s 51 (Land for which mining claim not to be granted)

Clause 394 amends section 51 by replacing the existing subsections (2) and (3) with requirements that will enable a mining claim to be issued over restricted land only where the relevant owners and occupiers consent to the application in writing and the applicant has lodged the written consent with the chief executive prior to the end of the last objection day for the application.

Once an owner or occupier has given their written consent and it has been lodged with the chief executive their consent cannot be withdrawn.

Omission of ss 56–60

Clause 395 omits sections 56 to 60 as these sections are no longer required under the new boundary definition methodology.

Section 56 (Marking out land before application for grant of mining claim) is omitted as the marking of a boundary through the use of physical monuments is no longer mandatory.

Section 57 (Manner of marking out land proposed to be subject of mining claim) is also redundant as the criteria for determining whether the boundary definition provided with an application, regardless of the methodology used, have been identified in section 386R and require the definition to be unambiguous and able to be located on the ground using only the definition provided. Where an applicant chooses to use physical monuments to define the boundary, a practice manual will provide a methodology that in the chief executive's opinion achieves the criteria. An applicant may choose to use an alternative method of using physical monuments which in the chief executive's opinion is assessed as meeting or exceeding the criteria. Section 57 has, therefore, been omitted.

The new methodology for defining a boundary of a proposed mining claim provides for any practical methodology of defining the boundary as long as the methodology used meets the criteria established by section 386R, that the boundary must be unambiguous and capable of being located on the ground. As a result, there is no longer any necessity for the chief executive to have specific authority to approve an alternative to marking the boundary using physical monuments. Therefore, section 58 (Consent of chief executive required to certain marking out of land) is redundant and has been omitted.

The process for applying for a mining claim is identified in sections 61 to 64C. The timeframes for completing relevant actions are defined in these sections. In addition section 386U identifies that if physical monuments are used to define the boundary of a proposed mining claim or mining lease then the application must be lodged with the chief executive within 5 business days of the last monument being installed. Section 59 is therefore redundant and is omitted.

The requirement for removing physical monuments when an application for a mining claim is not made or if an application has been made and it has been rejected by the chief executive or the Minister, or it is abandoned by the applicant has been included in a general provision, 386U, relating to all tenement applications where physical monuments are installed. Section 60 has therefore, been omitted.

Amendment of s 61 (Application for grant of mining claim)

Clause 396 amends section 61(1) by replacing the word 'shall' with the word 'must' to make it mandatory for an application to be provided in the prescribed way.

Sections 61(1)(e) to (g) are omitted and replaced with new subsections that provide for the new boundary definition methodology identified in section 386R to be implemented. Under these requirements, an applicant must define the boundary of any area to be included in the proposed mining claim, define the boundary of any land to be included as access to the proposed mining claim and be accompanied by a visual representation of the boundary and land. These requirements will enable the chief executive to assess whether the boundary definition provided meets the criteria identified in section 386R; that the boundary definition is unambiguous and able to be located on the ground.

Under proposed new section 61(g), a visual representation of the boundary and land included in the mining claim application are required to be provided with the application. Examples of visual material that may be provided include sketch, map or other graphic representation of the boundary of the proposed mining claim. This will for instance—

- assist the chief executive and the Land Court to understand the area over which the mining claim and access is proposed and the factors that need to be considered when assessing where mining and mining infrastructure are to occur and be placed; and
- assist the chief executive to determine whether:
    - additional definition of the boundary of the proposed claim and access is necessary;
    - physical monuments may be necessary for safety, dispute resolution, or clarity;
    - the means used to define the boundary is clear, unambiguous and capable of being located on the ground.

Omission of s 62 (Description of mining claim)

Clause 397 omits section 62 as the criteria for determining whether the boundary definition provided with an application, regardless of the methodology used, have been identified in section 386R and require the definition to be unambiguous and able to be located on the ground using only the definition provided. An applicant may choose to use an alternative method of defining the boundary of a proposed mining claim which in the chief executive's opinion is assessed as meeting or exceeding the criteria.

Replacement of ss 64 to 64D

Clause 398 omits existing sections 64 (Issue of a mining claim certificate), 64B (Applicant's obligations for mining claim application certificate), 64C (Declaration of compliance with obligations), and 64D (Continuing obligation to notify) and inserts a new section 64 (Issue of a mining claim notice), 64A (Documents to be given to affected persons), 64B (Declaration of compliance with obligations) which adopts a more flexible approach to the form of the advice to the applicant on their requirements to notify third parties as to an application and 64C (Continuing obligation to notify) which imposes a requirement to provide additional documentation given to the chief executive in support of the application to other stakeholders for the application.

New section 64 Issue of mining claim notice

Proposed new section 64 provides that if the chief executive is satisfied an applicant is eligible to apply for the mining claim and has complied with the requirements for application the chief executive must issue the applicant with a written notice (a *mining claim notice*). The notice must provide for the number of the proposed mining claim; the date and time the application was accepted; the information that the applicant must provide to the owner of relevant land and local government; and the last objection day for the owner and local government to lodge an objection to the application.

New section 64A Documents and other information to be given to affected persons

New section 64A (Documents to be given to affected persons) lists the documents that must be given to the owner of the land over which the claim is lodged, the owners of any land over which access is required and the local government. These entities are identified as *affected persons* for the proposed mining claim.

The documents must be given within 5 business days of the mining claim notice having been given to the applicant or, if the chief executive determines that a longer period should apply due to the circumstances of the application, the longer period determined by the chief executive.

New section 64B Declaration of compliance with obligations

A new section 64B (Declaration of compliance with obligations) is inserted. This new section reflects the provisions of current section 64C (Declaration of compliance with obligations) and no changes to the intent of the existing section are made.

New section 64C (Continuing obligation to notify)

A new section 64C (Continuing obligation to notify) is inserted. This new section reflects the provisions of current section 64D (Continuing obligation to notify) and no changes to the intent of the existing section are made.

Amendment of section 81 (Conditions of mining claim)

Clause 399 amends section 81(1)(m) to ensure that where a mining claim applicant has used physical monuments to define the boundary of the proposed mining claim whether by choice under section 386R or was required to do so under the pre-amended Act or under a notice issued by the chief executive under sections 386S or 386T that, once the mining claim is granted, the mining claim holder maintains the physical monuments used.

Omission of s 90 (Duty of holder of mining claim to mark boundary posts)

Clause 400 omits section 90 which is redundant because the use of boundary posts is no longer mandatory.

Amendment of s 121 (Effect of termination of mining claim)

Clause 401 omits the words ‘under this Act’ in section 121(3) because the use of boundary posts is no longer mandatory under this Act. If an applicant elects to use physical monuments new section 386T applies to the circumstances under which they must be removed.

Amendment of s 125 (Variation of access to mining claim area)

Clause 402 amends section 125(2)(a) to cross reference section 61 only as section 62 has been omitted.

Amendment of section 129 (Entitlements under exploration permit)

Clause 403 omits the example from section 129(1)(c)(i) as the section it uses as the example has been omitted from the legislation.

This clause also omits subsections (3) and (4) as these are replaced by requirements in Chapter 3 of the Bill. As a result of the omission of subsection (3) A consequential amendment to subsection 14 is also made to correct the cross referencing to refer to subsection (1)(a)(ii) and remove cross referencing to subsection 3.

The remaining subsections in this section are renumbered.

Amendment of s 181 (Obligations and entitlement under mineral development licence)

Clause 404 amends section 181 to omit subsections (8) and (9) as these subsections are replaced by requirements in chapter 3 of the Bill (chapter 3 of the new *Common Provisions Act 2014).*

This clause also omits part of subsection (20) that references subsection (8).

Amendment of s 183 (Application for mineral development licence)

Clause 405 amends section 183(1) by replacing the word 'shall' with the word 'must' to make it mandatory for an application to be provided in the prescribed way.

Sections 183(1)(e), (h) and (i) are omitted and replaced with new subsections that provide for the new boundary definition methodology identified in section 386R to be implemented by identifying those things that must be included in an application to enable the chief executive to assess whether the boundary definition provided for the proposed mineral development licence meets the criteria identified in section 386R.

Proposed new subsections 1(e) and (h) require the applicant to provide the chief executive with a definition of the boundary of the proposed mineral development licence and the land outside of the proposed mineral development licence area to be used for access to the proposed mineral development licence area.

Under proposed new section 61(i), a visual representation of the boundary and land included in the proposed mineral development licence application are required to be provided with the application.

Omission of s 184 (Description of mineral development licence)

Clause 406 omits section 184, as the criteria for determining whether the boundary definition provided with an application have been identified in section 386R.

Amendment of s 189 (Abandonment of application for mineral development licence)

Clause 407 makes minor amendments to section 189 to replace the word identify in subsections 189(2A) and 189(2B) with the word describe to align with the new methodology.

Amendment of s 210 (Surrender of mineral development licence)

Clause 408 replaces sections 210(3)(b)(ii) and 210(3)(b)(iii) with new subsections that provides for an amended boundary of an existing mineral development licence to comply with the new boundary definition methodology identified in section 386R. The applicant must provide the chief executive with a definition of the boundary of the proposed mineral development licence and the land outside of the proposed mineral development licence area to be used for access to the proposed mineral development licence area. The new subsections identify those things that must be included in an application to enable the chief executive to assess whether the boundary definition provided meets the criteria identified in section 386R.

Amendment of section 231 (Variation of access to mineral development licence)

Clause 409 amends the cross referencing in the section as section184 has been omitted.

Amendment of s 231C (Application for mineral development licence (183))

Clause 410 replaces sub-sections 231C(b) and 231C(c) with new clauses to ensure the manner in which the boundary of a mining development licence for Aurukun is defined, is consistent with how any other mineral development licence, mining claim and mining lease are defined.

Omission of s 231D (Alternative way of describing mineral development licence (184))

Clause 411 omits section 231D as the criteria for determining whether the boundary definition provided with an application, regardless of the methodology used, have been identified in section 386R.

Replacement of s 232 (Land subject to mining lease)

Clause 412 replaces section 232, with a new section 232 (Eligible person may apply for a mining lease) which enables any eligible person to apply for a mining lease over a contiguous area rather than limiting it to parties that have a pre-requisite permit or licence, such as a

prospecting permit, exploration permit or a mineral development licence. This enables an eligible person to apply for the licence without first acquiring a prospecting or exploration permit or mineral development licence.

Existing sub-section (2) is omitted.

Sub-section (3) is renumbered as sub-section (2) and it ensures that if the mining lease application is made for mineral (f), at least one of the eligible people applying for the lease must also hold a mineral development licence for mineral (f). The mineral development licence for mineral (f) must be held by the eligible person for all of the proposed lease area.

Omission of s 238 (Mining lease over surface of restricted land)

Clause 413 omits section 238. The current restriction excludes areas of restricted land from being included in the mining lease unless the consent of the owner is given prior to the last objection day for the application. The proposed amendment enables a mining lease to be granted over restricted land. However, unless the chief executive determines that the activity authorised by the proposed mining lease cannot coexist with the exisitng use of the land, the restricted land continues to require the consent of the owner of the land before any authorised activity can take place within the restricted land.

Replacement of s 239 (Restriction on mining leases where land freed from exploration permit

Clause 414 replaces section 239 to provide greater flexibility in the size of the lease that can be applied for and remove the need to lodge an application for several leases for a contiguous area up to 300 ha. The applicant will now be able to lodge a single application for the contiguous area up to 300ha.

However, an eligible person is prevented from applying, holding or having a direct or indirect interest in an area of the land which has been released of greater than 300 hectares whether the holding is made up of one or more leases.

The term released has been defined in this section to remove any doubt as to the circumstances under which this provision applies.

Omission of ss 240–244

Clause 415 omits sections 240, 241, 242, 243 and 244 as they are now redundant under the new boundary definition methodology.

The marking of a boundary through the use of physical monuments is no longer mandatory, and the criteria for determining whether the boundary definition provided with an application, regardless of the methodology used, have been identified in section 386R. It is no longer necessary for the chief executive to have specific authority to approve an alternative to

marking the boundary using physical monuments, and the process for applying for a mining lease is identified in sections 252-252C.

As alternatives to physically marking the boundary of a mining lease will be available, sections 243 and 244 will no longer apply to all applications and are redundant.

Replacement of s 245 (Application for grant of mining lease)

Clause 416 replaces section 245 with an application process that incorporates the new mining definition methodology and the new notification and objection process.

Existing section 245 (1)(a) to (d) are replicated in section (1)(a) to (e). For clarity, existing section (1)(d) has been separated into 2 subsections.

Section 245(1)(f) requires the owners of the land over which the proposed mining lease and proposed access is required to be identified by both name and address.

Section (1)(g) requires the boundary of the proposed mining lease to be identified in accordance with section 386R which is the new methodology for how mining leases are identified.

Subsection 1(h) requires the applicant to provide the chief executive with a definition of the boundary of: any surface area of land to be included in the proposed mining lease; any restricted land that would result in the owner of restricted land losing their right of consent for the authority holder to access the restricted land post grant; and of land required for access to the proposed mining lease.

For the land identified in subsections (1)(h)(i) and (ii) the applicant must under proposed section (1)(i) identify the purpose that they propose to use any surface areas included in the lease and specifically the use of any land that is restricted land for which the applicant would lose a right to refuse consent of the authority holder to enter if the mining lease were granted. In regard to the latter, the owner of the land would need to be paid compensation for the loss of consent over that land prior to grant. This would be required in circumstances such as open cut mines where the purpose for which restricted land is used and which resulted in the restricted land being inconsistent with the purpose for which the authority is sought. This will enable the Minister to determine whether the purpose of the authority and the existing use of restricted land are inconsistent and therefore whether exclusive access to the restricted land needs to be included in the grant of the mining lease and as a result that the compensation must be agreed to with the owner of that land or ordered by the Court prior to grant.

Under sections (1)(k) the applicant must give reasons why the mining lease should be granted with particular reference to the size and shape of the proposed mining lease.

New section (1)(l) requires the applicant to provide the reasons why they believe the proposed authority is inconsistent with the exiting use of restricted land and why the Minister

should remove the owners right to refuse consent to enter that restricted land in the proposed mining lease.

Proposed sections (1)(o), (p) and (q), (2) and (3) replicate existing sections (1)(m) and (o) and (1A) and (2). Subsection (1)(q) replaces (1)(o)(iv) to provide greater clarity in what is required to be provided to the chief executive by the applicant.

Omission of s 246 (Description of mining lease)

Clause 417 omits section 246. It is redundant as the boundary of the mining lease is now defined under separate provisions.

Replacement of ss 252 to 252D

Clause 418 omits sections 252 (Certificate of application etc.), 252A (Issue of certificate of public notice), 252B (Applicant's obligations for certificate of public notice), 252C (Declaration of compliance with obligations) and 252D (Continuing obligation to notify) and replaces them with new provisions.

New section 252 Issue of mining lease notice

New section 252 (Issue of mining lease notice) requires the chief executive to issue a written notice, a mining lease notice, once they are satisfied that the applicant is eligible to make the application for a mining lease and has complied with the Act when making the application.

The mining lease notice must identify the number of the proposed lease; the date and time the application was lodged; the documents that must be given to an affected person identified under new section 252A; and the last objection day for the application which must be at least 20 business days after the mining lease notice is given to the applicant.

252A Documents and other information to be given to affected persons

Under new section 252A affected persons for a mining lease application are identified as the owners and occupiers of the land over which the application is lodged; the owners of any land over which access is proposed; the local government in whose local government area the application is proposed; and any infrastructure providers whose infrastructure is wholly or partially within the proposed mining lease.

The terms infrastructure provider and infrastructure are defined in the Bill. Infrastructure is defined to include transport (road, rail, air), water, waste water, telecom or energy transmission infrastructure or other similar infrastructure. It includes the infrastructure sued to operate and/ or maintain the infrastructure including pumping stations, valve sites, monitoring infrastructure, etc. Infrastructure providers for this section are defined as the owners of infrastructure who provide infrastructure that is wholly or partially on the land.

Section 252A also requires the documents identified in section 252(3)(c), the mining lease notice and the application to be given to all affected persons for a mining lease application.

Where an environmental impact statement for the proposal has been completed under the *Environmental Protection Act 1994* or *State Development and Public Works Organisation Act 1971* and no additional notification is required under the notification stage of the *Environmental Protection Act 1994* for the environmental authority application, the documents and other materials must be given to affected persons within 5 business days of when a mining lease notice is given to the applicant.

Where the notification stage of the *Environmental Protection Act 1994* applies to the environmental authority application, the documents and other materials must be given within 5 business days of the application notice mentioned in section 152 of the *Environmental Protection Act 1994* is given to the applicant.

In either instance the chief executive may decide a longer period for providing the documents and other materials.

This section also precludes any part of the information in the application that relates to the applicant's financial and technical resources or any information that the chief executive considers to be commercial in confidence material from being given to affected persons.

New section 252B Declaration of compliance with obligations

New section 252B (Declaration of compliance with obligations) is also inserted. The applicant must provide the chief executive with a statutory declaration that they have notified all affected persons identified in section 252A that the mining lease application has been lodged and the documents referred to in section 252 have been given to them under section 252A. The notice must be given to the chief executive with 5 business days of the last objection day or a longer period decided by the chief executive.

However, if the chief executive considers that an applicant has, despite their best endeavours, failed to notify an occupier or infrastructure provider that should have been notified, the chief executive may require the applicant to issue another statutory declaration within the period stated in the notice The chief executive may require the owner or occupier to be notified despite the mining lease having been granted.

