

Land, Explosives and Other Legislation Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Land, Explosives and Other Legislation Amendment Bill 2018.

Policy objectives and the reasons for them

The policy objective of the Bill is to streamline and ensure the effectiveness of key regulatory frameworks within the Natural Resources, Mines and Energy portfolio, enhance worker and community safety and security in the explosives and gas sectors, and support the protection and cooperative management of cultural and natural values of Cape York Peninsula.

The Bill will:

- amend the *Aboriginal Land Act 1991*, and *Torres Strait Islander Act 1991*, to:
 - provide the option of granting land to a Registered Native Title Body Corporate (RNTBC) outside of their determined native title area;
 - allow the setting by agreement of sale prices for social housing on Indigenous land;
- protect the cultural and natural values of the Shelburne and Bromley properties on Cape York Peninsula;
- improve security, safety and transportation requirements under the *Explosives Act 1999*;
- amend the definitions of who meets the criteria for notifying the State under the *Foreign Ownership of Land Register Act 1988*, so that those definitions are consistent with other state legislation (i.e. the *Duties Act 2001*);
- provide for contemporary compliance powers in the *Land Act 1994*;
- further enhance rolling term lease provisions on regulated islands by enabling marine term leases to become rolling term leases where they are tied by covenant to, and provide infrastructure which supports a rolling term, or perpetual, tourism lease;
- enable the State to deal with buildings and other structures on state land that pose a risk to public safety or that are otherwise inappropriate or unwanted. The amendments also enable the State to recover any removal and remediation costs if necessary;
- further facilitate the take-up of online conveyancing by:
 - amending the *Land Title Act 1994* to eliminate the need for remaining duplicate paper certificates of title; and
 - updating, and clarifying certain titling provisions;

- address minor issues associated with the overlapping tenure framework for coal and coal seam gas (overlapping tenure framework);
- amend the *Petroleum and Gas (Production and Safety) Act 2004* to resolve operational deficiencies in the Act, streamline regulatory requirements and make the overall gas safety legislation more contemporary. These amendments clarify and improve operational safety outcomes for workers in the gas sector and users of gas plant and appliances by:
 - revising safety reporting requirements for operating plant so they are real time and support effective gas safety regulation;
 - confirming an operator of operating plant can be a corporation or an individual;
 - establishing a transparent process for appointing approving authorities for gas devices;
 - rationalising safety requirements for all fuel gas delivery networks; and
 - aligning other safety provisions with Queensland's mining safety legislation and general work place laws;
- introduce a framework to manage abandoned operating plant; and
- make minor amendments to correct errors and omissions in the *Aboriginal Land Act 1991*, *Land Act 1994*, *Land Title Act 1994*, *Petroleum and Gas (Production and Safety) Act 2004*, and the *Torres Strait Islander Land Act 1991*.

A more detailed explanation of the policy objectives is outlined below.

Aboriginal Land Act 1991 and Torres Strait Islander Land Act 1991 – Indigenous land and housing

The Bill amends the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to enhance Aboriginal and Torres Strait Islander people's ability to access and utilise their land by reducing compliance and administrative burden on Indigenous communities in the granting of land.

The Bill also amends these Acts to enhance opportunities for Indigenous people to achieve home ownership by providing an option to set a price for social housing, by agreement between trustees and the government. This will allow the State and trustees to respond to the unique circumstances in discrete communities and to recognise existing interests in property. The amendments will also allow for adjustments to be made in communities where there is limited or no active housing sales market.

Cape York Peninsula Heritage Act 2007

The *Cape York Peninsula Heritage Act 2007* (Cape York Peninsula Heritage Act) provides for cooperative management, protection and ecologically sustainable use of land in the Cape York Peninsula region. Prohibitions on resource extractive activities were applied to maintain the cultural, environmental and landscape values of this area.

The Bill includes amendments to the Cape York Peninsula Heritage Act to ensure that existing arrangements are retained on the Shelburne and Bromley properties – which are held as Aboriginal freehold land.

Explosives Act 1999

The *Explosives Act 1999* regulates the manufacture, sale, handling, storage, transportation and use of explosives in Queensland and provides for the safety of persons and property from misuse of explosives. The *Explosives Act 1999* is silent on security related matters. It is essential that Queensland's explosives legislation is kept current with contemporary safety and security standards and that it meets community and industry expectations. Queensland is also participating in a process to develop nationally consistent explosives legislation which will include a focus on security of explosives.

The Bill amends the *Explosives Act 1999* and the *Explosives Regulation 2017* to align with the national harmonisation process and place Queensland at the forefront for influencing the process going forward. The Bill will improve community safety by strengthening safety and security provisions for explosives. The Bill amends explosives legislation to reflect the Queensland Government's Not Now Not Ever Policy by prohibiting persons subject to domestic violence orders from holding an explosives licence.

Foreign Ownership of Land Register Act 1988

The policy objective of the amendments is to improve administration of the *Foreign Ownership of Land Register Act 1988*. The amendments will reduce duplication, clarify existing arrangements, streamline administration, remedy inconsistencies, remove redundant regulatory requirements and improve customer's experience by reducing red tape.

Land Act 1994

The *Land Act 1994* (Land Act) provides for the allocation, administration and use of state land. The policy objective of this Bill is to provide modern compliance provisions for the regulation of activities on State land and to enable the State to deal with unsafe, inappropriate and unwanted buildings and structures on State land.

Land Title Act 1994 – Paper certificates of title and e-Conveyancing

The policy objective of the amendments is to enhance titling legislation to achieve operational improvements which will streamline and clarify titling processes and allow for the contemporary conveyancing environment by further facilitating electronic conveyancing.

Petroleum and Gas (Production and Safety) Act 2004 – Gas Safety

The *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) establishes safety obligations for petroleum and gas operating plant. The Act's definition of 'operating plant' determines the activities, facilities or places regulated for workplace safety by the P&G Act. The P&G Act also establishes broader gas safety framework by licensing and authorising gas work and requiring approval for gas devices.

It is important that gas safety regulation is contemporary to support safety outcomes for workers and for communities. Routine review of safety legislation ensures it is relevant and appropriate in view of changes in industry practice, innovation and community expectations.

The Bill amends the P&G Act to improve its efficacy and responds to matters raised by industry and government stakeholders. Departmental reviews and stakeholder engagement processes have identified regulatory anomalies and deficiencies impacting day-to-day operations of practitioners and the regulator.

Petroleum and Gas (Production and Safety) Act 2004 – Abandoned operating plant

The P&G Act provides for tenure holders to decommission operating plant prior to surrendering tenure. The relevant provisions are ambiguous as to how operating plant should be safely maintained where decommissioning has not occurred and no tenure or environmental authority is in place. The Bill removes the ambiguity and provides a framework for the management of operating plant that has been abandoned.

Mineral and Energy Resources (Common Provisions) Act 2014, Mineral Resources Act 1989 and the Petroleum and Gas (Production and Safety) Act 2004 – Overlapping tenure framework for coal and coal seam gas

The overlapping tenure framework for coal and coal seam gas (overlapping tenure framework) is contained under chapter 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act). The Bill includes amendments to rectify minor and technical issues identified with the framework.

Achievement of policy objectives

Aboriginal Land Act 1991 and Torres Strait Islander Land Act 1991 – Indigenous land and housing

The Bill will achieve its policy objectives by:

- enabling the Minister to grant land to a Registered Native Title Body Corporate (RNTBC) where the RNTBC does not hold native title, and where the Minister is satisfied that it is appropriate to do so. This allows flexibility to appoint an entity – as identified by the people themselves – to be the trustee of Aboriginal or Torres Strait Islander freehold land.
- allowing the trustee and the chief executive of the Department of Housing and Public Works to agree either on a valuation methodology, or a specific price for a social housing dwelling.

Cape York Peninsula Heritage Act 2007

The Bill achieves the policy objective by amending the Cape York Peninsula Heritage Act to retain current prohibitions for the granting of mining interests in relation to the specified parcels of land.

Explosives Act 1999

The Bill achieves the policy objectives by amending the explosives legislation to:

- improve community safety and security by strengthening security provisions for explosives;
- improve the transport of explosives to save time and money for the industry and to improve safety and security on public roads;
- streamline administration including processes around application for, and transfer of, explosives licences; and
- improve the consistency of safety regulator provisions to improve information provided to the Explosives Inspectorate around notification and investigation of explosives incidents.

Foreign Ownership of Land Register Act 1988

To achieve the policy objectives, the Bill:

- allows for consistency of definitions between the *Foreign Ownership of Land Register Act 1988* and the *Duties Act 2001*; and
- amends penalties under the *Foreign Ownership of Land Register Act 1988* to remove complexity and appropriately reflect the gravity of the relevant offence.

Land Act 1994

To achieve the policy objective, the Bill:

- modernises existing provisions for authorised officers and the exertion of authorised officer powers, and inserts a number of new supporting offence and evidence provisions to complement these powers;
- addresses breach of permit conditions without the need to cancel a permit;
- enables unsafe buildings and structures to be dealt with in a timely manner;
- enables the State to seek the repair or removal of infrastructure that is poorly maintained, prevents future uses on the land or is inconsistent with the purpose of the lease or permit; and
- enables, in certain circumstances, a marine lease tied to another term or perpetual lease to become a rolling term lease.

Land Title Act 1994 – Paper certificates of title and e-Conveyancing

To achieve the policy objectives, the Bill:

- removes the requirements and effects of paper certificates of title; and
- provides a regulation-making power for the requirements for lodging and depositing instruments and other documents which may include requirements for an Electronic Lodgement Network to be used.

Petroleum and Gas (Production and Safety) Act 2004 – Gas Safety

The Bill achieves its gas safety objectives by amending the P&G Act to:

- resolve operational deficiencies and ambiguity, e.g. confirm that an operator can be a corporation or an individual;
- modernise and streamline safety reporting requirements previously required in an annual safety report so safety critical information is provided on-line and updated as it changes;
- establish a transparent process to appoint persons to approve gas devices;
- rationalise categories of operating plant for fuel gas delivery; and
- align gas safety provisions for operating plant with Queensland's mining safety legislation and general work place laws.

Petroleum and Gas (Production and Safety) Act 2004 – Abandoned operating plant

The Bill inserts a new framework in the P&G Act for the management of an operating plant that has not been decommissioned and there is no tenure or environmental authority in place. The framework will provide for abandoned operating plant to be safely managed.

Mineral and Energy Resources (Common Provisions) Act 2014, Mineral Resources Act 1989 and the Petroleum and Gas (Production and Safety) Act 2004 – Overlapping tenure framework

The Bill makes amendments to address issues identified with the overlapping tenure framework. The Bill:

- clarifies that section 232 of the MERC Act applies to a replacement tenure under section 908(2) of the P&G Act which is granted after the commencement of MERC Act;
- amends the definition of 'relevant matter' to provide that all of the matters required for a joint development plan under sections 130(3) and 142(3), can be referred to arbitration under the overlapping tenure framework;
- amends the definition of 'PL connecting infrastructure' to provide that it means infrastructure that connects PL major gas infrastructure to a petroleum well;
- amends section 343 of P&G Act to apply the same restrictions that prevent a tender for a petroleum lease from being released over a mining lease for coal to an area that is subject to an application for a mining lease for coal;
- inserts a new provision in the MERC Act to clarify that section 232 of the same Act does not, and never did, affect the operation of section 826 of the *Mineral Resources Act 1989* (MRA). The amendment will ensure the transitional provisions for the overlapping tenure framework and the new incidental coal seam gas provisions, as referred to in section 826 of the MRA, continue to operate as intended; and
- inserts a new provision in the MRA to provide for how a holder of a coal mining lease granted after commencement of section 826 of the MRA makes an offer of incidental coal seam gas to a holder of an overlapping petroleum lease granted before the commencement of section 826 of the MRA.

Alternative ways of achieving policy objectives

The regulatory frameworks amended by the Bill are already enshrined in legislation and may only be altered by amending legislation. There is no alternative way to achieve the identified policy objectives.

Estimated cost for government implementation

The implementation of the amendments will occur within existing budget allocations. Current departmental fact sheets, web content, application forms and work processes and systems will be amended where appropriate to take into account the proposed changes.

There will be minimal costs to Government associated with the gas safety amendments. There will be some costs initially to operationalise the changes and these will be met within the existing resources of the Department of Natural Resources, Mines and Energy. However, it is anticipated that the resolution of long standing ambiguous and operational deficiencies will reduce government and

industry costs associated with determining how to administer and comply with gas safety regulation.

Amendments to the overlapping tenure framework clarify existing obligations under the framework and do not incur any additional costs to industry or the government.

Consistency with fundamental legislative principles

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

Aboriginal Land Act 1991 and Torres Strait Islander Land Act 1991 – Indigenous land and housing

The amendments to the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* in relation to the possible granting of land to a Registered Native Title Body Corporate (RNTBC) where the RNTBC does not hold native title, may raise the question of whether the native title holders' rights and interests in the land may be negatively impacted.

To clarify, enabling a RNTBC to hold land outside of their determination area does not mean that they are the organisation which can make native title decisions for that land.

Where no determination of native title has been made, then an Indigenous Land Use Agreement (ILUA) is made with the people claiming to hold native title and goes through a more extensive notification and objection period prior to the National Native Title Tribunal registering the ILUA to ensure that the right people have had an opportunity to comment on the agreement.

Explosives Act 1999

Inconsistency between provisions and the scheme established under the *Criminal Law (Rehabilitation of Offenders) Act 1986*

Changes to the *Explosives Act 1999* are critical to ensuring that the Chief Inspector has all the necessary information to determine if an applicant or holder of an explosives authority is, and continues to be, a fit and proper person to hold a security clearance.

In determining if a person is a suitable person to hold a security clearance, new section 12B of the Act provides that the Chief Inspector must consider the applicant's criminal history. A new definition of criminal history is inserted into schedule 2 of the *Explosives Act 1999*, which provides that criminal history includes spent convictions and charges. This is in line with other legislation, including the *Security Providers Act 1993*.

New section 12B provides that the Chief Inspector must consider whether the applicant has, at any time, been subject to a domestic violence order (DVO), police protection notice (PPN) or release conditions under the *Domestic and Family Violence Protection Act 2012*. Under section 17 an individual must hold a security clearance in order to be granted an authority. Section 23 provides grounds for suspension or cancellation of an authority. Section 33 provides that the individual's employer must not allow a person unsupervised access to explosives if the person does not hold a security clearance. This creates a new offence with a maximum penalty of 50 penalty units.

The effect of these provisions is that previous charges, previous domestic violence history and spent charges may impact upon a person's ability to hold an authority or security clearance, affecting a person's livelihood.

A new section 23A provides that a security clearance may be suspended or cancelled if the holder is charged with a relevant offence or is no longer a suitable person to hold the security clearance. In coming to this decision the Chief Inspector may consider the person's criminal history, including spent convictions and charges. These provisions are necessary to ensure the safe and secure handling of explosives, including the safety and security of persons and property from the misuse of explosives. They are also necessary to ensure that only persons who are suitable to have access to explosives do so.

Under section 12G when the Chief Inspector makes a decision based on the report from the Commissioner of Police, the applicant or authority holder will not receive a copy of the report. However, if the Chief Inspector refuses the application or cancels an existing security clearance, section 12C states the Chief Inspector must give the applicant an information notice for the decision.

This will ensure the Chief Inspector has all necessary information to determine if an applicant or holder of an explosives authority is, and continues to be, a suitable person to hold a security clearance.

Potential departure from the principle that legislation have sufficient regard to an individual's rights and liberties under section 4(2) of the *Legislative Standards Act 1992*

The suspension of a respondent's explosives licence is necessary to ensure that police have the ability to provide appropriate protection to victims in circumstances where the respondent has access to explosives, and will improve protection for victims by requiring respondents to surrender any explosives they possess until the court makes a final determination. The change recognises the expanded role of and protection in temporary protection orders, PPNs, and release conditions.

Section 25 is amended to now include a reference to the cancellation or suspension of a security clearance as well as an authority. Section 25(2) provides that previous notice is not required. However, section 25(3) states that the Chief Inspector must immediately inform the authority or security clearance holder of the decision by giving an information notice for the decision.

Section 25A is amended to provide that when a person who holds an authority or security clearance is named as a respondent in a temporary protection order and is present in court when the order is made, the authority or security clearance is suspended from the time the order is made until the order is no longer in effect. Otherwise when the holder is given the temporary protection order, a PPN or release conditions, their authority or security clearance is suspended until the order, notice or conditions are no longer in effect.

Section 25B is amended to provide that when a person who holds an authority or security clearance is named as a respondent in a protection order and is present in court when the order is made, the authority or security clearance is cancelled from the time the order is made, or otherwise from the time the authority or security clearance holder is given the protection order. This is a potential departure from the principle under section 4(2) of the *Legislative Standards Act 1992* because it may adversely affect some respondents whose employment involves possessing and using explosives.

The cancellation of a respondent's explosives licence is necessary to ensure that police have the ability to provide appropriate protection to victims in circumstances where the respondent has access to explosives, and will improve protection for victims by requiring respondents to surrender any explosives they possess until the court makes a final determination.

Abrogation of privilege against self-incrimination

Section 59A removes the right of privilege against self-incrimination in relation to an explosives incident or serious explosive incident. Section 59A applies if a person is required to answer a question under section 59 – person must answer a question about an explosives incident. Section 59B states that a warning about the effect of this provision must be given to the person required to provide the information at the same time as the request.

Section 74A removes the right of privilege against self-incrimination in relation to investigations of explosives incidents or serious explosives incidents by a board of inquiry. Section 74B states that a warning about the effect of this provision must be given to the person required to provide the information or document at the same time as the request.

Excusing persons from answering questions can mean that necessary information showing why an explosives incident occurred might not be revealed. This information might be necessary to help stop a similar incident in the future and is particularly important given the potential for death or injury or damage to property from the misuse of explosives. Similar provisions removing the excuse to not answer questions also exist in other mining Acts as well as the *Work Health and Safety Act 2011*. However, as provided for in these other Acts, any information or document or other evidence received under this section will not be admissible as evidence against the person, other than proceedings arising out of the false or misleading nature of the answer, information or document.

New offences and penalties

The amendments introduced by the Bill in this regard are necessary to support the safe and secure handling of explosives.

Explosives Act

- section 26A –surrender of explosives where authority is suspended or cancelled under this division (maximum 100 penalty units)
- section 30A – immediately report the loss, destruction or theft of an authority or security clearance (maximum 50 penalty units)
- section 30A(2) report the loss by in 30A by written notice (maximum 50 penalty units)
- section 33 – unsupervised access to explosives without a security clearance (maximum penalty 50 penalty units)
- section 55 – chief inspector to be notified in writing of explosives incident (maximum penalty 50 penalty units)
- section 75 – contempt of a board of inquiry (maximum 200 penalty units)
- section 90A – 90B – failure to comply with a requirement to seized item (maximum penalty 100 penalty units)
- section 105AA –impersonation of inspectors or authorised officers (maximum penalty 100 penalty units)
- section 105G – failure to return an identity card (maximum penalty 20 penalty units)

Explosives Regulation

- section 18B – holder of a security clearance to notify inspector of notifiable event (maximum penalty 200 penalty units)
- section 46D – requirement to review security plan (maximum penalty 100 penalty units)
- section 76 – to whom explosives may be supplied (maximum penalty 100 penalty units)
- section 116A – unauthorised entry to a government magazine (maximum 50 penalty units)
- section 138A – licence must be available for inspection (maximum penalty 20 penalty units)
- section 145C – offences relating to determinations (maximum 100 penalty units)

Land Act 1994

Modern compliance framework

The new compliance framework has been developed to allow for variances in response to a wide range of matters that may arise under the Land Act in a manner which has sufficient regard to FLPs.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the Legislative Standards Act 1992)

The Bill introduces some new, and replaces some existing, compliance provisions with a modern suite of authorised officer powers and necessary supporting provisions and offences, consistent with contemporary drafting practices and legislation.

