

# Mining and Other Legislation Amendment Bill 2012

## Explanatory Notes

### Short Title of the Bill

The short title of the Bill is the Mining and Other Legislation Amendment Bill 2012.

### Policy objectives and the reasons for them

The Bill amends the following Acts administered by the Minister for Natural Resources and Mines:

- *Mineral Resources Act 1989*
- *Fossicking Act 1994*
- *Petroleum and Gas (Production and Safety) Act 2004*
- *Petroleum Act 1923*
- *Geothermal Energy Act 2010*
- *Greenhouse Gas Storage Act 2009*
- *Mines Legislation (Streamlining) Amendment Act 2012*.

The Bill also amends the:

- *Environmental Protection Act 1994*;
- *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*; and
- *Wild Rivers Act 2005*.

The primary objectives of the Bill are to:

- Amend the *Mineral Resources Act 1989*; *Mines Legislation (Streamlining) Amendment Act 2012*; *Environmental Protection Act 1994* and the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* to reduce red and green tape for small scale miners of opal and gemstones.
- Amend the *Fossicking Act 1994* to remove unnecessary regulatory burden on fossickers.
- Amend the *Petroleum and Gas (Production and Safety) Act 2004* to allow co-location of infrastructure on pipeline licences that will reduce the impact from, and support, petroleum and gas projects.

- Amend 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* to remove potential ambiguity in relation to the definition of occupier.
- Make minor amendments to the *Mines Legislation (Streamlining) Amendment Act 2012* to ensure a consistent approach to prohibited post-grant business transactions and changes of ownership (“dealings”) provisions across all resources legislation.
- Amend the *Mineral Resources Act 1989* to achieve consistency with other resources legislation to standardise statutory roles.
- Amend the *Mineral Resources Act 1989* for future management of the Aurukun bauxite resource project, by clarifying the process for cancelling a mineral development licence or mining lease for the Aurukun bauxite resource project, and entering into an Aurukun agreement with one or more proponents selected by the State.
- Amend the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* to improve the regime of competitive tendering in the *Petroleum and Gas (Production and Safety) Act 2004*, and to introduce a tendering process for exploration permits for coal and a cash bidding component for highly prospective areas into the *Mineral Resources Act 1989*.

### Reasons for the Policy Objectives

#### Small scale mining for opal and gemstones

Under current legislation, small scale mining operations for opal and gemstones that do not fit the scope of a mining claim are left with the only option of the mining lease tenure type. This exposes them to the same regulatory and financial regime faced by large scale mining operations. As a result, there is an undue financial and regulatory burden placed on this industry, given its relatively low risk to the state.

Amendments to the *Mineral Resources Act 1989* and *Mines Legislation (Streamlining) Amendment Act 2012* modify the existing mining claim tenure to allow small scale miners of opal, corundum, gemstones and other precious stones (opal and gemstone miners) on a mining lease, up to 20 hectares in size, to convert to a mining claim (the amendments refer to corundum, gemstones and other precious stones to align with existing convention under the regulations, however these notes include reference to opals for clarity).

For a mining claim for opal and gemstones that has been converted from a lease, or a new mining claim where the area has been decided by the Minister, machine mining will be authorised. The current restrictions on size and use of hand mining on existing mining claims will remain. Applications for this new mining claim for opal and gemstones will also be available. This will allow opal and gemstone miners to take advantage of the simpler administrative processes and lower fees attached to this tenure type. Currently there is no requirement to pay rent on mining claims. By transitioning these mining leases into the mining claim framework, these types of operations would also not be required to pay rent.

The *Environmental Protection Act 1994* and *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* amendments in the Bill will modify the existing licensing framework for mining activities. Eligible small scale opal and gemstone mining operations on a mining claim will not be required to hold an environmental authority. Additionally, eligible small scale exploration activities for minerals other than coal will not be required to hold an environmental authority. Eligibility criteria will limit environmental risk, negating the need for the additional rigour of an environmental authority. Removing the environmental authority requirement will benefit small scale opal and gemstone miners as they will no longer need to make an application, pay annual fees or comply with ongoing administrative requirements.

These reforms will be balanced by requirements to:

- submit a work program every five years;
- comply with a new Small Scale Mining Code under the *Mineral Resources Act 1989*;
- continue providing financial assurance and to rehabilitate disturbed areas through prescribed conditions under the *Environmental Protection Regulation 2008*;
- comply with the general environmental duty; and
- other requirements under the *Environmental Protection Act 1994*.

It is intended that these requirements strike a balance between the relatively low risk of these activities and the need for the state to maintain its mineral resource stewardship responsibility.

By reducing the regulatory burden associated with more intensive mining activity, this package of reforms reduces the financial, administrative and regulatory burden on low risk and low impact small scale mining for opal and gemstone commodities.

#### Reducing regulatory burden for fossickers

Under the existing provisions of the *Fossicking Act 1994* fossickers are required to enter into an Indigenous Land Use Agreement with any determined native title holders for the land before a fossickers licence can be granted. The recent acceleration in the rate of native title determinations handed down by the Federal Court has prompted a reassessment of the interpretation of the *Native Title Act 1993* (Cwlth) with regard to its application to fossicking.

It is considered that fossicking is a hobby and recreational activity and the issue of a fossickers licence does not constitute a right to mine. As such the issue of a fossickers licence is considered a future act which passes the freehold test, and therefore section 24MD (6A) of the *Native Title Act 1993* (Cwlth) should apply. This section provides that any native title holders or registered native title claimants in relation to the land or waters have the same procedural rights as if they instead held ordinary title to the land or waters.

In the case of the *Fossicking Act 1994*, ordinary landowners are not afforded any procedural rights prior to the issue of a fossickers licence. The Bill removes section 11 from the

*Fossicking Act 1994*, so that fossickers will no longer be required to negotiate an Indigenous Land Use Agreement before they can obtain a fossickers licence in respect of determined native title land. The Act currently requires the holder of a fossickers licence to obtain a landowners written consent to enter occupied land for fossicking purposes. The Act is also amended to require that the holder of a fossickers licence also seeks consent from determined native title holders who have been granted native title rights and interests over certain land “to the exclusion of all others”.

These amendments, by recognising the non-commercial nature of fossicking, remove the regulatory burden associated with more intensive commercial activity from fossickers while recognising the rights of holders of exclusive native title rights and interests to grant or refuse consent to fossickers wishing to enter their land.

*Allow co-location of infrastructure and activities on pipeline licences*

Under the current provisions of the *Petroleum and Gas (Production and Safety) Act 2004* petroleum pipeline licence holders are not authorised to construct or conduct other infrastructure or activities (e.g. linear infrastructure like electricity and telecommunication cables) on pipeline land where this infrastructure or activity relates to other petroleum authorities.

The Bill will enable petroleum industry proponents, including Coal Seam Gas-to-Liquefied Natural Gas project proponents (and potentially other sectors that can utilise pipeline licences including conventional petroleum, underground coal gasification and shale gas) to conduct incidental activities for a petroleum facility licence, petroleum lease or another pipeline licence, on pipeline licence land.

Integrating operations in this manner will have the additional benefit of minimising the impact of petroleum activities on landowners, the environment and overlapping tenure holders. In the absence of this proposed amendment, proponents will require separate approvals. Hence the proposal will reduce red tape for the petroleum and gas industries.

To ensure these incidental activities are appropriate for the licence area, approval will be required from the Minister. In the case of existing pipelines, the holder will have to apply to amend the pipeline licence. Should the change in activities result in a change to the compensable effect on the landowner, the holder of the pipeline licence will need to renegotiate their existing agreement with the landowner.

In addition, the *Petroleum and Gas (Production and Safety) Act 2004* was amended by the *Mines Legislation (Streamlining) Amendment Act 2012* to enable Coal Seam Gas water and brine to be transported in “produced water” pipelines (to address the salinity issues of Coal Seam Gas extraction). The Bill makes a minor amendment by removing any doubt that approval of a produced water pipeline is required under another Act if it is not being approved under the *Petroleum and Gas (Production and Safety) Act 2004*.

Removing potential ambiguity over the definition of occupier

Under the land access framework resource companies are required to compensate each owner and occupier of private land or public land in a tenement or authority area where a compensable impact (effect) occurs as a result of resource activities.

An amendment to the "occupier" definition contained in the *Petroleum and Gas (Production and Safety) Act 2004* was passed as part of the *Mines Legislation (Streamlining) Amendment Act 2012* that sought to redress a legislative inconsistency between the *Petroleum and Gas (Production and Safety) Act 2004* and all other resources Acts and brought the definition of occupier into line with all other resources legislation.

The passing of this amendment has resulted in public concerns being expressed about the scope of the definition of "occupier" as amended. This is particularly as it relates to the ability of landholders to access compensation from resource companies where multiple parties are involved in land management and formal business arrangements such as where Family Trusts, Corporations and Partnerships exist.

To remove any doubt and provide certainty to landholders and resource companies, The Bill amends the definition of "occupier" in 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* to:

- provide that an "owner" (freehold title or leaseholder) or person with a "right to occupy under an Act or lease registered under the *Land Title Act 1994*" is able to confer a right to occupy to another person or entity (e.g. children, other family members, family trust) and that this right be recognised as a legitimate "occupier" under the definition and compensation provisions of the Acts; and
- ensure that the definition would enable the recognition of legitimate business arrangements such as Family Trusts, Partnerships, and Companies associated with managing rural businesses on both leasehold and freehold land.

This amendment will resolve community concerns about the potential ambiguity of the definition and will ensure that persons with a legitimate business or residential interest in the land are recognised as occupiers for the purpose of the compensation provisions of the land access framework.

Consistent approach to prohibited post-grant dealings across resource legislation

The *Mines Legislation (Streamlining) Amendment Act 2012* contains amendments to each of the resources Acts to provide consistent provisions to address prohibited post-grant business transactions and changes of ownership ("dealings"). Further consideration of these amendments has determined that the amendments may generate legal uncertainty regarding the validity of third party agreements made under some of the resources legislation.

Minor amendments are made to un-commenced provisions of the *Mines Legislation (Streamlining) Amendment Act 2012* to reduce this uncertainty. This amendment will make it lawful under all resources Acts for holders to deem rights to a third party for part of a tenure (as if they were the holder) without legally transferring ownership for that part of the tenure. The registered holder for that part will still retain legal responsibility despite any such agreements being made.

*Modernisation of statutory roles under the Mineral Resources Act 1989*

The exercise of statutory powers by the mining registrar has created organisational inefficiencies, complicated decision making and is based on district based mining administration that no longer reflects the spatial and economic significance of resource development in Queensland. It also creates an inconsistency between heads of power for decision makers under the *Mineral Resources Act 1989* and the remaining more modern, Queensland resources legislation.

The Bill removes this inconsistency by amending the *Mineral Resources Act 1989* by transferring the powers and functions of the mining registrar to the Minister or chief executive. This change does not make the role of mining registrar redundant; rather, mining registrars will continue to exercise their current functions by way of delegated authority.

In addition, unlike other Queensland resources legislation, the *Mineral Resources Act 1989* uses several variations in terminology to describe officers employed or appointed under the Act to exercise administrative and judicial functions. This complexity and inconsistency with other resources legislation will be amended to enable roles and powers to be distinguished as one position title referred to as an "authorised officer".

*Aurukun Resource Area*

There is currently some doubt as to whether the provisions of Parts 6A and 7AAA of the *Mineral Resources Act 1989* are intended to apply once only or to any preferred developer selected by the State at a point in time.

The Explanatory Notes and second reading speech for the *Mineral Resources and other Legislation Amendment Bill 2006* specifically refer to the bidding process under which a preferred bidder for the Aurukun bauxite resource was selected. This creates doubt as to whether these provisions would apply to a new Aurukun proponent selected from a subsequent tender process.

Given the vast area of the Aurukun bauxite resource it is possible that, following the completion of a tender process, the State may select more than one proponent to develop different parts of the Aurukun bauxite resource area. Each successful proponent would have a separate Aurukun agreement with the State applying to different parts of the resource. It is unclear whether the legislation as currently drafted allows for the state to contract with multiple proponents.

Therefore, the Bill seeks to amend the *Mineral Resources Act 1989* to make provision for multiple Aurukun agreements and clarify the process for cancellation of a mineral development licence and mining lease for the Aurukun bauxite resource project.

#### Competitive Tendering Process

Under the *Mineral Resources Act 1989* exploration permit applications are processed over the counter on a first lodged first serve basis. While exploration permits for coal are processed through this over the counter process, they can only be applied for over land that is made available once the Minister releases land held under Restricted Area 394 which was declared to enable Government to strategically manage coal exploration.

A competitive tendering process would allow the State to assess and compare the capabilities of a range of applicants; ensuring land is allocated to the holder most likely to facilitate geological exploration. The Bill will improve the strategic management of coal exploration as introduction of a controlled release of land would allow the Government to identify and assess the suitability of areas before they are released. The Bill also provides the option for this competitive process to be applied to the allocation of exploration permits for minerals (other than coal).

The implementation of a cash bidding component to the competitive tendering process for potentially highly prospective coal, and petroleum and gas areas would ensure the Queensland community receives a more appropriate return from these resources, reflective of their in-ground value. There will continue to be regular land releases for under-explored areas of the State without a cash bidding component to support junior explorers.

Whilst a competitive tendering process is possible under the existing *Petroleum and Gas (Production and Safety) Act 2004*, the first tender round for petroleum and gas has highlighted a number of shortcomings in the legislative framework. Minor amendments to the framework in the *Petroleum and Gas (Production and Safety) Act 2004* are sought to allow a more effective commercial tender process to be applied to future releases.

### **Achievement of policy objectives**

The small scale mining red and green tape reduction policy objectives will be achieved through amendments to the *Mineral Resources Act 1989*, the *Environmental Protection Act 1994* the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* and the *Mines Legislation (Streamlining) Amendment Act 2012*.

The reduction in regulatory burden for fossickers will be achieved through amendments to the *Fossicking Act 1994*.

The provision of flexibility in pipeline licences that will reduce impact on landowners and support petroleum and gas proponents will be achieved through amendments to the *Petroleum and Gas (Production and Safety) Act 2004*.

The potential ambiguity of the use of the term "occupier" has been removed through amendments to 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*.