If a second notice is required prior to the grant of the mining lease by the Minster the applicant must comply with the Act or another Act in terms of entering into an agreement with the occupier or infrastructure provider in regard to the impacts of the proposed mining lease on them. If the second notice is required after the mining lease has been granted, the mining lease holder will need to resolve any legal or civil obligations regarding an agreement with the entity that has not been notified.

If the notice is not given under subsection (4) the Minister is prevented from granting the proposed mining lease and the Land Court is prevented from making a final recommendation about the mining lease application other than to recommend it be refused.

New section 252C (Continuing obligation to notify)

Section 252C (Continuing obligation to notify) is inserted. This new section reflects the provisions of current section 252D (Continuing obligation to notify) and no changes to the intent of the existing section are made.

Amendment of s 253 (Reissue of certificate of public notice)

Clause 419 amends section 253 (Reissue of certificate of public notice) to reflect the new terminology of mining lease notice. The section title is amended to section 252 (reissue of mining lease notice) and references to certificate of public notice is replaced with mining lease notice.

Replacement of s 260 (Objection to application for grant of mining lease)

Clause 420 omits section 260 (Objection to application for grant of mining lease) and inserts a new section 260 (Objection by affected person).

New section 260 Objection by affected person

This section identifies that an owner of the land the subject of the application, an owner of land necessary for access to the land within the proposed application and the relevant local government (affected persons) may lodge an objection to the proposed mining lease with the chief executive. The objection must be lodged on an approved form on or before the last objection day for the application.

Where an owner of land attends a conference with the applicant, the owner may lodge an objection within 5 business days of the conference ending.

If an applicant fails to attend the conference then the land owner may lodge an objection before the end of the day after the conference was to be held (section 260(2)). Where a conference is held or is intended to be held, the objection may be lodged despite the fact that the last objection day for the application may have past (section 260(2)).

Under section 260(3) when lodging an objection, under section 260(1) or (2), the objector must state the grounds of the objection and the facts and circumstances that the objector will rely on to support their objection. The object may only be in relation to matters listed under subsection (4).

Under section (5), an objector must serve on an applicant a copy of the objection lodged by the objector.

Replacement of s 265 (Referral of application and objections to Land Court)

Clause 421 replaces section 265 (Referral of application and objections to Land Court).

New section 265 Referral of application and objections to Land Court

The new section requires the chief executive to refer certain matters to the Land Court if:

- a properly made objection is made for a mining application;
- the application relates to a site-specific application for an environmental authority under the *Environmental Protection Act 1994*; and
- a relevant objection notice is given under section 182(2) of the *Environmental Protection Act 1994* or the applicant for the site-specific application has requested the application be referred to the Land Court.

The chief executive must refer the matter within 10 business of the latest date of the stated time periods and provide the relevant materials and documents. A properly made objection is defined under subsection 265(11) as an objection lodged under section 260 that has not been withdrawn.

Once the Land Court receives the matters referred to them by the chief executive the Land Court must set a date for a hearing and immediately give a written notice of that hearing date to the chief executive, the applicant, each affected person who lodged a properly made objection and if there have been submitters that lodged an objection notice that hads been referred to the Land Court, the submitter. The date of the hearing must be at least 20 business days after the last objection day.

The Land Court must make an order or give directions that a hearing under the *Mineral Resources Act 1989* to hear the properly made objections under section 268 must occur at the same time as a objections decision hearing under the *Environmental Protection Act* If after the Land Court sets a hearing date all properly made objections under the *Mineral Resources Act 1989* are withdrawn before the hearing is held, the Land Court may remit the matter to the chief executive.

Amendment of s 266 (Chief executive may recommend rejection of application for noncompliance)

Clause 422 amends section 266 (chief executive may recommend rejection of application for noncompliance) to refer to a mining lease notice rather than a redundant certificate of public notice.

Amendment of s 269 (Land Court's recommendation on hearing)

Clause 423 amends section 269 (Land Court's recommendation on hearing) to identify the matters the Land Court must consider when hearing an objection to a mining lease lodged under section 260.

The intention of the proposed section is to make it clear that a landholder and local government can only object to the Land Court on grounds that relate to the matters the Land Court can consider under section 269(4) of the *Mineral Resources Act 1989.*

The amendments to section 269 refine the Land Court's consideration to those matters that can be considered by the Land Court by inserting provisions providing that only directly affected landholders whose impacts derive solely from access will be able to object to whether the provisions of the Act have been complied with and whether the proposed access to the land is reasonable.

A local government can object to whether the provisions of the Act have been complied with and whether the extent, type, purpose, intensity, timing and location of the activities proposed to be carried out under the lease are appropriate, having regard to the likely impact of the activities on infrastructure and services owned, managed or controlled by a directly affected local government.

Owners of the land which the mining lease is proposed on are able to lodge an objection on whether the provisions of the Act have been complied with, consistent with existing sections 269(4)(i) and (m), the proposed mining operations are an appropriate land use and will conform with sound land use management, and appropriate having regard to the surface of the land the subject of the proposed mining lease.

In regard to the latter, relevant considerations of the Land Court include the extent, type, purpose, intensity, timing and location of the operations of the proposed mining lease. The proposed mining operations are defined as the operations that will be carried out under the authority of the proposed mining lease.

Amendment of s 271 (Criteria for deciding mining lease application)

Clause 424 amends section 271 (Criteria for deciding mining lease application) to ensure that the matters the Minister must consider when deciding an application are not reduced as a consequence of the amendments to section 269, other than to remove any requirement to have regard to the impacts considered under other legislation by another entity.

To ensure this occurs, this clause ensures that matters that have been removed from the Land Court's jurisdiction must still be considered by the Minister, other than matters that are within another Act's jurisdiction such as for instance environmental matters covered under the *Environmental Protection Act 1994.*

The additional matters that the Minster must considerations include whether:

- the area proposed for the mining lease is mineralised or the other purposes for which the lease is sought are appropriate;
- the use of the proposed lease area will represent an acceptable level of development and utilisation of the mineral resources in the area;

- the applicants financial and technical capabilities to carry on the mining operations and their past performance has been satisfactory;
- there will be any disadvantage to either an owner or occupier of restricted land with whom the applicant is required to enter into a compensation agreement or other applicants or holders of exploration permits or mineral development licences;
- the public right and interest will be prejudiced.

Amendment of s 271A (Deciding mining lease application)

Clause 425 amends section 271A to refer to the land in the proposed mining lease area for consistency with other provisions in the amended Act.

Omission of s 274 (Holder of a mining lease to mark boundary posts)

Clause 426 omits section 274 which is redundant as the use of boundary posts is no longer mandatory. If an applicant elects to use physical monuments, subordinate documents such as a practice manual may be used to establish the attributes required. If the chief executive requires physical monuments to be marked the notice under which the monuments are required will identify that they must be marked and how they are to be marked.

Amendment of s 275 (Application for inclusion of surface of area of mining lease)

Clause 427 amends section 275 (Application for inclusion of surface area of mining lease) to ensure it is consistent with new terminology and the removal of the requirement to post a notice on a datum post.

Amendment of s 276 (General conditions of a mining lease)

Clause 428 amends section 276(1)(h) to ensure that a mining lease holder maintains any physical monument used to define the boundary of the lease area.

Amendment of s 279 (Compensation to be settled before grant or renewal of mining lease)

Clause 429 amends section 279 to enable the Minister to grant a mining lease where compensation has not been agreed to over restricted land. As a mining lease will now be issued over the entire mining lease area, restricted land is no longer being excluded from the mining lease area.

In circumstances where the authorised activity and purpose of restricted land can co-exist the consent of the owner of the land is required before the authorised activity can be undertaken. Situations in which this could occur would be where the mining lease is not over the entire surface area of the land and those areas in which activity will occur coexist with the existing use of the proposed mining lease area.

Currently, when a mining lease has been granted any identified restricted land is excluded from the mining lease, unless the landowner has given written agreement. As a result, the lease area can be scattered with isolated areas of restricted land that do not form part of the mining lease. If the landowner and the mining lease holder enter an agreement post-grant, a separate application must be lodged for each area of restricted land under section 275.

As section 238 has been omitted from the Act (Clause 414) restricted land can now be included in the mining lease area. The interests of owners and occupiers of the restricted land will be protected by providing requirement for written consent to enter the restricted land to carry out authorised activities the terms of which must be complied with before the tenure holder can conduct activities on that land.

In other situations such as in an open cut mine for instance where the restricted land and authorised activities cannot coexist, compensation must be paid before the proposed mining lease is granted but the owner or occupier of the restricted land will lose their right of consent. In these circumstances despite the fact that no authorised activity can occur in the restricted land, the mining lease may be granted over the land. However, any subsequent activity within the restricted land must be under and in accordance with the Land Access provisions in the Common Provisions Act.

The amendments provide a framework to manage restricted land conflicts where co-existence with the resource activity is not possible. The changes are intended to prevent resource sterilisation, while ensuring that the process is not exploited where co-existence can occur and appropriate compensation is provided for affected owners and occupiers of the land prior to grant.

Amendment s 299 (Consolidation of mining leases)

Clause 430 amends section 299 to correct cross referencing to sections 240, 241, 243 and 274 all of which have been omitted therefore the cross referencing to these sections is obsolete.

Amendment of s 316 (Mining lease for transportation through land)

Clause 431 amends section 316 to omit reference to a prospecting permit which is no longer a pre-requisite permit for a mining lease.

Amendment of s 317 (Variation of access to mining lease area)

Clause 432 amends section 317 to correct cross referencing to refer to section 245 only as section 246 has been omitted therefore the cross referencing to these sections is obsolete.

Omission of s 318AAC (Alternative way of marking out land proposed to be subject of mining lease (241))

Clause 433 omits section 318AAC which is redundant as a mining lease must be defined in accordance with section 241. Section 241 provides for alternatives to placing physical monuments on the boundary.

Amendment of s 318AAD (Application for grant of mining lease (245))

Clause 434 amends section 318AAD to provide for the new methodology of defining the boundary of a mining lease.

Proposed new subsections (b) and (c) require the applicant to provide the chief executive with a definition of the boundary of: any surface area of land to be included in the proposed mining lease; and of land required for access to the proposed mining lease.

Other provisions of the legislation (386R) enable a methodology of the applicants choosing to define the boundary of these areas of land, unless otherwise directed by the chief executive define them in a particular way, and as long as the definitions are clear and unambiguous and locatable on the ground.

Under proposed new section (d) a visual representation of the land in subsections (b) and (c) included in the mining lease application are required to be provided with the application.

Examples of visual material that may be provided include —

- a sketch, map or other graphic representation of the boundary of the proposed mining lease
- photographs of the monuments placed on the boundary of the proposed mining lease
- photographs of a GPS display showing the coordinates of reference points on the boundary of the proposed mining lease
- other visual material that may show the boundaries of the land including any area of land outside the area of the proposed mining leases intended to be used to access the area of the proposed lease in a clear and unambiguous way.

Amendment of s 318AAE (Additional matters for application (252))

Clause 435 omits section 318AAE(2) which is redundant as a mining lease must be defined in accordance with Section 241. Section 241 provides for alternatives to placing physical monuments on the boundary.

Omission of s 318AAG (Holder of a mining lease to mark boundary posts (274))

Clause 436 omits section 318AAG which is redundant as the use of boundary posts is no longer mandatory. If an applicant elects to use physical monuments, subordinate documents such as a practice manual may be used to establish the attributes required.

Amendment of s 318AAH (General conditions of mining lease (276))

Clause 437 amends section 318AAH(1)(i) to ensure that a mining lease holder maintains any physical monument used to define the boundary of the lease area.

Amendment of s 318AT (Applicant's obligations)

Clause 438 amends section 318AT to correct cross referencing to the new section 245(1)(q)(i).

Amendment of section 318CB (Restriction on issuing certificate of public notice and additional requirements for grant)

Clause 439 amends section 318CB subsections (2A) and (3) to refer to a mining lease notice rather than a certificate of public notice which is redundant.

Amendment of s 386J (Request to applicant about application)

Clause 440 amends section 386J to insert new section 386J(1)(d) and section 386J(4A).

Section 386J(1)(d) as inserted allows the chief executive to require additional definition of a boundary to ensure that it is clear and unambiguous and able to be located on the ground using only the definition provided. This may require additional definition using the methodology used in the application or a different methodology. For example the application may use GPS coordinates to define the boundary and the chief executive may require additional GPS coordinates or may require one or more physical monuments to be installed, including but not necessarily limited to, a datum post.

New subclause (4A) clarifies that the chief executive may require physical monuments placed as part of defining the boundary of a proposed mining lease or mining claim to be moved to another location or removed, or for new physical monuments to be installed, whether the means of definition of the boundary is by the use of physical monuments or not.

Insertion of new ss 386R–386V

Clause 441 after section 386Q inserts new sections 386R (Required way for defining boundary of proposed mining tenement), 386S (Boundary definition notice), 386T (Requirement to define or further define mining tenement boundary), 386U (Requirement to remove physical monuments) and 386V (Entry of land for boundary definition purposes) to establish a new boundary definition methodology.

New section 386R Required way for defining boundary of proposed mining tenement

New section 386R applies to any application that is required to define the boundary of the tenement being applied for. When defining a boundary of any such tenement the boundary must be clear and unambiguous and accurately show the where the boundary is located on the ground using only the definition provided in the application.

The applicant may use methodologies such as physical monuments, GPS coordinates or survey the boundary and access to identify reference points. They may also use a combination of mapping, aerial photographs with references and bearings to key features and fixed monuments or any other methodology as long as, in the chief executive’s opinion, the boundary and access definition meet the criteria identified in section 386R.

386R enable the applicants to elect the most appropriate methodology to define the boundary of the land and as long as the definitions are clear and unambiguous and locatable on the ground.

New section 386R(3) makes it clear that a definition may be defined by reference to 1 or more physical monuments but that this is not a mandatory requirement, unless so instructed by the chief executive under 286J, 386T or 386S. Where the chief executive has given a notice under section 286J or section 286S the boundary must be defined in the way stated in the notice.

New section 386S Boundary definition notice

Section 386S provides, where a section requires a boundary to be defined in an application for proposed mining tenements the executive may to publish a notice or make directions on the way the boundary is to be defined. The notice must be published either by gazette, on the departments website or another way the chief executive considers appropriate.

The notice may apply to certain nominated types of applications as stated in the notice or alternatively to applications for a particular area.
An applicant for the grant of a mining tenement must bear any costs that may be incurred in complying with the notice.

New section 386T Requirement to define or further define mining tenement boundary

Section 386T provides for the chief executive to issue a written notice to a holder of a mining tenement to define the boundary of the tenement in a particular way or further define the boundary in a particular way. The person must comply with the notice within the stated reasonable period and bear any costs of complying with the notice. The period for compliance may be extended by the chief executive.

New section 386U Requirement to remove or move physical monuments

New section 386U requires an applicant to remove all physical monuments from the land that are installed to define the boundary of the tenement for the purposes of the application, including physical monuments installed under a direction or notice, if an application has not been made within 5 business days of installing the last of the physical monuments or the application is withdrawn or refused. Monuments must also be removed where they no longer form part of the boundary definition where the boundary has be moved.

The requirements of this Section to remove the physical monuments do not apply to survey marks installed under the *Survey and Mapping Infrastructure Act 2003*.

New section 386V Entry of land for boundary definition purposes

New section 386V provides for access to land where it is necessary for a person to enter land to comply with a notice to define or further define the boundary of a tenement. Entry is subject to the person entitled to enter to define the land in the way described or instructed only for the purpose stated and they must give the owner of the land notice of entry in writing prior to entering the land.

If the owner cannot easily be located, such as for instance they are overseas, then an occupier may be given the notice of entry.

Notice must be given at least 5 days before access is intended or a shorter time acceptable to the owner or occupier endorsed by them on the notice.

The chief executive may dispense with the requirement to give notice to the owner or occupier when the chief executive is satisfied that to give notice to them is not practical. If the chief executive decides to dispense with the requirement, before the decision to do so takes effect the chief executive may require alternative means of notification to be taken, such as publicly notifying access.

If a notice is issued under sections 386J, 386S or 386T the chief executive may impose additional conditions on entry. Examples of the type of conditions that may be attached include that entry must happen within a stated period.

Amendment of s 404B (Interference with particular things)

Clause 442 amends section 404B (Interference with particular things) to remove an offence for interfering with a notice posted on a datum post which is redundant under changes to the application process.

Amendment of s 816 (Conversion of mining lease to mining claim)

Clause 443 amends section 816 to apply the new boundary definition methodology to situations where a mining claim is proposed to be converted to a mining lease.

Insertion of new s 827 to 832

Clause 444 inserts transitional provisions for the commencement of mining application changes to mining claims, mineral development licences and mining leases to ensure continuity of assessment over transition to the amended Act.

Insertion of new 827 Applications for mineral development licences accepted before commencement

New section 827 provides for situations where an application for a mineral development licence has been lodged under section 183 of the *Mineral Resources Act 1989* before commencement of this section. In these circumstances the mineral development licence must be assessed under the pre-amended Act as if the amendments in the Common Provisions Act had not commenced. .

Insertion of new s 828 Mining claim application certificates given before commencement

New section 828 provides for situations where a mining claim application certificate is issued under section 64 of the *Mineral Resources Act 1989* before commencement of this section. In these circumstances the mining claim application must be assessed under the pre-amended Act as if the amendments in the Common Provisions Act had not commenced.