The Bill provides authorised officers with a range of powers which may be used having regard to the seriousness of a situation and in accordance with departmental oversight and supporting compliance policy and procedure. The Department of Natural Resources, Mines and Energy will develop the appropriate policies, procedures and training to ensure that all powers are exercised lawfully and appropriately.

New offences and penalties

The amendments introduced by the Bill in this regard are necessary to support the effective and transparent exercise of authorised persons powers and monitoring of compliance with and enforcement of the Land Act.

The new offences are largely modelled on existing compliance frameworks in other legislation with modifications to suit the Land Act framework. The new offences and penalties are:

- section 214J – Failure to comply with compliance notice (maximum 400 penalty units)
- section 390ZB – Failure to comply with direction (maximum 100 penalty units)
- section 390ZF – Offence to contravene help requirement (maximum 100 penalty units)
- section 390ZK – Offence to contravene seizure requirement (maximum 50 penalty units)
- section 390ZL – Offence to interfere (maximum 100 penalty units)
- section 390ZV – Offence to contravene personal details requirement (maximum 50 penalty units)
- section 390ZX – Offence to contravene document production requirement (maximum 100 penalty units)
- section 390ZY – Offence to contravene document certification requirement (maximum 100 penalty units)
- section 390ZZA – Offence to contravene information requirement (maximum 100 penalty units)
- section 390ZZD – Disclosure of criminal history report (maximum 100 penalty units)
- section 403H – Person must comply with a safety notice (maximum 400 penalty units)
- section 403K – Contravention of a regulatory notice (maximum 400 penalty units)

- section 403M – Person must not interfere with notices (maximum 400 penalty units)
- section 403N – Non-compliance with direction to leave land (maximum 400 penalty units).

The amendments are drafted in a manner that is consistent with contemporary drafting practice to ensure the new offences and related penalties are appropriate, reasonable and proportionate.

The maximum penalties associated with the offences were determined having regard to the range of penalties in the current Land Act and then other similar Queensland legislation. The consequences of non-compliance are considered to be proportionate to the offence and the Bill provides for higher penalties for offences of greater seriousness than for a lesser offence. Additionally, the penalties within the compliance framework are consistent with each other having been considered and allocated an appropriate penalty.

For example, a maximum penalty of 10 penalty units is prescribed if a person who ceases to be an authorised person fails to return their identity card to the chief executive within 21 days (formerly under section 397(3) and to be under new section 390K). The more serious offences, such as those which may directly affect an authorised officer exercising their powers and undertaking an investigation, are prescribed higher maximum penalties. For example, a maximum penalty of 100 penalty units is prescribed under new section 390ZZH for the offence of giving an authorised officer false or misleading information.

Necessary safeguards such as ensuring there is no offence committed where there is a reasonable excuse for the contravention have also been included in the new provisions.

The powers provided to authorised officers are limited in ways that are appropriate to the objectives of the Land Act, and align where appropriate, with those in other Queensland natural resources legislation.

Powers to enter premises, and search for or seize documents or other property

The Land Act, by section 400, currently provides power for authorised officers to enter land and undertake certain activities for the purposes of the Land Act or the *Vegetation Management Act 1999*.

The Bill more clearly defines the power of entry for authorised officers and the manner in which that entry may occur. The power of entry under the Land Act is recast by the Bill with model provisions to include entry by warrant and to provide further transparency around entry by consent.

The Bill continues the requirement under the Land Act that authorised officers be issued with identification documents and produce the identification in the course of exercising a power under the Land Act.

The power to enter is restrained through requirements for consent, notice or warrant and in limited circumstances, where an authorised officer reasonably believes the terms or conditions of a reservation, trust, lease, licence or permit are not being complied with.

An additional power of entry is included to allow investigation where an authorised officer has a reasonable suspicion that a dangerous structure or building poses a serious risk to public safety. This power is exercisable upon a lower standard being achieved (reasonable suspicion rather than reasonable belief) due to the risk to public safety and the need to safeguard the public in a timely manner.

The Bill provides safeguards and limitations around the provisions by authorising entry, search and seizure of evidence by the scope of consent given, warrant issued, or the public nature of the place, and as such reflect sufficient regard to the rights and liberties of individuals.

Seizure decisions are subject to internal review and appeal to the Magistrates Court. The provisions dealing with return of seized items allow the person entitled to the seized item to have access to it and the provisions detail the circumstances for the return of the seized item. Additionally, the chief executive's decision to forfeit a seized item to the State may also be appealed to the court.

Whilst the Bill does allow seizure of evidence where entry to a place has not been by consent or warrant, this power is not unlimited and it may only occur where the authorised officer reasonably believes the thing seized is evidence of the commission of an offence against the Act or a breach of a condition of a person's lease, licence or permit; and the seizure is necessary to prevent the thing being hidden, lost or destroyed.

For example, an authorised officer may receive information about a structure being built on unallocated state land, and upon entering the land, a camera is found which includes photographs on the construction activity and the people undertaking that activity.

New section 390ZP provides the chief executive with power to decide that a seized thing is forfeited to the State in limited circumstances. The chief executive can only forfeit a seized thing to the State if an authorised officer:

- a) after making reasonable inquiries, cannot find an owner; or
- b) after making reasonable efforts, cannot return it to an owner; or
- c) for a thing seized for an offence - reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.

A further safeguard is provided in that the chief executive's decision is subject to both internal review and appeal to the Magistrates Court.

The Bill also continues a statutory obligation under the Land Act on authorised officers to avoid damaging property and to cause as little inconvenience as possible, with provision for notice and compensation if damage occurs.

Information obtaining powers

The Bill provides for an authorised officer to require a person to provide documents. It is not a reasonable excuse for a person to fail to comply with a document production requirement where compliance might tend to incriminate a person. The exercise of this power is limited to documents which are issued to a person under the Land Act or required to be kept under the Land Act and as such it is not unreasonable that the privilege against self-incrimination is abrogated in these circumstances.

Further, evidential immunity is conferred by new section 390ZZJ which provides that evidence of the information or document, and other evidence directly or indirectly derived from the information or documents, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual or expose the individual to a penalty. This derivative use immunity legally protects a person from the use against the person notwithstanding the limited loss of the privilege against self-incrimination.

New section 390ZE provides a power for an authorised officer to require an occupier at a place to give an authorised officer reasonable help to exercise a general power. It is also an offence for a person to contravene such a requirement. Generally, self-incrimination is a reasonable excuse for non-compliance with the help requirement however this protection is justifiably abrogated where a document or information the subject of the help requirement is required to be held or kept by the person under the Land Act. Again, the derivative use immunity provided by 390ZZJ would apply.

New section 390ZZC will allow the chief executive to obtain information about the criminal history of a person who may be at premises for which entry is required. This amendment is necessary to inform the department of relevant information necessary to evaluate any potential risk to the personal safety of the attending authorised officer.

The section is sufficiently limited to ensure that there is not an unnecessary collection of private information. The Bill provides appropriate safeguards for the provision by way of penalties for inappropriate disclosure and the destruction of the information when it is no longer required.

Vehicle related powers and offences

The Bill provides authorised officers with a power to direct a person in control of a vehicle to stop or move the vehicle to allow the authorised officer to exercise his or her powers. This power is exercisable only where an authorised officer reasonably suspects, or is aware, that the vehicle is being used to commit an offence against the Act or if a thing in or on the vehicle may provide evidence of the commission of an offence or the breach of a condition or a person's, lease, licence or permit.

The power is justified on the grounds that the majority of trespass related acts or unlawful occupation of land involve vehicles and there is currently no means of stopping such vehicles to advise the person in control of the suspected offence. In addition, the powers will allow authorised officers to respond to situations where it is clear that a breach of condition is occurring, such as movement of livestock or equipment onto an area which has been required to be undisturbed for rehabilitation and/or cultural heritage purposes.

There are also safeguards around the exercise of this power such as the requirement for an authorised officer to identify themselves as an authorised officer and for the authorised officer to give a warning that, without reasonable excuse, it is an offence for the person to whom the direction or requirement is made not to comply with it.

New safety notice

The Bill, by new section 403D, provides a new power for the chief executive to give a person a safety notice in relation to a building, structure or equipment where the chief executive reasonably believes a building or structure or equipment on non-freehold land is dangerous and poses a serious risk to the safety of the public. If the person does not comply with the notice, the State may carry out the work and recover the costs from the person.

The power is to be included in the Land Act compliance framework to provide a means of addressing matters such as:

- a jetty or other marine structure (for example, retaining walls) constructed on a lease, licence or permit to occupy that has been assessed as unsafe by a Registered Professional Engineer (Qld);
- a structure (for example a gantry or cement sheeted shed containing asbestos) located on a business or residential lease in an urban area accessible by the public and which is beginning to fall apart and show evidence of damage and instability;
- installations or equipment (for example large belt driven diesel pumps) which are unfenced, easily accessible by the public and located on permits to occupy on roads and riverine areas.

The power is justified as an additional compliance tool to improve public safety on non-freehold land. There are a number of important limitations and safeguards around the exercise of the power. In relation to a dangerous building, structure or equipment, a safety notice may require a person to undertake any of the following:

- repair or rectify it to make it safe;
- fence it off to protect the public; or
- to demolish or remove it.

The safety notice must be accompanied by an information notice providing the details why the safety notice was given. A person given a safety notice has the ability to appeal to the Land court.

Repair, removal and remediation of buildings and structures

The Bill, by a new subdivision (chapter 4, part 3, division 2, subdivision 1AA), includes a new power to enable the State to require holders of a lease or permit to occupy to deal with buildings and structures that are unsafe, poorly maintained, prevent future use on the land or are inconsistent with the purpose of the lease or permit and are either causing community concern or become a liability to the State where the lease or permit land is surrendered, cancelled or forfeited.

If the person does not comply with the requirement, the State may carry out the work and recover the costs from the person.

The new power seeks to address the lack of adequate provisions in the Land Act to deal with buildings and structures on State land subject to a lease or permit to occupy that become a liability for the State to maintain and/or remove.

The power is to be included in the Land Act to deal with situations where buildings and structures become a liability to the State, such as:

- on lease expiry, the lessee removes buildings and structures that are useful or have on-sale value and leaves building or structures that have no on-sale value or are a liability (for example an asbestos shed, broken down sewerage works, flood destroyed structures);
- on lease expiry, the lessee leaves a large industrial building that cannot be used for any other purpose;
- during the term of a lease, the lessee fails to appropriately maintain a building or structure integral to meeting the purpose of the lease (e.g. tourism buildings and associated structures on a lease for tourism purpose);
- during the term of a lease, the lessee fails to ensure that a marine wall is maintained that protects the associated marina;
- during the term of a lease or permit, the lessee or permittee builds a structure that is inconsistent with the purpose of the lease or permit (e.g. a house on a permit to occupy for grazing; holiday units on a lease for housing mining workers);
- a permittee seeks to cancel a permit and leave unwanted structures as they are too difficult and costly for the permittee to maintain.

There are no provisions in the Land Act for the State to require a lessee or permittee to ensure that buildings and structures are well maintained, to remove a building or structure or for the State to recover costs if the work is undertaken by the State.

Modern conditions attached to a lease or permit can and have addressed some of the issues, however, legacy conditions are often found to be deficient in explicitly addressing poorly maintained and unwanted buildings and structures. In addition, compliance powers associated with breaches of a condition have been found extremely cumbersome and time consuming and as a result have not been used to date.

The power is considered justified as an additional compliance tool to deal with structures and equipment on State land that are causing community concern or that will result in a liability to the State. Such infrastructure is not only a financial liability to the State, but poses a real risk to community health and safety where accessible to the public.

Importantly, there are a number of limitations and safeguards around the exercise of the power. This includes the ability to appeal the decision. The exercise of the power will also be constrained by departmental policy and procedures.

These amendments will have positive implications for public health and safety; the health, safety and cost burden of future lessees and permittees; the future uses of State land; and cost burden to the State to remove or demolish buildings, structures and equipment.

Legislation has sufficient regard to the institution of Parliament (section 4(2)(b) of the Legislative Standards Act 1992)

The Bill includes provides for the chief executive to regulate or prohibit an activity on unallocated state land or certain reserve land for the following purposes:

- protecting public health or safety;
- preventing a nuisance in the area;
- protecting infrastructure in the area;
- protecting the cultural or environmental value of the restricted use area; or
- another purpose prescribed by regulation.

The ability to expand the purposes for which a regulatory notice may be made may be considered to delegate to an entity other than Parliament a power to change the application of the Act.

The inclusion of the power in these circumstances is justified due to the impracticality of listing all matters in the Act and the risks which may arise if it is not possible for presently unforeseeable matters to be dealt with in a flexible and timely manner. Additionally, the inclusion of further purpose in a regulation continues to subject the new purpose to the oversight and scrutiny of Parliament as a regulation must be tabled before, and may be disallowed by, the Parliament.

Regulated island provisions

The amendment to the Land Act by clauses 176, 177 and 196 amending sections 164, 164A and 373A enables sublessee consent to be removed from the making of a covenant which would “tie” a tidal/marine lease to a tourism lease (term or perpetual) on a regulated island. The limited removal of this right may arguably be viewed as derogating from the rights and liberties of individuals.

The removal of the requirement for sublessee consent for the creation of “tied covenant” has very limited application and retaining this limited right has the effect of Additionally, the interests of the sublessee are protected by section 373A (8) of the Land Act which requires that a covenant must not prevent a person from registering

an interest; exercising the person's rights under a registered interest; or releasing or surrendering a registered interest.

Land Title Act 1994 – Paper certificates of title

The amendment of the *Land Title Act 1994* by clauses 242 and 247 may raise FLP questions as it might be considered that the rights of individuals are adversely affected where they have been given possession of a paper certificate of title as security in a transaction whereby an equitable mortgage has been created.

However, the rights and obligations created under any existing equitable mortgage will not be affected by the amendment as the possession of a paper certificate of title alone does not give an equitable mortgagee the ability to enforce their security; an order of the court has always been required and an equitable mortgagee will still be able to seek such an order. Therefore the amendment is considered to be consistent with FLPs.

Petroleum and Gas (Production and Safety) Act 2004 – Gas Safety

The *Petroleum and Gas (Production and Safety) Act 2004* has provisions about the making of public statements by the Minister, chief executive, Commissioner and chief inspector about the commission of offences against, investigations conducted under and action taken to enforce the Act.

The Act provides protection from liability for an official for any acts done honestly and without negligence under the Act. This is in accordance with the general Queensland standard to confer immunity only where the person acts without negligence with any civil liability instead attaching to the State.

This is inconsistent with the general principle that all persons are equal before the law and that immunity should not be conferred. However, there is justification for immunity, as it is necessary for the administration of safety legislation, including the release of information about incidents so that officials are able to carry out their statutory safety and health functions and not be reluctant to take action because of concern about potential personal legal liability.

The amendments to provide immunity for certain public statements is consistent with recent amendments to Queensland's mining safety legislation and will remove all doubt about the release in good faith of incident information, including safety alerts.

Petroleum and Gas (Production and Safety) Act 2004 – Abandoned operating plant

The amendments allow the chief executive to authorise a person to carry out remediation activities to the land on which an abandoned operating plant is located and within the boundary of the former tenure (primary land).

The framework provides that the authorised person may enter primary land for the purpose of carrying out remediation after giving the owner or occupier of the land a notice of entry. The power of entry applies to the primary land and also to the land adjacent to the primary land for access and is therefore considered to be inconsistent with the fundamental legislative principles.

However, the amendments limit the power to enter primary land to the undertaking of remediation activities on abandoned operating plant. The authorised person is also required to give notice about the entry and the purpose of the entry to the occupier. The amendments include other safeguards such as requiring the authorised person to take all reasonable steps to ensure as little inconvenience and damage is caused when exercising the entry power and not permitting entry to structures used for residential purposes without consent.

Mineral and Energy Resources (Common Provisions) Act 2014 and the Mineral Resources Act 1989 – Overlapping tenure framework

Amendments to the MERC Act and the MRA insert new transitional provisions that apply retrospectively. However, the transitional provisions do not adversely affect the rights or liberties of individuals or impose new obligations retrospectively as the provisions clarify the intended operation of existing transitional provisions contained in the Acts.

Consultation

Regulatory Best Practice Principles were considered in the development of this Bill.

The Office of Best Practice Regulation within the Queensland Productivity Commission (QPC) was consulted on all amendments contained in the Bill concerning regulatory impacts.

QPC endorsed that further assessment under the Queensland Government Guide to Better Regulation was not required as the proposals are unlikely to result in significant adverse impacts.

Targeted consultation with stakeholders around the impacts of the proposed amendments for improving the safety and efficiency of explosives transport regulations was undertaken following recommendations from QPC.

The government made a decision not to undertake a regulatory impact analysis for the proposed amendments to the *Land Act 1994* that address legacy buildings and structures on lease and permit to occupy land.

Aboriginal Land Act 1991 and Torres Strait Islander Land Act 1991 – Indigenous land and housing

Cape York Land Council and Queensland South Native Title Services support the amendment providing for the grant of land to Registered Native Title Bodies

Corporate. Aboriginal Shire Councils were consulted and offered no objections.

Targeted consultation was also undertaken with the Department of Aboriginal and Torres Strait Islander Partnerships and the Department of Housing and Public Works.

Cape York Peninsula Heritage Act 2007

Key stakeholders – including Traditional Owners of Shelburne and Bromley properties, the conservation sector, Cape York Land Council Aboriginal Corporation and Balkanu Cape York Development Corporation – actively pursued this legislative amendment and indicated their full support.

Explosives Act 1999

Industry stakeholders including the Australian Explosives Industry and Safety Group and the Firearms Dealers Association of Queensland were consulted and expressed support for the proposals. The Transport Workers Union was also consulted and did not provide a submission.

A small number of domestic and family violence sector stakeholders were consulted by the then Department of Communities, Child Safety and Disability Services, on behalf of the Department of Natural Resources, Mines and Energy. Legal sector stakeholders identified by the Department of Justice and Attorney-General were also consulted by the Department of Natural Resources, Mines and Energy. Stakeholders expressed general support for the proposed amendments.

Foreign Ownership of Land Register Act 1988

The Queensland Law Society and Agforce expressed in principle support for the amendments to make definitions consistent across State legislation.

Land Act 1994

Discussions were held with AgForce and the Queensland Farmers Federation on the proposed changes to the *Land Act 1994*. AgForce had no major concerns, with the exception of the potential impact of the dangerous building and structures provision on leaseholders. The Queensland Farmers Federation raised no major concerns. Information was provided to the Local Government Association of Queensland.

The Queensland Law Society (QLS) raised a number of issues regarding the amendments, primarily around the scope of power granted to authorised officers and their powers of entry. QLS's concerns particularly relate to the potential impact of these powers on the rights of the occupiers of affected state land. The department has ensured that safeguards are in place that balance the rights of occupiers with the requirements under the *Land Act 1994* to effectively administer and manage state land.

Land Title Act 1994 – Paper certificates of title and e-Conveyancing

The Queensland Law Society was consulted on the amendments to the *Land Title Act 1994* and was generally supportive, or suggested minor changes which have been made where consistent with the policy objectives.

Petroleum and Gas (Production and Safety) Act 2004 – Gas Safety

Stakeholder consultation has occurred through routine engagement processes between the gas safety regulator and industry stakeholders. There is general support for the amendments.

Petroleum and Gas (Production and Safety) Act 2004 – Abandoned operating plant

Targeted consultation on the abandoned operating plant framework was undertaken with internal government stakeholders. The proposed amendments will not impose any regulatory requirements on industry as they will apply to sites that have been abandoned (i.e. there is no existing tenure or environmental authority holder).