A consistent approach to prohibited post-grant dealings provisions across resource legislation has been achieved through amendments to the *Mines Legislation (Streamlining) Amendment Act 2012*.

Modernisation of statutory roles in mining tenure administration has been achieved through amendments to the *Mineral Resources Act 1989*.

The future management of the Aurukun bauxite resource project will be clarified by amendments to the *Mineral Resources Act 1989*.

Improvements and extension of the competitive tendering process for exploration permits for petroleum, gas and coal will be achieved through amendments to the *Petroleum and Gas (Production and Safety) Act 2004* and *Mineral Resources Act 1989*.

### **Alternative ways of achieving policy objectives**

As the Bill addresses the regulatory burden, inconsistencies and uncertainty already in primary legislation they could not have been addressed without changes to legislation. Three legislative options were considered to achieve the policy objectives:

Option 1: Act decisively to amend the legislation to remedy the issues listed in a single Bill. This is the preferred option.

Option 2: Whilst each Act could have been amended individually, this would be a time consuming process and a far simpler option is to include all amendments in one Bill.

Option 3: Do nothing. This is not appropriate because the amendments are necessary to reduce the regulatory burden on industry and government, ensure a consistent and modern approach to regulation and to remove doubt over certain provisions.

The amendment of Part 6A and 7AAA of the *Mineral Resources Act 1989* is the only way to provide the legislative clarity needed for the management of the Aurukun bauxite resource project.

Amendments of the *Mineral Resources Act 1989* are considered necessary to allow a competitive tendering process to be implemented for coal exploration.



## **Estimated costs for government implementation**

The estimated total cost of the small scale mining reforms in lost revenue to the state will be in the area of \$800,000 – \$1,400,000 per annum as a result of red and green tape reduction initiatives. There will also be an additional labour cost to process applications to convert mining leases and notices to cancel environmental authorities relating to small scale mining activities. This will be absorbed using existing departmental resources, however it is expected that reduced interactions with the government over the long term will offset short-term additional processing burden for government.

The administrative budget for the competitive tendering process is \$5 million annually.

## **Consistency with Fundamental Legislative Principles**

While the provisions of the Bill are generally in accordance with the standards required under the *Legislative Standards Act 1992*, issues concerning conformity with fundamental legislative principles may be raised in relation to the following provisions of the Bill.

***s 4(3)(b) and subsection 4(3)(g) Legislative Standards Act 1992 (b) “is consistent with principles of natural justice” and “does not adversely affect rights and liberties, or impose obligations, retrospectively”.***

Clause 95 amends the *Mineral Resources Act 1989* to limit who may object to a mining claim and who may have the matter heard in the Land Court. Prior to the amendment the *Mineral Resources Act 1989* referred to “an entity” (no definition of this is provided in the Act), the amendments limit right of appeal to land owners and local government.

This narrows the scope of those that may previously have been able to object to the Land Court in regard to a particular mining claim application. As such this may affect the rights and liberties of those entities.

By limiting objections and appeals to directly impacted entities at the earlier stage is considered justified as it balances the rights of direct and indirectly impacted entities and the financial and administrative costs associated with the regulatory burden. In the majority of cases, objections to small mining operations are lodged by the landowner only.

***s 4(4)(a) and (b) of the Legislative Standards Act 1992 “allows the delegation of legislative power only in appropriate cases and to appropriate persons” and “sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly”.***

Clause 134 adds provisions to the *Mineral Resources Act 1989* that provides for a regulation to apply a code for managing the impacts of small scale mining activities carried out under a mining claim or an exploration permit. Under this provision mandatory conditions which will

apply to holders of mining claims and exploration permits are proposed. Under the *Mineral Resources Act 1989*, non-compliance with a mandatory condition may lead to cancellation of the claim or permit, or a penalty.

It is noted that potential sanctions for non-compliance are significant, and mandatory conditions will be stated in a regulation as opposed to being stated only in a document prepared by the department. This will ensure that the exercise of delegated legislative power is subject to the scrutiny of the Legislative Assembly. This framework is consistent with the existing Land Access Code under the *Mineral Resources Act 1989*.

## Consultation

### 1. *General consultation on small scale mining, pipeline licence incidental activities and occupier issue*

Peak industry representative bodies, including the Queensland Resources Council, Association of Mining and Exploration Companies and Australian Petroleum Production and Exploration Association, have been consulted on the amendments. Feedback was supportive. Government consulted with relevant local governments and community representatives, including the Local Government Association of Queensland, AgForce and the Queensland Farmers' Federation on the amendments. The Environmental Defenders Office and the Queensland Conservation Council were also consulted. Government also consulted with the Gasfields Commission on pipeline licence incidental activity amendments. The Gasfields Commission supports the amendments.

### 2. *Small Scale Mining Associations*

In addition, the government facilitated a workshop with various small scale mining associations in August 2012 to collaboratively identify potential reforms to reduce the regulatory and financial burden on the small scale mining sector and agree on those reforms that could be immediately implemented to deliver regulatory and financial relief to small scale miners.

Small scale mining representative bodies involved in the workshop included the North Queensland Miners Association, the Queensland Sapphire Producers Association, Quilpie Opal Miners Association, Yowah Opal Miners Community Services Association, the Queensland Boulder Opal Association and the Queensland Small Mining Council.

In general, small scale mining associations support the amendments, although some small scale mining representatives identified additional reforms for the broader small scale mining sector that would require further consideration and are not included in the reforms proposed in the Bill.

### 3. *Fossicking and native title*

Government has consulted with Aboriginal Representative Bodies and Land Councils on amendments to remove Indigenous Land Use Agreement requirements from the *Fossicking Act 1994*. Some Aboriginal Representative Bodies and Land Councils raised concerns

regarding removal of native title holder involvement in the grant process for fossicking licences and the right of native title holders to give consent to access land. These concerns were taken into account when finalising these amendments.

## **Consistency with legislation of other jurisdictions**

### *1. Small scale miners*

Each jurisdiction has different approaches to managing small scale mining operations. Western Australia issues general purpose leases for 21 years for areas not exceeding 10 hectares under the *Mining Act 1978* (WA). New South Wales, under the *Mining Act 1992* (NSW) issues mineral claims for five years not exceeding two hectares. Victoria issues a non-renewable prospecting licence where mining is authorised over a maximum area of five hectares under the *Mineral Resources (Sustainable Development) Act 1992* (Vic).

There is no consistent approach nor is there any specific identified merit in deviating from the existing mining claim tenure already established under the *Mineral Resources Act 1989*. In comparison it is proposed mining claims for opal and gemstones in Queensland will now be issued for 10 years up to 20 hectares, with work programs submitted every five years.

### *2. Modernising the role of the mining registrar*

Western Australia (*Mining Act 1978*), New South Wales (*Mining Act 1992*) and South Australia (*Mining Act 1971*) all have statutory mining registrar roles similar to that which is currently operating in Queensland.

However; Victoria (*Mineral Resources (Sustainable Development) Act 1990*) and the Northern Territory (*Mineral Titles Act 2010*) do not have a statutory mining registrar and Tasmania (*Mineral Resources Development Act 1995*) has a "registrar of mines" which holds a traditional registrar role concerned mainly with lodgement and notification functions, keeping of the register and minor related powers. These later states place major decision making powers with the Minister and all other powers or functions primarily with the head of their respective mining departments.

### *3. Incidental activities on petroleum pipeline licences*

The construction and operation of petroleum pipelines in Western Australia are covered by the *Petroleum Pipelines Act 1969*. Section 19 of this Act details the taking of land or easement over land for the purposes of or incidental to construction or operation of petroleum pipelines.

The same can be said for New South Wales where section 61 of the *Pipelines Act 1967* allows for the creation of easements in favour of licensees for the purpose of the construction and use of a pipeline or for any purpose incidental to any of those purposes.

Neither jurisdiction has specifically addressed the matter of legislating for the integration of infrastructure associated with petroleum production tenements.

#### *4. Fossicking and Native Title*

Under section 12(6) of the *Mining Act 1992* (NSW), where native title rights and interests in land or waters have been determined to exist under the *Native Title Act 1993* (Cwlth), before a person carries out fossicking activities they must first obtain the permission of the relevant registered native title body before entering the land. This does not relate to s.24MD which refers to procedural rights **prior to grant** of the licence. This is actually more in line with the proposed addition of section 27(1)(d) to the *Fossicking Act 1994* which will require the licence holder to seek permission for entry to certain land where there has been a determination of native title rights and interests “to the exclusion of all others”.

In Western Australia, fossicking (along with prospecting) is classed as a Miners’ Right. This state has not legislated for the granting of fossicking activities on areas where there is a determination of the existence of native title.

#### *5. Competitive Tendering Process*

In New South Wales, a competitive tender process (via cash and non cash) with an additional option for direct allocation is applied to exploration rights for coal. The amendments to the resources legislation to support competitive tendering do not include this direct allocation option. This is to eliminate any perception that the process of allocation of exploration rights could be corrupted.

## Notes on Provisions

### **Part 1                      Preliminary**

#### **Division 1                Short Title**

*Clause 1* establishes the short title of the Act as the *Mining and Other Legislation Amendment Act 2012*.

#### **Commencement**

*Clause 2* provides that part 2, part 4 (other than sections 22, 25 and 28), part 7 division 3, part 10 division 3, part 12 and Schedule 1 of the Act commence by proclamation.

### **Part 2                      Amendment of Environmental Protection Act 1994**

#### **Act amended**

*Clause 3* provides that this part amends the *Environmental Protection Act 1994*.

#### **Insertion of new ch 13, pt 19**

*Clause 4* inserts a new part 19 into Chapter 13 to provide transitional provisions for this Bill.

### **‘Part 19                    Transitional provision for the Mining and Other Legislation Amendment Act 2012**

#### **‘711                        Provision about financial assurance**

This provision ensures that any financial assurance for an environmental authority held by the administering authority before the commencement of this section can be taken to be financial assurance if the activity carried out under the environmental authority becomes a small scale mining activity after commencement. The section applies if the holder of the authority asks for the authority to be cancelled and a prescribed condition under the regulation requires financial assurance for the small scale mining activity.

The provisions also allow adjustments to be made to the financial assurance held to ensure that the amount held complies with the amount required by a prescribed condition. If more

financial assurance is held than required by a prescribed condition, the administering authority must return the excess amount. If less financial assurance is held than required by a prescribed condition, the holder of a small scale mining tenement must give the administering authority the additional amount required to comply with the prescribed condition.

## **Part 3                      Amendment of Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012**

### **Act amended**

*Clause 5* provides that this part amends the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

### **Insertion of new s 4AA**

*Clause 6* inserts a new section 4AA into the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

### **‘4AA Insertion of new ch 1, pt 3, div 2, sdiv 6**

#### **‘Subdivision 6            Prescribed conditions**

#### **‘21A                        Meaning of *prescribed condition***

This section inserts a new section 21A into the *Environmental Protection Act 1994* to provide a meaning of prescribed condition. A prescribed condition is a condition prescribed under a regulation for carrying out a small scale mining activity.

Because an environmental authority will not be required for a small scale mining activity, the prescribed conditions provide an alternative way of imposing certain requirements such as rehabilitation and financial assurance on small scale mining activities. These types of requirements are considered necessary as they protect the land owner and land underlying a mining tenure.

Without limiting what a prescribed condition may apply to, the section provides that a prescribed condition may require financial assurance of an amount prescribed in the regulation prior to carrying out a small scale mining activity. The financial assurance is provided as security for compliance with other prescribed conditions for carrying out the small scale mining activity and costs or expenses mentioned in section 298 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, which include, for example, costs or expenses incurred by the administering authority



authority, so the retention of the balance of the annual fee will cover the administrative processing costs.

The cancellation process is intended to be a simple self-assessment process. If the applicant is eligible to provide a notice to cancel their environmental authority, the environmental authority is automatically cancelled by the chief executive. The holder of the environmental authority may seek advice from the Department about the criteria for a small scale mining activity; however it is their responsibility to undertake a self-assessment and make their own determination about whether they meet the criteria for a small scale mining activity and provide the notice of cancellation accordingly. There is no requirement for the chief executive to validate that the activity is a small scale mining activity prior to cancelling the environmental authority.

If the holder of the environmental authority falsely submits a notice to cancel the environmental authority and they are not a small scale mining activity, the operator is subject to a number of offences under the Act. Example of offences that would apply include operating an environmentally relevant activity without an environmental authority (section 426) and providing false or misleading documents (section 480).

The heading of section 292 is being amended to clarify that the section applies to giving financial assurance for an environmental authority.

In relation to section 293, a number of minor amendments are being made to ensure that the provisions relating to the giving of financial assurance apply before acting under both an environmental authority and small scale mining tenure if a prescribed condition requires the giving of financial assurance for a small scale mining activity.

The heading of chapter 5, part 12, division 2, subdivision 2 is being amended to clarify that the subsection applies to financial assurance for environmental authorities.

In relation to section 297, the heading of section 297 is being amended to reflect that more than one definition applies to subdivision 3, and a definition of small scale mining tenure is being added.

In relation to section 298, the section is being consequentially amended to ensure that the provisions of the subdivision dealing with claiming or realising financial assurance also apply in the circumstances where financial assurance has been given for a small scale mining tenure.

In relation to section 302, the existing section is being omitted and replaced with a new section 302.



## **'302                      Who may apply**

This new section provides separate processes for amending and discharging financial assurance for an environmental authority and a small scale mining tenure. This is to clarify that the amendment process does not apply to a small scale mining tenure because the amount of financial assurance for a small scale mining tenure is determined by a prescribed condition, which will be prescribed in the regulation.

In relation to section 303, a minor consequential amendment is being made to align a subsection number with amendments made to section 302.

In relation to section 304, consequential amendments are being made so that the provisions allowing the administering authority to require a compliance statement, before deciding an application to discharge financial assurance, also apply to a small scale mining activity. The compliance statement must state the extent to which the activities have complied with the prescribed conditions for the small scale mining activities.

In relation to section 305, consequential amendments are being made so that if a tenure relating to a small scale mining activity is being transferred, a decision on an application to discharge the financial assurance by the holder of the tenure may be withheld until financial assurance has been given by the new holder of the tenure.