Insertion of s 829 Certificates of applications for a mining lease given before commencement

New section 829 provides for situations where a certificate of application is issued under section 252 of the *Mineral Resources Act 1989* before commencement of this section. In these circumstances the mining lease application must be assessed under the pre-amended Act as if the amendments in the Common Provisions Act had not commenced.

Insertion of s 830 Certificates of public notice given before commencement

New section 830 provides for situations where a certificate of application is issued under section 252 of the *Mineral Resources Act 1989* before commencement of this section. In these circumstances the mining claim application must be assessed under the pre-amended Act as if the amendments in the Common Provisions Act had not commenced.

Insertion of s 831 Objections to applications for grant of mining lease lodged before commencement

New section 831 provides for situations where an objection to an application lodged under section 260 of the *Mineral Resources Act 1989* before commencement of this section. In these circumstances the objection continues to be heard under the pre-amended Act as if the amendments in the Common Provisions Act had not commenced.

Insertion of s 832 Application for inclusion of restricted land in mining lease

New section 832 provides for situations where the holder of a mining lease may make application for the inclusion in the lease of areas of restricted land that were originally excluded from the mining lease area as the owner of the restricted land had not given consent under s 238 of the pre-amended Act.

After the commencement of this section, the holder of the original lease may make an application for inclusion in the lease of an area or areas of the restricted land that was excluded under section 275 of the amended Act.

Where the mining lease is granted over these areas of restricted land under this section the consent of the owner is required before any authorised activity can occur on the restricted land.

The distances and status of the restricted land i.e. category A and category B restricted land continue to apply as if the new Act had not commenced. The owner of the amendment lease may enter into an agreement with the landholder of the restricted land to access the land for authorised activity using the Land Access provisions of the Common provisions Act.

Amendment of sch 2 (Dictionary)

Clause 445 amends Schedule 2 (Dictionary) to remove redundant references to ‘certificate of public notice’, ‘mining claim application certificate’ and amend the definition of ‘last objection day’.

A definition of a ‘physical monument’ is also inserted, meaning a thing that has been placed on the boundary of a mining tenement for the purpose of defining its boundary as an area for which the tenement is being applied for. Examples of a physical monument include a peg or cairn as defined in the amended Act or as may be placed to meet the new requirement that the boundary be clear and unambiguous.

A ‘proposed lease area’ is defined in section 232(1) and is the area which is applied for in the proposed mining lease application.

Definitions for the terms ‘relevant owner or occupier’ and ‘restricted land’ are inserted to align with the definition of restricted land inserted into the Common Provisions Act.

A ‘survey mark’ is defined to be consistent with the definition of a survey mark under the *Survey and Mapping Infrastructure Act 2003*.

Division 10 Amendments relating to native title

Amendment of s 25 (Conditions of prospecting permit)

Clause 446 amends section 25 of the Act to remove reference to schedule 1A that is being omitted.

Omission of s 81A (Consultation and negotiated agreement conditions)

Clause 447 amends section 81A of the Act to reflect omission of schedule 1A.

Amendment of s 82 (Variation of conditions of mining claim)

Clause 448 amends section 82 of the Act to reflect omission of schedule 1A.

Amendment of s 93 (Renewal of mining claim)

Clause 449 amends section 93 of the Act to reflect omission of schedule 1A.

Amendment of s 132 (Exclusion of land from area of exploration permit if subject to other authority under Act)

Clause 450 amends section 132 of the Act to reflect omission of schedule 1A.

Omission of s 141A (Consultation and negotiated agreement conditions)

Clause 451 amends section 141A of the Act to reflect omission of schedule 1A.

Amendment of s 182 (Land is excluded from area of mineral development licence if covered by other authority under Act)

Clause 452 amends section 182 of the Act to reflect omission of schedule 1A.

Omission of s 194AA (Consultation and negotiated agreement conditions)

Clause 453 amends section 194AA of the Act to reflect omission of schedule 1A.

Amendment of s 271 (Criteria for deciding mining lease application)

Clause 454 amends section 271 of the Act to reflect omission of schedule 1A.

Omission of s 276A (Consultation and negotiated agreement conditions)

Clause 455 amends section 276A of the Act to reflect omission of schedule 1A.

Amendment of s 286A (Decision on application)

Clause 456 amends section 286A of the Act to reflect omission of schedule 1A.

Amendment of s 412 (Offences and recovery of penalties etc.)

Clause 457 amends section 412 of the Act to reflect omission of schedule 1A.

Insertion of new ss 833 and 834

Clause 458 inserts savings provisions that ensure the Alternative State Provisions will continue to apply to these mining lease applications.

New section 833 Act as in force on relevant day continues to apply for particular mining leases

New section 833 applies if an application for a mining lease over non-exclusive land was lodged during the period from 18 September 2000 to 31 March 2003 or is an application that was lodged before 18 September 2002 and the mining registrar has notified a native title provisions start day under section 725(3) and (4), and immediately before the commencement, the application had not been decided. Non-exclusive land is land is land over which native title has not been extinguished to the extent that the land is a place mentioned in section 26(3) of the Commonwealth Native Title.

New section 834 Relevant provisions continue to apply for particular mining tenements

New section 834 maintains relevant provisions for mining tenements granted before commencement.

Omission of sch 1A (Native title provisions)

Clause 459 omits schedule 1A of the Act. These provisions relate to native title processes for progressing applications for exploration and mining tenements under the *Mineral Resources Act 1989*, lodged between 18 September 2000 and 31 March 2003 inclusive; and before 18 September 2000, but only if notified for commencement under the Alternative State Provisions. These provisions are largely redundant as no future applications will rely on the Alternative State Provisions and there are now less than five mining lease applications that remain subject to these provisions.

Amendment of sch 2 (Dictionary)

Clause 460 amends definitions that are particular to the Alternative State Provisions regime in schedule 2 of the Act.

Division 11 Miscellaneous amendments

Amendment of s 133 (Application for exploration permit)

Clause 461 amends reference in s 133(g)(i) to paragraph (f) of this section instead of paragraph (g).

Amendment of s 136E (Requirements for making tender)

Clause 462 provides for the omission of one of the separate statements that must accompany a tender application for an exploration permit for coal. This statement provided information about how and when the tenderer proposed to consult with, and keep informed, each owner and occupier of private or public land on which authorised activities for the proposed exploration permit are, or are likely to be, carried out.

It is difficult for a tenderer for an exploration permit for coal to provide, in any meaningful detail at such an early stage, how and when consultation with potentially affected landowners and occupiers is to occur. Therefore, most statements that have accompanied such tender applications would be necessarily broad and add little to the assessment of the tender application.

However, other provisions of the *Mineral Resources Act 1989* and the Mineral and Energy Resources (Common Provisions) Bill 2014 provide more meaningful requirements for access and entry to land, for conduct by the exploration permit for coal holder on lands, compensation provisions and related matters for these types of permits.

An exploration permit for coal holder having to comply with these and other related provisions removes the need for the tenderer for an exploration permit for coal, to provide a statement with the application, about how and when future consultation with landowners and occupiers is to occur.

Omission of s 140A (Obligation to consult with particular owners and occupiers)

Clause 463 provides for the omission of an obligation for the holder of an exploration permit to consult with landowners and occupiers whose land may be affected by activities authorised by the permit.

It may be considered that there is a breach of a fundamental legislative principle triggered by the omission of this section in that its omission may not have sufficient regard to the rights and liabilities of individuals.

A number of amendments are proposed to be made to the ‘land access’ provisions in the Mineral and Energy Resources (Common Provisions) Bill 2014. These will provide certain obligations on a ‘resource authority’ holder (that includes the holder of an exploration permit)

in dealing with a landowner or occupier of private and public land, whose land may be affected by activities, authorised to be carried out under the authority.

In addition, each of the ‘Resource Acts’ (as defined in the Mineral and Energy Resources (Common Provisions) Bill 2014) requires a resource authority holder to comply with the ‘land access code’.

The current land access code states best practice guidelines for communication between an exploration permit holder, and owners and occupiers of private land. The code also imposes on the holder of an exploration permit mandatory conditions concerning the conduct of authorised activities on private land.

The proposed provisions and the requirement to comply with the land access code do not impose a disparate obligation to consult with a landowner/occupier. However to ensure compliance with all the obligations and requirements of the proposed amendments and the land access code, the holder of an exploration permit must necessarily consult regularly with the affected landowner/occupier.

Further, there were no rights for landowners/occupiers attached to the obligation proposed to be omitted. These sections merely imposed an obligation on the holder of an exploration permit to consult with landowners or occupiers, on whose land exploration activities were proposed to be carried out, about:

- Access to the land;
- Exploration activities that may be carried out on the land; and
- Compensation liability to the owner or occupier.

If the proposed exploration activity was one that, in the belief of the landowner/occupier, had an adverse impact on the owner/occupier, there was no obligation imposed on a holder of an exploration permit to change, or not carry out, the type of activity.

The land access code contains requirements to maintain ‘good relations’ with landowners/occupiers, including:

- To liaise closely with the landholder in good faith,
- Advise the landholder of the holder’s intentions relating to authorised activities well in advance of them being undertaken.

The *Mineral Resources Act 1989* also provides that the holder of an exploration permit must also comply with the mandatory conditions of the land access code.

All of these checks and balances provide a more meaningful and robust approach to exploration permit holder and landowner/occupier relationships, compared to a nebulous obligation that is meaningless in isolation, and is hard to quantify if deciding levels of non-compliance with this obligation.

Amendment of s 141 (Conditions of exploration permit)

Clause 464 amends reference in s 141(1)(f)(i) to paragraph (e) of this section instead of paragraph (f).

Omission of s 193A (Obligation to consult with particular owners and occupiers)

Clause 465 provides for the omission of an obligation for the holder of a mineral development licence to consult with landowners and occupiers whose land may be affected by activities authorised by the licence.

It may be considered that there is a breach of a fundamental legislative principle triggered by the omission of this section in that its omission may not have sufficient regard to the rights and liabilities of individuals.

A number of amendments are proposed to be made to the 'land access' provisions in the Mineral and Energy Resources (Common Provisions) Bill 2014. These will provide certain obligations on a 'resource authority' holder (including the holder of a mineral development licence) in dealing with a landowner or occupier of private and public land, whose land may be affected by activities, authorised to be carried out under the authority.

In addition, each of the 'Resource Acts' (as defined in the Mineral and Energy Resources (Common Provisions) Bill 2014) requires a resource authority holder to comply with the 'land access code'.

The current land access code states best practice guidelines for communication between the holder of a mineral development licence, and owners and occupiers of private land. The code also imposes on the holder of a mineral development licence mandatory conditions concerning the conduct of authorised activities on private land.

The proposed provisions and the requirement to comply with the land access code do not impose a disparate obligation to consult with a landowner/occupier. However to ensure compliance with all the obligations and requirements of the proposed amendments and the land access code, the mineral development licence holder must necessarily consult regularly with the affected landowner/occupier.

Further, there were no rights for landowners/occupiers attached to the obligation proposed to be omitted. These sections merely imposed an obligation on the mineral development licence holder to consult with landowners or occupiers, on whose land authorised activities were proposed to be carried out, about:

- Access to the land;
- Authorised activities that may be carried out on the land; and
- Compensation liability to the owner or occupier.

If the proposed authorised activity was one that, in the belief of the landowner/occupier, had an adverse impact on the owner/occupier, there was no obligation imposed on a mineral development licence holder to change, or not carry out, the type of activity.

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- To liaise closely with the landholder in good faith; and
- Advise the landholder of the holder’s intentions relating to authorised activities well in advance of them being undertaken.

The *Mineral Resources Act 1989* also provides that the holder of a mineral development licence must also comply with the mandatory conditions of the land access code.

All of these checks and balances provide a more meaningful and robust approach to mineral development licence holder and landowner/occupier relationships, compared to a nebulous obligation that is meaningless in isolation, and is hard to quantify if deciding levels of non-compliance with this obligation.

Amendment of s 194 (Conditions of mineral development licence)

Clause 466 amends reference in s 194 (1)(f)(i) to paragraph (e) of this section instead of paragraph (f).

Amendment of ch 13, pt 3, hdg (Authorised officers)

Clause 467 inserts the words “and other appointments” into the part 3 heading to reflect the ability of the chief executive to now appoint authorised persons in addition to authorised officers.

Amendment of s 336 (Appointment)

Clause 468 inserts the words “authorised officers” into the section 336 heading to distinguish the section from the new 336A, which enables the chief executive to appoint authorised persons.

Insertion of new s 336A

Clause 469 inserts new section 336A.

New section 336A Appointment—authorised persons

New section 336A allows the chief executive, by instrument in writing, appoint a person suitably qualified for the function to be performed, as an authorised person to carry out the functions specified in section 342(1)(a)(i). In executing this function, an authorised person

has the powers mentioned in 342(1)(a)(i), (f) and (g) to enter land to undertake geological activities on behalf of the State.

References within sections 337, 338 and 339 to an authorised officer are also taken to be a reference to an authorised person. This enables a chief executive to place conditions upon the authorised person's appointment and limit their powers.

This clause is designed to restore the chief executive's authority to appoint other persons (such as drilling contractors and geophysical contractors temporarily employed by the State) to exercise powers under section 342 as it existed prior to March 2013. This authority, which has existed since 1974, was inadvertently removed whilst consolidating references to departmental officers in the *Mining and Other Legislation Amendment Act 2013*.

Amendment of s 816 (Conversion of mining lease to mining claim)

Clause 470 amends section 816 to provide that a holder may convert one or more mining leases to one or two mining claims, so long as the holder does not result in having more than two 20 hectare mining claims for opal and gemstones. The process to convert mining leases to mining claims for opal and gemstones was recently provided for by the *Mining and Other Legislation Amendment Act 2013.* This amendment clarifies that through the conversion process a mining lease greater than 20 hectares can be converted into two smaller mining claims. This was always the intent of the original amendment and aligns with the fact that that an application can be made for two new 20 hectare mining claims for opal and gemstones.

Insertion of new s 837

Clause 471 inserts a validation provision for converted mining claims.

New section 837 Validation of conversion of mining lease to mining claim

New section 837 validates the conversion of mining leases to mining claims for opal and gemstones made before commencement under section 816 if the conversion was to one or more mining claims not more than 20 hectares each.

Part 8 Amendment of Mount Isa Mines Limited Agreement Act 1985

Act amended

Clause 472 states that this part amends the *Mount Isa Mines Limited Agreement Act 1985*.

Replacement of s 3 (Variation of formal agreement by agreement)

Clause 473 omits and replaces section 3 to provide that a formal agreement may be varied under the authority of an Act rather than by a regulation.

Amendment of s 3A (Effect of formal agreement)

Clause 474 omits and replaces section 3A(3) to provide that where the formal agreement was varied by a further agreement approved by regulation under previous section 3(2), that the formal agreement will prevail to the extent of any inconsistency with an instrument made under another Act.

Insertion of new s 5A

Clause 475 inserts new section 5A to provide the formal agreement may be varied by the further agreement as proposed in schedule 3.

Insertion of new sch 3

Clause 476 inserts a new schedule 3 with the proposed 2014 amendment agreement. An explanation of the clauses of the agreement is provided below.

Schedule 3 Proposed 2014 amendment agreement

Agreement Terms

Section 1 Definitions and interpretation

Section 1.1 inserts definitions for the Agreement.

Section 2 Amendment of formal agreement

Section 2.1 of the agreement deletes definitions listed from clause 2 of Part 1 of the Formal Agreement. These definitions are no longer required in the *Mount Isa Mines Limited Agreement Act 1985* (MIMLAA) as all environmental components are now administered under the *Environmental Protection Act 1994*.

Section 2.2 deletes clauses 9(1) to 9(6), 19, 20 and 22 from Part II as these clauses relate to the requirement to submit a mine plan. The name and content of a mine plan is being transformed to remove the environmental criteria and to have included information which is relevant in properly assessing the resource and mining lease requirements.

Section 2.3 of the agreement deletes clauses 2 to 6, 8 to 10, 13 and 17 contained in Schedule F of the Formal Agreement which are clauses relating to environmental conditions that are superfluous due to the transition of environmental matters to the *Environmental Protection Act 1994*.

Section 2.4 of the agreement deletes schedule H from the Formal Agreement which relates to environmental definitions for air quality, sulphur dioxide monitoring

stations and PM-10 monitoring stations. These matters are now dealt with under the Company's environmental authority issued under the *Environmental Protection Act 1994*.

Section 2.5 deletes Schedule I to the Formal Agreement as it contains superfluous provisions.

Section 2.6 makes a minor amendment to correct a grammatical error in clause 3(a) of Part II of the Formal Agreement.

Section 2.7 deletes clauses 10(1) to 10(3) from Part II of the Formal Agreement which deals with the methodology for calculating the security deposit and its purpose. This requirement is now dealt with under the *Environmental Protection Act 1994* and replaces these clauses with new clauses 10(1) to 10(13).

The new clauses provide for the Minister to determine the security required to be deposited for compliance by the Company with the conditions of the Mining Lease, the provisions of the legislation, for rectification of damage and for payment of any moneys owing to the Crown.

The other provisions of this clause allow the security deposit to be utilised at any time for the rectification of matters for which it is held and the Company is required to replenish the security or provide additional amounts of security on request of the Minister following such utilisation. The clause provides flexibility for the Minister to accept various forms of security as well as cash. The security can be reviewed by the Minister at the end of 5 years, if it is not earlier reviewed.

Where on expiry or termination of a Mining Lease the security is not required to be utilised, it may be returned/refunded to the party that originally deposited the security. Where the Minister retains security to be utilised for rectification of any matters due to non-compliance or to pay any outstanding monies, any balance which is not utilised will be returned/refunded to the party that originally deposited the security.