Mineral and Energy Resources (Common Provisions) Act 2014, Mineral Resources Act 1989 and the Petroleum and Gas (Production and Safety) Act 2004 – Overlapping tenure framework

Consultation was undertaken with stakeholders during the development of the amendments to the overlapping tenure framework. Stakeholders consulted were coal and coal seam gas companies via an Industry Reference Group organised by the Queensland Resources Council and the Australian Petroleum and Production and Exploration Association. Stakeholders were supportive of the amendments.

Consistency with legislation of other jurisdictions

Aboriginal Land Act 1991 and Torres Strait Islander Land Act 1991 – Indigenous land and housing

The legislative amendments are consistent with the legislation of other jurisdictions.

Cape York Peninsula Heritage Act 2007

This legislation is unique to the Cape York Peninsula.

Explosives Act 1999

The proposed amendments to the explosives legislation are consistent with the legislation of other jurisdictions.

Foreign Ownership of Land Register Act 1988

No other Australian State or Territory has similar legislation.

Land Act 1994

The proposed amendments to the compliance provisions in the *Land Act 1994* (Land Act) will make it more consistent with other natural resources legislation in Queensland, as well as more recently developed crown land legislation in New South Wales and South Australia.

The Land Act currently has a small range of authorised officer powers, and lacks a number of powers, which are common in these other frameworks. For example, both the *New South Wales Crown Land Management Act 2016* (due to commence in 2018), and the *South Australian Crown Land Management Act 2009* both have a broader and more extensive range of authorised officer powers than in Queensland. These additional powers include, for example, the power to require a person's name and address where an offence is suspected, and certain powers in relation to vehicles.

Many of the new, and amended, compliance powers, are based on those in the *Queensland Fair Trading Inspector's Act 2014*, which is considered a model Act for such provisions. Certain other Queensland legislation has also been drawn upon to assist with the drafting of new provisions, including the *Forestry Act 1959* (in relation to 'regulatory notices'), as well as the *Waste Reduction and Recycling Act 2011*.

Rolling term leases and requirements around tourism leases on islands are particular to Queensland with no equivalent in other Australian jurisdictions.

Land Title Act 1994 – Paper certificates of title and e-Conveyancing

All other Australian States and Territories are either currently participating in electronic conveyancing or preparing to participate in the future. Other Australian jurisdictions are in the process of eliminating paper certificates of title to facilitate electronic conveyancing processes and four jurisdictions have introduced a requirement for certain lodgements to be through the electronic conveyancing environment. A similar intent to this aspect of the Bill has been achieved in these jurisdictions.

Petroleum and Gas (Production and Safety) Act 2004 – Gas Safety

There is no comparable legislative framework for operating plant in other States.

The amendments establishing a process for appointing persons to approve gas devices is consistent with gas safety legislation in all other States.

Petroleum and Gas (Production and Safety) Act 2004 – Abandoned operating plant

There is no comparable legislative framework for managing abandoned operating plants in other States. The amendments establish a process for safely managing an operating plant that has been abandoned.

Mineral and Energy Resources (Common Provisions) Act 2014, Mineral Resources Act 1989 and the Petroleum and Gas (Production and Safety) Act 2014 – Overlapping tenure framework

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

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that the short title of the Act is the *Land, Explosives and Other Legislation Amendment Act 2018*.

Commencement

Clause 2 provides for: amendments to the *Foreign Ownership of Land Register Act, Explosives Act 1999* and *Explosives Regulation 2017* to commence by proclamation; amendments to the *Land Title Act 1994* relating to removal of the legal effect of paper certificates of title to commence on 1 July 2019; amendments to the *Mineral and Energy Resources (Common Provisions) Act 2014*, *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* relating to the overlapping tenure framework to commence on assent.

Amendments to the *Petroleum and Gas (Production and Safety) Act 2004* commencing on assent include those for abandoned operating plant and the gas safety amendments in part 12, division 2 and schedule 1, part 1. Gas safety amendments in part 12, division 3 and schedule 1, part 3 commence by proclamation.

Part 2 Amendment of Aboriginal Land Act 1991

Act amended

Clause 3 provides for the amendment of the *Aboriginal Land Act 1991*.

Amendment of s 10 (Lands that are transferable lands)

Clause 4 amends the section by omitting specific lots that have already been transferred and are therefore no longer transferable lands.

Amendment of s 32B (Definitions for pt 2A)

Clause 5 replaces an incorrect reference to 'registered lease' with the correct reference of 'registered sublease'.

Amendment of s 32R (Dwelling on available land)

Clause 6 amends the section to provide that the term 'price' is used instead of 'value' when determining the amount that must be paid for the dwelling. The clause also provides that the 'price' of the dwelling can be decided by agreement between the housing chief executive and the trustee of the land as an alternative method to the existing method of deciding the 'price' through use of an agreed valuation methodology.

Amendment of section 32T (Offer to allocate available land)

Clause 7 amends the section by replacing the term 'value' with the term 'price' to reflect that the price to be paid for a social housing dwelling is what is determined, not the value of the dwelling.

Amendment of s 40 (Appointment of grantee to hold land for benefit of Aboriginal people)

Clause 8 amends the section to provide the additional power, where the Minister is satisfied it is appropriate in the circumstances, to appoint a registered native title body corporate under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* as grantee to hold land for the benefit of Aboriginal people where there has been no determination that native title exists in relation to all or a part of the land.

It is up to the parties seeking the grant to the registered native title body corporate to provide evidence that it is appropriate to grant in the circumstances. However, the amendment provides examples of how the Minister could be satisfied that it is appropriate to appoint a registered native title body corporate as grantee to hold land where there has been no determination that native title exists. The examples are not a definitive list but simply indicative.

Amendment of s 93 (Transfer to entity to hold land for benefit of Aboriginal people)

Clause 9 amends the section to allow for the transfer of Aboriginal land (which is vested in the State) to a registered native title body corporate where there has been no determination that native title exists in relation to all or a part of the land.

The amendment reflects the amendments made to section 40 providing for the appointment of a registered native title body corporate as grantee to hold land for the benefit of Aboriginal people where there has been no determination that native title exists in relation to all or a part of the land.

Amendment of s 104 (Transfer of Aboriginal land)

Clause 10 amends the section to relocate a condition, on the transfer of land to a CATSI corporation, to section 106 (Minister's approval to transfer) as all other conditions are located in that section.

Amendment of s 105 (Application for approval to transfer)

Clause 11 amends the section to enable a trustee to apply for the Minister's approval for the transfer land to registered native title body corporate where there has been no determination that native title exists in relation to all or a part of the land.

The amendment reflects the amendments made to section 40 providing for the appointment of a registered native title body corporate to hold land for the benefit of Aboriginal people where there has been no determination that native title exists in relation to all or a part of the land.

Amendment of s 106 (Minister's approval to transfer)

Clause 12 amends the section to enable the Minister to approve an application by a trustee (under section 105) to transfer land to registered native title body corporate where there has been no determination that native title exists in relation to all or a part of the land.

The amendment reflects the amendments made to section 40 providing for the appointment of a registered native title body corporate to hold land for the benefit of Aboriginal people where there has been no determination that native title exists in relation to all or a part of the land.

Amendment of s 109 (Transfer of Aboriginal land)

Clause 13 amends the section to relocate a condition, on the transfer of land to a CATSI corporation, to section 111 (Minister's approval to transfer) as all other conditions are located in that section.

Amendment of s 111 (Minister's approval to transfer)

Clause 14 amends the section to enable the Minister to approve an application by a trustee (under section 109) to transfer land to registered native title body corporate where there has been no determination that native title exists in relation to all or a part of the land.

The amendment reflects the amendments made to section 40 providing for the appointment of a registered native title body corporate to hold land for the benefit of Aboriginal people where there has been no determination that native title exists in relation to all or a part of the land.

Amendment of s 128 (Additional conditions and requirements for social housing dwelling)

Clause 15 amends the section to provide that the term 'price' is used instead of 'value' when determine the amount that must be paid for the dwelling.

The clause also provides that the 'price' of the dwelling can be decided by agreement between the housing chief executive and the trustee of the land as an alternative method to the existing method of deciding the 'price' through use of an agreed valuation methodology.

Amendment of s 288 (Dealing with particular trust property)

Clause 16 amends the section to provide that the term 'price' is used instead of 'value' when determine the amount that must be paid for the dwelling. This reflects the amendments to section 128.

Amendment of sch 1 (Dictionary)

Clause 17 inserts into the dictionary a definition of a 'native title determination'.

The clause also amends the definition of 'social housing' to remove the term 'value'. This reflects that it is the price to be paid for a social housing dwelling, not the value of the dwelling that is being determined.

Part 3 Amendment of Cape York Peninsula Heritage Act 2007

Act amended

Clause 18 amends the Cape York Peninsula Heritage Act 2007.

Insertion of new s 27A

New section 27A Prohibition on, and dealing with applications for, grant of mining interest in relation to particular land

Clause 19 inserts a new section 27A providing for the prohibition, and dealing with applications for the grant of mining interests over specific land parcels of protected land. The protected land (which is Aboriginal freehold land under the Aboriginal Land Act 1991) and ownership to which the prohibition relates is as follows: (a) Shelburne Bay; Wuthathi Aboriginal Corporation Registered Native Title Body Corporate; (b) Shelburne Bay; Wuthathi Aboriginal Corporation Registered Native Title Body Corporate; (c) Bromley; Bromley Aboriginal Corporation Registered Native Title Body Corporate.

The clause provides that a mining interest – i.e. a lease, licence, permit, claim or other authority under the *Geothermal Energy Act 2010*, *Greenhouse Gas Storage Act 2009*, *Mineral Resources Act 1989*, *Petroleum Act 1923*, *Petroleum and Gas (Production and Safety) Act 2004* or another Act relating to mining for minerals, petroleum or natural gas – can neither be applied for, nor granted, in relation to the protected land.

Any application for the grant of a mining interest in relation to the protected land that has not been decided before the commencement of the section is taken to have been withdrawn and cannot be further dealt with.

Part 4 Amendment of Explosives Act 1999

Act amended

Clause 20 amends the Explosives Act 1999. This clause also contains a note referring to amendments in schedule 1, part 4.

Replacement of long title

Clause 21 amends the long title from 'An Act about explosives, and for other purposes' to 'An Act to regulate the handling of and access to explosives, and for other purposes'. This has been amended as the current long title does not reflect the purpose of the legislation. The purpose is now set out in section 2A.

Insertion of new s 2A

New section 2A Purpose of Act

Clause 22 inserts a new purpose into the Act to reflect the contemporary role of the legislation in the regulation of the handling of explosives and access to explosives to protect public health and safety, property and the environment.

Amendment of pt 3, hdg (Authorities)

Clause 23 amends the heading of Part 3 to read 'Authorities and security clearances'. This amendment reflects the insertion of a new Part 3, Division 1AA which specifies requirements for the application of, and renewal of, a security clearance.

Insertion of new pt 3, div 1AA

Clause 24 inserts a new division which provides the requirement of a security clearance in order to have access to certain types of explosives. This amendment has been made to ensure that only those persons who are appropriate to have access to explosives do so.

Division 1AA Security clearances

Subdivision 1 Applications for security clearances

New section 12A Making applications for security clearances

New section 12A states that an individual can apply to the chief inspector for a security clearance. The application must be in an approved form accompanied by the fee and any information prescribed by regulation.

New section 12B Criteria for deciding applications

New section 12B sets out the criteria of deciding an application. The chief inspector may decide to give a security clearance only if satisfied that the applicant is a suitable person to hold the clearance as set out in this section.

New section 12B(2) provides that the inspector must consider:

- the applicants criminal history; and
- whether the applicant has at any time been named as a respondent in a domestic violence order, police protection notice or release conditions

The chief inspector may also consider:

- the applicants' mental health
- information about the applicant that indicates that holding a security clearance would be a risk to the public or would be contrary to the public interest; and
- anything else relevant to the applicant's suitability to hold a security clearance

Under new section 12B(3) the applicant is not a suitable person to hold a security clearance if they have been named as a respondent in a domestic violence order,

police protection notice or release conditions and the notice or conditions are in force.

New section 12C Deciding applications

New section 12C states that the chief inspector must consider the application and decide to give or refuse the security clearance. The chief inspector may decide to give the clearance only if satisfied the applicant is a suitable person to hold the security clearance.

After making a decision, the chief inspector must promptly give the applicant the security clearance, or an information notice about the decision to refuse the security clearance.

A note is also included referring to section 123AC(2) – taking biometric information for use under this Act.

New section 12D Form of security clearances

New section 12D specifies that a security clearance must in the approved form and include a digital photo and digitised signature of the security clearance holder.

New section 12E Term of security clearances

New section 12E states the term of the clearance, which is not more than 5 years, upon which the security clearance expires. At the end of the stated term the clearance will expire.

Subdivision 2 Information about applicants and security clearance holders

New section 12G Reports about criminal history and other matters

New section 12G provides for obtaining reports about criminal history and other matters. Under this section the chief inspector may ask the commissioner for a written report about the person's criminal history, including the nature of any offence giving rise to a charge or conviction. The written report may also be about whether the applicant has at any time been named as a respondent in a domestic violence order, police protection notice or release conditions. The commissioner must give the report to the chief inspector. The report must only contain information about the person's criminal history, domestic violence order, police protection notice or release conditions, in the commissioner's possession, or to which the commissioner has access.

New section 12H Commissioner must give notice of particular matters

New section 12H provides that the commissioner must give the chief inspector written notice if the following events happen in relation to a person the commissioner

reasonably suspects is an applicant or current holder of a security clearance: - a change in the person's criminal history

- the person is named as the respondent in a domestic violence order or police protection notice
- release conditions are imposed on the person under the *Domestic and Family Violence Protection Act 2012*

The section also specifies what information the written notice must contain; that the chief inspector may confirm to the commissioner whether the person is an applicant or current holder of a security clearance; and that acquiring a criminal history is taken to be a change in a person's criminal history.

New section 12I Requests for information about mental health

New section 12I states that the chief inspector may, in writing, ask for further information about the person's mental health in order to decide whether the person is a suitable person to hold a security clearance. The chief inspector may ask the person to provide a report from a doctor or psychologist about the person's mental health. A minimum of 28 days' notice must be given for the applicant to provide this information. This applies in relation to an applicant for, or holder of, a security clearance.

Under new section 12I(5) the chief inspector may inform the doctor or psychologist about the person having access to explosives and ask the doctor or psychologist for a further report about the person's mental health. Section 12I(6) states that the inspector may inform the doctor or psychologist about the person having access to explosives if they reasonably consider the doctor or psychologist was not aware of the information and that it may influence the decision of the doctor or psychologist.

New section 12J Failure to give information about mental health

New section 12J states that if the applicant does not comply with a notice given under section 12I(2) they are taken to have withdrawn the application.

New section 12K Use of information obtained under s 12G, 12H or 12I

New section 12K states that information obtained under sections 12G, 12H or 12I may only be used to decide if the person is a suitable person to hold or continue to hold a security clearance section 12B, or whether to suspend or cancel a person's security clearance under section 24 or 25.

Information given to the chief inspector under section 12I may only be used for making a decision under section 12B about whether a person is suitable to hold or continue to hold a security clearance, whether to suspend or cancel a person's security clearance under section 24 or 25, or to investigate or prosecute an offence under the *Explosives Act 1999*.

New section 12K(4) states that the chief inspector must also consider when the offence was committed, the nature of the offence and other matters they consider to be relevant.

New section 12K(5) states that the section is subject to section 132 (Disclosure of the information).

Amendment of s 15 (Inquiries about person's appropriateness)

Clause 25 amends section 15(2A) to remove the consideration of mental health when making inquiries about a person's appropriateness and replaces it with making inquiries about the person's identity, character and physical health.

Sections 15(3)(a)(i) - (iii) are amended to remove the consideration of mental health, whether the person has been convicted of a relevant offence and whether a domestic violence order has been made against the person. The consideration of whether the person has stated anything that is false or misleading in an application, and the person's physical health, has been inserted. Mental health and domestic violence orders are now considered under the new Division 1AA (Security clearances).

Section 15(3)(b)(i) is amended to include an insolvent under administration under the Corporations Act.

Section 15(3)(b)(iv) is inserted to include the consideration of any information that indicates it would be contrary to the public interest for a corporation to hold an authority.

Sections 15(5) and 15(6) are omitted with the previous section 15(5) considered under the new Division 1AA (Security clearances).

Consequential renumbering has also occurred.

Section 15(8)(c) is also amended to include a reference to safety 'and security' practices for the use and handling of explosives.

Section 15(10) is omitted. Reference to the Corporations Act is now included in section 15(3)(b)(i). The term 'prescribed activity' is inserted into section 23, with 'prescribed activity' now defined in Schedule 2 - Dictionary. The definition of relevant offence is moved to new section 23A - Grounds for suspending or cancelling security clearances.

Insertion of new s15A

New section 15A Persons who are not appropriate persons

Clause 26 inserts a new section 15A which applies to a person who is an applicant or current holder of a security sensitive authority. This provides that a person is not an appropriate person to hold or continue to hold an authority if an employee of the person will have unsupervised access to explosives in the course of their employment and the employee does not hold a security clearance.

Under section 15A(3) an employee will have unsupervised access if they are able to have access to an explosive other than in the presence of, or under direct supervision of the person who holds a security clearance.

Amendment of s 16 (Additional information)

Clause 27 amends section 16 to replace subsection (1) to remove the consideration of mental health as this is now considered under the new Division 1AA (Security clearances).

Section 16(1A) is inserted to provide that the chief inspector may ask the person applying for the security clearance to give the inspector a report from a doctor about the person's physical health.

Subsections (3) to (6) are omitted as they are also now considered under the new Division 1AA (Security clearances).

Consequential renumbering has also occurred.

Insertion of new s 16A

New section 16A Other information for application

Clause 28 provides for the insertion of a new section 16A which states that the chief inspector may request in writing additional information that is reasonably needed in order to decide the application for an authority.

Amendment of s 17 (How chief inspector may deal with application)

Clause 29 amends section 17 to state that the chief inspector must refuse to issue a security sensitive authority unless:

- if the applicant is an individual, the applicant holds a security clearance
- if the applicant is a listed corporation, a person nominated by the corporation as the responsible person for explosives matters, holds a security clearance
- if the applicant is a corporation or partnership, each executive officer of the corporation or each partner in the partnership, holds a security clearance.

A note is also included referring to section 123AC(2) – taking biometric information for use under the *Explosives Act 1999*. Consequential renumbering has also occurred.

Insertion of new s 18A

New section 18A Form of authority

Clause 30 inserts a new section 18A which states that an authority must be in the approved form, and if the authority is an occupational authority, it must also include the holder's digital photo and digitised signature.

Amendment of s 20 (Transfer of authority)

Clause 31 amends section 20(1) to provide that a licence, other than an occupational authority, may be transferred with the written approval of the chief inspector.

Amendment of pt 3, div 2, hdg (Suspension and cancellation of authorities)

Clause 32 amends the heading of Part 3, Division 2.

Suspension and cancellations of authorities and security clearances

Insertion of new pt 3, div 2, sdiv 1, hdg

Clause 33 inserts a new subdivision.

Subdivision 1 Suspensions and cancellations generally

Amendment of s 23 (Grounds for suspension and cancellation)

Clause 34 amends the heading of section 23.

Section 23(c) is amended to omit the words 'has committed' and replace it with the words 'is convicted of or charged with' an offence about explosives or another offence involving the use of explosives.

Section 23(f) is omitted and replaced with a new ground where the level of safety under which an activity is carried out under an authority is inadequate for ensuring the safety of a person. New subsections 23(1)(g) – (l) further expand the grounds for suspension or cancellation of an authority.

Section 23 is also amended to include a new subsection (2) which states that section 23(1)(i) – (l) applies only for a security sensitive authority (i.e. these do not apply if the authority is a low risk authority).