In relation to section 306, consequential amendments are being made so that the powers of the administering authority to require a change to financial assurance also apply to a small scale mining tenure for which financial assurance has been given. This power is to ensure the amount of the financial assurance is in compliance with a prescribed condition about financial assurance for the tenure.

## **'Subdivision 6            Directions about rehabilitation**

### **'307A                      Direction to carry out rehabilitation may be given for small scale mining tenure**

A new section 307A is being inserted so that if the administering authority decides to refuse an application to discharge financial assurance for a small scale mining activity, the administering authority may give the holder of the small scale mining tenure a written direction to carry out rehabilitation within a stated reasonable period. This is required because the discharge of the financial assurance is only refused when rehabilitation requirements have not been met. The direction must be given to the holder with the notice of refusal required under section 305(1)(b) and the notice of refusal must also include an information notice about the decision to give the direction.

### **Amendment of s 12 (Amendment of s 330 (What is a transitional environmental program))**

*Clause 8* amends section 12 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends section 330 of the *Environmental Protection Act 1994* so that a transitional environmental program can detail the transition of an activity to comply with a prescribed condition for carrying out a small scale mining activity.

### **Amendment of s 13 (Amendment of s 331 (Content of program))**

*Clause 9* amends section 13 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends section 331 of the *Environmental Protection Act 1994* so that the content of a transitional environmental program can relate to an activity transitioning to comply with a prescribed condition for carrying out a small scale mining activity.

### **Amendment of s 14 (Amendment of s 332 (Administering authority may require draft program))**

*Clause 10* amends section 14 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends section 332 of the *Environmental Protection Act 1994* so that the administering authority may require a person or public authority to prepare a draft transitional environmental program and submit it for approval if a prescribed condition for carrying out a small scale mining activity is, or has been, contravened.

### **Amendment of s 23 (Amendment of s 346 (Effect of compliance with program))**

*Clause 11* amends section 23 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends section 346 of the *Environmental Protection Act 1994* so that a person complying with an approved transitional environmental program may do, or not do, the thing under the program, despite anything in a prescribed condition for carrying out a small scale mining activity.

### **Amendment of s 25 (Amendment of s 358 (When order may be issued))**

*Clause 12* amends section 25 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends section 358 of the *Environmental Protection Act 1994* so that the administering authority may issue an environmental

protection order to a person to secure compliance with a prescribed condition for carrying out a small scale mining activity.

### **Amendment of s 30 (Replacement of s 426 (Environmental authority required for mining activity))**

*Clause 13* amends section 30 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends section 426 of the *Environmental Protection Act 1994* so that the offence for carrying out an environmentally relevant activity without an environmental authority does not apply to a person carrying out a small scale mining activity.

### **Amendment of s 35 (Replacement of s 435A (Offence to contravene standard environmental conditions))**

*Clause 14* amends section 35 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends section 435A of the *Environmental Protection Act 1994* so that the offences for contravening prescribed conditions apply if a person is carrying out a small scale mining activity and contravening a prescribed condition that is in effect for the activity.

### **Amendment of s 36 (Amendment of s 452 (Entry of place – general))**

*Clause 15* amends section 36 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends section 452 of the *Environmental Protection Act 1994* so that an authorised person has powers to enter a place if it is a place to which a prescribed condition for a small scale mining activity relates and the other conditions of entry as outlined in the section are satisfied.

### **Amendment of s 37 (Amendment of s 458 (Order to enter land to conduct investigation or conduct work))**

*Clause 16* amends section 37 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends section 458 of the *Environmental Protection Act 1994* so that an authorised person may apply to a magistrate for an order to enter land to carry out work on the land to secure compliance with a prescribed condition for a small scale mining activity.

### **Amendment of s 38 (Amendment of s 493A (When environmental harm or related acts are unlawful))**

*Clause 17* amends section 38 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends section 493A of the *Environmental*

*Protection Act 1994* so that environmental harm or related acts are unlawful unless it is authorised to be done under a prescribed condition for a small scale mining activity.

### **Amendment of s 60 (Insertion of new ch 13, pt 18)**

*Clause 18* amends section 60 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which inserts a new part 18 into chapter 13 of the *Environmental Protection Act 1994*, including a table of references to former terms that may, if the context permits, be taken to a reference to a term being introduced through this Bill. Item 13, column 2 is being updated to include reference to a small scale mining activity.

### **Amendment of s 61 (Amendment of sch 2 (Original decisions))**

*Clause 19* amends section 61 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends schedule 2 of *Environmental Protection Act 1994*. The amendment updates the list of original decisions to include a decision under section 301(1), 305(1), 306(1). These relate to decisions about claiming or realising financial assurance, discharging financial assurance and changing the amounts of financial assurance with respect to a prescribed condition for a small scale mining activity.

### **Amendment of s 62 (Amendment of sch 4 (Dictionary))**

*Clause 20* amends section 62 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends the Dictionary in Schedule 4 of the *Environmental Protection Act 1994* to insert the definitions of “riverine area” and “watercourse” which have been relocated from the *Environmental Protection Regulation 2008* and new definitions of “a prescribed condition”, “small scale mining activity” and “small scale mining tenure”.

The definition of small scale mining activity contains a number of criteria that must be met for the activity to be classified as a small scale mining activity and be eligible to operate without an environmental authority. If one or more criteria are not met, the activity is cannot be a small scale mining activity and an environmental authority is required. The criteria limit the exemption to activities that have a lower risk and are generally based on the criteria already in the *Environmental Protection Regulation 2008* applying to lower risk, level 2 mining activities.

Small scale mining activities are limited to mining activities that are carried out under a mining claim, exploration permit and prospecting permit and that meet the additional criteria specified for each type of tenure under the definition.

In relation to mining claims, only mining activities associated with opals, gemstones, corundum and other precious stones will be eligible to operate as a small scale mining

activity if the area of the claim does not exceed 20 hectares and the following additional criteria are also met:

- (i) it does not, or will not, at any time cause more than 5ha of land to be significantly disturbed; and
- (ii) it is not, or will not be, carried out in a wild river area or on strategic cropping land or potential SCL under the *Strategic Cropping Land Act 2011*; and
- (iii) it is not, or will not be, carried out in a watercourse or riverine area; and
- (iv) it is not, or will not be, carried out in or within 1km of an area that, under a regulation, is a category A environmentally sensitive area; and
- (v) it is not, or will not, be carried out in or within 500m of an area that, under a regulation, is a category B environmentally sensitive area; and
- (vi) it is not, or will not, be carried out in an area prescribed under a regulation as a designated environmental area for this definition; and
- (vii) it is not, or will not be, carried out as part of a petroleum activity or a prescribed ERA for which there is an aggregate environmental score prescribed under a regulation; and
- (viii) it is not, or will not be, carried out by more than 20 persons at any one time; and
- (ix) it does not, or will not, at any time cause more than 5000m<sup>2</sup> of land to be disturbed at a camp site.

In relation to exploration permits, only exploration activities associated with minerals other than coal will be eligible to operate as a small scale mining activity if the area of the permit does not exceed 4 sub-blocks and the following additional criteria are also met:

- (i) it is not, or will not be, carried out in a wild river area or on strategic cropping land or potential SCL under the *Strategic Cropping Land Act 2011*; and
- (ii) it is not, or will not be, carried out in a watercourse or riverine area; and
- (iii) it is not, or will not be, carried out in or within 1km of an area that, under a regulation, is a category A environmentally sensitive area; and
- (iv) it is not, or will not be, carried out in or within 500m of an area that, under a regulation, is a category B environmentally sensitive area; and
- (v) it is not, or will not be, carried out in an area prescribed under a regulation as a designated environmental area for this definition; and
- (vi) it is not, or will not be, carried out as part of a petroleum activity or a prescribed ERA for which prescribed under a regulation; and
- (vii) it does not, or will not, at any time cause more than 1000m<sup>2</sup> of land to be disturbed.

All prospecting permit activities are defined as small scale mining activities, irrespective of the other criteria prescribed under subsections (a) and (b) of the definition of small scale mining activity.

## **Amendment of schedule (Amendment of other Acts))**

*Clause 21* amends the schedule of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which amends other Acts in the manner indicated.

In relation to the *Environmental Protection Act 1994*, item 8, section 320A(2)(f) is being amended so that the duty to notify of environmental harm does not apply to an event authorised under a prescribed condition for carrying out a small scale mining activity.

In relation to the *Mineral Resources Act 1989*, item 1, section 25(5) is being amended so that conditions of prospecting permit must not be imposed, prescribed or varied if the condition, or the condition as varied, is the same, or substantially the same, or inconsistent with, a prescribed condition under the *Environmental Protection Act 1994* for carrying out a small scale mining activity.

In relation to the *Mineral Resources Act 1989*, item 15, section 265(c) is being renumbered to section 265(5)(c).

In relation to the *Mineral Resources Act 1989*, item 19, section 391A(1)(a) is being amended so that the requirement to have an environmental authority prior to making a decision to grant, assign, vary or renew a mining tenement no longer applies if the mining tenement relates to a small scale mining activity.

In relation to the *Mineral Resources Act 1989*, item 20, section 391A(1)(b) is being amended so that the requirement to have an environmental authority prior to making a recommendation to grant, assign, vary or renew a mining tenement no longer applies if the mining tenement relates to a small scale mining activity.

## **Part 4                      Amendment of Fossicking Act 1994**

### **Act amended**

*Clause 22* provides that this part amends the *Fossicking Act 1994*.

### **Amendment of s 3 (Definitions)**

*Clause 23* provides that some now redundant definitions are omitted, some new definitions are inserted into the Act and an existing definition amended so that there is consistency with the *Mineral Resources Act 1989* in relation to regulatory officers.

### **Amendment of s 8 (Meaning of expressions used in this and other Acts)**

*Clause 24* omits a number of redundant expressions from the section to reflect the change in decision maker.

### **Omission of s 11 (Act's application if approved determination of native title)**

*Clause 25* omits section 11 and its requirements for an indigenous land use agreement to consent to fossicking over registered native title land.

### **Amendment of s 22 (Suspension and cancellation of licences—procedures)**

*Clause 26* amends section 22 to transfer the power of the mining registrar to the chief executive for the procedures for suspension and cancellation of a fossicking licence.

### **Amendment of s 23 (Return of licence)**

*Clause 27* amends section 22 to transfer the power of the mining registrar to the chief executive for the procedures for suspension and cancellation of a fossicking licence.

### **Amendment of s 27 (Licensee must get permission to fossick on occupied land etc.)**

*Clause 28* amends section 27 by inserting a new subsection providing that the holder of a fossicking licence must not fossick on land where there has been an approved determination of native title under the *Native Title Act 1993* (Cwlth) that confers possession of the land on native title holders to the exclusion of all others, without first obtaining the written permission of the native title holders for the determination.

The effect of this new requirement is that holders of exclusive possession native title are treated no differently to freehold owners.

A further amendment to subsection 27(3) provides that if the native title holder seeks to withdraw the permission, the permitter must give a licensee on the land reasonable written notice of its withdrawal.

A definition of the term “exclusive possession determination” is provided in subsection 27(6).

### **Amendment of s 28 (General permissions)**

*Clause 29* amends section 28 by replacing the mining registrar with the chief executive as the officer with whom a person gives general permission for fossicking on particular land.

### **Amendment of s 33 (Records of land mentioned in general permission to be kept)**

*Clause 30* amends section 33 by replacing the mining registrar with chief executive as the officer responsible for keeping records of general permissions and changes the place where the records of land mentioned in general permission is made available, from the mining registrar's office to places the chief executive considers appropriate.

### **Amendment of s 53 (Management plans)**

*Clause 31* amends section 53 by providing that the final management plan is available for inspection at places the chief executive considers appropriate rather than the mining registrar's office.

### **Amendment of s 56 (living on designated fossicking land and fossicking areas)**

*Clause 32* amends section 56 by replacing the mining registrar with chief executive as the officer whom a person must seek permission to live on designated fossicking land or a fossicking area.

### **Amendment of s 99 (Appeals to Land Court)**

*Clause 33* amends section 99 by replacing the mining registrar with chief executive as the officer whose decision to suspend or cancel a licence, a licensee may appeal against.

### **Amendment of s 100 (Starting appeal)**

*Clause 34* amends section 100 by replacing the mining registrar with the chief executive as the officer who is responsible for procedural matters when a licensee starts an appeal.

Subsection 100(2) is omitted, and the remaining subsections are re-numbered.

### **Amendment of s 102 (Hearing procedures)**

*Clause 35* amends section 102 by replacing the mining registrar with the chief executive as the decision that does not affect the rehearing of an appeal.



### **Amendment of s 103 (Powers of Land Court on appeal)**

*Clause 36* amends section 103 by replacing references to the mining registrar in section 103 with the chief executive as the decision the Land Court may set aside. In making that decision, the Land Court has the same powers as the original decider and their decision is substituted by the Land Court.

### **Amendment of s 106 (Protection against liability)**

*Clause 37* amends section 106 by replacing the mining registrar with the chief executive as the person who is protected against civil liability.

### **Amendment of pt 9, hdg (Repeal and transitional provisions)**

*Clause 38* amends the heading of part 9 to refer to transitional provisions preceding the *Mining and Other Legislation Amendment Act 2012*.

### **Insertion of new part 10**

*Clause 39* inserts a new part 10 after section 120.

## **‘Part 10 Transitional provisions for Mining and Other Legislation Amendment Act 2012**

### **‘121 Definitions for pt 10**

New section 121 provides that “*commencement*” means the day that this part commences and “*mining registrar*” means a mining registrar under the *Mineral Resources Act 1989* as in force before the commencement.

### **‘122 Continuing effect of general permissions**

New section 122 provides that a general permission in effect immediately before the commencement continues as a general permission under this Act after the commencement, and is subject to the same conditions as those in effect for the permission immediately before the commencement.

### **‘123 Continuing effect of permissions under s 56**

New section 123 provides that a permission of a mining registrar given for a person to live on designated fossicking land or fossicking area under section 56 and in effect immediately before the commencement continues as if it were a permission given by the chief executive

under section 56 as in force after the commencement, and is subject to the same conditions as those in effect for the permission immediately before the commencement.

## **‘124 Appeals**

New section 124 applies where a person has appealed a decision of a mining registrar to the Land Court before the commencement, and the appeal has not been decided.