Section 2.8 deletes clause 13 of Part II of the Formal Agreement and replaces it with a new clause 13 to provide the new due dates and content of the annual reports.

Section 2.9 inserts a new Part IIA into the formal agreement which introduces provisions relating to Development Plans.

Clause 1 provides definitions that apply to Development Plans.

Clause 2 outlines the purpose of a Development Plan. The Development Plan must provide detailed information about the nature and extent of activities which will be undertaken during the Plan Period on the Mining Lease. The Development Plan will assist the Minister in being able to make resource management decisions and to ensure that the mineral is developed appropriately.

Clause 3 provides that the Company must have a Development Plan in place at all times, and must comply with the Development Plan.

Clause 4 provides that a Development Plan must state the period for which it is to apply. The stated Plan Period must not be longer than five years and must comply with the requirements that are provided in clause 6.

Clause 5 provides that the Mining Plan which is currently in place will be deemed to be the Development Plan until 4 January 2015, unless a later Development Plan is approved under this Part before that date.

Clause 6 provides particulars of the Development Plan.

Subsection 1 provides that it is a condition of the Mining Lease that the Company lodges proposed later Development Plans with the Minister.

Subsection 2 outlines that the proposed later Development Plan must be lodged with the Minister at least 40 business days but not more than 100 business days before the end of the Plan Period or as soon as practicable after the Company proposes or becomes aware of a significant change. A Relevant Fee must accompany the proposed later Development Plan. The Relevant Fee will only apply at a point of where Development Plans will be required to be lodged on all mineral mining leases under the *Mineral Resources Act 1989*.

Subsection 3 provides that a further Development Plan may be lodged in the Current Plan Period if the proposed later Development Plan has not been approved.

Subsection 4 provides that a notice will be given to the Company requiring the lodgement of a proposed later Development Plan where the Development Plan has not been lodged within the Plan Period.

Subsection 5 outlines the requirements that must be included in the proposed later Development Plan such as the information about the rate of the proposed mining and the nature and extent of the activities proposed to be undertaken. The information enables an assessment of whether there are sufficient resources available and whether the activities are appropriate to achieve the proposed rate of production. It is intended that the information provided for each year of the Plan Period must be detailed and more general information must also be provided on the proposed development over the whole of the term of the Mining Lease.

Subsection 6 provides the power for the Minister to refuse or approve a proposed later Development Plan.

Subsection 7 provides for the matters that must be considered in deciding whether to approve the proposed later Development Plan. The criteria have been selected to

ensure that production is technically possible and viable for current or future commercial production.

Subsection 8 provides that the Minister must give the Company written notice of the approval of the later Development Plan.

Subsection 9 provides that the Minister must give the Company written notice of the refusal of the later Development Plan which provides reasons for the decision.

Subsection 10 provides that where the later Development Plan is lodged for the Minister's approval and the Development Plan has not been considered before the end of the Current Plan Period, then the Company is taken to have a Development Plan.

Section 2.10 inserts new clause 8 into Part IV of the Formal Agreement to introduce a head of power for the Minister to delegate his or her functions or powers under the Agreement. The Minister cannot delegate the function of renewing the Mining Lease under clause 6 of Part II of the Agreement.

Any act or thing done under such delegation has the same force and effect as if it had been done by the Minister. Where a delegation under this clause is made it does not prevent the Minister from exercising the Minister's authority under this legislation.

Section 2.11 provides for minor corrections.

Section 3 provides for general descriptions that apply to the Agreement.

Part 9 Amendment of the Petroleum Act 1923

Division 1 Preliminary

Act amended

Clause 477 provides that this part amends the *Petroleum Act 1923*.

Division 2 Amendments relating to the Common Provisions Act, chapter 1

Amendment of s 2 (Definitions)

Clause 478 inserts a definition for the Common Provisions Act.

Insertion of new s 4B

Clause 479 inserts a new section into the Act.

New section 4B Relationship with Common Provisions Act

New section 4B explains that the relationship between the *Petroleum Act 1923* and the Common Provisions Act is provided for by section 6 of the Common Provisions Act.

Division 3 Amendments relating to the Common Provisions Act, chapter 2

Amendment of s 2 (Definitions)

Clause 480 removes the definitions of 'assessable transfer', 'dealing', 'indicative approval' and 'non-assessable transfer' from section 2 and inserts the definition for 'dealing'.

Amendment of s 25G (Restrictions on amending work program)

Clause 481 amends the reference in s 25G (2)(d)(ii) from section 25J of the *Petroleum Act 1923* to the Common Provisions Act.

Amendment of s 47 (Reservations, conditions and covenants of lease)

Clause 482 replaces 'Act' with 'Act or the Common Provisions Act' in relation to the reservations, conditions and covenants of lease.

Amendment of s 77Z (Requirement for coordination arrangement to transfer lease in tenure area of mining lease)

Clause 483 removes the reference to 'part 6N' that is the current Dealings part of the *Mineral Resources Act 1989* that is being removed and replaces it with a reference to the new Common Provisions Act for registration.

Amendment of s 79X (General provision about ownership while tenure is in force for pipeline)

Clause 484 amends section 79X(3)(c) to provide that registration is required under the Common Provisions Act.

Omission of pts 6N-6NB

Clause 485 omits parts 6N to 6NB to reflect that dealings, caveats and associated agreements will be provided under the Common Provisions Act.

Amendment of s 122 (Amending applications)

Clause 486 provides that the chief executive decides an amending application. This clause also provides the head of power for a fee to be prescribed for an amending application.

Insertion of new pt 16

Clause 487 provides a transitional provision.

Part 16 Transitional provisions for Mineral and Energy Resources (Common Provisions) Act 2014

New section 206 Continued appeal right for particular decisions

The new transition section provides that a person who was entitled to appeal against a relevant decision to the Land Court under section 104(1) may continue to have this right in compliance with part 7. A relevant decision means: a decision to give a road use direction under previous section 79(1); the imposition of condition on entry on public land under previous section 79L(1), other than a condition agreed to or requested by the relevant 1923 Act petroleum tenure holder; a refusal to approve an assessable transfer under previous section 80KC; or a decision to require security under previous section 80KD.

Amendment of schedule (Decisions subject to appeal)

Clause 488 omits entries for sections 79(1), 79L(1), 80KC and 80KD and inserts the new appeal provisions under the Common Provisions Act for section 19(3) that is for a decision to refuse to approve registration of a dealing, or to approve registration of a dealing with conditions; section 21(2) for a decision to require security; section 23(3) that is for a decision to refuse to give indicative approval, or to give indicative approval with conditions; section 59(2) for an imposition of condition on entry on public land, other than a condition agreed to or requested by the relevant 1923 Act petroleum tenure holder; and section 64(1) for a decision to give road use direction.

Division 4 Amendments relating to the Common Provisions Act, chapter 3

Amendment of s 2 (Definitions)

Clause 489 removes the definitions of ‘ADR’, ‘compensation application’, ‘compensation liability’, ‘conduct and compensation agreement’, ‘deferral agreement’, ‘eligible claimant’, ‘entry notice’, ‘first authority’, ‘land access code’, ‘minimum negotiation period’, ‘negotiation notice’, ‘notifiable road use’, ‘parties’, ‘second authority’ and ‘waiver of entry notice’.

The clause also inserts new definitions for ‘conduct and compensation agreement’, ‘deferral agreement’, ‘eligible claimant’, ‘land access code’ and ‘parties’.

The clause also amends the definition of a preliminary activity to provide that an authorised activity carried out within 600 metres of a school or occupied residence may be a preliminary activity if the activity meets the remaining parts of this definition.

Amendment of s 61 (Obstruction of 1923 Act petroleum tenure holder)

Clause 490 amends section 61 to replace the reference to the omitted parts 6H or 6I, with the equivalent parts of the Common Provisions Act; chapter 3, part 2 or 3.

Omission of pts 6H–6K

Clause 491 omits pts 6H to 6K which are replaced by Chapter 3 of this Bill.

Amendment of s 103D (What happens if a party does not attend)

Clause 492 amends section 103D to insert a reference to an election notice served under the Common Provisions Act section 88 The clause also amends section 103D(2) to remove the reference to the omitted section 79VB with the equivalent section of the Common Provisions Act; section 96.

Amendment of s 103E (Authorised officer's role)

Clause 493 amends section 103E to replace the reference to the omitted section 79VAB, with the equivalent section of the Common Provisions Act; section 89.

Amendment of s 165 (Exclusion of pt 6I, div 1 for continuance of particular existing road uses

Clause 494 inserts new section 165(4A) that clarifies that a reference to part 6I, division 1 in section 165 is also a reference to chapter 3, part 3, division 2 of the Common Provisions Act.

Division 5 Amendments relating to the Common Provisions Act, chapter 6

Amendment of s 2 (Definitions)

Clause 495 amends the section 2 definitions of 'area' in paragraphs 1 and 3, and 'holder' to remove the reference to 'petroleum' as all resource authorities will be recorded on the register under the Common Provisions Act.

Omission of pt 6M (Petroleum register)

Clause 496 omits part 6M that are the provisions in relation to the petroleum register. This will now be provided under chapter 6, part 1 of the Common Provisions Act.

Amendment of s 80Z (Notice and taking effect of decision)

Clause 497 removes the reference to 'petroleum' so that the provision that requires the Minister to give an information notice about a decision refers to the register under the Common Provisions Act.

Amendment of s 113 (Other evidentiary aids)

Clause 498 removes the reference to 'petroleum' so that the provision includes a document that is given, issued, kept or made in the register under the Common Provisions Act.

Amendment of s 124A (Extinguishing 1923 Act petroleum interests on the taking of land in a 1923 Act petroleum tenure's area (other than by an easement)

Clause 499 removes the reference to 'petroleum' so that the provision for the extinguishment of interests on the taking of land in a resource authority area applies to all resource authority types.

Omission of s 142 (Practice manual)

Clause 500 omits section 142 Practice manual.

Insertion of new s 207

Clause 501 inserts a transitional provision.

New section 207 Existing practice manuals

New section 207 allows the practice manual kept under former section 142 to continue to have effect until another practice manual is made available by the chief executive under the *Mineral and Energy Resources (Common Provisions) Act 2014* and that the provisions about the place or way for information to be kept under a manual or is required to be given under section 124AA will continue to apply.

Division 6 Amendments relating to gas emissions

Amendment of s 2 (Definitions)

Clause 502 inserts a definition for legacy borehole into the dictionary. The intention is to capture boreholes or wells drilled for the purpose of resources exploration or production, or to inform resources exploration, but not by the current tenement holders or their related bodies corporate (i.e. land has been relinquished or there is no continuity of tenure to the current tenement holder).

Amendment of s 18 (Authority to prospect)

Clause 503 amends section 18(4) to insert remediation of legacy boreholes as a part of the authorisation for the holder of an authority to prospect. This will allow the holder of an authority to prospect to plug, abandon or otherwise remediate a legacy borehole as defined in schedule 2. There are circumstances where the particular history of a specific borehole is difficult to verify. The words 'reasonably believes' are included to provide that the holder can take remediation action if they are satisfied the borehole meets the conditions of the definition in schedule 2.

Existing regulatory requirements for notification, land access and land use that generally apply to authorised activities may be relevant and need to be considered by a tenement holder if they decide to remediate a legacy borehole.

Remediation of the legacy borehole includes activities to rehabilitate the surrounding area where it is disturbed by activities to plug and abandon the borehole. The standard for remediation of a legacy borehole is to be prescribed by regulation.

Amendment of s 44 (Form etc. of lease)

Clause 504 amends section 44(1)(b) to insert remediation of legacy boreholes as a right for the holder of a petroleum lease. This will allow the holder of a petroleum lease to plug, abandon or otherwise remediate a legacy borehole as defined in schedule 2. There are circumstances where the particular history of a specific borehole is difficult to verify. The words 'reasonably believes' are included to provide that the lease holder can take remediation action if they are satisfied the borehole meets the conditions of the definition in schedule 2.

Existing regulatory requirements for notification, land access and land use that generally apply to authorised activities may be relevant and need to be considered by a tenement holder if they decide to remediate a legacy borehole.

Remediation of the legacy borehole includes activities to rehabilitate the surrounding area where it is disturbed by activities to plug and abandon the borehole. The standard for remediation of a legacy borehole is to be prescribed by regulation.

Division 7 Miscellaneous amendments

Amendment of s 2 (Dictionary)

Clause 505 updates the section references in the definition of owner.

Amendment to section 25C (Application to sdiv 2)

Clause 506 provides for the amendment of a drafting 'note' to state a more detailed reference to the section number of the *Petroleum Act 1923* that requires a proposed later work program to be lodged with an application to renew an authority to prospect.

Insertion of new s 25CA

Clause 507 provides for the insertion of section 25CA.

New section 25CA Modified application of pt 9, div 1

This section will make it clear that the provisions relevant to all applications or purported applications, detailed in part 9, division 1 of the *Petroleum Act 1923*, will also apply to proposed later work programs that are lodged.

Amendment of s 25E (Deciding whether to approve proposed program)

Clause 508 provides for the omission of one of the matters that must be considered by the Minister when deciding whether to approve a later work program. The matter that is being omitted from consideration is the notice about the discovery of petroleum and its commercial viability. This is as a consequence of the omission of section 75Y of the *Petroleum Act 1923.*

Amendment of s 25M (Requirements for making application)

Clause 509 provides for the omission of one of the statements that must be included with an application for the renewal of an authority to prospect. This statement provided information about how and when the authority to prospect holder proposed to consult with, and keep informed, each owner and occupier of private or public land on which authorised activities for the authority to prospect (if renewed) are, or are likely to be, carried out.

It is difficult for an applicant for the renewal of an authority to prospect to provide, in any meaningful detail, how and when consultation with potentially affected landowners and occupiers is to occur. Therefore, most statements that have accompanied such applications have been necessarily broad and add little to the assessment of the renewal application.

However, other provisions of the *Petroleum Act 1923* and the Mineral and Energy Resources (Common Provisions) Bill 2014 provide more meaningful requirements for access and entry to land, for conduct by the authority to prospect holder on lands, compensation provisions and related matters for these types of 1923 Act petroleum tenure.

An authority to prospect holder having to comply with these and other related provisions removes the need for the holder to provide a statement with a renewal application, about how and when future consultation with landowners and occupiers is to occur.

Amendment of s 45 (Entitlement to renewal of lease)

Clause 510 provides for the omission of one of the statements that must accompany an application for the renewal of a petroleum lease. This statement provided information about how and when the petroleum lease holder proposed to consult with, and keep informed, each

owner and occupier of private or public land on which authorised activities for the petroleum lease (entitled to be renewed) are, or are likely to be, carried out.

It is difficult for an applicant for the renewal of a petroleum lease to provide, in any meaningful detail, how and when consultation with potentially affected landowners and occupiers is to occur. Therefore, most statements that have accompanied such applications have been necessarily broad and add little to the assessment of the renewal application.

However, other provisions of the *Petroleum Act 1923* and the Mineral and Energy Resources (Common Provisions) Bill 2014 provide more meaningful requirements for access and entry to land, for conduct by the petroleum lease holder on lands, compensation provisions and related matters for these types of petroleum tenure.

A petroleum lease holder having to comply with these and other related provisions removes the need for the holder to provide a statement with a renewal application, about how and when future consultation with landowners and occupiers is to occur.

Amendment of s 74K (Obligation to lodge proposed later work program)

Clause 511 provides for the insertion of provisions that restrict the lodgement of another later work program (the second work program) if a later work program (the first work program) was previously lodged within the statutory timeframes and was subsequently not approved.

The issue has been that if a person has been given an information notice about the Minister's refusal to approve the first work program, rather than appealing the decision, the second work program is lodged. Effectively then, because the refusal decision of the Minister never takes effect, the second work program must be considered. This may continue on for any number of later work programs if they are continually refused and thus having an 'endless loop' effect.

This is despite section 74K(3) of the *Petroleum Act 1923* which clearly states when a later work program *must* be lodged. This is because the first work program was submitted in compliance with section 74K(3) of the *Petroleum Act 1923*.

Further, it may be inferred through sections 74K(5) and (6) of the *Petroleum Act 1923* that a later work program may be lodged later than the period it must be lodged under section 74K(3) of the *Petroleum Act 1923*.

Although the principles of natural justice must be observed, eventually, a refusal of a later work program must become final unless an appeal is lodged against the decision.

Also, if a later work program is lodged within 20 business days before the end of the current work program period, another later work program for the authority cannot be lodged. This is because if the later work program has been refused to be approved by the Minister, the period of 20 business days, to appeal the decision, will apply to the refusal. Ultimately, it will

prevent the lodgement of another later work program that will again require the decision of the Minister.

Amendment of s 74Q (Obligation to lodge proposed later development plan)

Clause 512 provides for the insertion of provisions that restrict the lodgement of another later development plan (the second development plan) if a later development plan (the first development plan) was previously lodged within the statutory timeframes and was subsequently not approved.

The issue has been that if a person has been given an information notice about the Minister's refusal to approve the first development plan, rather than appealing the decision, the second development plan is lodged. Effectively then, because the refusal decision of the Minister never takes effect, the second development plan must be considered. This may continue on for any number of later development plans if they are continually refused and thus having an 'endless loop' effect.

This is despite section 74Q(3) of the *Petroleum Act 1923* which clearly states when a later development plan *must* be lodged. This is because the first development plan was submitted in compliance with section 74Q(3) of the *Petroleum Act 1923*.