Insertion of new s 23A

New section 23A Grounds for suspending or cancelling security clearances

Clause 35 states the grounds for the cancellation or suspension of a security clearance. These are where:

- the clearance was obtained because of incorrect or misleading information
- the holder of the clearance is convicted or has been charged of a relevant offence
- the holder of clearance is no longer a suitable person, including in regards to matters in section 12B(2).

This section also includes an amended definition of a relevant offence.

Amendment of s 24 (Procedure for suspension or cancellation)

Clause 36 amends section 24 to include multiple new references to a security clearance. This ensures the procedures for suspension or cancellation are applicable to both an authority or security clearance.

Amendment of s 25 (Procedure for urgent suspension or cancellation of authority)

Clause 37 amends section 25 to include new references to a security clearance, with the procedure for suspension or cancellation applicable to both an authority or security clearance.

Insertion of new pt 3, div 2, sdiv 2

Clause 38 inserts a new subdivision for immediate suspension and cancellation of an authority or security clearance in particular circumstances.

Subdivision 2 Immediate suspensions and cancellations

New section 25A Immediate suspension in particular circumstances

New section 25A applies where the holder of an authority or security clearance is named as a respondent in a temporary protection order, a police protection notice or release conditions are imposed. If the authority or security clearance holder is named as a respondent in a temporary protection order, and they are present in the court when the order is made, the authority or security clearance is suspended from the time of the order until the order is no longer in force. If release conditions are imposed, the authority or security clearance is suspended while the release conditions are in force. If the holder is served with the temporary protection order or police protection notice, the authority or security clearance is suspended until the order or notice is no longer in force. A temporary protection order is defined at new section 25A(3) to mean 'a temporary protection order under the *Domestic and Family Violence Protection Act 2012*' and includes 'an interstate domestic violence order corresponding to a temporary protection order' issued in Queensland.

New section 25B Immediate cancellation if protection order made

New section 25B provides that where the holder of an authority or security clearance is named as the respondent in a protection order, the authority or security clearance is cancelled from the time the order is made, if the holder is present in court at that time. In all other circumstances the authority or security clearance is cancelled from when the holder is served with the protection order.

A protection order is defined at new section 25B(3) as 'a protection order under the *Domestic and Family Violence Protection Act 2012*', and includes 'an interstate domestic violence order corresponding to a protection order' issued in Queensland.

Insertion of new pt 3, div 2, sdiv 3, hdg

Clause 39 inserts a new Subdivision 3 heading.

Amendment of s 26 (Return of authority)

Clause 40 is amended to include a reference to a security clearance, with the procedure for return of a suspension or cancellation applicable to both an authority

or security clearance. Return of a suspended security clearance by the chief inspector at the end of the suspension is the same as that for an authority.

Insertion of new s 26A

New section 26A Surrender of explosives

Clause 41 inserts a new section 26A providing for the surrender of explosives. The section applies to a person who has had their authority suspended or cancelled. Section 26A(2) states that the person must immediately arrange with an inspector to give an inspector any explosives they have in their possession, within 1 day of the suspension or cancellation taking effect. A maximum penalty of 40 penalty units applies.

Section 26A(3) states that the person must comply with subsection 2 unless they have a reasonable excuse. A maximum penalty of 100 penalty units applies.

Amendment of pt 3, div 3, hdg (Other provisions about authorities)

Clause 42 amends this heading to include 'and security clearances' in the heading to provide for the reference of security clearances in this part.

Amendment of s 27 (Replacement of authority)

Clause 43 amends section 27 to include a reference to a security clearance, with the procedure to replace a lost, stolen or destroyed security clearance the same as for an authority.

Amendment of s 28 (Amendment of authority on application)

Clause 44 amends section 28 to provide that an application to amend an authority must be made in the approved form.

Renumbering has also occurred.

Insertion of new s 30A

New section 30A Reporting loss, destruction or theft of authorities and security clearances

Clause 45 inserts section 30A to provide a requirement for the holder of an authority or security clearance to immediately report the loss, destruction or theft of the authority or security clearance by notice in the approved form or oral notice to the chief inspector or authorised officer. A maximum penalty of 50 penalty units applies.

Section 30A(4) states that if oral notification occurs the person also provide notice in the approved form to the chief inspector or authorised officer within 7 days. A maximum penalty of 50 penalty units applies.

Amendment of s 31 (Surrender of authority)

Clause 46 amends section 31 to include a reference to a security clearance, with the procedure to surrender a security clearance the same as for an authority.

Amendment of s 32 (General duty of care)

Clause 47 amends section 32 to provide that the duty of care includes taking reasonable precautions and using reasonable care to ensure explosives are kept secure from unauthorised access. Renumbering of the section has also occurred.

Replacement of s 33 (Employer's obligation about employees)

Clause 48 inserts a new section 33 which states an employer must ensure that an employee does not have access to an explosive unless the employee is the age prescribed by regulation.

Where the employer holds a security sensitive authority the employer must not allow the employee access unless:

- the employee holds a security clearance or;
- the access is within the course of the employee's employment and in the presence of and under the direct supervision of the employer or another person with a security clearance.

This requirement ensures that explosives are kept secure. A maximum penalty of 50 penalty units applies.

New section 33(2) also provides that an employer must not ask or allow an employee to carry out an activity involving the handling of explosives unless the employer is reasonably satisfied the employee has the qualifications, experience and expertise prescribed by regulation for carrying out of the activity. This requirement ensures public safety from misuse of explosives.

A note referring to section 23(1)(h) is also included.

Amendment of s 38 (Explosive to be manufactured under authority)

Clause 49 amends section 38 which states the exemption from manufacturing an explosive without an authority. An authority is not necessary where the amount of the explosive manufactured is not more than 50g, or a smaller amount prescribed by regulation. This amount is adequate for use in, for example, a chemical experiment where it is manufactured and used under the direct supervision of a competent adult

with sufficient knowledge and experience to identify hazards and risks associated with using explosives. The explosive must be manufactured in a laboratory that is part of an educational or research facility, for use in a chemical experiment by the person manufacturing the explosive.

Any amount above 50g requires a licence to manufacture.

Section 38(5) is inserted with the definition of a competent adult.

Amendment of s 40, hdg (Safety at factories)

Clause 50 amends the heading of section 40 by placing the words ‘and security’ after ‘Safety’. This reflects the purpose of the legislation to protect public safety by ensuring explosives are accessed and handled only by persons who hold a security clearance and are considered to be appropriate persons.

Amendment of s 46 (Government magazines)

Clause 51 amends section 46 by declaring that if a lease is registered under the *Land Act 1994* or the *Land Title Act 1994* for a place, or part of a place, declared to be a government magazine, the place or part stops being a government magazine on the registration of the lease.

Amendment of s 48, hdg (Safety at magazines)

Clause 52 amends the heading of section 48 by inserting the words ‘and security’ after ‘Safety’. This reflects the purpose of the legislation to protect public safety by ensuring explosives are accessed and handled only by persons who hold a security clearance and are considered to be appropriate persons.

Amendment of s 50 (Transporting explosives)

Clause 53 amends section 50(1) by removing the words ‘or boat’ as boat is now included in the definition of vehicle in the Act. A new section 50(1A) is inserted which states when subsection (1) does not apply. Section 50(3) is omitted and consequential renumbering has also occurred.

Insertion of new s 51A

New section 51A Regulation may be made about particular matters

Clause 54 inserts a new section 51A which states that a regulation may make provision about the recognition of laws of other jurisdictions about transporting explosives. Section 51A(1)(b) provides that the chief inspector may make a determination (decision) under the regulation about the safe and secure transport of an explosive.

Section 51A(2) states that the regulation may prescribe the process for making a determination or the effect the determination has on a provision of the regulation about transporting explosives. The regulation may also prescribe the process for amending, suspending or cancelling an administrative determination, or the information about a determination that must be kept publicly available.

Section 51A(3) defines the term administrative determination.

Replacement of ss 55 and 56

Clause 55 replaces sections 55 and 56 and inserts a new section 56A.

New section 55 Meaning of relevant person

New section 55 defines the meaning of a relevant person for explosives involved in an explosives incident. That is, the relevant person is the authority holder or if a person other than the authority holder was in custody or control of the explosives at the time of the incident – that person.

New section 56 Notification of explosives incident

New section 56 states that the chief inspector must be notified immediately following an explosives incident either verbally or by using an approved form. The maximum penalty is 170 penalty units.

Section 56(2) states that if the notification is oral, notification in the approved form must occur within 48 hours. The maximum penalty is 50 penalty units.

This section provides for the immediate notification of an incident to the chief inspector to ensure a prompt response to prevent, minimise and reduce the risk of future incidents occurring.

New section 56A Isolation of site of explosives incidents

New section 56A applies if an inspector reasonably believes it is necessary to preserve evidence after an explosives incident has occurred.

Section 56A(2) states that the inspector may isolate the site of the explosives incident to prevent interference with the site.

Section 56A(3) states that the inspector may, either by written notice or orally, require the relevant person for explosives involved in the incident to isolate the site as provided for in subsections 3(a) and 3(b).

Section 56A(4) states that where the requirement is given orally under subsection 3, the chief inspector must provide a written notice confirming the requirement as soon as practicable.

Section 56A(5) provides that a person must comply with the requirement. A maximum of 200 penalty units applies.

This ensures the site can be isolated to preserve evidence including in a situation where the authority holder was not in control of the site when the incident occurred.

Amendment of s 58 (Investigation by chief inspector or authority holder)

Clause 56 inserts section 58(1)(b)(iii) which provides that the chief inspector may give the authority holder whose explosives were involved in the explosives incident a written notice requiring the holder to give the report to the chief inspector.

Section 58(1A) states that after receiving a report under section 58(1)(b)(iii) the chief inspector may require, in writing, the authority holder to undertake further investigation or give further information about the explosives incident.

Section 58(2) to (4) have been consequentially amended, with the section also renumbered.

Amendment of s 59 (Person must answer question about explosives incident)

Clause 57 amends section 59 to insert a note referring to sections 59A and 59B in relation to self-incrimination. This ensures that all information about an explosives incident is provided to the chief inspector.

Section 59(2) is amended to insert a reference to maximum penalty for subsection (2). The previous reference to self-incrimination, section 59(3), is omitted.

Insertion of new ss 59A and 59B

Clause 58 inserts new sections 59A and section 59B.

New section 59A Abrogation of privilege against self-incrimination

New section 59A provides for the abrogation of privilege against self-incrimination in relation to an explosives incident if a person is required to answer a question under section 59. Under section 59A(2) a person is not excused from answering a question or providing a document or thing on the grounds that it may incriminate them.

Under section 59A(3) the information is not admissible as evidence against the person in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the information or document provided.

New section 59B Warning to be given by inspector

New section 59B states that it is not an offence to refuse to answer a question or provide a document or thing unless a warning was first given under section 59B(1)(b). Section 59B(3) states that nothing prevents an inspector from obtaining and using evidence provided voluntarily to the inspector.

These sections ensure that all relevant evidence is available to the chief inspector when investigating an incident.

Amendment of s 60 (Minister may establish board of inquiry)

Clause 59 amends section 60 to include reference to a previous investigation by a chief inspector, authority holder or inquiry by a board of inquiry. This ensures the board of inquiry is able to investigate an incident regardless of whether there have been previous investigations or inquiries.

Replacement of s 61 (Membership of board of inquiry)

Clause 60 replaces the previous section 61. This states that a board of inquiry is constituted by a magistrate or an appropriately qualified lawyer, and either the chief inspector or an appropriately qualified person who has knowledge or experience in explosives. Depending on the nature of the incident, the Minister may allow up to an additional three persons with special knowledge relevant to the incident to be added to the board of inquiry.

Under new section 61(2) the Minister is to appoint the members of the board and the chairperson, who must also be a member of the board. Under new section 61(3), a member of the board who is not an inspector is taken to have the powers of an inspector for the purposes of the inquiry.

These amendments reflect a more contemporary approach to a board of inquiry.

Insertion of new ss 62A and 62B

Clause 61 inserts new sections 62A and 62B.

New section 62A Conditions of appointment

New section 62A provides for the conditions of appointment to a board of inquiry, including remuneration and allowances to be decided by the Minister. Section 62A(2) states that a member holds office on the conditions decided by the Minister.

New section 62B Chief executive to arrange for services of staff for board of inquiry

New section 62B provides for services of support staff to be made available to the board of inquiry.

These amendments insert governance arrangements that were not provided in the previous legislation.

Amendment of s 63 (Procedure)

Clause 62 omits section 63(4). This is now provided for in section 61(2) where the Minister is to appoint the chairperson of the inquiry.

Amendment of s 72 (Offences by witnesses)

Clause 63 inserts a note in section 72 which refers to section 74A and 74B in relation to self-incrimination. The previous reference to reasonable excuse in section 72(3) is omitted.

Insertion of new ss 74A and 74B

Clause 64 inserts new sections 74A and 74B.

New section 74A Abrogation of privilege against self-incrimination

New section 74A provides that a person is not excused from answering a question or providing a document or thing on the grounds that it may incriminate them or expose them to a penalty.

New section 74A(2) states that the information is not admissible as evidence against the person in civil or criminal proceedings, other than proceedings arising out of the false or misleading nature of the information or document provided.

New section 74B Warning to be given by board of inquiry

New section 74B provides that before requiring a person to answer a question or produce a document or thing under this part, the board of inquiry must warn the person that a failure to comply is an offence and warn the person of the effect of section 74A.

New section 74B(2) provides that it is not an offence to refuse to answer a question or provide a document or thing unless a warning was first given under section 74B(1)(b). Section 74B(3) states that nothing prevents the board from obtaining and using evidence provided voluntarily to the board.

These new sections ensure that all relevant evidence is available to the board when investigating an incident.

Amendment of s 75 (Contempt of board)

Clause 65 amends section 75 to state that a person must not impede or obstruct the board in the exercise of its powers. The maximum penalty for an offence under this section is increased to 200 penalty units, recognising the seriousness of contempt of the board when undertaking an investigation.

Section 75 has also been renumbered.

Replacement of s 80A (Function of inspector)

Clause 66 replaces section 80A to provide detailed functions of an inspector, reflecting the contemporary role and function of this position.

Section 80A(2) refers to the *Public Service Act 2004*, section 24, for a definition of government entity for the section.

Insertion of new ss 90A-90C

Clause 67 inserts new sections 90A – 90C.

New section 90A Power to secure seized thing

New section 90A describes what an inspector may do with a seized thing, such as take reasonable action to restrict access to it or move it.

New section 90B Powers to support seizure

New section 90B provides that in order to enable a thing to be seized an inspector may require a person the inspector reasonably believes is in control of the thing or a place of seizure for the thing to, under section 90B(1)(a), both take it to a reasonable place at a reasonable time and, if necessary, remain in control of it at the stated place for a reasonable time.

Under section 90B(1)(b) the chief inspector may require a person to do an act mention in 90A(2)(a), (b) or anything else an inspector could do under subsection 90A(1)(a).

Section 90B(2) states that the requirement must be made by written notice or if it is not practical to give notice, it must be made orally and confirmed by notice as soon as practicable.

Section 90B(3) states that a person must comply with a requirement made under subsection (1) unless they have a reasonable excuse. A maximum penalty of 100 penalty units applies for subsection (3).

New section 90C Offence to interfere

New section 90C creates an offence to interfere with a seized thing or enter a restricted place under new section 90A without a reasonable excuse or an inspector's approval. The maximum penalty is 100 penalty units.

Amendment of s 93 (Access to seized things)

Clause 68 amends section 93(3) to provide that if an inspector has required a person to move a thing from the place of seizure under section 90B(1)(c) the inspector may also require the person to return the thing to the original place of seizure. Section 93(4) states that the person must return the thing at their own expense.

Amendment of s 94 (Forfeiture of seized things)

Clause 69 amends section 94(1) to provide that the chief inspector may decide if a seized thing is forfeited to the State where section 94(1)(a) or 94(1)(b) apply.

Section 94(2)(a) and (b) are amended to include reference to both an inspector or authorised officer, allowing this function to be delegated to an authorised officer under the legislation.

Amendment of s 97 (Power to require attendance of persons before an inspector to answer questions)

Clause 70 amends section 97(1)(b) by inserting the words 'health, safety or security'. This reflects the purpose of the legislation to protect public safety by ensuring explosives are accessed and handled only by persons who hold a security clearance and are considered to be appropriate persons.

Replacement of s 99 (False or misleading statements to inspector)

Clause 71 replaces the previous section 99.

New section 99 False or misleading information

New section 99 provides that a person must not, in relation to the administration of this Act, give an inspector or authorised officer information that the person knows is false or misleading. The maximum penalty is 20 penalty units.

Section 99(2) states that subsection (1) does not apply if the person tells the inspector or authorised officer when giving the information, that to the best of the person's ability, how the document is false or misleading and if the person can obtain the correct information, gives the correct information.

New section 99A Person not to encourage or influence refusal to answer questions

New section 99A states that person must not encourage or influence a refusal to answer questions. This creates a new offence with a maximum penalty of 40 penalty units.

New section 99A(2) states that this section does not apply to the provision of legal advice to a person by a lawyer.

Omission of s 101 (False or misleading documents to inspector)

Clause 72 omits section 101.

Amendment of pt 6, div 2, sdiv 6, hdg (General enforcement offence)

General enforcement offences

Clause 73 amends the heading of this part.

Insertion of new s 105AA

New section 105AA Impersonating inspectors or authorised officers

Clause 74 inserts new section 105AA which states that a person must not impersonate an inspector or an authorised officer. The maximum penalty is 100 penalty units.

Insertion of new pt 6, div 2, sdiv 7

Subdivision 7 Additional power of chief inspector

Clause 75 inserts a new subdivision 7 that creates an additional power of the chief inspector in an emergency.

New section 105A Definition for subdivision

New section 105A states that a *Public Safety Preservation Act declaration* means an emergency under the *Public Safety Preservation Act 1986*.

New section 105B Power to direct action in emergency

New section 105B applies where the chief inspector reasonably believes there is a dangerous situation and the situation is occurring within a disaster situation or an area for which a Public Safety declaration is in force.

New section 105B(2) states that the chief inspector may direct an inspector to take action the chief inspector reasonably believes is necessary to prevent, remove or minimise the danger.

New section 105B(3) authorises an inspector directed under 105B(2) to take that action.

New section 105C Relationship to Public Safety Preservation Act 1986

New section 105C clarifies the relationship with the *Public Safety Preservation Act 1986*. New section 105C(1) states that a commander for a Public Safety Preservation Act declaration may give directions about the circumstances in which the power under new section 105B may be exercised while that declaration is in force.

New section 105C(2) states that the commander cannot direct the chief inspector in the way in which the power may be exercised. New section 105C(3) provides that a direction under section 105C(1) may only be given if it is necessary for the effective management of a situation when a Public Safety Preservation Act declaration is in force.

New section 105C(4) contains definitions relevant to the section.

Insertion of new pt 6, division 2A

Division 2A Authorised officers

Clause 76 inserts a new Division 2A 'Authorised Officers'.

New section 105D Appointments

This section provides for the appointment of an authorised officer.

New section 105E Appointment conditions and limit on powers

New section 105E specifies that an inspector holds office on the conditions stated in their instrument of appointment, a signed notice given to the authorised officer or a regulation.

New section 105E(3) states that an authorised officer is also subject to the directions of the Minister and the chief inspector.

New section 105F Functions of authorised officers

New section 105F provides for the functions of an authorised officer. These are more limited than the functions of an inspector in section 80A. This reflects the differences of role and function for a chief inspector and authorised officer in the Act.

New section 105G Authorised officer's identity card

New section 105G establishes the requirement of an identity card for authorised officers. The identity card must contain a recent photo of the authorised officer, be signed by the authorised officer, include an expiry date and identify the person as an authorised officer under the Act. Where a person stops being an authorised officer they must return the identity card to the chief inspector within 21 days, unless they have a reasonable excuse. A maximum penalty of 20 penalty units applies.