The Land Court must hear or continue to hear, and decide the appeal under this Act in force after the commencement.

Where a person could have appealed to the Land Court against a decision of a mining registrar immediately before commencement, and had not, they may appeal and the Land Court must decide the appeal under this Act as in force after the commencement, and the decision appealed against is taken to be a decision of the chief executive.

## **Part 5 Amendment of Geothermal Energy Act 2010**

### **Act amended**

*Clause 40* provides that this part amends the *Geothermal Energy Act 2010*.

### **Amendment of s 385 (Regulation-making power)**

*Clause 41* renumbers sections 385(2)(f) to 385(2)(ab) and relocates them to after section 385(2)(aa). This is a regulation-making power about lodgement of hard copies of documents and is being moved so that it is within the same area as other similar regulation making powers about lodgement are stated. These regulation making powers were introduced by the *Mines Legislation (Streamlining) Amendment Act 2012* and are being rearranged for consistency with similar provisions in other Queensland resources legislation.

### **Amendment of sch 2 (Dictionary)**

*Clause 42* amends the definition of "occupier" to achieve consistency across all the resource Acts. The new definition clarifies the definition of occupier as meaning a person who has a right to occupy land arising under an Act (such as freehold or leasehold title), a lease registered under the *Land Titles Act 1994* or as of right, conferred by a person who has a right to occupy the land. The purpose of this amendment is to ensure that a person with a legitimate business or residential interest in land is recognised as an occupier for the purposes of compensation provisions of the land access framework.

## **Part 6                      Amendment of Greenhouse Gas Storage Act 2009**

### **Act amended**

*Clause 43* provides that this part amends the *Greenhouse Gas Storage Act 2009*.

### **Amendment of sch 2 (Dictionary)**

*Clause 44* amends the definition of "occupier" to achieve consistency across all the resource Acts. The new definition clarifies the definition of occupier as meaning a person who has a right to occupy land arising under an Act (such as freehold or leasehold title), a lease registered under the *Land Titles Act 1994* or as of right, conferred by a person who holds a right to occupy the land. The purpose of this amendment is to ensure that a person with a legitimate business or residential interest in land is recognised as an occupier for the purposes of compensation provisions of the land access framework.

## **Part 7                      Amendment of Mineral Resources Act 1989**

### **Division 1              Preliminary Act Amended**

*Clause 45* provides that this part amends the *Mineral Resources Act 1989*. The clause also inserts a note referring to amendments in Schedule 1.

### **Division 2              Amendments commencing on assent**

#### **Amendment of S 10AA (Joint holders of mining tenement)**

*Clause 46* amends subsection 10AA (2)(c) to provide for the grant of a mining tenement or approval.

#### **Insertion of new pt 5, div 1 hdg**

*Clause 47* Inserts a new heading for part 5 division 1 before section 126.

### **'Division 1              Preliminary'**

## **Insertion of new pt 5, div 2, hdg and s 130A**

*Clause 48* inserts a heading for new Division 2 after section 130, dealing with obtaining exploration permits for minerals other than coal.

### **‘Division 2                    Obtaining exploration permit for a mineral other than coal**

#### **‘130A                            Application of div 2**

New section 130A provides that this division applies to exploration permits for minerals other than coal. This clarifies that under the reformed framework for the allocation of exploration rights, only exploration permits for minerals other than coal can be released through an application process.

### **Amendment of s 131 (who may apply)**

*Clause 49* inserts a new subsection 131(2), which provides that an application for an exploration permit cannot be made for an area that is the subject of a call for tenders for an Exploration Permit (non-coal) i.e. for an area that the Minister has already moved to release via a competitive tender process. This clarifies the interplay between the two processes by which exploration permits for minerals other than coal may be allocated; via an application process or if the Minister considers it in the State’s best interests, via a competitive tender process (refer to section 136A).

## **Insertion of new ss 136 and 136A, pt 5, div 3 and pt 5, div 4, hdg**

*Clause 50* inserts new sections 136 and 136A. It then inserts a new heading to part 5 division 3 and part 5 division 4 before section 137.

### **‘136                                Grant of exploration permit on application**

New section 136 provides that the Minister may, for an application for an exploration permit made under this division, either grant an exploration permit with or without conditions, or refuse the application. The Minister cannot grant an exploration permit unless the Minister is satisfied that the prescribed criteria for the grant of the permit are met. These provisions are in keeping with the previous requirements placed on the Minister when granting an exploration permit on application, however now only apply to exploration permits for minerals other than coal.

**‘136A                      Obtaining exploration permit by competitive tender**

New section 136A allows the Minister to allocate an exploration permit for a mineral other than coal through a competitive tender process if it is considered in the State’s best interests. In these circumstances, the Minister may publish a call for Exploration Permit (non-coal) tenders by publication in a gazette notice. The notice may invite tenders for an exploration permit for minerals other than coal, for 1 or more sub-blocks.

This amendment supports the policy initiative to apply a contemporary stewardship framework for the allocation of exploration rights. It is intended that a competitive tender process would be used for an Exploration Permit (non-coal) in situations such as where an area has been identified as potentially highly prospective or an area is surrounded by environmentally sensitive areas. In these circumstances, the competitive tendering process will allow the Minister to assess which tenderer is best able to explore the land while furthering the interests of the State.

If the Minister considers a competitive tender process appropriate for an exploration permit for a mineral other than coal, the same process that is used for exploration permits for coal will be used. In such a scenario division 3, subdivisions 2 and 3, apply as if a reference to a call for Exploration Permit (coal) tenders were a call for Exploration Permit (non-coal) tenders, and a reference to an exploration permit for coal were a reference to an exploration permit for a mineral other than coal for the sub-blocks the subject of the call, and with any other necessary changes.

**‘Division 3                      Obtaining exploration permit for coal**

**‘Subdivision 1              Preliminary**

**‘136B Application and operation of div 3**

New section 136B states that division 3 applies to exploration permits for coal and outlines the processes available to the Minister for the granting of these permits. Allocation by competitive tender is to be the general process used for exploration permits for coal. This will support the Government’s responsible stewardship objectives for the allocation of areas for coal exploration and development to the most suitable parties. An exploration permit for coal can only be granted under this division.

## **‘Subdivision 2      Competitive tenders**

### **‘136C                      Call for tenders**

The Minister may publish a call for Exploration Permit (coal) tenders by gazette notice, inviting tenders for an exploration permit for coal.

The call must state:

- the proposed area of the permit;
- the closing time (the day and time) by which a tender responding to the call must be made;
- that the tenders must be lodged before the closing time for the call: and
- that details are available at a stated place about any conditions likely to significantly impact on exploration in the proposed area, the period of not more than 5 years for which the proposed program of work for the permit must apply, any special criteria other than prescribed criteria, that are proposed to be used to decide whether to grant the permit or to decide the provisions of the permit, and whether a competitive tender process involving a cash bid is to be used for deciding the preferred tenderer.

New subsection 136C(3) provides that the call may state other relevant matters, for example matters relevant to the special criteria and prescribed criteria. Note that these are examples only and there is no limitation on the other relevant matters that may be included in the call. In the case of a competitive tender that includes a cash bid component, the call may make reference to other land use conflicts that need to be managed by the successful tenderer. This subsection provides the ability for the call to state such matters as necessary.

New subsection 136C(4) provides that the Minister’s powers to decide conditions of the exploration permit are not limited by subsection 136C(2)(d)(i) which provides that the call include information about proposed conditions of the permit that may impact significantly on exploration in the proposed area of the exploration permit. This is to ensure a competitive commercial tendering environment can be achieved through the controlled release process, particularly if a cash bid component is included.

### **‘136D                      Right to tender**

New section 136D provides that an eligible person may tender for an exploration permit by following the requirements in new section 136E. A tender can not be made after the closing time for the call, or for only part of the area of the proposed exploration permit. This is a clarifying section.

### **‘136E Requirement for making tender**

New section 136E requires that a tender for an exploration permit for coal must be in the approved form, must be accompanied by a statement specifying a description of the program of work to be carried out under the authority of the exploration permit if granted and specifying the human, technical and financial resources proposed to be committed to the exploration work during each year of the exploration permit if granted.

The tender must be accompanied by a statement that details the tenderer’s financial and technical resources, which is separate from the statement about the proposed work program.

The tender must be accompanied by a statement about how and when the tenderer proposes 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. The note to this subsection refers to the obligations for consulting with particular owners and occupiers set out in section 140A of the Act.

The tender must also provide proof of the tenderer’s identity, pay any application fee prescribed under regulation and, if the preferred tenderer is to be decided by a competitive tender process involving a cash bid, then the tender must include the tenderer’s cash bid.

These requirements are in keeping with the previous requirements for making an application for an exploration permit for coal. It is important that the same information is requested in the competitive tender process as it was previously to provide certainty to industry that, other than the possible inclusion of a cash bidding component, the content required through the ”application” process is similar.

### **‘136F Right to terminate call for tenders**

New section 136F provides that the Minister may by Gazette notice terminate a call for Exploration Permit (coal) tenders at any time before deciding to grant an exploration permit to a person who has made a tender in response to the call.

If the call is terminated, all tenders made in response to the call lapse.

The State is not liable to make any payment by way of compensation, reimbursement or otherwise to any person for or in connection with the termination of the call. This includes reimbursement for any cost incurred in preparing a tender or progressing a tender as part of competitive tender process for the granting of an exploration permit.

The Minister must refund any amount provided by a person as security for the person’s tender. This will give certainty to tenderers that any bid security is likely to be refunded should the Minister choose to terminate the tender process. This will also provide the





If a tender is withdrawn, under this section the Minister may retain all or part of any tender security given by the tenderer as security for the tender. In normal circumstances, a tenderer who withdraws from the process will forfeit their bid security. It would only be in exceptional circumstances that the Minister would consider allowing any of this bid security to be returned.

### **‘Subdivision 3      Deciding tenders**

#### **‘136I                      Process for deciding tenders**

New section 136I provides that any process the Minister considers appropriate may be used to determine a call for Exploration Permit (coal) tenders. The chosen process will inform the Minister’s action to either grant or refuse the exploration permit, subject to the Minister being satisfied the prescribed criteria are met and any special criteria are considered (as per s136K(2) and (3)). The section includes two examples of the kinds of processes that might be used, but these examples do not limit the Minister’s powers to decide a process. This flexibility is needed to ensure a fair and complete assessment of all tenders for the best possible result. The process to be undertaken would be described in any tender documentation provided to tenderers.

As per subsection (2), as apart of any process used the Minister may also seek further information from a tenderer that the Minister reasonably requires to assess the tender.

#### **‘136J                      Provisions for preferred tenders**

New subsection 136J(1) provides that the Minister may require a preferred tenderer for the call for Exploration Permit (coal) tenders to pay the amounts necessarily incurred, or to be incurred, to enable the exploration permits to be granted, for example amounts required to comply with the *Native Title Act 1993* (Cwlth) part 2, division 3, subdivision P as well as any cash bid amount offered by the preferred tenderer.

The Minister may also require, within a stated reasonable period, the preferred tenderer to pay the rental for the first year of the term of the permit as required under section 138, and to give the security for the permit as required under section 144.

If the preferred tenderer does not comply with the requirements in subsection 136J(1), or does not do all things reasonably necessary to allow an exploration permit for coal to be granted to the tenderer, the Minister may revoke the tenderer’s appointment as the preferred tenderer. Before the Minister moves to revoke a preferred tenderer’s appointment however, the Minister must give the preferred tenderer a reasonable opportunity to provide reasons for, and rectify, the tenderer’s failure to comply with the stated requirements.

If a preferred tenderer's appointment is revoked, the Minister may retain the whole or part of any tender security given by the preferred tenderer. The Minister may also appoint another tenderer to be the preferred tenderer.

These measures seek to strengthen the integrity of the tender process, while accommodating for unforeseen situations where a preferred tenderer may be reasonably inhibited from complying with the requirements under this section.

### **'136K                      Deciding whether to grant exploration permit**

New section 136K provides that after the closing time of the call for Exploration Permit (coal) tenders, the Minister may grant *or* refuse to grant any exploration permit for coal. This decision will be informed by whatever process the Minister has chosen as appropriate under section 136L.

Subsection 136K(2) provides that the Minister can not grant the exploration permit unless the Minister is satisfied that the prescribed criteria for the grant of the permit are met. Subsection 136K(3) provides that the Minister must consider any special criteria for the call in deciding whether to grant an exploration permit or deciding its conditions. These two sub-sections ensure that whatever process is used for deciding a call for tenders, there are consistent criteria that must be fulfilled.

### **'136L                      Notice to unsuccessful tenderers**

New section 136L provides that after a call for Exploration Permit (coal) tenders has been decided, each tenderer not granted the exploration permit must be given a notice of the decision. A note to new subsection 136L(1) refers to section 32 of the *Judicial Review Act 1991*.

New subsection 136L(2) provides that the Minister must refund any tender security given by the unsuccessful tenderer. This will give certainty to tenderers that any bid security provided will be refunded should they be unsuccessful in the tender process. This refund of a security to an unsuccessful tenderer is not applicable if a tenderer has withdrawn their tender or has been disqualified as the preferred tenderer, as per section 136H(4) and 136J(4).

### **'Subdivision 4      Obtaining      exploration      permit      following    surrender**

### **'136M                      Application      for      exploration      permit      for    surrendered exploration permits**

New section 136M outlines the process if a holder of an exploration permit for coal intends to surrender a permit and apply for a new exploration permit for the whole or part of the area of

the exploration permit to be surrendered. This option is available to permit holders to allow for more practical administrative management of any tenure held e.g. if a holder has exploration permits for two adjacent areas and would like to merge the areas to come under one single permit.

These applications for obtaining an exploration permit following surrender will be assessed as if they were an application for an Exploration Permit (non coal) under section 133. Under subsections (4) and (5), the Minister may seek further information from an applicant to assist in the assessment of an application.

**‘136N Grant of exploration permit for surrendered exploration permits**

If an application for an exploration permit has been made under s136M, new section 136N provides that the Minister may either grant an exploration permit with or without conditions, or refuse the application.

The Minister cannot grant an exploration permit unless the Minister is satisfied that the prescribed criteria for the permit are met. The Minister also cannot grant an exploration permit for land if all or any part of the land is in a fossicking area, except if the exploration permit was made, but not decided, before the land became a fossicking area.