Further, it may be inferred through sections 74Q(5) and (6) of the *Petroleum Act 1923* that a later development plan may be lodged later than the period it must be lodged under section 74Q(3) of the *Petroleum Act 1923*.

Although the principles of natural justice must be observed, eventually, a refusal of a later development plan must become final unless an appeal is lodged against the decision.

Omission of s 74V (Obligation to consult with particular owners and occupiers)

Clause 513 provides for the omission of an obligation for the holder of a 1923 Act petroleum tenure to consult with landowners and occupiers whose land may be affected by activities authorised by a 1923 Act petroleum tenure.

It may be considered that there is a breach of a fundamental legislative principle triggered by the omission of this section in that its omission may not have sufficient regard to the rights and liabilities of individuals.

A number of amendments are proposed to be made to the 'land access' provisions in the Mineral and Energy Resources (Common Provisions) Bill 2014. These will provide certain obligations on a 'resource authority' holder (that includes the holder of a 1923 Act petroleum tenure) in dealing with a landowner or occupier of private and public land, whose land may be affected by activities authorised to be carried out under a 1923 Act petroleum tenure.

In addition, each of the ‘Resource Acts’ (as defined in the Mineral and Energy Resources (Common Provisions) Bill 2014) requires a resource authority holder to comply with the ‘land access code’.

The current land access code states best practice guidelines for communication between the 1923 Act petroleum tenure holder, and owners and occupiers of private land. The code also imposes on the holder of a 1923 Act petroleum tenure mandatory conditions concerning the conduct of authorised activities on private land.

The proposed provisions and the requirement to comply with the land access code do not impose a disparate obligation to consult with a landowner/occupier. However to ensure compliance with all the obligations and requirements of the proposed amendments and the land access code, the 1923 Act petroleum tenure holder must necessarily consult regularly with the affected landowner/occupier.

Further, there were no rights for landowners/occupiers attached to the obligation proposed to be omitted. These sections merely imposed an obligation on the 1923 Act petroleum tenure holder to consult with landowners or occupiers, on whose land authorised activities were proposed to be carried out, about:

- Access to the land;
- Authorised activities that may be carried out on the land; and
- Compensation liability to the owner or occupier.

If the proposed authorised activity was one that, in the belief of the landowner/occupier, had an adverse impact on the owner/occupier, there was no obligation imposed on a 1923 Act petroleum tenure holder to change, or not carry out, the type of activity.

The land access code contains requirements to maintain ‘good relations’ with landowners/occupiers, including:

- To liaise closely with the landholder in good faith;
- Advise the landholder of the holder’s intentions relating to authorised activities well in advance of them being undertaken.

The *Petroleum Act 1923* also provides that the holder of a 1923 Act petroleum tenure must also comply with the mandatory conditions of the land access code.

All of these checks and balances provide a more meaningful and robust approach to a 1923 Act petroleum tenure holder and landowner/occupier relationships, compared to a nebulous obligation that is meaningless in isolation, and is hard to quantify if deciding levels of non-compliance with this obligation.

Omission of s 75Y (Notice about discovery and commercial viability)

Clause 514 provides for the omission of the requirement for a 1923 Act tenure holder to lodge a notice of a discovery of petroleum and this discovery's commercial viability.

There are issues surrounding 'when' petroleum is discovered, particularly when coal seam gas (CSG) is 'discovered'. This is because of the dewatering that needs to occur from the coal seam to release the CSG.

This section provided a definition for when CSG is said to be 'discovered'. This definition did not align with the realities of CSG exploration and production. For example coal core samples may be taken from a CSG well, during drilling, to assist in determining a CSG resource in the coal. When the coal core is tested for CSG content via desorption, CSG (in essence) is 'discovered'. Therefore, the CSG may be 'discovered' without it meeting what was the definition provided for in this section.

Also, the value of the information contained in these notices was questionable when not read in context with other related information. Much of the information that was obtained from these notices is already lodged by a 1923 Act petroleum tenure holder in other notices, reports or documentation required under the *Petroleum Act 1923*.

Amendment of s 119 (Application of div 1)

Clause 515 provides a note to this section provides that the provisions relevant to all applications or purported applications, detailed in part 9, division 1 of the *Petroleum Act 1923*, will also apply to proposed later work programs that are lodged.

Part 10 Amendment of Petroleum and Gas (Production and Safety Act) Act 2004

Division 1 Preliminary

Act amended

Clause 516 provides that this part amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Division 2 Amendments relating to the Common Provisions Act, chapter 1

Insertion of new s 6BA

Clause 517 inserts a new section into the Act.

New Section 6BA Relationship with Common Provisions Act

New section 6BA explains that the relationship between the *Petroleum and Gas (Production and Safety) Act 2004* and the Common Provisions Act is provided for by section 6 of the Common Provisions Act.

Amendment of sch 2 (Dictionary)

Clause 518 inserts a definition for 'Common Provisions Act' in Schedule 2.

Division 3 Amendments relating to the Common Provisions Act, chapter 2

Amendment of s 30A (Joint holders of a petroleum authority)

Clause 519 makes a minor amendment to remove 'under this Act' so that section 30A(2) of the *Petroleum and Gas (Production and Safety) Act 2004* also applies to the Common Provisions Act.

The clause also makes requirements for registering applicants as joint holders under section 30A(2)(a) apply to register a transfer of a petroleum authority under the Common Provisions Act.

Amendment of s 59 (Restrictions on amending work program)

Clause 520 changes section 59(2)(d) so that it refers to an application having been made under the Common Provisions Act for approval to register a transfer of a share in the authority.

Amendment of s 201 (Provision for who is the authority holder)

Clause 521 amends section 201(3) and (4) to remove 'under chapter 5, part 10' that is for dealings that will be removed.

Amendment of s 238 (Subleasing of 1923 Act lease provided for under coordination arrangement)

Clause 522 provides that upon the approval of a coordination arrangement that provides for the subleasing of a 1923 Act lease, the sublease is taken to be a prescribed dealing with approval from the Minister for registration under the Common Provisions Act.

Amendment of s 379 (Requirement for coordination arrangement to transfer petroleum lease in tenure area of mining lease)

Clause 523 removes the reference to the current dealings chapter 5, part 10 that is to be removed and inserts a reference to new chapter 2 of the Common Provisions Act for Dealings.

Omission of ch 5, pts 10–10B

Clause 524 omits chapter 5, part 10 relating to dealings, part 10A relating to associated agreements and part 10B relating to caveats as these parts will be provided for under chapter 6 of the Common Provisions Act.

Amendment of s 823 (Who may appeal or apply for external review)

Clause 525 omits subsection (4) and inserts subsections (4) and (5) that provide that a person whose interests are affected by a decision in schedule 1, table 3, may appeal against the decision to the Land Court. Subsection (5) provides that a person whose interests are affected by a decision is a person who has been given, or is entitled to be given, and information about the decision.

Amendment of s 844 (Amending applications)

Clause 526 replaces an ‘official who may or must decide’ with ‘relevant person’ and that a relevant person may be the chief inspector, if the application is made under sections 389, 622 or 728; or chapter 9, part 9; or otherwise, is the chief executive.

This clause also includes the requirement for a person making application to amend the application or a document accompanying the application to have paid the fee prescribed under a regulation.

Amendment of s 908 (Right to apply for petroleum tenure)

Clause 527 provides that the chief executive must record in the register against the replacement authority all the dealings that were recorded in the register for the original tenure.

Insertion of new ch 15, pt 17

Clause 528 inserts transitional provisions for appeal provisions.

Part 17 Transitional provisions for Mineral and Energy Resources (Common Provisions) Act 2014

New section 983 Continued appeal right for particular decisions

A new section provides that a person who was entitled to appeal against a relevant decision to the Land Court under section 823(3) may continue to have this right in compliance with chapter 2, part 2. A relevant decision means: a decision to give a road use direction under previous section 517(2); the imposition of condition on entry on public land under previous section 527(1), other than a condition agreed to or requested by the relevant petroleum authority holder; and a refusal to approve an assessable transfer under previous section 573D(1).

Amendment of sch 1 (Reviews and appeals)

Clause 529 omits entry for section 823(3) and inserts section 823(3) and (4). This clause also omits schedule 1, table 2 entries for section 517(1), 527(1) and 573D(1) and inserts the new appeal provisions under the Common Provisions Act for section 19(3) that is for a decision to refuse to approve registration of a dealing, or to approve registration of a dealing with conditions; section 23(3) that is for a decision to refuse to give indicative approval, or to give indicative approval with conditions; section 59(2) for an imposition of condition on entry on public land, other than a condition agreed to or requested by the relevant petroleum authority holder; and section 64(1) for a decision to give road use direction.

Amendment of sch 2 (Dictionary)

Clause 530 omits definitions of ‘assessable transfer’, ‘dealing’, ‘indicative approval’ and ‘non-assessable transfer’ from schedule 2 and inserts a definition for ‘dealing’.

Division 4 Amendments relating to the Common Provisions Act, chapter 3

Omission of ch 1, pt 3, div 3 (Land access code)

Clause 531 omits Chapter 1, part 3, division 3 as the power to make a land access code is now provided for in Chapter 3 of this Bill.

Amendment of s 31 (Operation of div 1)

Clause 532 amends section 31 to replace the reference to the omitted chapter 5, part 2, division 3, with the equivalent part of the Common Provisions Act; chapter 3, part 2.

Amendment of s 108 (Operation of sdiv 1)

Clause 533 amends section 108 to replace the reference to the omitted chapter 5, part 2, division 3, with the equivalent part of the Common Provisions Act; chapter 3, part 2.

Amendment of s 181 (Additional condition of relevant petroleum tenure)

Clause 534 amends section 181 to replace the reference to the omitted chapter 5, part 2, division 3, with the equivalent part of the Common Provisions Act; chapter 3, part 2.

Amendment of s 193 (Operation of div 2)

Clause 535 amends section 193 to replace the reference to the omitted chapter 5, part 2, division, with the equivalent part of the Common Provisions Act; chapter 3, part 2.

Amendment of s 293 (Right of entry to facilitate decommissioning)

Clause 536 amends section 293 to replace the references to the omitted chapter 5, part 5, division 1, with the equivalent division and parts of the Common Provisions Act; chapter 3, part 7, division 1.

Amendment of s 393 (Purpose of div 1)

Clause 537 amends section 393 to replace the reference to the omitted chapter 5, part 2, division 3, with the equivalent part of the Common Provisions Act; chapter 3, part 2.

Amendment of s 396 (Deciding application)

Clause 538 omits the note in section 396(7).

Amendment of s 398 (Operation of div 1)

Clause 539 amends section 398 to replace the reference to omitted chapter 5, part 2, division 3, with the equivalent part of the Common Provisions Act; chapter 3, part 7.

Amendment of s 399A (Written permission binds owner's successors and assigns)

Clause 540 omits section 399A(4).

Amendment of s 418 (Obligation to consult with particular owners and occupiers)

Clause 541 omits section 418(4), and renumbers existing section 418(5) to the new 418(4).

Amendment of s 426 (Public road authority's obligations in aligning pipeline on road)

Clause 542 amends section 426 to replace the reference to the omitted section 527, with the equivalent section of the Common Provisions Act; section 67.

Amendment of s 431 (Power to give works directions)

Clause 543 omits the note in section 431(1)(b).

Amendment of s 438 (Operation of div 1)

Clause 544 amends section 438 to replace the reference to the omitted chapter 5, part 2, division 3, with the equivalent part of the Common Provisions Act; chapter 3, part 6.

The clause also inserts a new 438(3)(e) stating that authorised activities are subject to the Common Provisions Act, and omits the note in 438(3).

Amendment of s 451 (Obligation to consult with particular owners and occupiers)

Clause 545 omits section 451(4), and renumbers existing section 451(5) to the new 451(4).

Amendment of s 471 (Effect of part 5 permission)

Clause 546 amends the note to section 471 to replace the reference to the omitted chapter 5, parts 2 and 3, with the equivalent chapter of the Common Provisions Act, chapter 3.

Omission of ch 5, pts 2-5

Clause 547 omits pts 2-5 of chapter 5 which are replaced by Chapter 3 of this Bill.

Amendment of s 734E (What happens if a party does not attend)

Clause 548 amends section 734E to insert a reference to an election notice served under the Common Provisions Act section 88. This clause also amends section 734E(2) to replace the note for the omitted section 537B, with the relevant section in the Common Provisions Act; section 96.

Amendment of s 805 (Obstruction of petroleum authority holder)

Clause 549 omits section 805(1)(a) and inserts a new 805(1)(a) which references the relevant parts of the Common Provisions Act; chapter 3, part 2 or 3.

Amendment of s 814A (Executive officer may be taken to have committed offence

Clause 550 amends the definition of deemed executive liability provision to include the relevant references to the Common Provisions Act.

Amendment of s 938 (Exclusion of ch 5, pt 3, div 1 for continuance of particular existing road uses)

Clause 551 inserts a new 938(4A) to clarify that references to chapter 5, part 3, division 1 within section 938, are also references to chapter 3, part 3, division 2 of the Common Provisions Act.

Amendment of s 2 (Definitions)

Clause 552 removes the definitions of 'ADR', 'compensation liability', 'conduct and compensation agreement', 'conduct and compensation agreement requirement', 'deferral agreement', 'election notice', 'eligible claimant', 'entry notice', 'first authority', 'land access code', 'minimum negotiation period', 'negotiation notice', 'notifiable road use', 'parties', 'road use direction', 'second authority' and 'waiver of entry notice' from schedule 2.

The clause inserts the new definitions 'conduct and compensation agreement', 'deferral agreement', 'eligible claimant', 'land access code', and parties'.

The clause also amends the definition of a preliminary activity to provide that an authorised activity carried out within 600 m of a school or occupied residence may be a preliminary activity if the activity meets the remaining parts of this definition.

Division 5 Amendments relating to the Common Provisions Act, chapter 4

Omission of ss 295 and 296

Clause 553 omits sections 295 and 296 from the Act as these provisions are now provided in chapter 4 of the Common Provisions Act.

Amendment of s 297 (Relationship with chs 2 and 5 and ch 15, pt 3)

Clause 554 amends the heading of section 297 to refer to 'the Common Provisions Act'.

Section 297(1) and (4) is amended to refer to 'the Common Provisions Act' for the requirements and restrictions for the coal seam gas provisions.

Amendment of s 301 (What is a *coal exploration tenement* and a *coal mining lease*)

Clause 555 amends section 301 to insert new subsection (4) to clarify that a coal exploration tenement or coal mining lease referenced under parts 1 to 5 of the *Petroleum and Gas (Produciton & Safety) Act 2004* does not include an exploration permit (coal), mineral development licence (coal) or ML (coal) to which chapter 4 of the Common Provisions Act applies.

Insertion of new s 303A

Clause 556 inserts new section 303A.

New section 303A What is a *petroleum tenure*

Section 303A defines a petroleum tenure for parts 1 to 5, to exclude a petroleum tenure that is subject to the overlapping tenure framework in chapter 4 of the Common Provisions Act. The purpose of this amendment is to exclude petroleum resource authorities to which chapter 4 applies from chapter 3 of the *Petroleum and Gas (Production & Safety) Act 2004.*

Division 6 Amendments relating to the Common Provisions Act, chapter 6

Amendment of s 30AA (Extinguishing petroleum interests on the taking of land in a petroleum authority's area (other than by an easement)

Clause 557 removes the reference to 'petroleum' so that the provision for the extinguishment of interests on the taking of land in a resource authority area applies to all resource authority types.

Amendment of s 30A (Joint holders of a petroleum authority)

Clause 558 makes a minor amendment to remove 'petroleum' so that section 30A of the also applies to the Common Provisions Act.

Omission of ch 5, pt 9 (Petroleum register)

Clause 559 removes chapter 5, part 9 that are the provisions for the petroleum register under the *Petroleum and Gas (Production and Safety) Act 2004*. The register provisions are now dealt with under chapter 6, part 1 of the Common Provisions Act.

Amendment of s 799 (Notice and taking effect of decision)

Clause 560 removes the reference to 'petroleum' so that the provision that requires the Minister to give an information notice about a decision refers to the register under the Common Provisions Act.

Amendment of s 834 (Other evidentiary aids)

Clause 561 removes the reference to 'petroleum' so that the provision includes a document that is given, issued, kept or made in the register under the Common Provisions Act.

Omission of s 858A (Practice manual)

Clause 562 omits section 858A Practice manual.

Insertion of new s 984

Clause 563 inserts a transitional provision.

New section 984 Existing practice manuals

Section 984 inserts a transitional provision that allows the practice manual kept under former section 858A to continue to have effect until another practice manual is made available by the chief executive under the *Mineral and Energy Resources (Common Provisions) Act 2014* and that the provisions about the place or way for information to be kept under a manual or is required to be given under section 858A(3) will continue to apply.

Amendment of sch 2 (Dictionary)

Clause 564 amends the identified definitions to remove references to the petroleum register and refer to the register established under the Common Provisions Act. This allows for a register for all resource authority types to be established under the Common Provisions Act

Division 7 Amendments relating to gas emissions

Amendment of s 32 (Exploration and testing)

Clause 565 amends section 32(1) to insert remediation of legacy boreholes as a key authorised activity for the holder of an authority to prospect. This will allow the holder of an authority to prospect to plug, abandon or otherwise remediate a legacy borehole as defined in schedule 2. There are circumstances where the particular history of a specific borehole is difficult to verify. The words ‘reasonably believes’ are included to provide that the holder can take remediation action if they are satisfied the borehole meets the conditions of the definition in schedule 2.