Subsection (4) provides that section 105G does not prevent the giving of a single identity card to a person for this Act and other Acts or for other purposes.

Amendment of s 111 (Application for external review)

Clause 77 amends section 111 to provide that an applicant for a security clearance may apply to QCAT for an external review of the decision to refuse to give the clearance.

Section 111(4)(d) is omitted as it is provided for under section 111(1) – refusal to grant an explosives trial.

Under the new section 111(4A) the holder of a security clearance may apply to QCAT for an external review of a decision by the chief inspector to suspend or cancel the security clearance, to refuse to renew the security clearance or to refuse to replace the security clearance.

Renumbering of the section has also occurred.

Insertion of new pt 8, div 1A

Division 1A Biometric information

Clause 78 inserts Part 8, Division 1A.

New section 123AA Application of division

New section 123AA specifies the application of the division to a relevant application for a security clearance or the renewal or replacement of a security clearance or an application for an occupational authority, or the renewal, replacement or amendment of an occupational authority under the Act.

New section 123AB Definitions for division

New section 123AB states definitions specific to the division, including the meaning of biometric information.

New section 123AC Taking biometric information for use under this Act

New section 123AC states that a person must allow the chief inspector to take and keep for use under this Act the person's biometric information. If the person does not comply with subsection (1) the chief inspector must refuse the relevant application.

New section 123AD Using biometric information

New section 123AD states when the chief inspector may use the person's biometric information under this Act.

New section 123AE Biometric information must be destroyed if relevant application refused or withdrawn

New section 123AE provides that the chief inspector must as soon as practical destroy biometric information if the relevant application is refused or withdrawn.

New section 123AF When biometric information must be destroyed if authority or security clearance given

New section 123AF provides that where the chief inspector gives the person an occupational authority or security clearance, or amends the authority under section 29, the chief inspector must destroy the person's biometric information as soon as practicable after the later of the following:

- the day the occupational authority or security clearance expires,
- if the biometric information is relevant to an investigation, inquiry or proceeding, mentioned in section 123AD, the day it ends.

Amendment of s 123A (Treatment of partnerships)

Clause 79 amends section 123A to include reference to sections 15, 15A, 16 and 16A. Section 15A 'persons who are not appropriate persons' and section 16A 'other information for applicant' are both new sections.

Amendment of s 126 (Disclosure by doctors and psychologists of certain information)

Clause 80 replaces section 126(1) to provide that the section applies if a doctor or psychologist is of the opinion that a patient is not a suitable person to hold or continue to hold a security clearance because of the person's mental condition or because the person may be a danger to themselves or another person.

Section 126(1)(b) applies if a doctor is of the opinion that a patient is not an appropriate person to hold or continue to hold an authority or have access to explosives because of the person's physical condition or because they may be a danger to themselves or another person.

Insertion of new s 126AA

Clause 81 inserts a new section 126AA.

New section 126AA Effect of appeals against domestic violence orders

New section 126AA provides that if a person who is named as a respondent in a domestic violence order, where the chief inspector decides to refuse the security clearance on that ground, successfully appeals against the decision and the order is set aside, then the domestic violence order is taken to not have been made.

Section 126AA(4) states that subsection (2) does not affect the validity of the chief inspector's decision.

Amendment of s 126A (Protection from reprisal)

Clause 82 amends section 126A to replace the reference to explosives safety issue with explosives issue. Section 126A(7) replaces the definition of explosives safety issue to explosives issue. This definition includes the safety or health of a person while handling explosives or the security of explosives from unauthorised access.

Amendment of s 126C (Public statements)

Clause 83 amends section 126C(2)(c) to provide for authorised officers to make public statements. Section 126C(2)(d) omits and replaces the subsection to include a reference to the suspension or cancellation of an authority or security clearance under this Act.

Insertion of new s 126D

Clause 84 inserts a new section 126D.

New section 126D Chief inspector may issue safety and security alerts

New section 126D provides the circumstances in which an inspector may issue safety and security alerts. New section 126D(1) states that if the chief inspector believes there is a specific explosives issue in relation to the safety or security of

explosives then the chief inspector may issue an explosives alert to particular persons or the general public.

New section 126D(2) states that the alert is of an advisory nature only and that the chief inspector may recommend that a person or the public do or not do something.

New section 126D(3) provides that the alert must relate to a specific safety or security issue provided for in 126D(1), with section 126D(4) detailing the methods by which the alert may be issued.

The terms communication network and unique electronic address are also defined in this section.

Replacement of s 130 (Delegation by chief inspector)

Clause 85 replaces section 130 to provide that the chief inspector may delegate powers under the Act to an inspector or authorised officer, with the exception of section 105B, which cannot be delegated. Section 105B provides the power to direct in an emergency.

Amendment of s 132 (Disclosure of information)

Clause 86 amends section 132 to replace 132(1)(c) which states that a person must not disclose information obtained by the person in the administration of this Act unless the disclosure is made in relation to an investigation or proceeding under this Act or a report about the investigation or proceeding.

Section 132(2) is amended to provide that the chief inspector can communicate information that comes to the chief inspectors knowledge under the Act to a chief executive of a department or the head of a public service office under the *Public Service Act 2008*, responsible for administering a law of Queensland, the Commonwealth or another State about explosives.

Insertion of new s 132A

Clause 87 inserts new section 132A.

New section 132A Additional requirements for disclosure to particular persons

New section 132A provides additional requirements for disclosure under section 132 to ensure the information is not given to anyone outside of the intended recipient without permission in writing from the chief inspector. New section 132A(1)(b) states that the confidential information is used only for the purpose for which it was given under section 132.

Amendment of s 133 (Evidentiary provision)

Clause 88 amends section 133 to include references to an authorised officer as well as an inspector to provide for the situation where an inspector has delegated power to an authorised officer in the giving of evidence.

Section 133(4) is amended to include a security clearance and a determination as a stated document. A new subsection 133(4)(ai) is inserted to include a reference to a security clearance or copy of a security clearance. Section 133(4)(a)(ii) is amended to include reference to a determination.

Section 133(4)(b) is amended to provide for the holder of an authority, stated authority, security clearance or stated security clearance. Section 133(4)(c) and (d) is amended to include reference to a security clearance or determination.

Renumbering of the section has also occurred.

Insertion of new ss 133A and 133B

Clause 89 inserts new section 133A and 133B.

New section 133A Expert reports

New section 113A applies to a proceeding under the Act, other than a proceeding under part 7. Section 133A provides that an expert report is admissible in evidence.

Under new section 133A(3) the report is only admissible with the court's leave where the expert does not attend to give oral evidence in the proceeding.

New section 133A(4) states that court must consider the contents of the report, the reason the expert is not attending and the risk of not admitting or excluding the report when deciding whether to grant leave. An expert report is defined in new section 133A(6).

New section 133B Analysts' reports

New section 133B provides for the inclusion of a signed analyst's report as evidence in a proceeding. This section applies to a proceeding under this Act, other than a proceeding under part 7.

Amendment of s 135 (Regulation-making power)

Clause 90 inserts a new subsection in section 135(2) to include that a regulation may be made about the appointment of a person to be the manager of a government magazine and the functions and powers of the manager.

Renumbering has also occurred.

Insertion of new pt 10, div 6

Division 6 Transitional provisions for Land, Explosives and Other Legislation Amendment Act 2018

Clause 91 provides for the insertion of a new Part 10, Division 6.

New section 148 Definitions for division

Section 148 states the definitions for the division for amendment act, existing application and former.

New section 149 Existing applications for or to renew authorities

Section 149 applies in relation to existing applications for or to renew an authority.

Existing applications include a new application or an application to renew made but not yet decided before the commencement of the Act.

Section 149(2) states that the former part 3, division 1 (authorities) continues to apply in relation to the application as if the amendment Act had not commenced. Section 149(3) provides that section 15A does not apply to the applicant and former sections 15 and 16 continue to apply in relation to the applicant and an employee of the applicant until the application is decided.

New section 150 Particular authority holders taken to hold security clearances

Section 150 applies in relation to a security sensitive authority that is in effect immediately before commencement or is given after commencement for an existing application. This includes who is the holder of the security clearance in these circumstances if the security sensitive authority holder is a partnership or corporation other than a listed corporation.

Section 150(6) states that within 2 months after the relevant day, a listed corporation must nominate an executive officer or employee of the corporation as the responsible person for explosive matters for the corporation. A maximum penalty of 50 penalty units applies.

Section 150(8) states that despite section 12E a security clearance mentioned in subsection (2), (3), (4) or (7) lapses on whichever occurs first – the security sensitive authority expires or is cancelled, or if the security sensitive authority is renewed, the day the renewed security sensitive authority expires or is cancelled, or 5 years after the security clearance takes effect.

Section 150(9) defines relevant day.

New section 151 Application of s 15A to particular persons

Section 151 details the application of section 15A in relation to a security sensitive authority where the holder of an authority that was in effect immediately before the commencement or that is given after the commencement for an existing application or where either of the above were renewed after the commencement of the Act.

Section 151(2) states that section 15A does not apply in relation to a person employed by the authority holder immediately before the commencement, during the

period starting on the commencement, and ending on the day that is 2 years after the commencement.

New section 152 Application of s 33 to particular persons

Section 152 states that section 33(1)(b) does not apply in relation to a person employed by the holder of a security sensitive authority immediately before the commencement during the period – starting on the commencement and ending on the day that is 2 years after the commencement.

New section 153 Application of explosives incident provisions

Section 153 states where an explosives incident occurs after the commencement of the Act, sections 54A to 56 as amended and section 58, as inserted, are to apply.

Where an explosives incident occurs prior to the commencement, former sections 55, 56 and 58 are to apply.

Amendment of sch 2 (Dictionary)

Clause 92 amends the Dictionary in schedule 2 of the Act.

Part 5 Amendment of Explosives Regulation 2017

Regulation amended

Clause 93 states that this part amends the Explosives Regulation 2017.

A note has been inserted to see amendments in schedule 1, part 4.

Insertion of new section 8A

Clause 94 inserts a new section 8A.

New section 8A Security sensitive explosives-Act, sch 2

Section 8A(1) prescribes an unrestricted firework for paragraph (c) of the definition of security sensitive explosives in Schedule 2. An unrestricted firework is not a security sensitive explosive. Section 8A(2) states that for paragraph (f) security sensitive ammonium nitrate is prescribed. Security sensitive ammonium nitrate is a security sensitive explosive.

Amendment of s 9 (Alternative safety measures)

Clause 95 inserts the words ‘and security’ after all instances where the word ‘safety’ occur in section 9. The obligations and duties contained in codes of practice and Australian standards extend to keeping explosives secure. Alternative safety measures must also include security measures. Using alternate safety and security measures provides flexibility for authority holders to meet the required safety and security standards.

Insertion of new parts 2A and 2B

Part 2A Obligations of employers generally

New section 18A Age of employees—Act, s 33

Clause 96 prescribes, at 18A, the ages of employees for section 33(1)(a) of the Explosives Act. Section 18A(1)(a) requires that employers must not employ an employee to drive a vehicle transporting explosives unless the employee is 21 years or more. Section 18A(1)(b) prescribes that otherwise all employees must be 18 years or more.

Section 18A(2) states that this section does not apply in relation to an employee who is employed to work at a mine.

Part 2B Security Clearances

New section 18B Notification requirements for security clearance holders

Section 18B provides the notification requirements for security clearance holders. Section 18B(1) defines the events that are notifiable events, which are an event that happens during the term of a security clearance.

Section 18B(2) provides that the security clearance holder must, as soon as practicable after they become aware of the notifiable event, give an inspector or authorised officer notice of the event, unless the holder has a reasonable excuse.

Section 18B(2)(a) states that failure to notify without a reasonable excuse under section 18B(1)(d) for a change in circumstances carries a maximum penalty of 50 penalty units. Section 18B(2)(b) states that a failure to notify of a change of name or address under section 18B(1)(e) carries a maximum penalty of 20 penalty units. Section 18B(2)(c) states that a failure of events under section 18B(1)(a) – (c) to carries a maximum penalty of 200 penalty units.

Amendment of s 19 (Authorities that may be issued—Act, s 13)

Clause 97 creates an explosives driver licence that can be issued under section 13 of the Explosives Act.

Insertion of new section 23A

New section 23A Occupational authorities—Act, sch 2

Clause 98 inserts Part 3, Division 1 which states the occupational authorities relevant to section 18A of the Explosives Act. Section 23A states that the occupational licences under schedule 2 of the Explosives Act are:

- an explosives driver licence;
- a fireworks operator licence;
- a shotfirer licence;
- a licence to use explosives; and

- a licence to collect ammunition.

Amendment of s 31 (Licence to transport explosives)

Clause 99 clarifies that with the introduction of the new explosives driver licence, the existing licence to transport explosives authorises the holder to operate a business transporting explosives, and to possess explosives for the purpose of operating a business of transporting the explosives. This licence does not authorise a person to drive a vehicle transporting explosives.

Insertion of new s 31A

New section 31A Explosives driver licence

Clause 100 states that an explosives driver licence authorises the holder of the licence to transport explosives by driving a vehicle that, under a licence to transport explosives, is a vehicle in which explosives of that class may be transported.

Insertion of new s 36A

New section 36A Explosives driver licence

Clause 101 states requirements to be considered an appropriate person for the issue of an explosives driver licence.

Section 34A(2) states a valid driver licence is one that has not expired, or been cancelled or suspended, and the person is not disqualified by order of an Australian court from holding or obtaining a driver licence.

Amendment of s 37 (Shotfirer licence)

Clause 102 amends section 37 to include security handling procedures and methods for the hazards associated with each blasting explosive.

Amendment of s 39 (Fireworks operator licence)

Clause 103 amends section 39 to include security handling procedures for the hazards associated with each type of firework stated in the operator's licence.

Amendment of s 40 (Other authorities)

Clause 104 amends section 40 to update section references from section 37 to section 36A.

Amendment of s 43 (Notification requirements for all authority holders)

Clause 105 amends section 43(1)(a) by removing the requirement for notifying of a change in the person's mental health. Section 43(1)(b) and (c) are amended by removing the requirement to notify if the authority holder is convicted of certain offences or has a domestic violence order is made against them. These occurrences will now be covered by new section 18B for holders of a security clearance.

Section 43(1) is amended by deleting the existing section 43(1)(e) and inserting new requirements in relation to a change to a corporation's executive officers or if the corporation becomes an externally administered corporation. New sections 43(1)(f) and (g) are created for corporations other than a listed corporation where there is a change to the corporation's shareholders, or for an authority holder that is not a security sensitive authority or the authority is a corporation, the holder is convicted or charged, in Queensland or elsewhere, with an offence involving a prescribed activity.

A minor amendment to section 43(2) is made to contemporise the wording of the subsection.

Section 43(3) is amended to remove the definition of listed corporation. Renumbering and consequential amendments have also occurred.

Insertion of new s 43A

New section 43A Notification requirements for holders of security sensitive authorities

Clause 106 provides the prescribed events that, if they happen during the term of a security sensitive authority held by an individual or a corporation other than a listed corporation, the authority holder must give an authorised officer or an inspector notice of the event. Notice must be given to the chief inspector as soon as practicable after becoming aware that a prescribed event has happened, unless the holder has a reasonable excuse. The maximum penalty is 200 penalty units.

Omission of s 46 (Requirement to have and give effect to safety management system)

Clause 107 omits section 46.

Insertion of new pt 3, div 5A

Clause 108 inserts a new Division 5A.

Division 5A Safety and Security requirements

New section 46 Definitions for division

New section 46 inserts definitions for this part for an emergency event, national counter terrorism alert level, prescribed authority and safety and security management system.

New section 46A Requirement for safety and security management system

New section 46A inserts the requirement for a safety and security management system that complies with this section. This section applies to the holder of a prescribed authority if 1 or more employees of the holder carry out activities under the authority. The maximum penalty is 100 penalty units.

Section 46A(3) states what the safety and security management system must relate to. Section 46A(4) states what the safety and security management system must include.

New section 46B Safety and security requirements under other legislation

New section 46B provides that the safety and security management system may be part of a safety and security management system under another Act.

New section 46C Contents of security plan

New section 46C states provides for what a security plan must do.

New section 46D Requirements to review security plan

New section 46D provides that the holder of the prescribed authority must review the security plan annually and if any of the following happens:

- a change in the national counter-terrorism alert level or level of risk
- a loss of explosives
- unauthorised entry or attempted unauthorised entry to the place where the explosives are stored
- an explosives stock discrepancy
- an explosive has been stolen or fraudulently obtained
- an explosive or explosive facility has been intentionally damaged
- information kept by the holder in relation to explosives has been lost or stolen
- an explosive has been accessed in an unauthorised way
- an explosive has been sold and has not been delivered by the expected delivery day

A maximum penalty of 100 penalty units applies.

Amendment of s 54 (Condition of explosives)

Clause 109 amends section 54(a) to include a reference to secure, which achieves the new purpose of the Explosives Act.

Amendment of s 65 (Requirements for handling explosives at port)

Clause 110 amends section 65(1)(b)(ii) to include a reference to security, which achieves the new purpose of the Explosives Act.

Amendment of s 66 (Port authority or port operator to prepare explosives limits document)

Clause 111 amends section 66(a) to include a reference to securely, which achieves the new purpose of the Explosives Act.

Omission of s 70 (Prescribed amount of explosive—Act, s 38)

Clause 112 omits section 70. The prescribed amount of explosive is defined in section 38 of the Act.

Amendment of s 71 (Prescribed explosives and conditions—Act, s 38)

Clause 113 amends section 71(1)(a) and 71(2)(b) to update prescribed explosives under the regulation.

Section 71(2)(b) is also amended to include a reference to security, which achieves the new purpose of the Explosives Act.

Amendment of s 73 (Manufacturing explosives)

Clause 114 amends section 73 to include a reference to security, which achieves the new purpose of the Explosives Act.

Amendment of s 76 (Persons to whom explosives may be supplied)

Clause 115 amends section 76 to include a maximum penalty of 100 penalty units.

Amendment of s 79 (Person must comply with instructions and procedures)

Clause 116 amends section 79(b) to include a reference to security, which achieves the new purpose of the Explosives Act.

Amendment of s 81 (Prohibited conduct)

Clause 117 amends section 81(a)(i) to include a reference to safely and securely handling explosives, which achieves the new purpose of the Explosives Act.

Amendment of s 83 (Persons to whom explosives may be sold)

Clause 118 amends section 83 to include an inspector as an authorised person to whom an explosive may be sold where the chief inspector has provided a direction under section 105B of the Explosives Act.

Omission of s 86 (Employer's obligations about employees engaged in selling explosives—Act, s 33)

Clause 119 omits section 86 as a result of new section 33 of the Explosives Act.

Amendment of s 88 (Restriction on holder of licence selling security sensitive explosive to new client)

Clause 120 amends section 88 to insert a new subsection 88(8) to provide that section 88 does not apply where explosives are proposed to be sold to an inspector who has been given a direction by the chief inspector under s 105B of the Act to purchase the explosive.

Amendment of s 89 (Restriction on holder of licence selling security sensitive explosive to existing client)

Clause 121 amends section 89 to insert a new subsection 89(8) to provide that section 89 does not apply where explosives are proposed to be sold to an inspector who has been given a direction by the chief inspector under s 105B of the Act to purchase the explosive.

Omission of s 92 (Security plan obligations of holder of licence to sell explosives)

Clause 122 omits section 92. The new provision 46C provides for the contents of a security plan.

Amendment of s 105 (Requirements for storing explosives)

Clause 123 amends section 105(1)(d) to include a reference to security, which achieves the new purpose of the Explosives Act.

Amendment of s 114 (Duties)

Clause 124 amends section 114 to introduce a new subsection that requires explosives at the magazine to be secure from unauthorised access.