If the Minister refuses the application, the Minister must refund an amount provided by the tenderer as security for the application but may decide whether all or part of the application fee be retained.

**‘Division 4 Other provisions about exploration permits’**

**Replacement of s 137 (Grant of exploration permit)**

*Clause 51* replaces the existing section 137 under which exploration permits for both coal and non-coal permits were previously granted.

**‘137 Prescribed criteria for grant of exploration permit**

New section 137 states the prescribed criteria for the grant of an exploration permit under division 2 or 3. These prescribed criteria apply regardless of whether an exploration permit is allocated via an application process, competitive tender process or invitation by the Minister for a specific party to submit an application.

The criteria are that:

- the requirements of the Act have been complied with;
- the applicant is an eligible person and has paid the rental for the first year of the term of the exploration permit under section 138;
- the Minister has approved the program of work that under subsection 137(3) with the application; and
- the Minister is satisfied that the person is not disqualified from being granted the permit under subsection 137(4).

Subsection 137(3) states that in deciding whether to approve the program of work, the Minister must have regard to the extent of proposed activities in the proposed area of the exploration permit, when and where the applicant proposes to carry out exploration activities in the proposed area of the exploration permit, and whether the applicant has the financial and technical capability for carrying out the work.

Subsection 137(4) states that a person, is disqualified from being granted an exploration permit if the Minister reasonably believes that the person has, at any time, contravened a provision of the *Mineral Resources Act 1989*, the repealed Acts or other mining legislation, whether or not the person has been charged with or convicted of an offence for the contravention. This section also applies to the executive officer of a corporation meaning that they are concerned with or take part in the management of the corporation, whether or not the person is a director or has the position of an executive officer.

### **Amendment of s 138 (Rental payable on exploration permit)**

*Clause 52* amends a number of cross-references in section 138 relating to the payment of the first year's rent before the grant of the exploration permit.

### **Amendment of s 141C (Application to vary conditions of existing permit)**

*Clause 53* amends the section so that subsection 141C(2) and subsection 142(3) apply to an exploration permit for coal despite section 130A. This means that applications to vary conditions of existing Exploration Permit (coal) will be assessed as if they were an application for an Exploration Permit (non coal) under section 133.

### **Amendment of s 146 (Initial term of exploration permit)**

*Clause 54* provides an additional requirement that the initial term for an exploration permit granted in response to a call for Exploration Permit (coal) tenders or Exploration Permit (non-coal) tenders must be the same as the required period for the proposed work program for the permit, as stated in the call for tenders.

New sub-sections 146(2) and (3) support the policy intent that a competitive tendering process for the allocation of an exploration permit involves the assessment of legitimate and feasible programs of work from tenderers. As such, a call for tenders will specify a required period for which a tenderer's program of work will have to apply and this required period will be the same as the initial term of the exploration permit when it is granted. This section provides certainty to tenderers that they will be able to and expected to carry out their submitted program of works in response to a call for tenders if they are granted the permit.

### **Relocation and renumbering of s 159 (Abandonment of application for exploration permit)**

*Clause 55* relocates section 159 to part 5, division 2, as inserted by this Act, and renumbers it as section 135.

Section 159 covers the abandonment of an application for an exploration permit. As an application process will only be used for minerals other than coal, the section will be renumbered as section 135 and moved under Division 2 with the other provisions specific to exploration permits for a mineral other than coal.

### **Amendment of s 231A (Application of pts 6 and 6A)**

*Clause 56* amends reference to 'the Aurukun project' to clarify that there may be multiple Aurukun projects.

### **Amendment of s 231B (Only eligible person can apply for and hold mineral development licence (180))**

*Clause 57* clarifies that there may be multiple eligible persons and multiple Aurukun projects.

New subsection 231B(3) clarifies that despite subsection 231B(1), a mineral development licence to which this part applies, may be cancelled under section 231J even though the holder has ceased to be an eligible person.

### **Amendment of s 231G (conditions of mineral development licence (194))**

*Clause 58* clarifies that a mineral development licence to which this part applies, is subject to certain conditions in the Aurukun agreement that is relevant to that mineral development licence. This is in addition to those conditions listed in 231G.

### **Amendment of s 231H (Renewal of licence (179A))**

*Clause 59* amends subsection (1)(a) to clarify that the Minister may renew a mineral development licence if the Minister is satisfied the Aurukun agreement that is relevant to that mineral development licence has not been terminated.

### **Amendment of s 231I (Requirement for assigning or mortgaging mineral development licences (198))**

*Clause 60* amends subsection (2) to clarify that approval or consent to assign or mortgage a mineral development licence or interest in a mineral development licence is required under the Aurukun agreement that is relevant to that mineral development licence.

### **Amendment of s 231J (Contravention by holder of mineral development licence (209))**

*Clause 61* amends section 231J to clarify that the Minister may cancel the mineral development licence if the Aurukun agreement that is relevant to that licence has been terminated.

### **Amendment of s 318AAA (Application of pts 7 and 7AAA)**

*Clause 62* clarifies that the State may enter into multiple Aurukun agreements for multiple Aurukun projects

Subclause 2 inserts a new subsection that clarifies that this part applies to a mining lease under section 234 for a purpose mentioned in section 234(1)(a) or section 234(1)(b) and a mining lease under section 316 for the transportation of a thing.

### **Amendment of s 318AAB (Only eligible person can apply for and hold mining lease (233))**

*Clause 63* clarifies that there may be multiple eligible persons and multiple Aurukun projects.

Subclause 3 inserts a new subsection 318AAB(3) that, despite subsection 318AAB(1), provides a mining lease granted under this part may be cancelled under section 318AAL, even though the holder has ceased to be an eligible person.

### **Amendment of s 318AAD (Application for grant of mining lease (245))**

*Clause 64* adds to section 318AAD(f)(i) to provide that the requirements of this subsection apply in cases where a mining program is not proposed. For example in cases where a program of works is proposed under a mining lease granted under section 234(b) or a transportation mining lease granted under section 316.

### **Amendment of s 318AAH (General conditions of mining lease (276))**

*Clause 65* amends a reference to the Aurukun agreement so that the section applies more generally to a relevant Aurukun agreement.

### **Amendment of s 318AAJ (Renewal of lease 286A))**

*Clause 66* clarifies that this section applies if the Minister is satisfied the Aurukun agreement that is relevant to that mining lease has not been terminated before the application for the renewal of the lease was made.

### **Amendment of s 318AAK (Requirements for assigning, mortgaging or subleasing mining leases (300))**

*Clause 67* amends subsection (2) to clarify that approval or consent to assign, mortgage or sublease a mining lease or an interest in a mining lease is required under the Aurukun agreement that is relevant to that mining lease.

### **Amendment of s 318AAL (Contravention by holder of mining lease (308))**

*Clause 68* clarifies that the Minister may cancel a mining lease if the Aurukun agreement that is relevant to that lease has been terminated.

### **Amendment of s 318AAM (Limitation on surrender of mining lease (309))**

*Clause 69* clarifies that section 309 does not apply unless the Minister is satisfied that the holder of a mining lease has fully discharged all obligations under the Aurukun agreement that is relevant to that mining lease.

### **Amendment of s 386J (Request to applicant about applications)**

*Clause 70* amends the definition of “application” so that it does not include an Exploration Permit tender.

### **Amendment of 386L (Notice to progress relevant applications)**

*Clause 71* inserts a new subsection 386L(4A) stating that this section does not apply to an Exploration Permit tender.

### **Amendment of s 386M (Particular criteria generally not exhaustive)**

*Clause 72* amends subsection 386M(3) so that subsection 386(2) does not apply in relation to an Exploration Permit tender, or if the provision otherwise provides.

### **Amendment of s 386N (Particular grounds for refusal generally not exhaustive)**

*Clause 73* inserts a new subsection 386N(3) which states that this section does not apply to an Exploration Permit tender.

### **Amendment of s 386P (Requirements for making application)**

*Clause 74* renumbers the subsections and inserts a new subsection 386P(5) which states that this section does not apply to an Exploration Permit tender.

### **Amendment of s 387 (Register to be maintained)**

*Clause 75* amends subsection 387(1)(g) to require the recording in the register of applications (other than Exploration Permit tenders) for the grant of exploration permits, and inserts a new subsection 387(1)(ga) which provides for the recording of applications for mineral development permits.

### **Amendment of s 390 (Priority of competing applications)**

*Clause 76* inserts a new subsection 390(6) which states that this section does not apply to an Exploration Permit tender.

### **Insertion of new pt 19, div 19**

*Clause 77* inserts a heading for part 19, division 19 .



**‘Division 19                    Transitional provisions for Mining and Other  
Legislation Amendment Act 2012**

**‘Subdivision 1                Provisions for amendments commenceing on  
assent**

**‘806                                Definitions for sdiv 1**

New section 806 provides that in this division “commencement” means the commencement of this section.

**‘807                                Existing applications for exploration permits for  
minerals other than coal**

New section 807 provides that where an application for an exploration permit for a mineral other than coal was made before the commencement and had not been decided at commencement, the application must be decided under this Act as in force after the commencement.

**‘808 Existing applications for exploration permits for coal**

New section 808 provides that where an application for an exploration permit for coal was made before the commencement and had not been decided at commencement, the application must be decided under this Act as in force immediately before commencement as if the amending Act had not been enacted.

**Amendment of sch 2 (Dictionary)**

*Clause 78*            omits the definition of “Aurukun agreement” from the dictionary.

Subclause 2 amends Schedule 2 to insert a number of new definitions to the dictionary for the Act, including “application”, “Aurukun agreement”, “call for EP (coal) tenders”, “call for EP (non-coal) tenders”, “closing time”, “EP tender”, “prescribed criteria”, “closing time”, “relevant Aurukun agreement”, “special criteria” and “tender security”.

Subclause 3 amends the definition of “Aurukun project”.

Subclause 4 amends the definition of “eligible person” for part 6A and part 7AAA of the Act.

Subclause 5 amends the definition of “occupier”.

## **Division 3 Amendments commencing by proclamation**

### **Amendment of s 4B (Notice to local government and chief executive (planning) of particular mining tenements)**

*Clause 79* amends section 4B to replace references to the mining registrar with the chief executive and provides consistent terminology in referring to the area of a mining tenement.

### **Amendment of s 48 (Land in area of mining claim)**

*Clause 80* amends section 48 to provide that a mining claim may now also be granted over land in an area of an exploration permit or exploration permits.

Eligible miners are now able to move into a small scale production tenure from either a prospecting permit or an exploration permit as the prerequisite tenure.

The note to subsection 48(1) is also amended to include exploration permits.

### **Amendment of s 50 (Entitlements under mining claim)**

*Clause 81* amends section 50 by introducing the term "prescribed mining claim" which is a mining claim for opals, corundum, gemstones and other precious stones where the area has been decided by the Minister or converted from a mining lease. These mining claims may use machinery to mine for opals, corundum, gemstones and other precious stones on a mining claim in accordance with the conditions of the mining claim. For clarity, on commencement an existing holder of a mining claim for opals, corundum, gemstones and other precious stones for one hectare is restricted to hand mining only. Any existing holder wishing to use machinery will need to apply for a new mining claim over the same area, and the Minister decides the area. This will be subject to any area or machinery restrictions prescribed in a restricted area or under the regulations.

### **Amendment of s 51 (Land for which mining claim not to be granted)**

*Clause 82* amends section 51 by inserting new subsection (1A) to provide that restrictions on granting a mining claim over the area of an exploration permit, or earlier application for an exploration permit under section (1)(e), does not apply when the holder of, or applicant for, that exploration permit is the same person as applicant for the mining claim.

## **Amendment of s 53 (Area and shape of mining claim land)**

*Clause 83* amends section 53 to provide for mining claims that can be granted for opals, corundum, gemstones and other precious stones, for areas up to 20 hectares.

Subsection (1) is amended so that the grant of a mining claim for opals, corundum, gemstones and other precious stones where the area is decided by the Minister, is not limited to a specific shape.

New subsection 53(1A) is inserted to provide for the Minister to determine the size of a mining claim for opals, corundum, gemstones or other precious stones of not more than 20 hectares. However, a mining claim for corundum, gemstones or other precious stones may not have the area decided by the Minister, in which case it is subject to the prescribed area (i.e. one hectare).

Subsection 53(2) is amended to make it clear that an application for a mining claim for opal, corundum, gemstones and other precious stones, where the area has been decided by the Minister, is not subject to subsection (2).

New section 53(2A) provides that in deciding the area of a mining claim that applies to opals, corundum, gemstones and other precious stones of 20 hectares or less, the Minister must consider whether the area of land is mineralised, whether it is of an appropriate size and shape in relation to the mineralisation, and the type and location of activities to be carried out on the mining claim.

Section 53(3) retains the existing area limit of one hectare for a mining claim that does not apply mining claims for opals, corundum, gemstones or other precious stones where the area has not been decided by the Minister. A person may still apply for a one hectare opal, corundum, gemstone or other precious stone mining claim for hand mining and is not required to address the criteria the Minister must have regard to under subsection 53(2A).

New subsection 53(3A) provides that subsection 53(3B) applies if the area of a mining claim has been decided by the Minister and is in an area prescribed under a regulation

New subsection 53(3B) provides that the Minister can not decide an area for the mining claim that is more than the area prescribed under the regulation.

Subsection 53(4) is amended so that it applies also to an area that has been decided by the Minister.

Amendments to subsection 53(5) is amended to replace the mining registrar with the chief executive as the person who must notify the holder of a mining claim that the mining claim exceeds the prescribed area or decided area.

Subsection 53(6) is amended to reflect the change in decision maker from the mining registrar to the Minister for mining claims. It is also amended to provide for an agreement to be reached between the holder and the Minister to reduce the area of a decided area to or to less than the decided area.

### **Amendment of s 55 (Restriction on number of mining claims)**

*Clause 84* amends subsection 55(2) so that action taken for a tenure or interest holder to show cause is related to a specific tenure rather than generally applicable to all tenures or interests held.

Subsection 55(3) is amended to provide that the Minister may cancel a mining claim or interest in the mining claim.