Existing regulatory requirements for notification, land access and land use that generally apply to authorised activities may be relevant and need to be considered by a tenement holder if they decide to remediate a legacy borehole.

Remediation of the legacy borehole includes activities to rehabilitate the surrounding area where it is disturbed by activities to plug and abandon the borehole. The standard for remediation of a legacy borehole is to be prescribed by regulation.

Amendment of s 109 (Exploration, production and storage activities)

Clause 566 amends section 109(1) to insert remediation of legacy boreholes as a key authorised activity for the holder of a petroleum lease. This will allow the holder of a

petroleum lease to plug, abandon or otherwise remediate a legacy borehole as defined in schedule 2. There are circumstances where the particular history of a specific borehole is difficult to verify. The words 'reasonably believes' are included to provide that the lease holder can take remediation action if they are satisfied the borehole meets the conditions of the definition in schedule 2.

Existing regulatory requirements for notification, land access and land use that generally apply to authorised activities may be relevant and need to be considered by a tenement holder if they decide to remediate a legacy borehole.

Remediation of the legacy borehole includes activities to rehabilitate the surrounding area where it is disturbed by activities to plug and abandon the borehole. The standard for remediation of a legacy borehole is to be prescribed by regulation.

Insertion of new ch2, pt 10, div 5

Clause 567 inserts a new division to establish State authorisation for activities to remediate legacy boreholes and in particular authorise an emergency response to a legacy borehole or another borehole that presents a particular safety threat. The provisions provide a means to access a legacy borehole and other boreholes that present a safety threat whether or not it is located within a current resources tenement.

While existing provisions of safety legislation require operators under resources legislation to resolve unacceptable safety risks caused by legacy boreholes affecting their operations, there are many potential circumstances in which legacy boreholes and other boreholes could present a safety threat that would not be subject to existing safety obligations of operators under resources legislation. For example, boreholes located on land not part of a resources tenement.

New section 294A Definitions for div 5

This clause inserts new section 294A to include definitions for authorised person and lower flammability limit. New section 294A also contains a referral to section 294B for the definition of remediation activity.

New section 294B Authorised person to carry out remediation activities

This clause inserts new section 294B to provide for the chief executive of the department responsible for mine and petroleum and gas safety to authorise a person to carry out remediation activities. Remediation activities can be authorised for a bore or well believed by the chief executive to be a legacy borehole as defined in schedule 2; or a bore or well that poses a risk to life or property and/or a well or bore that is on fire or emitting gas causing a gas concentration in the surrounding air greater than the lower flammability limit. The lower flammability limit is the lowest concentration of fuel gas in air that will ignite.

The key purpose of this provision is to enable the State to authorise a person to take action to remediate a borehole that presents a safety threat. For situations where the origin or ownership of the borehole may not be able to be determined or may have been used as a water bore, an authorised person can be authorised to take remediation action if the bore or well presents a safety threat specified as a risk to life or property, a fire or gas emission resulting in a gas concentration above the lower flammability limit.

The remediation activity authorised under section 294B includes plugging and abandoning the bore or well and rehabilitation of the surrounding area. The standard for a remediation activity is to be prescribed by regulation.

New section 294C Entering land to carry out remediation activities

This clause inserts new section 294C which provides access for a State authorised person to enter land where there is a legacy borehole as well as adjacent land that may need to be accessed to reach the legacy borehole. The entry provisions apply when a person has been authorised by the State to remediate a legacy borehole. Consent of the land occupier is required before entry to land used for residential purposes.

Entry to remediate a legacy borehole that presents a safety concern can occur at any time. Where a legacy borehole is not presenting a safety concern, the authorised person can enter within a period of 10 business days following notification to the land owner or land occupier (whichever occurs first).

An authorised a person may enter and re-enter land to carry out remediation activities within the 10 business day period. If remediation of the legacy borehole takes longer than the 10 business days to complete, the authorised person must provide another notice.

New section 294D Notice of entry

This clause inserts new section 294D to specify notification requirements that an authorised person must do to notify land owners and land occupiers whose land will be entered to remediate a borehole. If the authorisation is because of a safety concern, written notification must be made within 10 business days after entry is made. If the authorisation is for remediation of a legacy borehole that does not present a safety concern, land owners and land occupiers must be given written notice before entry is made.

The section also provides that the written notification must state when the entry was or is to be made, the purpose of the entry, that the authorised person is permitted under the *Petroleum and Gas (Production and Safety) Act 2004* to enter the land without consent or a warrant, and the remediation activity carried out or proposed to be carried out.

New section 294E Obligation of authorised person in carrying out remediation activity

This clause inserts new section 294E to oblige an authorised person carrying out remediation activities to not cause or contribute to unnecessary damage to any structure or works on the land, to take reasonable steps to cause as little inconvenience, and do as little damage as is practicable in the circumstances. It is intended that disturbance and disruption should be minimised to that necessary to do the remediation works effectively and safely. When addressing a safety concern it is recognised that those circumstances may modify what is reasonable.

New section 294F Application of particular safety Acts to remediation activity

This clause inserts new section 294F to allow a mine safety regime to apply to a particular remediation activity. Remediation of legacy boreholes will require specialist equipment and expertise. It is anticipated that in most cases, operators under resources legislation that drill and decommission bores and wells will be authorised to remediate legacy boreholes. These operators currently undertake equivalent activities under resources safety regulation. It is intended that this section enable operators to be subject to the resources safety regulation under which they ordinarily carry out similar activities. This means existing and familiar safety management systems will be able to be used ensuring no delay. In the event that an authorised person does not ordinarily carry out similar activities subject to mine safety legislation, then provisions of the *Work Health and Safety Act 2011* would apply.

Amendment of s 856 (Protection from liability for particular persons)

Clause 568 amends section 856(1) to provide indemnity from liability for a person authorised by the State (under new section 294B) to remediate legacy borehole or another bore or well that presents a threat to life or property or is on fire or emitting gas causing a gas concentration in the surrounding air greater than the lower flammability limit. An authorised person will be exempt from civil liability for an act done, or omission made, honestly and without negligence.

Amendment of sch 2 (Dictionary)

Clause 569 inserts into the dictionary, references to the definitions of *authorised person* and *remediation activity*, and a definition for *legacy borehole*.

The definition for *legacy borehole* is intended to capture boreholes or wells drilled for the purpose of resources exploration or production, or to inform resources exploration, but not drilled by the current tenement holders or their related bodies corporate (i.e. land has been relinquished or there is no continuity of tenure to the current tenement holder).

Division 8 Amendments relating to incidental coal seam gas

Amendment of s 331 (Application of div 2)

Clause 570 amends section 331 as consequence of amendments to section 318CN and insertion of new section 318CNA under the *Mineral Resources Act 1989* made by this Bill.

Amendment of s 671 (Limitation for facility or pipeline included in coal mining operation)

Clause 571 amends section 671 as a consequence of amendments to section 318CN of the *Mineral Resources Act 1989* made by this Bill.

Amendment of s 800 (Restriction on petroleum tenure activities)

Clause 572 amends section 800 as a consequence of amendments to section 318CN and insertion of new section 318CNA under the *Mineral Resources Act 1989* made by this Bill.

Amendment of s 802 (Restriction on pipeline construction or operation)

Clause 573 inserts new section 802(1)(c)(ii) to provide that a person must not construct or operate a pipeline (other than a distribution pipeline or a produced water pipeline) unless the pipeline is for the transportation of incidental coal seam gas mined under section 318CM of the *Mineral Resources Act 1989* within the area of contiguous coal mining leases or leases that share a common boundary. This new exemption to the restrictions on pipeline construction or operation is to take account of related amendment to section 318CN of the *Mineral Resources Act 1989* that provide for new uses of incidental coal seam gas.

Amendment of s 803 (Restriction on petroleum facility construction or operation)

Clause 574 amends section 803 as a consequence of amendments to section 318CN and insertion of new section 318CNA under the *Mineral Resources Act 1989* made by this Bill.

Division 9 Amendments relating to royalties

Amendment of s 590 (Imposition of petroleum royalty on petroleum producers)

Clause 575 amends section 590 to remove a reference to a petroleum producer accepting incidental coal seam gas from an overlapping mining lease holder under section 318CN of the *Mineral Resources Act 1989*.

Amendment of s 591 (General exemptions from petroleum royalty)

Clause 576 amends section 591 to clarify when a petroleum royalty exemption will apply for coal seam gas used by a petroleum producer for mining the coal that produced the gas. The clause also provides an exemption to ensure that petroleum royalty is not payable under this Act on coal seam gas for which royalty is payable under the *Mineral Resources Act 1989*.

Division 10 Miscellaneous amendments

Amendment of s 3 (Main purpose of Act)

Clause 577 omits the word ‘transmission’ from the purposes of the *Petroleum and Gas (Production and Safety) Act 2004* so that the purposes of the *Petroleum and Gas (Production and Safety) Act 2004* apply to a wider range of pipeline types.

Amendment of s 16 (What is a *pipeline*)

Clause 578 provides for the insertion of the definition of ‘end points’ for pipeline. The end points for a pipeline, or a proposed pipeline, are required to be stated in an application for a survey licence or a pipeline licence that is for a point-to-point pipeline.

Knowing the end points for a pipeline or proposed pipeline assists in determining the area of a survey licence or point-to-point pipeline licence upon its grant. End points are also statutorily required to be displayed in the petroleum register.

Insertion of new s 16A

Clause 579 provides a definition of a ‘distribution pipeline’.

New section 16A What is a *distribution pipeline*

A distribution pipeline cannot be authorised to be constructed or operated under the *Petroleum and Gas (Production and Safety) Act 2004*. While a distribution pipeline cannot be constructed or authorised under the *Petroleum and Gas (Production and Safety) Act 2004*, section 670 of this Act provides that it is ‘operating plant’, meaning the relevant safety provisions (chapter 9 Safety among others) under this Act apply to it.

This clause also provides that a pipeline transporting petroleum, to a pipeline that is a distribution pipeline as part of a ‘distribution system’ (as defined in ‘schedule 2 Dictionary’ of the *Petroleum and Gas (Production and Safety) Act 2004*), is not a distribution pipeline.

While this clause provides a definition of the type of pipeline that may not be constructed or operated under the *Petroleum and Gas (Production and Safety) Act 2004* it also latently provides for what pipelines may be authorised to be constructed or operated under the *Petroleum and Gas (Production and Safety) Act 2004*.

When this definition is read in conjunction with the definition of a ‘pipeline’, the provisions of chapter 4, part 2 and a number of other related provisions of the *Petroleum and Gas (Production and Safety) Act 2004* that relate to pipelines (for example, section 802 of the *Petroleum and Gas (Production and Safety) Act 2004*) guidance is obtained as to the types of pipelines that must be authorised to be constructed or operated under the *Petroleum and Gas Production and Safety) Act 2004*.

Effectively, this clause envisages that all pipelines, that transport or propose to transport petroleum, fuel gas, or produced water, will require a pipeline licence granted under the *Petroleum and Gas (Production and Safety) Act 2004*. The exceptions to this will be:

- where the pipeline (or proposed pipeline) is a ‘distribution pipeline’, or
- the construction or operation of the pipeline or proposed pipeline is authorised elsewhere under the *Petroleum and Gas (Production and Safety) Act 2004* (see particularly sections 33 and110), or
- the construction or operation of the pipeline or proposed pipeline is authorised under section 442 of the *Petroleum and Gas (Production and Safety) Act 2004* (providing that this is necessarily part of the petroleum facility and is on petroleum facility land)), or
- the construction or operation of the pipeline or proposed pipeline is authorised under the *Petroleum Act 1923* (see sections 184(4) and 44(1)(b) of the *Petroleum Act 1923*) noting that these sections provide the holders of an authority to prospect or petroleum lease, respectively, to carry out an authorised activity that is the same as, or similar to, an activity under the *Petroleum and Gas (Production and Safety) Act 2004*, sections 33 or 110), or
- the construction or operation of the pipeline or proposed pipeline, to transport incidental coal seam gas (as defined in the *Mineral Resources Act 1989*), is authorised under the *Mineral Resources Act 1989*.

Amendment of s 33 (Incidental activities)

Clause 580 provides an amendment to section 33 of the *Petroleum and Gas (Production and Safety) Act 2004*. By the nature of this clause, it provides what cannot be considered an ‘incidental activity’ that may be carried out on an authority to prospect granted under the *Petroleum and Gas (Production and Safety) Act 2004*.

Taking into account the exceptions provided by this clause, this clause also provides what type of incidental activity may be carried out on an authority to prospect. Therefore, this clause also provides that the processing of gaseous petroleum, produced as an unavoidable result of testing for production on a petroleum well within an authority to prospect, may be carried out on an authority to prospect.

The production of petroleum on an authority to prospect, that is not authorised under this clause for the authority to prospect, cannot be carried out on the authority to prospect and is not an ‘incidental activity’ for the authority to prospect.

Amendment of s 37 (Requirements for making tender)

Clause 581 provides for the omission of one of the statements that must be included with a tender application for an authority to prospect. This statement provided information about how and when the tenderer proposed to consult with, and keep informed, each owner and

occupier of private or public land on which authorised activities for the proposed authority to prospect are, or are likely to be, carried out.

It is difficult for a tenderer for an authority to prospect to provide, in any meaningful detail at such an early stage, how and when consultation with potentially affected landowners and occupiers is to occur. Therefore, most statements that have accompanied such tender applications are necessarily broad and add little to the assessment of the tender application.

However, other provisions of the *Petroleum and Gas (Production and Safety) Act 2004* and the Mineral and Energy Resources (Common Provisions) Bill 2014 provide more meaningful requirements for access and entry to land, for conduct by the authority to prospect holder on lands, compensation provisions and related matters for these types of petroleum authorities.

An authority to prospect holder having to comply with these and other related provisions removes the need for the tenderer for an authority to prospect, to provide a statement with the application, about how and when future consultation with landowners and occupiers is to occur.

Insertion of new s 55A

Clause 582 provides for the insertion of section 55A.

New section 55A Application of ch 14, pt 1 to lodgement

This section will make it clear that the provisions relevant to all applications or purported applications, detailed in chapter 14, part 1 of the *Petroleum and Gas (Production and Safety) Act* 2004, will also apply to proposed later work programs that are lodged.

Amendment of s 57 (Deciding whether to approve proposed program)

Clause 583 provides for the omission of one of the matters that must be considered by the Minister when deciding whether to approve a later work program. The matter that is being omitted from consideration is the notice about the discovery of petroleum and its commercial viability. This is as a consequence of the omission of section 544 of the *Petroleum and Gas (Production and Safety) Act 2004.*

Insertion of new ch 2, pt 1, div 4, sdiv 2A

Clause 584 provides for the insertion of new chapter 2, part 1, division 4, subdivision 2A into the *Petroleum and Gas (Production and Safety) Act 2004*. The provisions being inserted in this subdivision relate to ‘ATP production testing’ or ‘ATP storage testing’ being carried out on a petroleum well within the area of an authority to prospect.

Subdivision 2A Mandatory condition for particular types of testing

New section 71A ATP production testing

New section 71A provides that an authority to prospect holder may carry out testing for petroleum production on a petroleum well, that intersects a natural underground reservoir, and the holder is testing for petroleum production (called 'ATP production testing') from the intersected natural underground reservoir.

The authority to prospect holder may carry out production testing on the petroleum well until the 'end date' for the ATP production testing. After this period, the approval of the Minister must be obtained. In giving this approval, the Minister may set conditions on giving this approval.

The chief executive must be advised about ATP production testing that is being carried out, by the holder of an authority to prospect, within the area of the holder's authority to prospect. To advise the chief executive, a notice is required to be lodged about the commencement of the ATP production testing, within 20 business days from the commencement of the ATP production testing.

New section 71B ATP storage testing

Inserted section 71B provides that an authority to prospect holder may also carry out testing for petroleum storage on a petroleum well, that intersects a natural underground reservoir and the holder is testing for petroleum storage (called 'ATP storage testing') from the intersected natural underground reservoir.

The authority to prospect holder may carry out ATP storage testing on the petroleum well until the 'end date' for the ATP storage testing. After this period, the approval of the Minister must be obtained. In giving this approval, the Minister may set conditions on giving this approval.

The chief executive must be advised about ATP storage testing that is being carried out, by the holder of an authority to prospect, within the area of the holder's authority to prospect. To advise the chief executive, a notice is required to be lodged about the commencement of the ATP storage testing, within 20 business days from the commencement of the ATP storage testing.

Despite allowing for storage testing to be carried out, an authority to prospect holder cannot carry out GHG stream storage.

New section 71C Authority to prospect holder must notify chief executive if testing stops

Inserted section 71C provides that for both ATP production testing and ATP storage testing, the chief executive must be given a notice, within 20 business days after the ATP production or ATP storage testing stops, containing information that is prescribed under a regulation.

Omission of s 73 (Permitted period for production or storage testing)

Clause 585 provides for the omission of section 73 as a consequence of the insertion of new chapter 2, part 1, division 4, subdivision 2A into the *Petroleum and Gas (Production and Safety) Act 2004.*

Omission of s 74 (Obligation to consult with particular owners and occupiers)

Clause 586 provides for the omission of an obligation for the holder of an authority to prospect to consult with landowners and occupiers whose land may be affected by activities authorised by this type of petroleum tenure.

It may be considered that there is a breach of a fundamental legislative principle triggered by the omission of this section in that its omission may not have sufficient regard to the rights and liabilities of individuals.