Renumbering has also occurred.

Amendment of s 115 (Powers)

Clause 125 amends section 115 by replacing the heading and to provide that the manager may inspect the explosive to decide whether the explosive is in a secure condition for storage and transport.

Renumbering of the section has also occurred.

Insertion of new s 115A

New section 115A Manager may authorise magazine employees to give instructions

Clause 126 inserts a new section 115A giving a manager of a government magazine the power to authorise an appropriately qualified employee to give instructions to other persons at the magazine, including other magazine employees, where those instructions are necessary to ensure compliance with the Explosives Act.

The authorisation must be by written notice stating the name of the employee for which the authorisation is given, the day of the authorisation and any conditions of the authorisation.

Replacement of section 116 (Entry to government magazine)

Clause 127 replaces section 116 providing that for schedule 2 of the Explosives Act, the definition of 'unlawfully enter', paragraph (a)(iii) the manager of the magazine and an inspector are prescribed.

New section 116A Entry to areas within government magazines

Section 116A provides the manager of a government magazine or an inspector the power to direct a person not to enter an area within a government magazine if they consider it is necessary to ensure safety or security of another person or the safety and security of explosives from unauthorised access. If the person does not comply with the direction they are subject to a maximum penalty of 50 penalty units.

Section 116A(3) provides that the manager of the government magazine or an inspector may take reasonable steps to remove a person who has entered an area in a government magazine against a direction.

Amendment of s 118 (How manager must deal with request)

Clause 128 amends sections 118(2)(g)(ii) and 118(4) to include a reference to secure and securely, which achieves the new purpose of the Explosives Act.

Amendment of s 119 (Requirements for storing explosive)

Clause 129 amends section 119(1)(d)(ii) to include a reference to secure, which achieves the new purpose of the Explosives Act.

Amendment of s 129 (Person must comply with instructions and procedures)

Clause 130 amends section 129(a) by requiring a person to comply with the lawful instructions of a prescribed person or for a government magazine, a person authorised under section 115A to give instructions to another person at the government magazine.

Section 129(b) is amended to include a reference to security, which achieves the new purpose of the Explosives Act.

Section 129(c) is amended to clarify that the procedures approved by the chief inspector are in relation to explosives at the magazine.

Section 129(2) is inserted to provide that subsection (1)(a) does not apply to a direction given to the person under section 116A(1) of the Regulation.

Amendment of s 131 (Prohibited conduct)

Clause 131 amends section 131(a)(i) to include a reference to safely and securely storing explosives, which achieves the new purpose of the Explosives Act.

Amendment of s 133 (Explosives exempt from s 50(1) of Act)

Clause 132 amends section 133 to state that explosives exempt from section 50(1) of the Act includes an explosive on board a boat, the owner or master of which is subject to the *Transport Operations (Marine Safety) Regulation 2016*, section 88(1) or (2), for the explosive.

Amendment of s 134 (Requirements for consignors and consignees of particular explosives)

Clause 133 amends section 134 to insert a new subsection (3) which states the circumstances where a person is not required to comply with a provision of the Australian dangerous goods code or the Australian explosives code in relation to a determination that applies.

Amendment of s 135 (Amendment of s 135 (Explosives that may be transported under s 50(3) of Act)

Clause 134 amends section 135 by omitting the heading and inserting new heading 'Amounts of explosives-Act, s50'. Section 135(1) is omitted and section 135(2) is amended to refer to amended section 50(2)(b) of the Act. Consequential renumbering has also occurred.

Amendment of s 136 (Conditions for transporting explosives under s 50(3) of Act)

Clause 135 amends section 136 to include references to security which achieves the new purpose of the Explosives Act. Section 136 is also amended to include reference to amended section 50(2) of the Act.

Subsection (3A) is inserted which states the circumstances where a person is not required to comply with a provision of the Australian dangerous goods code or the Australian explosives code in relation to a determination that applies.

Consequential renumbering has also occurred.

Insertion of new s 136A

New section 136A Transport of explosives by persons employed at mines-Act, s50

Clause 136 states that in relation to section 50(2)(b) of the Act, a person may transport an explosive by driving a vehicle without holding an authority mentioned in section 50(1) of the Act.

Amendment of s 137 (General requirements for transporting explosives)

Clause 137 amends section 137 to amend the reference to section 50(3)(a) and to insert a new subsection (3) stating the circumstances where a person is not required to comply with a provision of the specified codes in relation to a determination that applies.

Insertion of new s 138A

New section 138A Licence must be available for inspection

Clause 138 inserts section 138A to the Explosives Regulation to provide that the holder of an explosives driver licence must have the licence available for inspection when driving a vehicle to transport explosives, unless the person has a reasonable excuse. A maximum penalty of 20 penalty units applies.

Amendment of s 140 (Person must comply with instructions, notices and procedures)

Clause 139 amends section 140(b) to include a reference to security, which achieves the new purpose of the Explosives Act.

Amendment of s 142 (Prohibited conduct)

Clause 140 amends section 142(a)(i) and 142(a)(iii) to include a reference to safely and securely handling explosives and security, which achieves the new purpose of the Explosives Act.

Amendment of s 143 (Application of division)

Clause 141 amends section 143 by stating that the division does not apply to the holder of an explosives driver licence.

Insertion of new pt 9, divs 6 and 7

Clause 142 inserts a new Division 6 and Division 7.

Division 6 Competent authority

New section 145A Chief inspector is competent authority-Act, s 51A

Section 145A provides that the chief inspector is the competent authority for this part.

Division 7 Determinations

Subdivision 1 Making and effect of determinations

New section 145B Competent authority may make determinations-Act, s 51A

Section 145B provides that for section 51A(1)(b) of the Act the competent authority may make a determination about the safe and secure transportation of an explosive. The determination must be made by notice. This notice is declared to be subordinate legislation under the *Statutory Instruments Regulation 2012*, section 2(3) and schedule 1. However, if the determination is an administrative determination, the determination does not need to be made by notice.

A determination may also be made in the form on an exemption or approval.

New section 145C Offences relating to determinations

Section 145C(1) provides that it is an offence for a person to whom a determination applies, subject to a condition, to not comply with the condition. The maximum penalty for contravening a condition of the determination is 40 penalty units.

Section 145C(2) provides that it is an offence for a person to whom a determination prohibits the doing of something, to do the thing. The maximum penalty for contravening a prohibition of the determination is 100 penalty units.

Section 145C(3) provides that it is an offence for to a person to whom a determination applies, to do a thing contrary to the determination. The maximum penalty for contravening a prohibition of the determination is 100 penalty units.

Section 145C(4) states it is a defence to a prosecution for an offence against this section if the person did not know, and could not reasonably be expected to know, of the determination or the determination applied to the person.

Subdivision 2 Administrative determinations

New section 145D Applications for administrative determinations or amendments

Section 145D provides for a person to apply to the competent authority for an administrative determination or an amendment of an administrative determination. Subsection 145D(2) states the application must be in the approved form and if the application is for an amendment of an administrative determination, it must be accompanied by the determination to be amended.

Subsection 145D(3) provides the competent authority may, if more information is reasonably necessary to decide the application, give a notice to the applicant asking the applicant to give to the competent authority the additional information.

New section 145E Deciding applications

Section 145E states that the competent authority must, after considering an application, decide to make the administrative determination, or amendment, with or without conditions, or to refuse to make the administrative determination or amendment.

Subsection 145E(2) states that the competent authority must not make the administrative determination or amendment unless satisfied the determination or amendment ensures the safe and secure transport of the explosive the subject of the determination.

New section 145F Notice of decision

Section 145F provides that where the competent authority decides to make an administrative determination or amendment it must be given to the applicant and to any other person to whom the determination applies.

Where the competent authority refuses to make the administrative determination or amendment, or makes the administrative determination subject to conditions, an information notice must be given to the applicant and any other person to whom the determination applies.

New section 145G Form and term of administrative determinations

Section 145G provides that that an administrative determination must be in writing and state who the determination applies to, the explosive to which it relates, the provisions of to which it relates in this part and of the Australian dangerous goods code or the Australian explosives code, any conditions it is subject to and the term of the determination.

At the end of the stated term the administrative decision expires.

New section 145H Replacement administrative determinations

Section 145H states that the competent authority panel must give the holder of the administrative determination a replacement if the determination is amended under section 145K or it has been lost, defaced, destroyed or stolen.

New section 145I Grounds for amending, suspending or cancelling administrative determinations

Section 145I provides grounds for the suspension, amendment or cancellation of a determination.

New section 145J Notice of proposed action

Section 145J applies if the competent authority considers there is a ground to amend, suspend or cancel an administrative determination. This section states what must be stated in a notice to a holder of the determination prior to this occurring. This includes a period of at least 28 days after the notice is given for the holder to show why the proposed action should not be taken.

New section 145K Amending, suspending or cancelling administrative determinations generally

Section 145K states that where a competent authority still considers a ground exists after considering any submissions made under section 145J, the authority may amend, suspend or cancel the administrative determination. A decision notice must be given to the holder in the form of an information notice.

New section 145L Suspension on conditions

Section 145L applies where an administrative determination is suspended under section 145K(1)(c)(ii) and the grounds for taking action under that section are capable of being remedied by the holder of the administrative determination.

Section 145L(2) provides that the suspension may be on the condition that the holder remedies the grounds to the competent authorities reasonable satisfaction within a reasonable time before the suspension period ends. If this does not occur the determination may be cancelled under section 145M.

Section 145L(3) states that if a condition is imposed under subsection (2) the decision notice must state that the administrative determination may be cancelled under section 145M if the holder does not comply.

New section 145M Cancellation for failure to take remedial action

Section 145M applies if the competent authority suspends an administrative determination on the condition stated in section 145L(2) and reasonably believed the holder of the administrative determination has not complied with the condition.

Section 145M states that the competent authority holder may cancel the determination by information notice.

New section 145N Immediate suspension of administrative determinations

Section 145P states that the competent authority may immediately suspend an administrative determination if it considers it necessary in the public interest, without notice under section 145J(2). Section 145N(3) provides that the holder must immediately be informed by giving an information notice of the decision.

Under section 145N(4) the suspension takes effect on the day the information notice is given to the holder of the administrative determination, or a later day if it is stated in the notice. The suspension ends on whichever day is earlier – the day the competent authority, after complying with sections 145J(2) and 145K(1), gives the holder a decision notice, or the day that is 56 days after the day the information notice is given under subsection (3).

Subdivision 3 Register of determinations

New section 145O Register of determinations—Act, s 51A

Section 145O states that for section 51A(2)(d) of the Act, the competent authority must keep a register of determinations. Section 51 provides that a regulation may be made about particular matters.

Section 145O(2) states the information that must be included on the register for each determination. Section 145O(3) states the register must be kept in the form and in the way decided by the competent authority. Under section 145O(4) the competent authority must ensure the register is available to the public.

Amendment of s 147 (Employer's obligations about employees engaged in using explosives)

Clause 143 omits section 147(2)(a) and (e) as a result of the replacement of section 33 of the Explosives Act.

Amendment of s 152 (Use of blasting explosives)

Clause 144 amends section 152(a)(ii) to include a reference to security, which achieves the new purpose of the Explosives Act.

Amendment of s 160 (Meaning of *organise* fireworks display)

Clause 145 amends section 160(b) to include a reference to safety and security requirements, which achieves the new purpose of the Explosives Act.

Amendment of s 162 (Meaning of *safety requirements* for fireworks display)

Clause 146 amends section 162 and 162(a)(ii) to include a reference to safety and security measures and alternative safety and security measures, which achieves the new purpose of the Explosives Act.

Amendment of s 166 (Prohibition on allowing unsafe fireworks display to be staged)

Clause 147 amends section 166 by the replacement of the heading and the inclusion of a reference to security, which achieves the new purpose of the Explosives Act.

Amendment of s 168 (Fireworks contractor's obligations about safety of fireworks display)

Clause 148 amends section 168 to include a reference to security, and safety and security requirements, which achieves the new purpose of the Explosives Act.

Amendment of s 184 (Application for external review)

Clause 149 inserts, under section 184(2), the definition 'reviewable decision', (fa) a decision under section 145E to refuse to make or amend an administrative determination, and (fb) a decision under section 145E to make or amend an administrative determination subject to conditions, and (fc) a decision under section 145K, 145M or 145N to amend, suspend or cancel an administrative determination.

These sections are then renumbered as paragraphs (g) to (j).

Amendment of s 185 (Period for keeping records)

Clause 150 amends section 185 to include a reference to security, which achieves the new purpose of the Explosives Act.

Insertion of new pt 14, div 1, hdg

Clause 151 inserts a new heading in Part 14 of the Explosives Regulation.

Division 1 Transitional Provisions for SL No.150 of 2017

Amendment of s 193 (Definitions for part)

Clause 152 amends section 193 to replace the reference to part with division.

Insertion of new pt 14, div 2

Clause 153 inserts Part 14, division 2.

Division 2 Transitional provisions for Land, Explosives and Other Legislation Amendment Act 2018

New section 210 Existing licence to transport explosives

Section 210 applies to a licence to transport explosives in force immediately before the commencement of the Act. From the commencement, the licence is taken to authorise the authority holder to operate a business of transporting the explosives stated in the licence in the vehicles stated in the licence. The licence does not authorise the authority holder to drive a vehicle to transport explosives.

New section 211 Employees of holder of licence to transport explosives

New section 211 applies to employees of holders of a licence to transport explosives who, on commencement, are employed to drive a vehicle stated in the licence as a vehicle to transport explosives. From commencement, the employee is taken to be the holder of an explosives driver licence. This section stops having effect one year after commencement.

This section allows a person employed as a driver of a vehicle transporting explosives to continue in that role until they can fulfil the requirements of the new explosives transport driver licence outlined under sections 31A and 34A.

Section 211(3) states when the section does not apply.

Amendment of sch 3 (Matters to be included in safety management system)

Clause 154 amends the heading of schedule 3 to include a reference to safety. Schedule 3, part 1, item 1 is omitted and replaced with a new item 1 which expands the matters to be provided for in system management to include risk identification.

The reference to Schedule 3, authorising provision section 46A(4) is also amended.

Amendment of sch 7 (Dictionary)

Clause 155 amends the dictionary in schedule 7.

Part 6 Amendment of Foreign Ownership of Land Register Act 1988

Act Amended

Clause 156 provides for the amendment of the *Foreign Ownership of Land Register Act 1988*.

Amendment of s 4 (Interpretation)

Clause 157 amends section 4 to provide clarification in the terminology used in the interpretation of the Act.

Omission of ss 5—10

Clause 158 omits sections 5 to 10 to allow for new definitions.

Replacement of s 11 (Register)

Clause 159 replaces section 11 to provide clarification and updating in the terminology used and references made in the section (for example, references to microfilm are omitted).

Omission of s 12 (Accurately completed prescribed forms)

Clause 160 omits section 12 to reflect contemporary drafting practices. The standard provision in section 48A(2) of the *Acts Interpretation Act 1954* may be relied upon.

Amendment of s 14 (Access to information in register)

Clause 161 amends section 14 to update terminology and drafting for clarification purposes.

Subsection 14(2) is omitted as it is not possible for the registrar to know or readily find out whether providing particulars of information recorded or contained in the register would disclose or lead to the disclosure of the address of the principal places of residence of a consul or a member of the staff of an embassy. The subsection is omitted as compliance is not possible.

Omission of s 17 (Disclosure of present interest)

Clause 162 omits section 17 as the section is redundant.

Replacement of ss 18—21

Clause 163 replaces sections 18 to 21 to provide clarification and consistency in the terminology used and references made in the sections and to reflect contemporary drafting practices. The obligation to notify in section 18(1) has been continued in new section 50, and the obligation in section 18(4) has been reflected in new section 44B. Section 21 is no longer required due to the contemporary practice of a single titles

registry. Otherwise the purpose and intent of the sections remains the same as the sections which are replaced by this amendment, however this amendment allows for new definitions.

Amendment of s 23 (Registrar may enter information)

Clause 164 amends section 23 for consistency in the terminology used and references made in the section.

Amendment of s 24 (Offence not to comply with s 22)

Clause 165 amends section 24 to update terminology for clarification purposes.

Amendment of s 25 (False or misleading statements)

Clause 166 amends section 25 to provide clarification and consistency in the terminology used and references made in the section.

Omission of pt 5 (Forfeiture and restraint)

Clause 167 omits part 5 to ensure a proportionality between penalty and offence. The forfeiture provided for in part 5 is omitted because any failure to notify can be penalised under the provisions of part 4. As the registrar can enter the particulars in the register regardless (pursuant to section 13), there is no substantive impact on the lack of notification which warrants forfeiture of the land.

Replacement of ss 41—42

Clause 168 replaces sections 41 and 42 to provide clarification and consistency in the terminology used and references made in the section.

Amendment of s 43 (Evidentiary provisions)

Clause 169 amends section 43 in a minor way for clarification purposes.

Insertion of new s 44B

New section 44B Particular trustees to give information about beneficiaries

Clause 170 inserts new section 44B to reflect the obligation in section 18(4) (to be repealed) and to provide clarification and consistency in terminology used and references made in the section.

Insertion of new pt 7

Part 7 Transitional provisions for Land, Explosives and Other Legislation Amendment Act 2018

Clause 171 inserts new part 7. The transitional provisions in this part allow for the changes in relevant definitions before and after the commencement.

New section 46 Definitions for part

New section 46 provides definitions of 'amended', 'amended Act', 'previous', 'previous Act' and 'repealed' for the part.

New section 47 Declarations under repealed section 6(2) continued in force

New section 47 preserves the effect of declarations made by the Minister under section 6(2) (to be repealed). In circumstances where immediately before the commencement a person was not a foreign person because of a declaration and who at the commencement would otherwise be a foreign person, the declaration continues in force and the person is taken not to be a foreign person while the declaration continues in force. The registrar must be notified of any change in the circumstances on which the declaration was made and the Minister may cancel the declaration if satisfied that because of a change, it is no longer appropriate for the person to be taken not to be a foreign person.

New section 48 Applications for declarations under s 6(4)

New section 48 provides that where an application under section 6(4) (to be repealed) is made but not decided before the commencement, the application is taken to be withdrawn.

New section 49 Obligation to notify under repealed s 17 continued

New section 49 allows for the notification obligations under section 17 (to be repealed) to continue in circumstances where immediately before the commencement a person has not complied with a requirement under the section to lodge a notification of ownership in relation to the legal estate of an interest in land.

A trustee notification of ownership referred to in the repealed section 17 is taken to be a reference to a notification of ownership.

New section 50 Obligation to notify under repealed section 18 continued

New section 50 allows for the notification of obligations under section 18 (to be repealed) to continue in the circumstances where immediately before the commencement a person had not complied with a requirement under the section to lodge a notification of ownership in relation to an acquired interest in land. A trustee notification of ownership referred to in repealed section 18 is taken to be a reference to a notification of ownership.

New section 51 Application of s 19 to particular persons

New section 51 provides that in circumstances where at the commencement the legal estate of an interest in land is recorded in the name of a foreign person and on the commencement the person ceases to be a foreign person, then new section 19 (notification of ceasing to be a foreign person) applies to the foreign person from the day on which the person becomes aware they have ceased to be a foreign person under the amended Act.

New section 52 Application of s 20 to particular persons

New section 52 provides that in circumstances where immediately before the commencement the legal estate of an interest in land was recorded in the records of a registering authority in the name of a person who was not a foreign person under the unamended Act and on the commencement the person is a foreign person, then new section 20 (notification of becoming a foreign person) applies from the day on which the person becomes aware they are a foreign person under the amended Act.

Amendment of sch 1 (Dictionary)

Clause 172 amends Schedule 1 (Dictionary) by omitting the definitions of 'corporation', 'foreign corporation', 'foreign natural person', 'foreign person', 'foreign trust', 'last accounting date', 'officer', 'share' and 'year of income', and including new definitions of 'corporation', 'foreign person', 'foreign trust', 'notification of ownership', 'unallocated State land' and 'voting power'.