### **Amendment of s 56 (Marking out land before application for grant of mining claim)**

*Clause 85* amends section 56 to require that the holder of an exploration permit must mark out the boundary of the area proposed to be subject to an application for a mining claim. This reflects that an exploration permit is also a prerequisite tenure for a mining claim.

### **Amendment of s 58 (Consent of mining registrar required to certain marking out of land)**

*Clause 86* amends section 58(1) to refer to a "mining claim application certificate" in place of a "certificate of application". This reflects amendments to notification and objection provisions. Further amendments to the heading for the section, and the section itself have been made to reflect transfer of powers and functions of the mining registrar to the chief executive.

### **Amendment of s 59 (Time for application for grant of mining claim)**

*Clause 87* amends section 59 to provide that the timeframe within which an application for the grant of a mining claim must be made also applies to the holder of an exploration permit in applying for a mining claim.

### **Amendment of s 61 (Application for grant of mining claim)**

*Clause 88* amends subsection 61(1)(j)(iv) so that an application for the grant of a mining claim shall be accompanied by a work program for the activities to be carried out under the mining claim. This replaces the requirement for an outline of the activities to be conducted on the area applied for.

A new application requirement is inserted as new subsection 61(1)(j)(v) providing that if the application is for a mining claim for opals, corundum, gemstones and other precious stones where the Minister is deciding the area, the applicant must also provide information about the matters the Minister considers under section 53. That is, whether the area of the land is mineralised, whether the area of land in the mining claim is of an appropriate size and shape in relation to the mineralisation, and the types of activities to be carried out under the mining claim.

A number of amendments to subsections 61(1), 61(2) and 61(3) as renumbered reflect the transfer of powers and functions of the mining registrar to the chief executive.

### **Replacement of s 64 (Certificate of application etc.)**

*Clause 89* replaces section 64.

#### **‘64 Issue of mining claim application certificate**

Replacement section 64 provides for the issue of a mining claim application certificate. If the chief executive is satisfied that the applicant for the grant of a mining claim is eligible to apply and has complied with the application requirements of the Act, then the chief executive must give the applicant a mining claim application certificate for the application.

Subsection 64(3) provides that the mining claim application certificate must state the number of the proposed mining claim, the date and time the application was lodged, the last objection day for lodging objections to the application and where the application and any additional documents given to the chief executive about the application may be inspected.

Subsection 64(4) provides that the last objection day must be at least 20 days after the mining claim application certificate is given to the applicant.

### **Omission of s 64A (Issue of certificate of public notice)**

*Clause 90* omits section 64A.

### **Replacement of s 64B (Applicant’s obligations for certificate of public notice)**

*Clause 91* omits section 64B and replaces it with a new section dealing with an applicant’s obligations for mining claim application certificate.



Amendments to this section remove the ability of any entity to object to the grant of a mining claim. This may raise concerns for compliance with fundamental legislative principles that the rights and liberties of individuals are adversely affected. By limiting objections and appeals to directly impacted entities is considered justified as it balances the rights of direct and indirectly impacted entities and the financial and administrative costs associated with the regulatory burden. In the majority of cases, objections to small mining operations are lodged by the landowner only.

### **Amendment of s 74 (Grant of mining claim to which no objection is lodged)**

*Clause 95* amends subsections 74(2), (3) and (4) to change the decision maker from the mining registrar to the Minister.

The amendment clarifies that the issuing of an environmental authority is not critical to the decision of the Minister to grant a mining claim. That is, for a mining claim other than one where small scale mining activities may take place, there is still a requirement for an environmental authority before the claim can be granted. This allows mining claims to be granted without an environmental authority, if the applicant is eligible to operate without one under the *Environmental Protection Act 1994* as a small scale mining activity.

### **Amendment of s 81 (Conditions of mining claim)**

*Clause 96* amends section 81 to provide for two additional conditions to which a mining claim is subject: the small scale mining code and the requirement for five year work programs.

The mining claim holder must comply with the mandatory provisions of the small scale mining code to the extent that the code applies to the holder. The holder must also ensure that any other person carrying out an authorised activity for the mining claim also complies with the mandatory provisions of the small scale mining code to the extent that it applies to the holder.

Where a mining claim is granted or renewed for a term of more than five years, the mining claim holder must give the chief executive a work program of activities to be conducted. This information must be given to the chief executive within one month of the five year anniversary day after the mining claim was granted or the start date of the renewed term.

As a result of the amendments, paragraphs in subsection 81(1) are renumbered. Section 81 is also amended to reflect the change in decision maker from mining registrar to Minister.

### **Amendment of s 82 (Variation of conditions of mining claim)**

*Clause 97* amends subsections 82(1), (2) and (3) to reflect the transfer of powers and functions of the mining registrar to the Minister.

Section 82(5) is also amended so that a variation of the mining claim must be endorsed on the certificate of grant only if a certificate of grant has been issued

### **Amendment of s 83 (Provision of security)**

*Clause 98* provides that one of the issues that the decision maker must consider in determining the amount of security to be deposited by the holder of the mining claim is the work program required by subsection 61(1)(j)(iv) as amended.

A number of further amendments reflect the change in decision maker.

### **Replacement of s 88 (Issue of certificate of grant of mining claim)**

*Clause 99* replaces section 88.

#### **‘88 Issue of certificate of grant for mining claim**

The new section makes it discretionary for the chief executive to issue a certificate of grant for a mining claim granted by the Minister. This is to align this process with that of issuing instruments for mining leases. As for mining leases, in practice, a certificate of grant would be issued on request by the holder.

### **Amendment of s 90 (Duty of holder of mining claim to mark boundary posts)**

*Clause 100* amends section 90 as a consequential amendment reflecting the replacement of section 88 and that a certificate of grant for a mining claim may not have been issued.

### **Amendment of s 93 (Renewal of mining claim)**

*Clause 101* amends section 93 to provide that the application for renewal of a mining claim must be made to the Minister instead of the mining registrar. An application for renewal shall be accompanied by a work program for the activities to be conducted under the mining claim. The amendments also reflect changes in the decision maker.



### **Amendment of s 107 (Surrender of mining claim)**

*Clause 102* amends section 107 to provide for a consequential amendment to the removal of the requirement for an environmental authority to be obtained by the holder of a mining claim for small scale mining activities under the *Environmental Protection Act 1994*.

This amendment ensures that, should the holder of the mining claim seek to surrender the tenure, the decision maker (in this case, the Minister) may accept the surrender only if any environmental authority has been cancelled or surrendered under the *Environmental Protection Act 1994*.

### **Amendment of s 108 (Abandonment of application for mining claim)**

*Clause 103* amends section 108 to refer to the mining claim application certificate and is an amendment consequential to the changes in notification and objections. Amendments also reflect the change in decision maker.

### **Amendment of s 110 (Use of machinery in mining claim area)**

*Clause 104* amends section 110 which is an existing regulation making power, so that regulations may be made about the types of machinery or equipment that may or may not be used for prospecting, hand-mining or other mining on mining claims.

### **Amendment of s 123 (Property remaining on former mining claim may be sold etc.)**

*Clause 105* amends section 123 to remove reference to relevant environmental authority to allow the proceeds of any sale of property for a small scale mining activity to be allocated to meeting any costs or expenses under the *Environmental Protection Act 1994*.

### **Amendment of s 124 (Approval for prospecting on reserve subject of mining claim application)**

*Clause 106* amends section 124 heading and text so that a person holding a prospecting permit or exploration permit on a reserve may apply for a mining claim over that area, to recognise that eligible miners are now able to move into a small scale production tenure from either a prospecting permit or an exploration permit as the prerequisite tenure.

### **Amendment of s 125 (Variation of access to mining claim area)**

*Clause 107* amends section 124 to reflect the transfer of powers and functions of the mining registrar to the chief executive.

### **Amendment of s 129 (Entitlements under exploration permit)**

*Clause 108* amends section 129 to include mining claim as a tenure that the holder of an exploration permit may have considered for grant in priority to all other persons.

### **Amendment of s 141 (Conditions of exploration permit)**

*Clause 109* amends section 141 to provide that the holder of an exploration permit, and any other person carrying out an authorised activity for the exploration permit must comply with the small scale mining code to the extent that it applies to the holder.

### **Amendment of s 148 (Rights and obligations upon application for mining lease or mineral development licence)**

*Clause 110* amends section 148 to provide that the holder of an exploration permit who applies for a mining claim, has all the rights and responsibilities conferred by the exploration permit, other than the responsibility to pay rent, on the holder for the time between the expiry of the exploration permit until the application for the mining claim is determined.

This is a consequential amendment to the recognition of an exploration permit as a prerequisite tenure to a mining claim and a minor technical amendment related to restructuring amendments made by the *Mines Legislation (Streamlining) Amendment Act 2012*.

### **Amendment of s 161 (Surrender of exploration permit)**

*Clause 111* amends section 161 to reflect that an environmental authority may or may not be issued as a result of small scale mining activities.

### **Amendment of s 166 (Improvement restoration for exploration permit)**

*Clause 112* amends section 166 to provide this section does not apply in the circumstances where an exploration permit is being surrendered so that a mining claim can be granted. This is a consequential amendment to the recognition of an exploration permit as a prerequisite tenure to a mining claim.

### **Amendment of s 176 (Discovery of minerals to be reported)**

*Clause 113* amends section 176 to provide that the Minister may direct the holder of an exploration permit to apply for a mining claim. This is a consequential amendment to the recognition of an exploration permit as a prerequisite tenure to a mining claim.

### **Amendment of s 177 (Reduction of area of exploration permit upon grant of mineral development licence or mining lease)**

*Clause 114* amends the heading and the text of section 177 to provide that when the holder of an exploration permit (or an eligible person with the consent of the holder) applies for a mining claim for the same area and the same mineral as the exploration permit; the area of the exploration permit shall be reduced and the terms and conditions of the exploration permit may be varied as directed by the Minister. This is a consequential amendment to the recognition of an exploration permit as a prerequisite tenure to a mining claim.

### **Amendment of s 317 (Variation of access to mining lease area)**

*Clause 115* amends section 317 to reflect the transfer of powers and functions of the mining registrar to chief executive and omits the redundant subsection 317(2) requirements for the mining registrar to notify the chief executive of actions taken under this section.

### **Amendment of s 318AAV (Indicative approval)**

*Clause 116* amends section 318AAV so that an application for indicative approval should be made to the Minister instead of the mining registrar for mining claims.

### **Amendment of s 318AAW (Applying for approval of assessable transfer)**

*Clause 117* amends section 318AAW so that an application for approval of an assessable transfer must be made to the Minister for mining claims, rather than the mining registrar.

### **Amendment of s 318AAX (Deciding application)**

*Clause 118* amends section 318AAX so that the transfer of mining tenement may be approved where the tenement is for small scale mining activities under the *Environmental Protection Act 1994* that is not required to be a registered suitable operator under the *Environmental Protection Act 1994*.

### **Amendment of 334ZA (Addition of wild river area to mining tenement)**

*Clause 119* amends section 334ZA to differentiate between the notification and objection processes for a mining lease and a mining claim where it is proposed to add a wild river area to a tenement.

Amendments are also made to subsection 334ZA(5) to reflect the transfer of powers and functions of the mining registrar to the chief executive.

### **Amendment of s 335D (Right of internal review and appeal against compliance direction)**

*Clause 120* amends references under section 335D to the decision maker for applicants seeking rights of internal review against a compliance direction to reflect transfer of powers and functions of a mining registrar to the chief executive.

### **Replacement of ch 13, pt 3 hdg (Mining registrars and other officers)**

*Clause 121* replaces the heading of Chapter 13, Part 3 to refer to authorised officers.

## **‘Part 3 Authorised Officers’**

### **Amendment of s 336 (Appointment of mining registrars and other officers)**

*Clause 122* amends section 336(1) to confer a power on the chief executive, by instrument in writing, to appoint a public service officer as an authorised officer to carry out functions under the *Mineral Resources Act 1989*.

Section 336(2) is amended so that the chief executive rather than a mining registrar may from time to time appoint a bailiff to carry out service and execution of all process, judgements and orders authorised under the *Mineral Resources Act 1989*.

### **Replacement of ss 337-341**

*Clause 123* omits sections 337 to 341 to implement the transfer of powers and functions of the mining registrar and changes to streamline regulatory officer roles.

## **‘337 Appointment conditions and limit on powers**

New section 337 provides that an authorised officer holds office on any conditions stated in the instrument of appointment, a notice signed by the chief executive and given to the authorised officer or in a regulation, which may limit the authorised officer’s powers.

## **‘338 When office ends**

New section 338 provides that a person’s appointment as an authorised officer ends when the term stated in a condition of office ends, or the office ends under another condition of office,

or the authorised officer's resignation under section 339 takes effect. The ways in which a person's office may end is not limited by the operation of this section.

### **'339 Resignation**

New section 339 provides that an authorised officer may resign by signed notice given to the chief executive.

### **'340 Issue of identity card**

New section 340 requires that the chief executive must issue an identity card to each authorised officer. The identity card must contain a recent photo of the authorised officer, a copy of their signature, and identify the person as an authorised officer under the *Mineral Resources Act 1989*. The card must state when it expires. This section does not prevent the issue of a single identify card to a person for the purposes of the *Mineral Resources Act 1989* and other purposes.

### **'341 Production or display of identity card**

New section 341 requires that an authorised officer must produce their identity card to a person in the authorised officer's presence, before the authorised officer exercises a power under the Act, and so that it is clearly visible to the person when the authorised officer's powers under the Act are authorised. If it is not practicable to display the identity card before or when the power is exercised, the authorised officer must produce it for the person's inspection at the first reasonable opportunity.

### **'341A Return of identity card**

New section 341A provides that if the office of a person as an authorised officer ends, the person must return their identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse. The section creates a maximum penalty of 50 penalty points for a breach of this section.

### **Amendment of s 342 (Powers of mining registrars and others)**

*Clause 124* amends the heading of section 342 so that it deals with the powers of authorised officers. The amendments provide that the powers in this section may be exercised by a person who is an authorised officer, that is, a person who has been appointed pursuant to subsection 336(1).

### **Amendment of s 343 (Seizure of minerals produced by or vehicles, machinery etc. used in unauthorised mining)**

*Clause 125* amends section 343 to reflect the change in regulatory role terminology to an authorised officer.