A number of amendments are proposed to be made to the ‘land access’ provisions in the Mineral and Energy Resources (Common Provisions) Bill 2014. These will provide certain obligations on a ‘resource authority’ holder (that includes the holder of an authority to prospect) in dealing with a landowner or occupier of private and public land, whose land may be affected by activities authorised to be carried out under the authority.

In addition, each of the ‘Resource Acts’ (as defined in the Mineral and Energy Resources (Common Provisions) Bill 2014) requires a resource authority holder to comply with the ‘land access code’.

The current land access code states best practice guidelines for communication between an authority to prospect holder, and owners and occupiers of private land. The code also imposes on the holder of an authority to prospect mandatory conditions concerning the conduct of authorised activities on private land.

The proposed provisions and the requirement to comply with the land access code do not impose a disparate obligation to consult with a landowner/occupier. However to ensure compliance with all the obligations and requirements of the proposed amendments and the land access code, the holder of an authority to prospect must necessarily consult regularly with the affected landowner/occupier.

Further, there were no rights for landowners/occupiers attached to the obligation proposed to be omitted. These sections merely imposed an obligation on the holder of an authority to

prospect to consult with landowners or occupiers, on whose land authorised activities were proposed to be carried out, about:

- access to the land;
- authorised activities that may be carried out on the land; and
- compensation liability to the owner or occupier.

If the proposed authorised activity was one that, in the belief of the landowner/occupier, had an adverse impact on the owner/occupier, there was no obligation imposed on a holder of an authority to prospect to change, or not carry out, the type of activity.

The land access code contains requirements to maintain 'good relations' with landowners/occupiers, including:

- to liaise closely with the landholder in good faith; and
- advise the landholder of the holder's intentions relating to authorised activities well in advance of them being undertaken.

The *Petroleum and Gas (Production and Safety) Act 2004* also provides that the holder of an authority to prospect must also comply with the mandatory conditions of the land access code.

All of these checks and balances provide a more meaningful and robust approach to authority to prospect holder and landowner/occupier relationships, compared to a nebulous obligation that is meaningless in isolation, and is hard to quantify if deciding levels of non-compliance with this obligation.

Amendment of s 79 (Obligation to lodge proposed later work program)

Clause 587 provides for the insertion of the provisions that restrict the lodgement of another later work program (the second work program) if a later work program (the first work program) was previously lodged within the statutory timeframes and was subsequently not approved.

The issue has been that if a person has been given an information notice about the Minister's refusal to approve the first work program, rather than appealing the decision, the second work program is lodged. Effectively then, because the refusal decision of the Minister never takes effect, the second work program must be considered. This may continue on for any number of later work programs if they are continually refused and thus having an 'endless loop' effect.

This is despite section 79(3) of the *Petroleum and Gas (Production and Safety) Act 2004* which clearly states when a later work program *must* be lodged. This is because the first work program was submitted in compliance with section 79(3) of the *Petroleum and Gas (Production and Safety) Act 2004*.

Further, it may be inferred through sections 79(5) and (6) of the *Petroleum and Gas (Production and Safety) Act 2004* that a later work program may be lodged later than the period it must be lodged under section 79(3) of the *Petroleum and Gas (Production and Safety) Act 2004*.

Although the principles of natural justice must be observed, eventually, a refusal of a later work program must become final unless an appeal is lodged against the decision.

Also, if a later work program is lodged within 20 business days before the end of the current work program period, another later work program for the authority cannot be lodged. This is because if the later work program has been refused to be approved by the Minister, the period of 20 business days, to appeal the decision, will apply to the refusal. Ultimately, it will prevent the lodgement of another later work program that will again require the decision of the Minister.

Amendment of s 82 (Requirements for making application)

Clause 588 provides for the omission of one of the statements that must be included with an application for the renewal of an authority to prospect. This statement provided information about how and when the authority to prospect holder proposed to consult with, and keep informed, each owner and occupier of private or public land on which authorised activities for the authority to prospect (if renewed) are, or are likely to be, carried out.

It is difficult for an applicant for the renewal of an authority to prospect to provide, in any meaningful detail, how and when consultation with potentially affected landowners and occupiers is to occur. Therefore, most statements that have accompanied such applications have been necessarily broad and add little to the assessment of the renewal application.

However, other provisions of the *Petroleum and Gas (Production and Safety) Act 2004* and the Mineral and Energy Resources (Common Provisions) Bill 2014 provide more meaningful requirements for access and entry to land, for conduct by the authority to prospect holder on lands, compensation provisions and related matters for these types of petroleum tenure.

An authority to prospect holder having to comply with these and other related provisions removes the need for the holder to provide a statement with a renewal application, about how and when future consultation with landowners and occupiers is to occur.

Amendment of s 92 (Term of declaration)

Clause 589 provides for the omission of one of the matters that may be considered by the Minister when deciding whether to declare an area of an authority to prospect a potential commercial area. The matter that is being omitted from consideration is the notice about the discovery of petroleum and which contains details about the commercial viability of the discovery. This is as a consequence of the omission of section 544 of the *Petroleum and Gas (Production and Safety) Act 2004.*

Amendment of s 112 (Incidental activities)

Clause 590 provides for the amendment of a drafting ‘note’ to state references to chapters, parts and sections relevant to section 112 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 118 (Requirements for making ATP-related application)

Clause 591 provides for the omission of one of the statements that must be included with an application for a petroleum lease. This statement provided information about how and when the petroleum lease holder proposed to consult with, and keep informed, each owner and occupier of private or public land on which authorised activities for the petroleum lease are, or are likely to be, carried out.

It is difficult for an applicant for a petroleum lease to provide, in any meaningful detail, how and when consultation with potentially affected landowners and occupiers is to occur. Therefore, most statements that have accompanied such applications have been necessarily broad and add little to the assessment of the application.

However, other provisions of the *Petroleum and Gas (Production and Safety) Act 2004* and the Mineral and Energy Resources (Common Provisions) Bill 2014 provide more meaningful requirements for access and entry to land, for conduct by a petroleum lease holder on lands, compensation provisions and related matters for these types of petroleum tenure.

A petroleum lease holder having to comply with these and other related provisions removes the need for the holder to provide a statement with a petroleum lease application, about how and when future consultation with landowners and occupiers is to occur.

Insertion of new s 145A

Clause 592 provides for the insertion of section 145A.

New section 145A Application of ch 14, pt 1 to lodgement of proposed later development plan

This section will make it clear that the provisions relevant to all applications or purported applications, detailed in chapter 14, part 1 of the *Petroleum and Gas (Production and Safety) Act 2004*, will also apply to proposed later development plans that are lodged.

Insertion of new ch 2, pt 2, div 5, sdiv 1, hdg

Clause 593 provides for the insertion of new chapter 2, part 2, division 5, subdivision 1 into the *Petroleum and Gas (Production and Safety) Act 2004*. The provisions being inserted in this subdivision relate to ‘PL production testing’ or ‘PL storage testing’ being carried out on a petroleum well within the area of a petroleum lease.

Insertion of new ch 2, pt 2, div 5, sdiv 2 and sdiv 3, hdg

Clause 594 provides for the insertion of new chapter 2, part 2, division 5, subdivision 2 into the *Petroleum and Gas (Production and Safety) Act 2004*. The provisions being inserted in this subdivision relate to ‘PL production testing’ or ‘PL storage testing’ being carried out on a petroleum well within the area of a petroleum lease.

Subdivision 2 Key mandatory conditions for particular types of testing

New section 150A PL production testing

New section 150A provides that a petroleum lease holder may carry out testing for petroleum production on a petroleum well, that intersects a natural underground reservoir, and the holder is testing for petroleum production (called ‘PL production testing’) from the intersected natural underground reservoir.

The petroleum lease holder may carry out production testing on the petroleum well until the ‘end date’ for the PL production testing. After this period, the approval of the Minister must be obtained. In giving this approval, the Minister may set conditions on giving this approval.

The chief executive must be advised about PL production testing that is being carried out, by the holder of a petroleum lease, within the area of the holder’s petroleum lease. To advise the chief executive, a notice is required to be lodged about the commencement of the PL production testing, within 20 business days from the commencement of the PL production testing.

New section 150B Approval of particular ATP production testing taken to be approval for PL production testing

New section 150B provides for a ‘transitional approval’. It provides that if the Minister approves the ATP production testing on a petroleum well (within the area of an authority to prospect), the approval remains in force if the petroleum well is also within the area of a petroleum lease that is later applied for and granted from this ATP. However, the transitional approval only applies to the period initially approved by the Minister for the ATP production testing from the well. The Minister may also set new conditions, as the Minister considers appropriate, on the transitional approval.

New section 150C PL storage testing

New section 150C provides that a petroleum lease holder may also carry out testing for petroleum storage on a petroleum well, that intersects a natural underground reservoir and the holder is testing for petroleum storage (called ‘PL storage testing’) from the intersected natural underground reservoir.

The petroleum lease holder may carry out PL storage testing on the petroleum well until the ‘end date’ for the PL storage testing. After this period, the approval of the Minister must be obtained. In giving this approval, the Minister may set conditions on giving this approval.

The chief executive must be advised about PL storage testing that is being carried out, by the holder of a petroleum lease, within the area of the holder’s petroleum lease. To advise the chief executive, a notice is required to be lodged about the commencement of the PL storage testing, within 20 business days from the commencement of the PL storage testing.

Despite allowing for storage testing to be carried out, a petroleum lease holder cannot carry out GHG stream storage.

New section 150D Approval of particular ATP storage testing taken to be approval for PL storage testing

New section 150D provides for a ‘transitional approval’. It provides that if the Minister approves the ATP storage testing on a petroleum well (within the area of an authority to prospect), the approval remains in force if the petroleum well is also within the area of a petroleum lease that is later applied for and granted from this ATP. However, the transitional approval only applies to the period initially approved by the Minister for the ATP storage testing from the well. The Minister may also set new conditions, as the Minister considers appropriate, on the transitional approval.

New section 150E Petroleum lease holder must notify chief executive if testing ends

New section 150E provides that for both PL production testing and PL storage testing, this clause provides that the chief executive must be given a notice, within 20 business days after the PL production or PL storage testing stops, containing information that is prescribed under a regulation.

Omission of s 153 (Obligation to consult with particular owners and occupiers)

Clause 595 provides for the omission of an obligation for the holder of a petroleum lease to consult with landowners and occupiers whose land may be affected by activities authorised by this type of petroleum tenure.

It may be considered that there is a breach of a fundamental legislative principle triggered by the omission of this section in that its omission may not have sufficient regard to the rights and liabilities of individuals.

A number of amendments are proposed to be made to the ‘land access’ provisions in the Mineral and Energy Resources (Common Provisions) Bill 2014. These will provide certain obligations on a ‘resource authority’ holder (that includes the holder of a petroleum lease) in dealing with a landowner or occupier of private and public land, whose land may be affected by activities authorised to be carried out under the authority.

In addition, each of the ‘Resource Acts’ (as defined in the Mineral and Energy Resources (Common Provisions) Bill 2014) requires a resource authority holder to comply with the ‘land access code’.

The current land access code states best practice guidelines for communication between a petroleum lease holder, and owners and occupiers of private land. The code also imposes on the holder of a petroleum lease mandatory conditions concerning the conduct of authorised activities on private land.

The proposed provisions and the requirement to comply with the land access code do not impose a disparate obligation to consult with a landowner/occupier. However to ensure compliance with all the obligations and requirements of the proposed amendments and the land access code, the holder of a petroleum lease must necessarily consult regularly with the affected landowner/occupier.

Further, there were no rights for landowners/occupiers attached to the obligation proposed to be omitted. These sections merely imposed an obligation on the holder of a petroleum lease to consult with landowners or occupiers, on whose land authorised activities were proposed to be carried out, about:

- access to the land;
- authorised activities that may be carried out on the land; and
- compensation liability to the owner or occupier.

If the proposed authorised activity was one that, in the belief of the landowner/occupier, had an adverse impact on the owner/occupier, there was no obligation imposed on a holder of a petroleum lease to change, or not carry out, the type of activity.

The land access code contains requirements to maintain ‘good relations’ with landowners/occupiers, including:

- to liaise closely with the landholder in good faith; and
- advise the landholder of the holder’s intentions relating to authorised activities well in advance of them being undertaken.

The *Petroleum and Gas (Production and Safety) Act 2004* also provides that the holder of a petroleum lease must also comply with the mandatory conditions of the land access code.

All of these checks and balances provide a more meaningful and robust approach to petroleum lease holder and landowner/occupier relationships, compared to a nebulous obligation that is meaningless in isolation, and is hard to quantify if deciding levels of non-compliance with this obligation.

Amendment of s 159 (Obligation to lodge proposed later development plan)

Clause 596 provides for the insertion of provisions that restrict the lodgement of another later development plan (the second development plan) if a later development plan (the first development plan) was previously lodged within the statutory timeframes and was subsequently not approved.

The issue has been that if a person has been given an information notice about the Minister's refusal to approve the first development plan, rather than appealing the decision, the second development plan is lodged. Effectively then, because the refusal decision of the Minister never takes effect, the second development plan must be considered. This may continue on for any number of later development plans if they are continually refused and thus having an 'endless loop' effect.

This is despite section 159(3) of the *Petroleum and Gas (Production and Safety) Act 2004* which clearly states when a later development plan *must* be lodged. This is because the first development plan was submitted in compliance with section 159(3) of the *Petroleum and Gas (Production and Safety) Act 2004*.

Further, it may be inferred through sections 159(5) and (6) of the *Petroleum and Gas (Production and Safety) Act 2004* that a later development plan may be lodged later than the period it must be lodged under section 159(3) of the *Petroleum and Gas (Production and Safety) Act 2004*.

Although the principles of natural justice must be observed, eventually, a refusal of a later development plan must become final unless an appeal is lodged against the decision.

Amendment of s 162 (Requirements for making renewal application)

Clause 597 provides for the omission of one of the statements that must be included with an application for the renewal of a petroleum lease. This statement provided information about how and when the petroleum lease holder proposed to consult with, and keep informed, each owner and occupier of private or public land on which authorised activities for the petroleum lease (if renewed) are, or are likely to be, carried out.

It is difficult for an applicant for the renewal of a petroleum lease to provide, in any meaningful detail, how and when consultation with potentially affected landowners and occupiers is to occur. Therefore, most statements that have accompanied such applications have been necessarily broad and add little to the assessment of the renewal application.

However, other provisions of the *Petroleum and Gas (Production and Safety) Act 2004* and the Mineral and Energy Resources (Common Provisions) Bill 2014 provide more meaningful requirements for access and entry to land, for conduct by the petroleum lease holder on lands, compensation provisions and related matters for these types of petroleum tenure.

A petroleum lease holder having to comply with these and other related provisions removes the need for the holder to provide a statement with a renewal application, about how and when future consultation with landowners and occupiers is to occur.

Amendment of s 178 (Deciding application for data acquisition authority)

Clause 598 provides that the term of a data acquisition authority must end no later than 2 years after the data acquisition authority takes effect.

Amendment of s 185 (Underground water rights)

Clause 599 provides that 'associated water' may be used for any purpose, whether it is for a purpose on the petroleum tenure itself, or for a purpose outside of the area of the petroleum tenure.

Amendment of s 234 (Arrangement to coordinate petroleum activities)

Clause 600 provides for the omission of the definition of 'relevant lease' and replaces references to this with 'coordinated lease' for section 234 of the *Petroleum and Gas (Production and Safety) 2004*.

Amendment of ch 2, pt 10, hdg and ch 2, pt 10, divs 3 and 4, hdgs

Clause 601 provides amendments to stated headings of the *Petroleum and Gas (Production and Safety) Act 2004* so that these headings also include 'water injection bore'.

Amendment of ch 2, pt 10, div 2, hdg and ss 283, 284A, 285 to 287, 294 and sch 2

Clause 602 provides amendments to certain sections and headings of the *Petroleum and Gas (Production and Safety) Act 2004*. These amendments recognise that water injection bores are now an integral part of authorised activities that certain petroleum explorers or producers may be required to carry out under a petroleum authority. Water injection bores assist petroleum explorers and producers to use produced water, unavoidably released during authorised exploration and production activities for petroleum, responsibly.

Amendment of s 282 (Restriction on who may drill water observation bore or water supply bore)

Clause 603 provides that the 'heading' of this section, and the section itself, also applies to the drilling of a water injection bore.

Amendment of s 288 (Transfer of water observation bore or water supply bore to landowner)

Clause 604 provides that the ‘heading’ of this section, and the section itself, also applies to the transfer of a water injection bore to a landowner.

Amendment of s 292 (Obligation to decommission)

Clause 605 provides for an obligation on a responsible person to decommission a water injection bore.

Replacement of s 393 (Purpose of div 1)

Clause 606 provides for the omission of the ‘purpose’ of a survey licence and replaces this with how chapter 4, part 1, division 1 of the *Petroleum and Gas (Production and Safety) Act 2004* operates. This is achieved by providing the key activities that may be authorised to be carried out under a granted survey licence.

Before the commencement of this provision, the *Petroleum and Gas (Production and Safety) Act 2004* stated that the purpose of granting a survey licence was to allow access to land for activities authorised under the survey licence that involved minimal impact on or disturbance of the land. These activities included surveying for suitable construction and operation sites for pipelines or petroleum facilities and their access routes.

However, minimal impacts on, or disturbance of land is not defined in the *Petroleum and Gas (Production and Safety) Act 2004* and is therefore difficult to quantify. This is problematic as initial surveying of a site is not the only activity that may be required to determine suitability of the site. For example, soil sampling may be necessary to determine if the soil can safely contain a high-pressure petroleum pipeline. Activities such as this may not always be interpreted as being ‘minimal’.