The new definitions are for consistency with other relevant legislation including the *Duties Act 2001*, and to streamline conveyancing transactions by removing unnecessary complexity and discrepancy.

Part 7 Amendment of Land Act 1994

Act amended

Clause 173 states that this part amends the *Land Act 1994*.

Insertion of new ch 4, pt 3, div 2, sdiv 1AA

Clause 174 inserts new chapter 4, part 3, division 2, subdivision 1AA into the *Land Act 1994* relates to when a lessee is not seeking to renew a lease or a renewal application has been refused. In this situation, the lessee is required to provide an 'improvements report' providing information on the buildings or other structures on a lease and the lessee's intention towards removing any building or other structures. The Minister can respond to the improvements report with an improvements notice, requesting the lessee to undertake activities in regards to the buildings and structures.

Subdivision 1AA Improvements reports and notices and related matters

New section 156 Lessee must give improvements report and other information

New section 156 provides that a lessee of a term lease must give the Minister an improvements report within one month after a relevant day which is determined by the length of the lease. The improvements notice provides information on the location, condition and nature of the buildings or other structures on the lease and whether the lessee intends to remove any of them. The lessee may include representations about why the Minister should not give him/her an improvements notice requiring the lessee to take action.

The relevant day for a lessee to provide the improvement report is within one month after the relevant day, with a relevant day for leases with a term of 5 years or more being one year prior to expiry, while leases less than 5 years having a relevant day being 6 months prior to expiry. This provides the Minister with 11 months, for leases with a term of 5 years or more, or 5 months for leases with a term of less than 5 years to request further information and provide a response to the lessee.

The Minister may also request additional information or a report about the condition of the buildings and structures on the lease land. If the lessee does not obtain the report, the Minister may obtain the report at the expense of the lessee.

New section 156A Minister may give improvements notice

New section 156A provides that the Minister may give a lessee an improvements notice requiring the lessee to carry out repairs or remove a stated building or another structure, or remediate the lease land, within a stated period after the lease expires. This notice is in response to the information sought and provided for in section 156. The improvements notice can be given no later than 6 months after the lease expires in situations where the lessee has failed to provide an improvements report or the report is misleading or false or fails a requirement.

The new section provides for when the Minister may be satisfied to require certain action to be taken and the time period to undertake the necessary work. The time period is a minimum of 3 months and the Minister needs to take into consideration the nature of the work in determining the appropriate time for compliance.

The Minister must be satisfied with one or more of the following circumstances applies before deciding that a building or structure must be removed. These requirements include:

- the building or other structure is not consistent with the purpose of the lease
- the building or other structure hinders future use or allocation of the lease land
- the building or other structure is a liability to the State, for example it contains asbestos or other similar material that causes harm to people and the environment or that the building or structure has caused community concern due to its impact on the environment.

To remove any limitations on the future use of lease land due to a building or other structure, the Minister may also require the remediation of the area.

In addition, the Minister must consider any representations in any improvements report when deciding whether to give the lessee an improvements notice.

An information notice must accompany or be included with an improvements notice. The information notice provides the reasons for the Minister's decision, the rights of review and appeal including for a stay of decision.

New section 156B Person must comply with improvements notice

New section 156B provides that a person who receives an improvements notice must comply with the notice. Consent must be sought from, or notice given to, the

Minister before the land can be entered to take the action specified in the improvement notice.

In taking the action, all reasonable steps must be taken to ensure as little damage as is practicable in the circumstances. Otherwise reasonable compensation may be payable – either by agreement or decided by a court.

New section 156C Noncompliance with improvements notice

New section 157C provides for what the State may do if a person does not comply with an improvements notice. If a person does not comply the State may take the action stated in the improvements notice and recover all reasonable costs associated with carrying out the action, including all costs of disposal by sale and providing to a waste or other such facility.

Amendment of s 157 (Expiry of lease)

Clause 175 amends section 157 to ensure the outcomes of the improvements report and notice are considered in regards to improvements when a lease expires. This is to ensure that buildings and other structures that the State sought to remove do not become the property of the State at lease expiry.

Amendment of s 164 (What is a *rolling term lease*)

Clause 176 inserts a definition of a ‘tourism lease’, which means a term lease, or a perpetual lease, for tourism purposes for land on a regulated island. This allows a term lease that includes tidal water land to be a rolling term lease where it is tied by covenant to either a land-based rolling term lease or perpetual lease, ensuring these land, and tidal, leases are transferred together to a person.

Amendment of s 164A (Approval of lease as a rolling term lease)

Clause 177 amends section 164A(1) to remove the requirement for the improvements on a tidal water land lease to be part of a significant development, for the Minister to approve the lease as a rolling term lease. As a result, for the Minister to approve a tidal water land lease as a rolling term lease, the improvements on the lease need to facilitate the tourism purposes of the tourism lease it is associated with.

Insertion of new ss 180B and 180C

Clause 178 inserts new section 180B and 180C which provides that if a holder of a permit to occupy over State land has sought to surrender a permit, or a permit is being cancelled, the chief executive may request the permittee to provide an ‘improvements report’ and other reports on the buildings or other structures on the permit area.

New section 180B Chief executive may require report and other information

New section 180B provides that, before the chief executive decides whether to approve an application to surrender a permit, the chief executive may require the

permittee to give the chief executive a report stating certain information in relation to each building and structure on the permit land.

A request may be made by the chief executive for additional information, or require a report to be obtained, about the condition of the buildings and structures on the permit land.

If the report is not obtained, the chief executive may obtain it at the permittee's expense.

New section 180C Chief executive may require improvements report and other information

New section 180C provides that the chief executive may require a permittee, before a permit is cancelled, to provide an improvements report that states certain information for each building or structure on the permit land.

A permittee may make representations in the report about why the permittee should not be given an improvements notice.

Additional information may be required to be given to the chief executive, or a report be given about the condition of the buildings and structures on the permit land.

Failure to give the report means the chief executive may obtain the report and recover the costs from the permittee as a debt due to the State.

Amendment of s 180H (Dealing with improvements)

Clause 179 amends section 180H to allow 14 days after cancellation or surrender of a permit for a permittee to make an application to remove the permittee's improvements.

Insertion of new ss 180I-180K

Clause 180 inserts new sections to provide for the chief executive to give a permittee an improvement notice outlining their requirements in regards to buildings and other structures on the permit area and provides powers for permittee's non-compliance with the improvement notice.

New section 180I Chief executive may give improvements notice

New section 180I allows the chief executive to give an improvements notice after the permit has been cancelled to the person who, immediately before the cancellation, was the permittee.

The notice may require the person to carry out repairs, remove a stated building or structure, or remediate the relevant land within a stated period.

New section 180I outlines when the chief executive may be satisfied the action should be taken.

Any representations included in the improvements report given by the person must be considered by the chief executive in deciding whether to give an improvements notice.

An information notice about the decision to give the improvements notice must accompany, or be included with, the improvements notice. The information notice outlines the chief executive's reason for the decision and the relevant review and appeal rights.

New section 180J Person must comply with improvements notice

New section 180J requires a person given an improvements notice to comply with the notice.

The person taking the action may enter the land to which the notice applies with the consent of the chief executive or by giving the chief executive notice. Reasonable compensation may be payable for any loss or damage caused – either by agreement, or by a decision of the court.

All reasonable steps must be taken by the person to cause as little damage as is practicable in the circumstances. Provisions are provided for compensation if a person incurs loss or damage as a result of a previous permittee (or contractor) undertaking actions associated with an improvement notice.

New section 180K Noncompliance with improvements notice

New section 180K provides that where a person given an improvements notice does not comply with the notice the State may take the action required under the improvements notice and recover from the person the reasonable costs incurred in taking the action.

Insertion of new s 199B

New section 199B Conditions relating to buildings and other structures

Clause 181 inserts new section 199B which applies a new condition to all leases and permits requiring lessees and permittees to: keep all building and other structures in a good and substantial state of repair; and not to erect a structure or building on the land that is inconsistent with the purpose of the lease or permit.

Amendment of s 214 (Minister's power to give remedial action notice)

Clause 182 amends section 214 to provide a modified remedial action notice process where the notice relates to a breach of a condition under section 199B on a lease.

Insertion of new s 214G

Clause 183 inserts new section 214G. This section provides a process for dealing with non-compliance of a remedial action notice issued for a breach of s 199B relating to buildings and other structures on a lease.

New section 214G Noncompliance with particular remedial action notice

New section 214G provides that where a lessee has failed to comply with a remedial action notice given in relation to a building or another structure, the State may take the action required in the notice, remove or demolish the building or structure and recover the costs incurred in taking the action as a debt due to the State.

Further, the lease may be forfeited by the Minister if it is appropriate in the circumstances, such as where the building or other structure was integral to the purpose of the lease, or the purpose of the lease has been changed under s 154.

Insertion of new ch 5, pt 2, div 6

Clause 184 inserts a new division in regards to the giving of compliance notices to permittees who are breaching, or who have breached, a condition of their permit. The division covers the circumstances when a compliance notice may be given by an authorised officer, the requirements of compliance notices, and provisions concerning the State taking certain action where a compliance order is not complied with.

Division 6 Compliance notices

New section 214H Authorised officer may give compliance notice to permittee

New section 214H provides for an authorised officer to give a permittee a compliance notice where it is reasonably believed a permittee is breaching, or has breached, a condition of their permit. The compliance notice may require the permittee to remedy the breach, including by refraining from doing an act. The section also states that a compliance notice must be accompanied by, or include, an information notice about the decision to give the compliance notice.

This new section provides a means to deal with non-compliance with permit conditions, similarly to how a remedial action notice may be given to a lessee, or licensee, who is breaching a condition of their lease or licence.

New section 214I Requirements for compliance notice

New section 214I outlines what a compliance notice must state, to provide clarity on the nature of the breach, and the steps which must be taken to remedy the breach.

Matters the compliance notice must state include that the authorised officer reasonably believes the permittee is breaching (or has breached) a condition of their permit, the condition being (or has been) breached, the nature of the breach, reasonable steps to remedy the breach, and the period within which these steps must be taken. If any work must be carried out, the notice must give details of the work involved. If a permittee is required to refrain from doing an act, the compliance notice must state the period for which the permittee must refrain from the act, or that they must refrain until further notice is given.

New section 214J Failure to comply with compliance notice

New section 214J makes it an offence for a person who receives a compliance notice to not comply with the notice, unless the person has a reasonable excuse. A maximum penalty of 400 penalty units applies to this offence.

If a person is convicted of this offence, the court may, as well as imposing a penalty for the offence, make a compliance order that the person must comply with all or part of the compliance notice within a stated period. The court may also make any other orders the court considers appropriate. Without limiting these other orders a court may make, this section also states that if the compliance notice requires the person to remove a thing from the land, the court may order that the thing be forfeited to the State if the person fails to remove the thing within the period stated in the compliance order.

New section 214K State may take action and recover costs

New section 214K applies in the circumstance that a person does not comply with a compliance order within the period stated in the order. If this occurs, then the State may take the action required under the compliance order, and recover from the relevant person the reasonable costs of taking the action. The costs would become a debt due to the State.

New section 214L How forfeited property may be dealt with

New section 214L applies where a thing is forfeited to the State because a person has not complied with a compliance order – which is an order made by a court where a person is convicted of an offence for not complying with a compliance notice.

The chief executive may deal with the forfeited thing in an appropriate manner, such as by destroying it, giving it away or otherwise disposing of it. However, the chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the making of the compliance order.

Where the State incurs costs in disposing of a thing – for example transport costs, dump costs, storage costs, or costs of sale – then the State may recover these reasonable costs from the person as a debt due to the State. Where the chief executive sells the thing (or part of it), the amount received for the sale must be taken off the amount the State may otherwise recover from the person for disposal costs, or for doing a thing required under the compliance order.

In the circumstance where the amount made from a sale is greater than the costs associated with disposal, and taking compliance order actions, then these additional proceeds of sale must be returned to the person.

Amendment of s 234 (When lease may be forfeited)

Clause 185 amends section 234 to provide additional grounds for which a lease may be forfeited.

Insertion of new 242A

New section 242A Minister may require improvements report and other information

Clause 186 inserts new section 242A which allows the Minister to require the lessee to give the Minister an improvements report where forfeiture action is intended. The report must state certain information for each building or other structure on the lease land.

A lessee may make representations in the report about why the Minister should not give the lessee an improvements notice requiring the lessee to take action.

Additional information may be requested from the lessee by the Minister, or the Minister may ask the lessee to give a report. If the report is not obtained, the Minister may obtain it at the lessee's expense.

Amendment of s 243 (Improvements on forfeited lease)

Clause 187 amends section 243(1A) to insert a period within which an application to remove improvements may be made by the former lessee. This period is 14 days after the lease is forfeited.

Insertion of new ss 244 – 244B

Clause 188 inserts new sections 244 to 244B.

New section 244 Minister may give improvements notice

New section 244 allows the Minister to require a person who, immediately before forfeiture was the lessee, to take action in relation to buildings or structures on the land the subject of the forfeited lease. The Minister may give the notice to the person within 3 months of forfeiture. A reasonable period, not less than 3 months, must be allowed for the person to take the required action.

The section also outlines when the Minister may be satisfied certain action may be required to be taken.

Consideration must be had, by the Minister, to any representations made by the person in the improvements report about why an improvements notice should not be issued, in deciding whether to give the improvements notice.

An information notice must accompany, or be included with, an improvements notice.

New section 244A Person must comply with improvements notice

New section 244A requires a person to comply with an improvements notice. Entry to the land to undertake the required action may occur with the consent of the Minister or where 5 business days' notice is given.

In taking the action, the person must take all reasonable steps to cause as little damage, and inconvenience, as is practicable. Reasonable compensation may be payable for any loss or damage caused.

New section 244B Noncompliance with improvements notice

New section 244B provides that where a person given an improvements notice fails to comply with the notice the State may take the action required under the improvements notice and recover from the person the reasonable costs of taking the action as a debt due to the State.

Insertion of new s 280AA

New section 280AA Particulars that may be removed

Clause 189 provides a means for ensuring the integrity of any register kept by the chief executive by providing a discretion to remove irrelevant records from the register. The new section allows for the removal of records where the chief executive no longer considers the thing should be recorded to ensure the register is an accurate, comprehensive and useable record of the land and dealings to which the register relates and the removal of the thing will not prejudice the rights of the holder of an interest in a lease, licence, permit or reserve.

This amendment is similar to new section 29A of the *Land Title Act 1994*.

Insertion of new s 287A

New section 287A Registration of, or dealing with, particular documents

Clause 190 inserts new section 287A which provides the chief executive with discretion to register or otherwise deal with a document that has been lodged or deposited other than in compliance with a requirement under the Land Act if the chief executive is satisfied it is reasonable not to require the compliance. It is intended that this discretion will be exercised only in relation to unusual and complex matters, for example where the document is of a class required to be lodged using an Electronic Lodgement Network but the complexity of the transaction or the need for particular evidence to be provided with the document makes it impracticable to lodge in this way.

This amendment is similar to new section 10A of the *Land Title Act 1994*.

Amendment of s 294E (Registration of building management statement)

Clause 191 amends section 294E to clarify and remove any doubt that registered building management statements bind successors in title to the lessee of each lot to which the statement applies.

This amendment is similar to the amendment made to section 54D of the *Land Title Act 1994*.

Amendment of s 305 (Requisitions)

Clause 192 amends section 305 to allow a requisition to be given by the chief executive if the chief executive is satisfied that a lodged document is not capable of registration and the reason is not a matter for which a requisition may be given requiring re-execution, completion, correction or the provision of stated information or a stated document.

This amendment is similar to the amendment made to section 156 of the *Land Title Act 1994*.

Amendment of s 306 (Rejecting document for failure to comply with requisition)

Clause 193 amends section 306 to provide that the chief executive may reject a document to which a requisition relates and any document that depends on it for registration where the requisition is given by the chief executive stating that the document is not capable of registration and stating why the document is not capable of registration.

This amendment is similar to the amendment made to section 157 of the *Land Title Act 1994*.

Insertion of new s 327D

New section 327D Minister may require report and other information

Clause 194 inserts new section 327D to allow the Minister to require a lessee to provide a report about improvements to the Minister in relation to an application for surrender.

The Minister may ask for additional information or for the lessee to give a report. The Minister may obtain the report if the lessee fails to do so, and at the lessee's expense.

Amendment of s 328 (Surrender of subleases)

Clause 195 amends section 328 to provide that a document evidencing the whole or partial surrender of a registered sublease by operation of law may be registered if the chief executive is satisfied that every registered mortgagee and sublessee of the surrendered sublease has been given notice of the surrender. The amendment allows for mortgagees and sublessees to be aware of dealings which affect their registered interests.

This amendment is similar to the amendment made to section 69 of the *Land Title Act 1994*.

Amendment of s 373A (Covenant by registration)

Clause 196 amends section 373A so that sublessee consent is not required for covenants that tie a rolling term lease or perpetual lease for tourism purposes on a regulated island to a tidal water land lease.

The present requirement for sublessee consent has had the unintended consequence of unreasonably limiting, in certain circumstances, the capacity for marine lessees to utilise the rolling term provisions on regulated islands. The requirement for sublessee consent is not considered necessary for covenants that tie land at transfer, as tied covenants have no effect on sublessees, and it is thus considered an unreasonable burden for these leaseholders of island tourism leases.

Amendment of s 377 (Registering personal representative)

Clause 197 amends section 377 for streamlining and clarity. The amendment removes the requirement that the original or an office copy of specific evidence in support of an application be deposited. This will allow the chief executive appropriate flexibility in specifying the evidence required to be deposited with an application under the section and also allow for the various different modes of deposit, including electronic conveyancing.

This amendment is similar to the amendment made to section 111 of the *Land Title Act 1994*.

Amendment of s 380 (Applying for Supreme Court order)

Clause 198 amends section 380 to broaden the scope of persons who may apply to the Supreme Court for an order that they be registered as lessee, sublessee or licensee. The amendment is to allow for circumstances where only the court may properly make a determination in instances where a relevant lease, sublease or licence is registered in the name of a person as personal representative.

This amendment is similar to the amendment made to section 114 of the *Land Title Act 1994*.

Amendment of s 389C (Requirements of caveats)

Clause 199 amends section 389C to provide that the information required to be stated on a caveat includes the name and address of each other person whose interest or whose right to registration of a document is affected by the caveat. The amendment allows for clarification for related actions in the provisions for caveats, in particular, for the giving of notices. The amendment also clarifies that the address stated may be the address of a stated legal practitioner.

This amendment is similar to the amendment made to section 121 of the *Land Title Act 1994*.

Replacement of s 389E (Notifying caveat)

Clause 200 replaces section 389E to clarify that the chief executive must give notice of lodgement of a caveat to each other person whose interest or whose right to registration of a document is affected by the caveat. This will require notice of a caveat to be given to persons who are intending to acquire an interest under a dealing which has been lodged but is not yet registered.

This amendment is similar to the amendment made to section 123 of the *Land Title Act 1994*.

Amendment of s 389F (Effect of lodging caveat)

Clause 201 amends section 389F to clarify that, where a caveator has the benefit of a subsisting order of an Australian court in restraining a lessee from dealing with a lease, or licensee from dealing with a licence, lodgement of the caveat does not prevent registration of a document for a dealing other than a dealing restrained by the order.

This amendment is similar to the amendment made to section 124 of the *Land Title Act 1994*.

Amendment of s 389I (Cancelling caveat)

Clause 202 amends section 389I to provide that the chief executive may cancel a caveat under the section if the caveat has been lodged by a person with the benefit of a subsisting order of an Australian court in restraining a lessee from dealing with a lease or a licensee from dealing with a licence and the chief executive is satisfied that the proceeding in which the order was made has been discontinued or dismissed or otherwise ended.