### **Omission of ch 13, pt 4 (Chief executive)**

*Clause 126* omits chapter 13, Part 4 that gave the chief executive the same functions and powers of a mining registrar. This chapter is redundant with the transfer of all powers and functions of the mining registrar to the chief executive.

### **Renumbering of ch 13, pts 5 and 6**

*Clause 127* renumbers chapter 13, parts 5 and 6 as chapter 13, parts 4 and 5.

### **Amendment of s 386J (Request to applicant about application)**

*Clause 128* amends section 386J references to the decision makers in relation to making requests to applicants about their applications.

### **Amendment of s 386K (Refusing application for failure to comply with request)**

*Clause 129* amends section 386K references to the decision makers in relation to refusing an application for a failure by the applicant to comply with a request.

### **Amendment of s 386L (Notice to progress relevant applications)**

*Clause 130* amends section 386L to make the Minister the head of power for progressing an application for renewal of a mining tenement reflecting the changes to transfer decision making powers of the mining registrar to Minister.

### **Amendment of s 386O (Place or way for making applications, giving, filing, forwarding or lodging documents or making submissions)**

*Clause 131* amends section 386O to omit references to the mining registrar and replaces subsection (5) to ensure subsection (5) is appropriately linked to subsection (4).

## **Amendment of s 386P (Requirements for making application)**

*Clause 132* amends section 386P to reflect the transfer of powers and functions of the mining registrar to the chief executive.

## **Insertion of new s 391C**

*Clause 133* inserts new section 391C.

### **‘391C Small scale mining code**

The new section 391C provides that a regulation may make a code for managing the impacts of small scale mining activities carried out under a mining claim or exploration permit. The code will state guidelines for small scale mining activities. The purpose of the code is to ensure that:

- the activities are carried out in an environmentally responsible way;
- ensure land subject to the activities is managed responsibly;
- minimise conflicts about land use because of the carrying out of the activities; and
- ensure land is rehabilitated; and improvements on the land are restored to an appropriate condition, after the small scale mining activities carried out on the land are completed.

The small scale mining code imposes mandatory conditions concerning the conduct of authorised activities on the land. Where there is a conflict between the small scale mining code and a condition of the small mining claim or permit, then the mandatory provision of the small scale mining code prevails to the extent of the inconsistency.

Under the *Mineral Resources Act 1989*, non-compliance with a mandatory condition may lead to cancellation of the claim or permit, or a penalty. It is noted that potential sanctions for non-compliance are significant, and mandatory conditions, will be stated in a regulation as opposed to being stated only in a document prepared by the department. This will ensure that the exercise of delegated legislative power is subject to the scrutiny of the Legislative Assembly. This framework is consistent with the existing Land Access Code under the *Mineral Resources Act 1989*.

## **Amendment of s 404B (interference with particular things)**

*Clause 134* amends cross-references in section 404B so that it is consistent with the new notification processes for mining claim applications.

### **Amendment of s 404C (Information requirements for holders of mining tenements)**

*Clause 135* amends section 404C to replace mining registrar with authorised officer for the power to give notice to provide information.

### **Amendment of s 404D (False or misleading document)**

*Clause 136* amends section 404D to replace the mining registrar with an authorised officer, in the offence provision for the giving of false or misleading information.

### **Amendment of s 406 (Land Court may review direction of requirement)**

*Clause 137* amends section 406 to reflect changes to regulatory officer role terminology.

### **Amendment of s 409 (Removal orders)**

*Clause 138* amends section 409 to reflect changes to regulatory officer role terminology.

### **Amendment of s 417 (Regulation-making power)**

*Clause 139* amends section 417 to allow for the making of regulations about the forwarding of documents to another place. This is related to amendments made by the *Mines Legislation (Streamlining) Amendment Act 2012*.

### **Insertion of new ch 15, pt 6, div 2**

*Clause 140* inserts a new chapter 15, part 6, division 2.

#### **‘Division 2                    Provisions for amendments commencing by proclamation**

#### **‘809                            Definitions for pt 5**

New section 809 of the *Mineral Resources Act 1989* inserts definitions applying to this part.







If a mining lease is converted to a mining claim, the area of the mining claim must include the whole of the surface of the land within the mining lease without including any other land. The term of the mining claim ends on the first of the following events to occur: the day 10 years after the conversion, the day the term of the mining lease would have ended where only one mining lease is converted, or, for the conversion of more than one mining lease, the first day the term of any of the mining leases would have ended if the conversion had not occurred.

The Minister must consider an application made under this section and either decide to grant or to refuse the application.

The Minister may grant the application if satisfied the holder has complied with the conditions of the mining lease and the Act in relation to the mining lease.

If the Minister decides to grant the application, the chief executive must give the applicant notice of the decision and record the details of the conversion in the register.

If the Minister decides not to grant the application, the chief executive must give the applicant notice of the decision and reasons for it.

For clarity, once the particulars of the conversion have been recorded in the register, the relevant mining lease is taken to be a mining claim.

Upon the conversion of a mining lease to a mining claim, any security deposited under the *Mineral Resources Act 1989* is taken to be a security deposit for the mining claim. If a mining lease being converted is subject to a condition that it cannot be renewed or further renewed, this condition carries to the mining claim. On conversion to a mining claim, the mining claim is subject to the conditions stated in section 81 and any conditions decided by the Minister stated in the decision notice.

If an application for conversion has been lodged but not decided by the date a mining lease is due to end, the mining lease is taken to continue in force until the application is decided. During this period, the holder must comply with the conditions of the mining lease and the Act in relation to the lease.

## **Amendment of sch 1 (Access and compensation provisions for exploration permits and mineral development licences)**

*Clause 141* amends Schedule 1, section 6(2) so that the holder of an exploration tenure for small scale mining activities operating without an environmental authority, must include a copy of the small scale mining code with the entry notice. The section is also amended to reflect that an environmental authority may not have been issued.



the holder and another party that may deem rights or interests about a part of a tenure, the registered holder of that part of the tenure remains the registered holder and retains all legal responsibilities under the Act for that part.

### **Amendment of s 143 (Amendment of sch 2 (Dictionary))**

*Clause 146* Amends section 143 to omit the definition of "dealing" and inserts a note that the legislation ultimately amended is the *Geothermal Act 2010*. A definition of "dealing" already exists under the *Geothermal Energy Act 2010* and an additional definition is not required.

### **Amendment of s 146 (Replacement of ch 5, pt 14 (Dealings))**

*Clause 147* amends section 146 by amending inserted section 347(b) of the *Greenhouse Gas Storage Act 2009* to replace the words "has the effect of transferring" with "transfer" to provide consistency across the resources Acts for prohibited dealings. Under the amended section, a dealing that actually transfers the legal ownership of a divided part of a greenhouse gas tenure is prohibited. Regardless of any transaction or commercial agreement made between the holder and another party that may deem rights or interests about a part of a tenure, the registered holder of that part of the tenure remains the registered holder and retains all legal responsibilities under the Act for that part.

### **Amendment of s 163 (Amendment of s 91 (Initial term of mining claim))**

*Clause 148* amends section 163 for amendments to section 91 of the *Mineral Resources Act 1989* to extend the maximum term of a mining claim from 5 years to 10 years.

### **Amendment of s 164 (Amendment of s 93 (Renewal of mining claim))**

*Clause 149* amends section 164 for amendments to section 93 of the *Mineral Resources Act 1989* to extend the maximum term of a mining claim that is renewed from 5 years to 10 years.

### **Amendment of s 208 (Amendment of s 299 (Consolidation of mining leases))**

*Clause 150* amends section 208 for amendments to section 299 of the *Mineral Resources Act 1989*. This is to update the amendment by re-inserting a cross-reference to section 238 of the *Mineral Resources Act 1989* to maintain its exclusion from provisions that must be considered in an application to consolidate a mining lease.

### **Amendment of s 216 (Insertion of new pts 7AAAB-7AAAE))**

*Clause 151* makes a minor technical amendment to section 216 and inserted section 318AAP(1)(e)(i) to the *Mineral Resources Act 1989*.

The clause also amends section 216 by amending inserted section 318AAQ of the *Mineral Resources Act 1989* to replace the words "has the effect of transferring" with "transfers" to provide consistency across the resources Acts for prohibited dealings. Under the amended section, a dealing that actually transfers the legal ownership of a divided part of a mining tenement is prohibited. Regardless of any transaction or commercial agreement made between the holder and another party that may deem rights or interests about a part of a tenure, the registered holder of that part of the tenure remains the registered holder and retains all legal responsibilities under the Act for that part.

Amendments are made to section 216 to amend the note to inserted section 318AAT(4) to reflect that an application is an assessable dealing and must be approved by the Minister.

Sub-clauses (4) to (6) also amend section 216 to remove references to mining registrars in inserted sections 318AAZI and 318AAZJ to reflect that the chief executive is responsible for procedural matters related to caveats.

### **Amendment of s 228 (Insertion of new pt 19, div 17)**

*Clause 152* amends section 243 by omitting inserted section 795(3), a transitional no longer required now that mining claim terms will be 10 years.

### **Amendment of s 243 (Replacement of ss 387 and 387A)**

*Clause 153* amends section 387 to add a number of documents to those that must be kept on the register. It also inserts a note that the legislation ultimately amended is the *Mineral Resources Act 1989*.

### **Amendment of s 256 (Replacement of pt 6N (Dealings))**

*Clause 154* amends section 256 by amending inserted section 80G of the *Petroleum Act 1923* to replace the words "has the effect of transferring" with "transfers" to provide consistency across the resources Acts for prohibited dealings. Under the amended section, a dealing that actually transfers the legal ownership of a divided part of a 1923 Act petroleum tenure is prohibited. Regardless of any transaction or commercial agreement made between the holder and another party that may deem rights or interests about a part of a tenure, the registered holder of that part of the tenure remains the registered holder and retains all legal responsibilities under the Act for that part.

## **Amendment of s 273 (Replacement of ch 5, pt 10 (Dealings))**

*Clause 155* amends section 273 by amending inserted section 570(c) of the *Petroleum and Gas (Production and Safety) Act 2004* to replace the words "has the effect of transferring" with "transfers" to provide consistency across the resources Acts for prohibited dealings. Under the amended section, a dealing that actually transfers the legal ownership of a divided part of a petroleum tenure is prohibited. Regardless of any transaction or commercial agreement made between the holder and another party that may deem rights or interests about a part of a tenure, the registered holder of that part of the tenure remains the registered holder and retains all legal responsibilities under the Act for that part.

## **Replacement of s 290 (Replacement of pt 5, hdg (Exploration permits))**

*Clause 156* amends section 290, that replaces particular headings in the part 5 exploration permits.

### **'290 Replacement of particular headings in pt 5**

Subsection 290(1) provides that this section amends particular headings in part 5 to convert the part into a chapter and divisions into parts.

Subsection 290(2) amends Part 5 by omitting each heading mentioned in column 1 and inserting each heading mentioned in column 2.

## **Insertion of new ss 321A and 321B**

*Clause 157* inserts a new heading and new section 321A and section 321B after section 321.

### **'321A Replacement of pt 19, div 18, hdg (Transitional provision for Fiscal Repair Amendment Act 2012)**

This new section replaces the heading for Part 19, division 18.

### **'Part 5 Transitional provisions for Fiscal Repair Amendment Act 2012'**

**‘321B Replacement of pt 19, div 19, hdg and pt 19, div 19, hdg**

This new section replaces the headings for Part 19, division 19.

**‘Part 6 Transitional provisions for Mining and Other Legislation Amendment Act 2012**

**‘Division 1 Provisions for amendments commencing on assent**

Note that this ultimately amends the *Mineral Resources Act 1989*.

**Amendment of sch 2 (Consequential amendments commencing by proclamation other than amendments for the restructure of the Mineral Resources Act 1989)**

*Clause 158* amends Schedule 2 of the *Mines Legislation (Streamlining) Amendment Act 2012* to make minor technical changes to section 141(1)(f) and section 194(1)(f) of the *Mineral Resources Act 1989*.

**Amendment of sch 3 (Consequential amendments for the restructure of the Mineral Resources Act 1989)**

*Clause 159* amends Schedule 3 of the *Mines Legislation (Streamlining) Amendment Act 2012* to make a minor technical change by omitting entries for sections 332 and 333.

Subclause 2 amends Schedule 3, amendment 1 of the *Mineral Resources Act 1989* table by inserting into column 1 the provisions to be amended by omitting the words in column 2 and inserting the words in column 3 for a number of sections.

**Part 9 Amendment of Petroleum Act 1923**

**Act amended**

*Clause 160* provides that this part amends the *Petroleum Act 1923*.

**Amendment of s 2 (Definitions)**

*Clause 161* The definition of "occupier" is amended to achieve consistency across all the resource Acts. The new definition clarifies the definition of occupier as meaning a person



who has a right to occupy land arising under an Act (such as freehold or leasehold title), a lease registered under the *Land Titles Act 1994* or has a right to occupy the land, conferred by a person who holds a right to occupy the land. The purpose of this amendment is to ensure that a person with a legitimate business or residential interest in land is recognised as an occupier for the purposes of compensation provisions of the land access framework.

## **Part 10                      Amendment of Petroleum and Gas (Production and Safety) Act 2004**

### **Division 1                      Preliminary**

#### **Act amended**

*Clause 162* provides that this part amends the *Petroleum and Gas (Production and Safety) Act 2004*.

### **Division 2                      Amendments commencing on assent**

#### **Amendment of s 35 (Call for tenders)**

*Clause 163* amends sub-section 35(2)(e)(iv) to require a call for tenders to state whether a competitive tender process involving a cash bid is to be used for deciding the preferred tenderer. The optional requirement of a cash bid within a competitive tender process is intended for the allocation of areas identified as potentially highly prospective. This will support the Government's responsible stewardship objectives for the allocation of areas for petroleum and gas exploration. This includes ensuring development of petroleum and gas lands by the most suitable parties and an adequate return to the community for the State's resources, reflective of in-ground value.

New subsection 35(3) provides that the call may state other relevant matters, for example matters relevant to the special criteria, the work program criteria or the capability criteria. Note that these are examples only and there is no limitation on the other relevant matters that may be included in the call. In the case of a competitive tender that includes a cash bid component, the call may make reference to other land use conflicts that need to be managed by the successful tenderer. This subsection provides the ability for the call to state such matters as necessary.