This clause therefore omits the provision on a survey licence about access to land for authorised activities that ‘involve minimal impact on or disturbance of the land’ and allows instead for case-by-case assessment of each survey licence application.

Further, the disturbance on any land that may cause environmental harm is more appropriately addressed through an Environmental Authority granted under the *Environmental Protection Act 1994*, which is itself a condition of the granting of a survey licence.

At all times, the *Environmental Protection Act 1994* requires that the holder of a survey licence must comply with the conditions of the Environmental Authority granted for the licence. This is also provided for by the proposed amendment to section 394 of the *Petroleum and Gas (Production and Safety) Act 2004.*

Although an Environmental Authority may be granted for an application for a survey licence, this does not mean that the survey licence application must be granted under the *Petroleum and Gas (Production and Safety) Act 2004*. Assessment of the licence application will ensure that the extent and nature of activities to be carried out under the licence (see section 395(2)(b)(v) of the *Petroleum and Gas (Production and Safety) Act 2004*) are necessary survey activities that align with the types of survey activities detailed in section 394 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 394 (Surveying activities)

Clause 607 provides that the carrying out of activities on a survey licence is subject to the Environmental Authority granted under the *Environmental Protection Act 1994* for the licence.

Amendment of s 396 (Deciding application)

Clause 608 provides that the term of a survey licence must end no later than 2 years after the survey licence takes effect.

Amendment of s 409 (Requirements for making application)

Clause 609 provides for the omission of one of the statements that must be included with an application for a pipeline licence. This statement provided information about how and when the pipeline licence holder proposed to consult with, and keep informed, each owner and occupier of private or public land on which authorised activities for the pipeline licence are, or are likely to be, carried out.

It is difficult for an applicant for a pipeline licence to provide, in any meaningful detail, how and when consultation with potentially affected landowners and occupiers is to occur. Therefore, most statements that have accompanied such applications have been necessarily broad and add little to the assessment of the application.

However, other provisions of the *Petroleum and Gas (Production and Safety) Act 2004* and the Mineral and Energy Resources (Common Provisions) Bill 2014 provide more meaningful requirements for access and entry to land, for conduct by a pipeline licence holder on lands, compensation provisions and related matters for these types of petroleum authorities.

A pipeline licence holder having to comply with these and other related provisions removes the need for the holder to provide a statement with a pipeline licence application, about how and when future consultation with landowners and occupiers is to occur.

Omission of s 418 (Obligation to consult with particular owners and occupiers)

Clause 610 provides for the omission of an obligation for the holder of a pipeline licence to consult with landowners and occupiers whose land may be affected by activities authorised by this type of petroleum authority.

It may be considered that there is a breach of a fundamental legislative principle triggered by the omission of this section in that its omission may not have sufficient regard to the rights and liabilities of individuals.

A number of amendments are proposed to be made to the ‘land access’ provisions in the Mineral and Energy Resources (Common Provisions) Bill 2014. These will provide certain obligations on a ‘resource authority’ holder (that includes the holder of a pipeline licence) in dealing with a landowner or occupier of private and public land, whose land may be affected by activities authorised to be carried out under the licence.

In addition, each of the ‘Resource Acts’ (as defined in the Mineral and Energy Resources (Common Provisions) Bill 2014) requires a resource authority holder to comply with the ‘land access code’.

The current land access code states best practice guidelines for communication between a pipeline licence holder, and owners and occupiers of private land. The code also imposes on the holder of a pipeline licence mandatory conditions concerning the conduct of authorised activities on private land.

The proposed provisions and the requirement to comply with the land access code do not impose a disparate obligation to consult with a landowner/occupier. However to ensure compliance with all the obligations and requirements of the proposed amendments and the land access code, the holder of a pipeline licence must necessarily consult regularly with the affected landowner/occupier.

Further, there were no rights for landowners/occupiers attached to the obligation proposed to be omitted. These sections merely imposed an obligation on the holder of a pipeline licence to consult with landowners or occupiers, on whose land authorised activities were proposed to be carried out, about:

- Authorised activities that may be carried out on the land; and
- Crossing access land for the licence.

If the proposed authorised activity was one that, in the belief of the landowner/occupier, had an adverse impact on the owner/occupier, there was no obligation imposed on a holder of a pipeline licence to change, or not carry out, the type of activity.

The land access code contains requirements to maintain ‘good relations’ with landowners/occupiers, including:

- To liaise closely with the landholder in good faith; and
- Advise the landholder of the holder’s intentions relating to authorised activities well in advance of them being undertaken.

The *Petroleum and Gas (Production and Safety) Act 2004* also provides that the holder of a pipeline licence must also comply with the mandatory conditions of the land access code.

All of these checks and balances provide a more meaningful and robust approach to pipeline licence holder and landowner/occupier relationships, compared to a nebulous obligation that is meaningless in isolation, and is hard to quantify if deciding levels of non-compliance with this obligation.

Amendment of s 437 (Limitation of transmission pipeline licence holder's liability)

Clause 611 provides the omission of 'transmission' pipeline from this section. This removes the limitation to the liability of a pipeline licence holder, expressed in section 437, from a 'transmission' pipeline to any pipelines authorised to be constructed or operated under a pipeline licence granted under the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 445 (Requirements for making application)

Clause 612 provides for the omission of one of the statements that must be included with an application for a petroleum facility licence. This statement provided information about how and when the petroleum facility licence holder proposed to consult with, and keep informed, each owner and occupier of private or public land on which authorised activities for the petroleum facility licence are, or are likely to be, carried out.

It is difficult for an applicant for a petroleum facility licence to provide, in any meaningful detail, how and when consultation with potentially affected landowners and occupiers is to occur. Therefore, most statements that have accompanied such applications have been necessarily broad and add little to the assessment of the application.

However, other provisions of the *Petroleum and Gas (Production and Safety) Act 2004* and the Mineral and Energy Resources (Common Provisions) Bill 2014 provide more meaningful requirements for access and entry to land, for conduct by a petroleum facility licence holder on lands, compensation provisions and related matters for these types of petroleum authorities.

A petroleum facility licence holder having to comply with these and other related provisions removes the need for the holder to provide a statement with a petroleum facility licence application, about how and when future consultation with landowners and occupiers is to occur.

Amendment of s 451 (Obligation to consult with particular owners and occupiers)

Clause 613 provides for the omission of an obligation for the holder of a petroleum facility licence to consult with landowners and occupiers whose land may be affected by activities authorised by this type of petroleum authority.

It may be considered that there is a breach of a fundamental legislative principle triggered by the omission of this section in that its omission may not have sufficient regard to the rights and liabilities of individuals.

A number of amendments are proposed to be made to the 'land access' provisions in the Mineral and Energy Resources (Common Provisions) Bill 2014. These will provide certain obligations on a 'resource authority' holder (that includes the holder of a petroleum facility licence) in dealing with a landowner or occupier of private and public land, whose land may be affected by activities authorised to be carried out under the licence.

In addition, each of the 'Resource Acts' (as defined in the Mineral and Energy Resources (Common Provisions) Bill 2014) requires a resource authority holder to comply with the 'land access code'.

The current land access code states best practice guidelines for communication between a petroleum facility licence holder, and owners and occupiers of private land. The code also imposes on the holder of a petroleum lease mandatory conditions concerning the conduct of authorised activities on private land.

The proposed provisions and the requirement to comply with the land access code do not impose a disparate obligation to consult with a landowner/occupier. However to ensure compliance with all the obligations and requirements of the proposed amendments and the land access code, the holder of a pipeline licence must necessarily consult regularly with the affected landowner/occupier.

Further, there were no rights for landowners/occupiers attached to the obligation proposed to be omitted. These sections merely imposed an obligation on the holder of a pipeline licence to consult with landowners or occupiers, on whose land authorised activities were proposed to be carried out, about:

- authorised activities that may be carried out on the land; and
- crossing access land for the licence.

If the proposed authorised activity was one that, in the belief of the landowner/occupier, had an adverse impact on the owner/occupier, there was no obligation imposed on a holder of a petroleum facility licence to change, or not carry out, the type of activity.

The land access code contains requirements to maintain 'good relations' with landowners/occupiers, including:

- to liaise closely with the landholder in good faith; and
- advise the landholder of the holder's intentions relating to authorised activities well in advance of them being undertaken.

The *Petroleum and Gas (Production and Safety) Act 2004* also provides that the holder of a petroleum facility licence must also comply with the mandatory conditions of the land access code.

All of these checks and balances provide a more meaningful and robust approach to pipeline licence holder and landowner/occupier relationships, compared to a nebulous obligation that is meaningless in isolation, and is hard to quantify if deciding levels of non-compliance with this obligation.

Amendment of ss 541, 542 and 543A

Clause 614 provides amendments to the stated sections of the *Petroleum and Gas (Production and Safety) Act 2004* so that these sections will also apply to a 'water observation bore'.

Omission of s 544 (Notice by petroleum tenure holder about discovery and commercial viability)

Clause 615 provides for the omission of the requirement for a petroleum tenure holder to lodge a notice of a discovery of petroleum and this discovery's commercial viability.

There are issues surrounding 'when' petroleum is discovered, particularly when coal seam gas (CSG) is 'discovered'. This is because of the dewatering that needs to occur from the coal seam to release the CSG.

This section provided a definition for when CSG is said to be 'discovered'. This definition did not align with the realities of CSG exploration and production. For example coal core samples may be taken from a CSG well, during drilling, to assist in determining a CSG resource in the coal. When the coal core is tested for CSG content via desorption, CSG (in essence) is 'discovered'. Therefore, the CSG may be 'discovered' without it meeting what was the definition provided for in this section.

Also, the value of the information contained in these notices was questionable when not read in context with other related information. Much of the information that was obtained from these notices is already lodged by a petroleum tenure holder in other notices, reports or documentation required under the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 560 (Obligation to remove equipment and improvements)

Clause 616 provides an amendment to this section of the *Petroleum and Gas (Production and Safety) Act 2004* so that this section will also apply to a 'water injection bore'.

Amendment of s 621 (Restrictions on supplying gas not of prescribed quality)

Clause 617 removes 'transmission' from note 1.

Amendment of s 670 (What is an *operating plant*)

Clause 618 provides for another facility that is an 'operating plant'. Holders of certain petroleum authorities under the *Petroleum and Gas (Production and Safety) Act 2004* may drill a water injection bore, water observation bore or water supply bore on the area of the authority. The carrying out of these activities will now be subject to the safety provisions within the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 802 (Restriction on pipeline construction or operation)

Clause 619 provides for the correction of a drafting oversight. What was section 802(1)(a)(i) provided that the construction or operation of a pipeline was restricted unless the construction or operation was carried out under the *Petroleum and Gas (Production and Safety) Act 2004* under the authority of a petroleum tenure.

However, the construction or operation of a pipeline is also authorised, pursuant to the *Petroleum and Gas (Production and Safety) Act 2004*, under a pipeline licence or petroleum facility licence. Under section 18 of the *Petroleum and Gas (Production and Safety) Act 2004*, a pipeline licence and a petroleum facility licence are defined (with other authorities) as 'petroleum authorities'.

Therefore, section 802 now provides that the construction or operation of a pipeline is restricted unless the construction or operation is carried out under the *Petroleum and Gas (Production and Safety) Act 2004* under the authority of a petroleum tenure, pipeline licence or petroleum facility licence.

Amendment of s 824 (Period to appeal)

Clause 620 provides for the correction of a drafting oversight. What was section 824 of the *Petroleum and Gas (Production and Safety) Act 2004* provided that an appeal from an internal review decision made under section 823(2) or (3) of this Act was required to be started within 20 business days after the two periods that were stated in sections 824(1)(a) and 824(1)(b) of the *Petroleum and Gas (Production and Safety) Act 2004*. However, no internal review decisions are made under section 823(3); that is, the decisions listed in schedule 1, table 2 to the *Petroleum and Gas (Production and Safety) Act 2004* are not subject to internal review decisions (see chapter 12, part 1 of the *Petroleum and Gas (Production and Safety) Act 2004* for what is subject to an internal review decision).

Therefore, there was no actual day an appeal must have commenced by if the decision is one listed under schedule 1, table 2 to the *Petroleum and Gas (Production and Safety) Act 2004*.

Thus, section 824(1) of the *Petroleum and Gas (Production and Safety) Act 2004* is amended so that appeals from an internal review decision under section 823(2), or a decision made under section 823(3), must be started within 20 business days after certain stated periods.

Amendment of ch 14, pt 1 (Applications)

Clause 621 inserts a note after the heading to clarify that chapter 14, part 1 of the *Petroleum and Gas (Production and Safety) Act 2004* applies to a proposed later work program application and a proposed later development application.

Insertion of new ss 985 and 986

Clause 622 inserts transitional provisions.

New section 985 Existing application for data acquisition authority

New section 985 provides transitional provisions for an application for a data acquisition authority. It applies to an application for a data acquisition authority, if the application has been lodged, but the grant of the authority has yet to be considered by the Minister.

For such an application, if the Minister decides to grant the application, the term of this type of data acquisition authority must end no later than two years from the day the authority takes effect.

New section 986 Existing application for survey licence

New section 986 provides transitional provisions for an application for a survey licence. It applies to an application for a survey licence, if the application has been lodged, but the grant of the licence has yet to be considered by the Minister.

For such an application, if the Minister decides to grant the application, the term of this type of survey licence must end no later than two years from the day the licence takes effect.

Amendment of sch 1 (Reviews and appeals)

Clause 623 amends table 1 of schedule 1 to provide for a person affected by the Minister's decision to refuse an ATP production testing, ATP storage testing, PL production testing or PL storage testing to seek a review.

Amendment of sch 2 (Dictionary)

Clause 624 provides amendments to schedule 2 Dictionary to the *Petroleum and Gas (Production and Safety) Act 2004*. The terms in the dictionary are considered distinctive and their inclusion in schedule 2 allows these terms to be more easily linked to their use throughout the *Petroleum and Gas (Production and Safety) 2004*.

Amendment of sch 2 (Dictionary)

Clause 625 provides for further amendments to schedule 2, Dictionary to the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of sch 2 (Dictionary)

Clause 626 updates section references in the definition of owner.

Part 11 Amendment of Property Law Act 1974

Act amended

Clause 627 provides that this part amends the *Property Law Act 1974*.

Amendment of s 84 (Regulation of exercise of power of sale)

Clause 628 omits the reference to the Mineral Resources Act in section 84(5) so that all exercise of power of sale for resource authorities, including mining tenements under the *Mineral Resources Act 1989,* are administered by the *Property Law Act 1974.*

Part 12 Amendment of State Development and Public Works Organisation Act 1971

Act amended

Clause 629 provides that this part amends the *State Development and Public Works Organisation Act 1971*.

Amendment of s 45 (Application of Coordinator-General's report to proposed mining lease)

Clause 630 is amended to remove the reference to section 47 that is being omitted.

Amendment of s 46 (Coordinator-General's conditions override other conditions)

Clause 631 is amended to remove the reference to section 47 that is being omitted.

Omission of s 47 (Paramountcy of native title issues decision conditions)

Clause 632 omits section 47 of the *State Development and Public Works Organisation Act 1971* as the provision is made redundant as a consequence of removing Schedule 1A from the *Mineral Resources Act 1989*. These provisions relate to native title processes for progressing applications for exploration and mining tenements under the *Mineral Resources Act 1989*, lodged between 18 September 2000 and 31 March 2003 inclusive; and before 18 September 2000, but only if notified for commencement under the Alternative State Provisions. No

future applications will rely on the Alternative State Provisions and there are now less than five mining lease applications that remain subject to these provisions.

Insertion of new pt 9, div 8

Clause 633 inserts a new transitional provision.

Division 8 Transitional provision for Mineral and Energy Resources (Common Provisions) Act 2014

New section 202 Pre-amended Act continues to apply for particular mining leases

Section 202 inserts a savings provision that ensures the Alternative State Provisions continue to apply to the relevant mining lease applications.

Part 13 Amendment of Torres Strait Islander Cultural Heritage Act 2003

Act amended

Clause 634 provides that this part amends the *Torres Strait Islander Cultural Heritage Act 2003*.

Amendment of schedule (Dictionary)

Clause 635 omits the definitions of *native title agreement* and *native title mining provisions* from the Schedule as a consequence of removing Schedule 1A of the *Mineral Resources Act 1989*. These provisions relate to native title processes for progressing applications for exploration and mining tenements under the *Mineral Resources Act 1989*, lodged between 18 September 2000 and 31 March 2003 inclusive; and before 18 September 2000, but only if notified for commencement under the Alternative State Provisions. No future applications will rely on the Alternative State Provisions and the few remaining mining lease applications that remain subject to these provisions will continue to be resolved in accordance with the Alternative State Provisions.

Part 14 Amendment of Mineral Resources Regulation 2013

Regulation amended

Clause 636 amends the Mineral Resources Regulation 2013.

Insertion of new s 38A Returns required for coal seam gas

Clause 637 inserts a new section 38A into chapter 3, part 2 of the Mineral Resources Regulation 2013 to clarify how royalty on coal seam gas produced under the *Mineral Resources Act 1989* is to be accounted for.

Schedule 1 Owners of land

This schedule provides definitions for owners of land as provided by section 12 of the Common Provisions Act.

Schedule 2 Dictionary

This schedule provides definitions for the Act provided by section 8 of the Common Provisions Act.

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