Clause 42 also removes existing Section 35(2)(e)(iv) which required a call for tenders for an authority to prospect to state the weightings proposed to be given to each special criteria, work program criteria and capability criteria. Tenderers will still be aware of the criteria against which their tenders are being assessed; however the removal of published weightings

communicating how the assessment is calculated will strengthen the integrity of the tender process.

### **Amendment of s 37 (Requirements for making tender)**

*Clause 164* amends s37(e), requiring a tender for an authority to prospect to be accompanied by the fee described under a regulation *as well as* the tenderer's cash bid if a competitive tender process involving a cash bid is to be used for deciding the preferred tenderer. All other existing requirements for making a tender for an authority to prospect are retained.

### **Amendment of s 38 (Right to terminate call for tenders)**

*Clause 165* new sub-section 38(4) states that if the Minister terminates a call for tenders for an authority to prospect, the Minister must refund any tender security given by the tenderer. This refund is not applicable however if a tenderer has withdrawn their tender or has been disqualified as the preferred tenderer, as per section 845(4) and 40(4).

Previously, the Minister had the right to terminate a call for tender but not to refund any monies in connection with the termination. With the introduction of a cash bid component as part of the competitive tender process, applicants are required to provide a bid security for their cash bid. Under the current petroleum and gas call for tenders with a cash bid component, the inability of the Minister to refund any moneys has made the provision of a bid security a relatively complex process. Tenderers cannot submit their bid security as a cheque because the Minister is unable to refund them if they are unsuccessful in the tender process. Instead, tenderers have been required to provide a bank guarantee as their bid security, with the preferred tenderer required to convert their bank guarantee to a payment within four days of being notified that they are the preferred tenderer. The new sub-section 38(4) will allow for greater flexibility in requesting a security, with it possible to be in the form of a cheque or bank cheque.

### **Amendment of s 39 (Process for deciding tenders)**

*Clause 166* amends the section 39 which states that any process the Minister considers appropriate may be used to determine a call for tenders for an authority to prospect. An additional example of the kind of process that might be used has been included; by a process involving short listing a group of possible preferred tenderers and asking them to engage in another round of tendering before appointing a preferred tenderer from that group. Multiple tendering rounds will allow for a more flexible tendering process and foster greater competitive tension.

The examples in section 39 do not limit the Minister's powers to decide a process. This flexibility is needed to ensure a fair and complete assessment of all tenders for the best possible result. The process to be undertaken would be described in any tender material provided to tenderers.

New subsection (2) provides that as part of any process used for deciding tenders, the Minister may also seek further information from a tenderer that the Minister reasonably requires to assess the tender.

### **Amendment of s 40 (Provisions for preferred tenderers)**

*Clause 167* amends subsection 40 (2) to state that if the preferred tenderer does not comply with the requirements in subsection 40(1), the Minister may revoke the tenderer's appointment as the preferred tenderer. New subsection 40 (3) provides that before the Minister moves to revoke a preferred tenderer's appointment however, the Minister must give the preferred tenderer a reasonable opportunity to provide reasons for, and rectify, the tenderer's failure to comply with the stated requirements.

If a preferred tenderer's appointment is revoked, the Minister may retain the whole or part of any tender security given by the preferred tenderer. The Minister may also appoint another tenderer to be the preferred tenderer.

These measures seek to strengthen the integrity of the tender process, while accommodating for unforeseen situations where a preferred tenderer may be reasonably inhibited from complying with the requirements under this section.

### **Amendment of s 44 (Notice to unsuccessful tenderers)**

*Clause 168* inserts a new subsection 44(2) requiring that after a call for tenders for an authority to prospect has been decided, the Minister must refund any tender security given by the unsuccessful tenderer. This will give certainty to tenderers that a bid security can be refunded should they be unsuccessful. This refund of a security to an unsuccessful tenderer is not applicable if a tenderer has withdrawn their tender or has been disqualified as the preferred tenderer, as per section 40(4) and 845(4).

### **Amendment of s 127 (Call for tenders)**

*Clause 169* Inserts new subsection 127(2)(e)(iv) requiring a call for tenders for a petroleum lease to state whether a competitive tender process involving a cash bid is to be used for deciding the preferred tenderer. The optional requirement of a cash bid within a competitive tender process is intended for the allocation of areas identified as potentially highly prospective. This will support the Government's responsible stewardship objectives for the allocation of areas for petroleum and gas development. This includes ensuring

development of petroleum and gas lands by the most suitable parties and an adequate return to the community for the State's resources, reflective of in-ground value.

Existing sub-section 127(3) provides that the call may state other relevant matters to the call for tenders. In the case of a competitive tender that includes a cash bid component, the call may make reference to other land use conflicts that need to be managed by the successful tenderer.

Clause 47 removes existing sub-section 127(2)(e)(iv) which requires a call for tenders for a petroleum lease to state the weightings proposed to be given to each special criteria, development plan criteria and capability criteria. Tenderers will still be aware of the criteria against which their tenders are being assessed; however the removal of published weightings communicating how the assessment is calculated will strengthen the integrity of the tender process.

### **Amendment of s 128 (Right to tender)**

*Clause 170* inserts a new subsection 128(3) stating that if a competitive tender process involving a cash bid is to be used from deciding the preferred tenderer, the tender must be accompanied by the tenderer's cash bid. All other existing requirements for making a tender for a petroleum lease are retained.

### **Amendment of s 129 (Right to terminate call for tenders)**

*Clause 171* inserts new sub-section 129(4) stating that if the Minister terminates a call for tenders for a petroleum lease, the Minister must refund any tender security given by the tenderer. This refund is not applicable however if a tenderer has withdrawn their tender or has been disqualified as the preferred tenderer, as per section 845 (4) and 131 (4).

Previously, the Minister had the right to terminate a call for tender but not to refund any monies in connection with the termination. With the introduction of a cash bid component as part of the competitive tender process, applicants are required to provide a bid security for their cash bid. The inability of the Minister to refund any moneys has made the provision of a bid security quite a complex process. The new sub-section 129(4) will allow for greater flexibility in requesting a security, with it possible to be in the form of a cheque or bank cheque which the Minister can refund if they are unsuccessful in the tender process.

### **Amendment of s 130 (Process for deciding tenders)**

*Clause 172* amends section 130 which states that any process the Minister considers appropriate may be used to determine a call for tenders for a petroleum lease. An additional example of the kind of process that might be used has been included; by a process involving short listing a group of possible preferred tenderers and asking them to engage in another

round of tendering before appointing a preferred tenderer from that group. Multiple tendering rounds will allow for a more flexible tendering process and foster greater competitive tension.

The examples in section 130 do not limit the Minister's powers to decide a process. This flexibility is needed to ensure a fair and complete assessment of all tenders for the best possible result. The process to be undertaken would be described in any tender material provided to tenderers.

New subsection (2) provides that as part of any process used for deciding tenders, the Minister may also seek further information from a tenderer that the Minister reasonably requires to assess the tender.

### **Amendment of s 131 (Provisions for preferred tenderers)**

*Clause 173* amends subsection 131(2), to provide that if the preferred tenderer does not comply with the requirements in subsection 131(1), the Minister may revoke the tenderer's appointment as the preferred tenderer. New subsection 131(3) provides that before the Minister moves to revoke a preferred tenderer's appointment however, the Minister must give the preferred tenderer a reasonable opportunity to provide reasons for, and rectify, the tenderer's failure to comply with the stated requirements.

If a preferred tenderer's appointment is revoked, the Minister may retain the whole or part of any tender security given by the preferred tenderer. The Minister may also appoint another tenderer to be the preferred tenderer.

These measures seek to strengthen the integrity of the tender process, while accommodating for unforeseen situations where a preferred tenderer may be reasonably inhibited from complying with the requirements under this section.

### **Amendment of s 135 (Notice to unsuccessful tenderers)**

*Clause 174* inserts a new subsection s135(2) requiring that after a call for tenders for petroleum lease has been decided, the Minister must refund any tender security given by the unsuccessful tenderer. This will give certainty to tenderers that any bid security can be refunded should they be unsuccessful. This refund of a security to an unsuccessful tenderer is not applicable if a tenderer has withdrawn their tender or has been disqualified as the preferred tenderer, as per section 845(4) and 131(4).

### **Amendment of s 802 (Restriction on pipeline construction or operation)**

*Clause 175* amends section 802 to remove any doubt that unless the construction and operation of a produced water pipeline is being approved under another Act it must not be constructed or operated unless it is carried out pursuant to section 802.

## **Amendment of s 845 (Withdrawal of application)**

*Clause 176* inserts a new subsection 845(5) stating that if person withdraws a tender in response to a call for tenders, the Minister may retain the whole or part of an amount provided as security for their tender. This measure strengthens the integrity of the competitive tender process, ensuring tenderers are aware that all cash bids lodged will be taken as genuine offers for the available authority to prospect or petroleum lease.

In normal circumstances, a tenderer who withdraws from the process will forfeit their bid security. It would only be in exceptional circumstances that the Minister would consider allowing any of this bid security to be returned.

## **Insertion of new ch 15, pt 15**

*Clause 177* inserts a new chapter 15, part 15 containing new subsection 976.

## **‘Part 15                      Transitional provision for Mining and Other Legislation Amendment Act 2012**

### **‘976                              Existing competitive tenders**

New subsection 976 states that for any call for tenders that has not been decided at the commencement of the *Mining and Other Legislation Amendment Bill 2012* legislative amendments, the Minister may not use a multiple round process to decide the call. This applies to existing call for tenders for both authority to prospects and petroleum leases.

A multiple round process is defined as meaning a process involving short-listing a group of possible preferred tenderers and inviting them to engage in another round of tendering before appointing a preferred tenderer from that group.

## **Amendment of sch 2 (Dictionary)**

*Clause 178* inserts a definition for “tender security” for a tender under chapter 2 part 1 or part 2 as meaning an amount given by the relevant tenderer as security for the tender.

The definition of “occupier” is amended to achieve consistency across all the resource Acts. The new definition clarifies the definition of occupier as meaning a person who has a right to occupy land arising under an Act (such as freehold or leasehold title), a lease registered under the *Land Titles Act 1994* or has a right to occupy the land, conferred by a person who holds a right to occupy the land. The purpose of this amendment is to ensure that a person with a legitimate business or residential interest in land is recognised as an occupier for the purposes of compensation provisions of the land access framework.

## **Division 3                    amendments commencing by proclamation**

### **Amendment of s 403 (Incidental activities)**

*Clause 179* amends section 403 to allow a pipeline licence holder to carry out a stated pipeline licence incidental activities in the area of the licence. This includes incidental activities related to construction or operation on pipeline land and activity that is reasonably necessary for carrying out the authorised activity for a petroleum lease, a petroleum facility licence or another pipeline. This includes activities stated on the licence to be an incidental activity for this subsection.

### **Amendment of s 409 (Requirements for making application)**

*Clause 180* amends section 409 to provide that an application for a pipeline licence must state the extent and nature of any proposed stated pipeline licence incidental activities proposed to be carried out on the licence and address the criteria in section 415(2).

### **Amendment of s 412 (provisions of licence)**

*Clause 181* amends section 412 so that the pipeline licence must state the stated pipeline incidental activities that the holder is entitled to carry out on the pipeline licence.

### **Amendment of s 415 (Criteria for decisions)**

*Clause 182* amends section 415 so that the criteria for the decision must include the nature and extent of the stated pipeline licence incidental activity proposed to be carried out. In considering the extent and nature of any proposed stated pipeline licence incidental activities, the Minister must consider whether carrying out the activity on the pipeline licence would have the overall effect of reducing impacts of authorised activities on land, landowners and the community, whether the activity is reasonably necessary for carrying out an authorised activity for a petroleum lease, petroleum facility licence or another pipeline licence, and whether the activity would be more appropriately carried out on another petroleum lease, petroleum facility licence or pipeline licence.

### **Amendment of s 426 (Public road authority's obligations in aligning pipeline on road)**

*Clause 183* amends section 426 to require a public road authority also to address infrastructure proposed to be constructed in the carrying out of a stated pipeline incidental activity for the pipeline.

### **Amendment of s 427 (Requirement to consult if construction affects existing pipeline)**

*Clause 184* amends the heading of section 427 to include infrastructure.

Subsection 1 is amended so that the section also covers the safety of infrastructure constructed for the carrying out of a stated pipeline licence incidental activity.

### **Amendment of s 428 (Costs of pipeline works caused by public road construction)**

*Clause 185* amends subsection (1)(b) so that the section also applies to the situation where construction of, or changes to a road affects infrastructure constructed for the carrying out of a stated pipeline licence incidental activity.

Subsection 2 is amended so that the same considerations that are currently applied to pipelines are applied to infrastructure for stated pipeline licence incidental activity.

### **Amendment of s 431 (Power to give works direction)**

*Clause 186* amends subsection (1)(a) so that the section also applies to the situation where a pipeline holder proposes to construct or is constructing infrastructure for the carrying out of a stated pipeline licence incidental activity.

Subsection 431(1)(b) is amended to remove the reference to the redundant term of public land authority approval.

### **Amendment of s 474 (Amendment applications that may be made)**

*Clause 187* amends section 474 the examples of how a pipeline licence may be amended, to include the carrying out of a stated pipeline licence incidental activity.

### **Amendment of s 669 (Making safety requirement)**

*Clause 188* amends section 669 to allow the making of a regulation to make a safety requirement about the carrying out of stated pipeline licence incidental activities.

### **Amendment of sch 2 (Dictionary)**

*Clause 189* inserts a definition for “*stated pipeline licence incidental activity*” as defined in section 403(3)



## **Part 11                      Amendment of Wild Rivers Act 2005**

### **Act amended**

*Clause 190* provides that this part amends the *Wild Rivers Act 2005*.

### **Amendment of s 45 (Exemption of projects from application of this Act)**

*Clause 191* clarifies that there may be multiple Aurukun projects.

### **Amendment of s 46 (meaning of Aurukun project)**

*Clause 192* amends the definition of “an Aurukun project” in line with the amendment to the *Mineral Resources Act 1989*.

## **Part 12                      Minor and consequential amendments of Acts**

### **Act amended in sch 1**

*Clause 193* provides that Schedule 1 amends the Act it mentions.