The amendment also provides that the chief executive may cancel a caveat lodged by a person with the benefit of such a subsisting order of an Australian court if a document for a dealing other than a dealing restrained by the order is registered and, because of the registration of the document, the order can have no further effect to restrain dealings by the person subject to the order.

This amendment clarifies that a caveat does not interfere with dealings which are not restrained by the relevant court order. For example, a transfer by a mortgagee of a lease following exercise of the mortgagee's power of sale may be lodged. Registration of such a transfer is not prevented by the caveat and the consequent change of lessee means the court order can have no further effect.

This amendment is similar to the amendment made to section 128 of the *Land Title Act 1994*.

Insertion of new ch 6A

Clause 203 inserts a new chapter 6A, which contains a range of new, and updated, compliance and enforcement provisions under the *Land Act 1994* (the Land Act).

These new, and amended, powers are designed to contemporise the Land Act, and provide for a more efficient, and effective, compliance and enforcement framework.

The updated framework covers the appointment, and investigative powers, of authorised officers, penalties for non-compliance with particular requirements, as well as a number of new provisions associated with the giving of notices, and directions, for certain land.

This new framework will allow authorised officers to respond more effectively, and in a timelier manner, to a range of unlawful, and unsafe, activities on State land.

Chapter 6A Investigation and enforcement

Part 1 Preliminary

New section 390C Definitions for chapter

New section 390C provides a list of definitions of important terms that are used in this chapter. Many of the definitions also refer to other relevant sections.

Part 2 General provisions about authorised officers

Division 1 Appointment

New section 390D Functions of authorised officers

New section 390D lists the functions of authorised officers. These functions include investigating, monitoring and enforcing compliance with the Act, investigating or monitoring whether an occasion has arisen for the exercise of powers under the Act, and facilitating the exercise of powers under the Act.

New section 390E Appointment and qualifications

New section 390E outlines who the chief executive may appoint as authorised officers, and what the chief executive must consider before appointing a person. A public service employee, or another person prescribed by regulation, may be appointed as an authorised officer, but only if the chief executive is satisfied the person is appropriately qualified to be appointed in this role.

New section 390F Appointment conditions and limit on powers

New section 390F provides for the appointment conditions, and limits on authorised officer's powers. Conditions may be placed on an authorised officer's appointment, including in the instrument of appointment, a signed notice given to the authorised officer, or a regulation. The instrument of appointment, a signed notice given to the authorised officer or a regulation may limit the authorised officer's powers. A signed notice means a notice signed by the chief executive.

New section 390G When office ends

New section 390G provides for when the office of an authorised officer ends. This may occur if the term of office stated in a condition of office ends, under another condition of office the office ends, or the authorised officer resigns.

Subclause (2) provides that subclause (1) does not limit the ways the office of a person as an authorised officer ends. A 'condition of office' is defined to mean a condition under which the authorised officer holds office.

New section 390H Resignation

New section 390H provides for the resignation of authorised officers. An authorised officer may resign by signed notice given to the chief executive. However, if holding office as an authorised officer is a condition of the authorised officer holding another office, the authorised officer may not resign without resigning from the other office.

Division 2 Identity cards

New section 390I Issue of identity card

New section 390I makes provision for the issue of identity cards to authorised officers. Subclause (1) requires the chief executive to issue an identity card to each authorised officer. The identity card must contain a recent photo, a copy of the authorised officer's signature, identify the person as an authorised officer, and state the expiry date for the card. This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

New section 390J Production or display of identity card

New section 390J places a requirement on authorised officers to produce or display their identity card. When exercising a power in relation to a person in the person's presence, an authorised officer must show the person their identity card before exercising the power, or ensure the identity card is clearly visible to the person when exercising the power.

However, if it is not practicable to comply with these requirements, the authorised officer must produce the identity card for the person's inspection at the first reasonable opportunity.

Further, it is stated that an authorised officer does not exercise a power in relation to a person only because the authorised officer has entered a place as mentioned in new section 390N(1)(b), (f), or (g).

New section 390K Return of identity card

New section 390K requires a person who ceases to be an authorised officer to return their identity card to the chief executive within 21 days after ceasing to hold office as an authorised officer unless the person has a reasonable excuse. A maximum of 10 penalty units applies for a contravention.

Division 3 Miscellaneous provisions

New section 390L References to exercise of powers

New section 390L clarifies references to the exercise of powers under the chapter. If a provision of the chapter refers to the exercise of a power by an authorised officer and there is no reference to a specific power, the reference is to the exercise of all or any authorised officer's powers under the chapter or a warrant (to the extent the powers are relevant).

New section 390M Reference to document includes reference to reproductions from electronic document

New section 390M clarifies that a reference in the chapter to a document includes a reference to an image or writing produced from an electronic document, or not yet produced, but reasonably capable of being produced from an electronic document (with or without the aid of another article or device).

Part 3 Entry of places by authorised officers

Division 1 Power to enter

New section 390N General power to enter places

New section 390N outlines the circumstances when an authorised officer may enter a place, for a purpose of the *Land Act 1994*, or the *Vegetation Management Act 1999*. These circumstances include:

- (a) where an occupier of the place consents to the entry under division 2 (relating to entry by consent) and the authorised officer has complied with section 390Q which relates to matters the authorised officer must tell the occupier; or
- (b) the place is unallocated State land or relevant trust land; or
- (c) the place is non-freehold land subject to a trust, lease, licence or permit, or freehold land containing a reservation for a public purpose, and the authorised officer reasonably believes the terms or conditions of the reservation, trust, lease, licence or permit are not being complied with, or the Act is not being complied with; or
- (d) the place is non-freehold land and the authorised officer reasonably suspects a building or structure or equipment on the land is dangerous and poses a serious risk to the safety of the public; or
- (e) the place is non-freehold land (other than unallocated State land or relevant trust land), or freehold land containing a reservation for a public purpose, and the entry is made at least 14 days after giving the occupier of the place a notice stating: the authorised officer's intention to enter; the proposed purpose of entering; and the day and time, or the 48 hour period during which, the authorised officer proposes to enter the place; or
- (f) if it is a public place, the entry is made when the place is open to the public; or
- (g) the place is the place of business of the lessee, licensee or permittee and

- is open for carrying on the business, or otherwise open for entry; or
- (h) the entry is authorised under a warrant, and if there is an occupier of the place, the entry procedure is complied with under section 390X.

Subclause (2) provides that entry under the abovementioned circumstances (except for entry under a warrant) does not authorise the entry of a part of the place consisting of premises where a person resides.

Subclause (3) provides that if the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.

Subclause (4) provides that if the power to enter is under a warrant, the power is subject to the terms of the warrant.

Subclause (5) provides that the consent may provide consent for re-entry and is subject to the conditions of consent.

Subclause (6) provides that if the power to re-enter is under a warrant, the re-entry is subject to the terms of the warrant.

Subclause (7), for the purposes of this section, defines 'relevant trust land'. Relevant trust land means trust land of which the State is the trustee, or trust land for which there is no trustee.

Division 2 Entry by consent

New section 390O Application of division

New section 390O provides that the division applies if an authorised officer intends to ask an occupier of a place to consent to the authorised officer or another authorised officer entering the place in relation to power of entry via consent (section 390N(1)(a)).

New section 390P Incidental entry to ask for access

New section 390P provides that for the purpose of asking the occupier for the consent, the authorised officer may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

New section 390Q Matters authorised officer must tell occupier

New section 390Q provides that before asking for the consent, the authorised officer must explain to the occupier the purpose of the entry, including the powers intended to be exercised; and tell the occupier:

- (a) that the occupier is not required to consent; and
- (b) that the consent may be subject to conditions and may be withdrawn at any time.

New section 390R Consent acknowledgement

New section 390R provides for the giving of a consent acknowledgement.

If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent. The section also lists the matters the acknowledgement must state.

If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier. However, if it is impractical for the authorised officer to give the occupier a copy of the acknowledgement immediately, the authorised officer must give the occupier the copy as soon as practicable. There may be instances where it is impracticable to give a copy immediately, such as where a carbon copy or access to a photocopier may not be readily available.

If an issue arises in a proceeding about whether the occupier consented to the entry, and an acknowledgement complying with subclause (2) for the entry is not produced in evidence, the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Division 3 Entry under warrant

Subdivision 1 Obtaining warrant

New section 390S Application for warrant

New section 390S makes provision for an authorised officer to apply for a warrant for a place.

Subclause (1) provides that an authorised officer may apply to a magistrate for a warrant for a place. Subclause (2) requires an authorised officer to prepare a written application that states the grounds on which the warrant is sought, and subclause (3) requires the application to be sworn.

Subclause (4) provides that the magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

New section 390T Issue of warrant

New section 390T provides for the issue of a warrant.

Subclause (1) provides that the magistrate may issue a warrant for the place if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity

that may provide evidence of an offence against this Act, or a breach of a condition of person's lease, licence or permit.

Subclause (2) lists the matters the warrant must state, which includes details such as the place to which the warrant applies, particulars of the offence or breach of condition the magistrate considers appropriate, the name of the suspected person, the evidence that may be seized, when the warrant ends, and other matters.

New section 390U Electronic application

New section 390U provides for an application for a warrant to be made by electronic means, where an authorised officer reasonably considers this is necessary because of urgent circumstances, or other special circumstances, such as the authorised officer's remote location. Such applications may be made via phone, fax, email, radio, videoconferencing or another form of electronic communication.

An electronic application may not be made before the authorised officer prepares the written application, but may be made before the written application is sworn.

New section 390V Additional procedure if electronic application

New section 390V outlines the additional procedure that applies for an electronic application for a warrant.

New section 390W Defect in relation to a warrant

New section 390W states that a warrant is not invalidated by a defect in the warrant, or compliance with the subdivision relating to obtaining the warrant, unless the defect affects the substance of the warrant in a material particular.

Subdivision 2 Entry procedure

New section 390X Entry procedure

New section 390X outlines the things an authorised officer must do (or attempt to do) where intending to enter a place under a warrant.

Before entering the place, the authorised officer must (or make a reasonable attempt to) identify themselves to the occupier of the place, give the person a copy of the warrant, tell the person they are permitted by the warrant to enter the place, and give the person an opportunity to allow the authorised officer immediate entry to the place without using force.

Subclause (3) states that the authorised officer does not need to comply with these requirements if it is reasonably believed that entry to the place without compliance with these requirements is required to ensure the execution of the warrant is not impeded.

Part 4 Other powers of authorised officers and related matters

Division 1 Stopping or moving vehicles

New section 390Y Application of division

New section 390Y provides that this division applies if an authorised officer reasonably suspects, or is aware, that a vehicle is being used to commit an offence against this Act, or a thing in or on a vehicle may provide evidence of the commission of an offence against this Act, or the breach of a condition of a person's lease, licence or permit.

New section 390Z Power to stop or move

New section 390Z makes provision for the power to stop or move a vehicle.

Subclause (1) provides that if the vehicle is moving, the authorised officer may, to exercise his or her powers, signal or otherwise direct the person in control of the vehicle to stop the vehicle and to bring the vehicle to, and keep it at, a convenient place within a reasonable distance to allow the authorised officer to exercise the powers.

Subclause (2) provides that if the vehicle is stopped, the authorised officer may direct the person in control of the vehicle—

- (a) not to move it until the authorised officer has exercised the inspector's powers; or
- (b) to move the vehicle to, and keep it at, a stated reasonable place to allow the authorised officer to exercise the powers.

Subclause (3) provides that when giving the direction under subclause (2), the authorised officer must give the person in control an offence warning for the direction.

New section 390ZA Identification requirements if vehicle moving

New section 390ZA makes provision for identification requirements where an authorised officer proposes to give directions to a moving vehicle.

The authorised officer must clearly identify themselves to the vehicle operator, such as using a sign to identify himself or herself, if standing at the side of the road. When the vehicle stops, the authorised officer must immediately show their identity card to the vehicle operator (this applies despite the section 390J relating to the production or display of identity cards).

New section 390ZB Failure to comply with direction

New section 390ZB makes the failure to comply with a direction in relation to a vehicle an offence, unless the vehicle operator has a reasonable excuse. A maximum penalty of 100 penalty units applies.

Subclause (2) provides that it is a reasonable excuse for the person not to comply with a direction if—

- (a) the vehicle was moving and the inspector did not comply with the identification requirements under section 390ZA; or
- (b) to comply immediately would have endangered someone else or caused loss or damage to property, and the person complies as soon as it is practicable to do so.

Subclause (2) does not limit what may be a reasonable excuse in terms of not complying with a vehicle related direction.

Further, a person does not commit an offence for not complying with vehicle direction, if the direction the person fails to comply with is given under section 390Z(2), and the person is not given an offence warning for the direction.

Division 2 General powers of authorised officers after entering places

New section 390ZC Application of division

New section 390ZC provides that the powers under this division may be exercised if an authorised officer enters a place under section 390N(1)(a), (b), (c), (d), (e), (g) or (h) – this excludes entry where the place is a public place and the entry is made when the place is open to the public.

If the authorised officer enters via consent, or a warrant, the powers in this division are subject to any conditions of the consent or terms of the warrant.

New section 390ZD General powers

New section 390ZD lists the things an authorised officer may do after entering a place for the purposes of monitoring, or investigating compliance with the Act.

These general powers include searching any part of the place, inspecting, examining or filming any part of the place, taking things (or a sample of a thing) for examination, placing identifying marks, taking an extract from or copying a document, and other matters.

Further, if the place is lease land, licence land or permit land for agricultural, grazing or pastoral purposes, the authorised officer may establish 1 or more monitoring sites on the land to monitor compliance with: the Act; the lease, licence or permit; a land management agreement; a remedial action notice; a remedial action order; a compliance notice; or a compliance order. The authorised officer may also place a marker to show where a monitoring site is, install or place a monitoring device to carry out the monitoring, read a monitoring device, and check the accuracy of, or repair or replace, a monitoring device.

Subclause (3) provides that the authorised officer may take a necessary step to allow the exercise of a general power. Subclause (4) provides that if an authorised officer takes a document from the place to copy it, the authorised officer must copy the document and return it to the place as soon as practicable.

Subclause (5) provides that if the authorised officer takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised officer must produce the document and return the article or device to the place as soon as practicable.

Subclause (6) provides definitions of 'examine', 'film' and 'inspect', for the purposes of this section.

New section 390ZE Power to require reasonable help

New section 390ZE provides for an authorised officer to ask an occupier of a place, or a person at the place, for reasonable help to exercise a general authorised officer power, for example producing a document or giving information. When making this help requirements, the authorised officer must give the person a warning that it is an offence to contravene this help requirement.

New section 390ZF Offence to contravene help requirement

New section 390ZF makes it an offence not to comply with a help requirement, unless the person has a reasonable excuse. A maximum penalty of 100 penalty units applies to this offence.

It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate them, or expose them to a penalty. However, this excuse does not apply if a document or information the subject of the help requirement is required to be held or kept by the individual under this Act.

Division 3 Seizure by authorised officers and forfeiture

Subdivision 1 Power to seize

New section 390ZG Seizing evidence at a place that may be entered without consent or warrant

New section 390ZG provides powers for an authorised officer to seize evidence at a place that may be entered without the occupier's consent or a warrant.

Where an authorised officer enters a place the authorised officer may enter without the consent of the occupier, and without a warrant, the authorised officer may seize a thing at the place if they reasonably believe the thing is evidence of an offence against the Act, or a breach of condition of a lease, licence, or permit.

If the authorised officer enters the place under section 390N(1)(c), (d) or (e), the authorised officer may a seize a thing at the place only it they also reasonably believe the seizure is necessary to prevent the thing being hidden, lost or destroyed, or being used to commit, continue or repeat an offence against the Act.

New section 390ZH Seizing evidence at a place that may be entered with consent or warrant

New section 390ZH applies where an authorised officer may enter a place with the consent or the occupier, or a warrant, and enters after obtaining the necessary consent, or under a warrant.

If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place only if the authorised officer reasonably believes the thing is evidence of an offence, or a breach of a condition of a lease, licence, or permit. The seizure must also be consistent with the purpose of the entry as explained to the occupier.

If entering under a warrant, the authorised officer may only seize the evidence for which the warrant was issued. The authorised officer may also seize anything else at the place if they reasonably believe the thing is evidence of an offence against the Act, or a breach of a condition of a person's lease, licence, or permit, and the seizure is necessary to prevent the thing being hidden, lost or destroyed.

Further, an authorised officer may also seize a thing at the place if the authorised officer reasonably believes it has just been used in committing an offence, or breaching a condition of a person's lease, licence, or permit.

New section 390ZI Seizure of property subject to security

New section 390ZI provides for an authorised officer to seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.

However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised officer or a person acting under the direction or authority of the authorised officer.

Subdivision 2 Powers to support seizure

New section 390ZJ Power to secure seized thing

New section 390ZJ provides for powers to secure a seized thing. Subclause (1) allows for the authorised officer to leave the thing where they found it and to take reasonable steps to restrict access, or move it to another place.

To restrict access to the seized thing, an authorised officer may, for example, seal the thing or the entrance to where the thing is located, and make appropriate markings to show that access is restricted. The authorised officer may also make equipment inoperable, such as by dismantling it or removing a component which is required for the equipment to operate. An authorised officer may also require a person who is reasonably believed to be in control of the place or thing to do one of these acts to restrict access to the thing.

New section 390ZK Offence to contravene seizure requirement

New section 390ZK makes it an offence to not comply with a requirement made of the person under section 390ZJ(2)(c), in relation to securing a seized thing, unless the person has a reasonable excuse. A maximum penalty of 50 penalty units applies.

New section 390ZL Offence to interfere

New section 390ZL provides that a person must not tamper with a seized thing or with anything used to restrict access to the thing without approval from an authorised officer or without a reasonable excuse. A maximum penalty of 100 penalty units applies.

Where access to a place is restricted, a person must not enter the place in contravention of the restriction, or tamper with anything used to restrict access, without an authorised officer's approval, or a reasonable excuse. A maximum penalty of 100 penalty units applies.

Subdivision 3 Safeguards for seized things

New section 390ZM Receipt and information notice for seized thing

New section 390ZM applies if an authorised officer seizes anything under section 390ZG or 390ZH with exception to the following: unless the authorised officer reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or because of the condition, nature and value of the thing it would be unreasonable to require the authorised officer to comply with this section.

Subclause (2) states that the authorised officer must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized a number of things including: a receipt for the thing that generally describes the thing and its condition; and an information notice about the decision to seize it.

Subclause (3) provides that if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.

Subclause (4) provides for the receipt and information notice may be given in the same document; and relate to more than 1 seized thing.

Subclause (5) makes provision for the authorised officer to delay giving the receipt and information notice if the authorised officer reasonably suspects giving them may frustrate or otherwise hinder an investigation by the authorised officer under this chapter.

Subclause (6) provides that the delay may be only for so long as the authorised officer continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

New section 390ZN Access to seized thing

New section 390ZN relates to access of a seized thing.

Subsection (1) determines that until a seized thing is forfeited or returned, the authorised officer who seized the thing must allow an owner of the thing reasonable time to inspect it. Also, if it is a document the authorised officer must allow an owner the ability to copy it.

However, subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

Subclause (3) provides that the inspection or copying must be allowed free of charge.

New section 390ZO Return of seized thing

New section 390ZO provides for the return of a seized thing.

Subclause (1) applies if a seized thing is not forfeited or transferred under subdivision 4 or 5; or subject to a disposal order under division 4.

Subclause (2) provides for when the chief executive stops being satisfied there are reasonable grounds for retaining the thing, the chief executive must return it to its owner.

Subclause (3) provides that the owner may apply to the chief executive if the thing is not returned to its owner within 3 months after it was seized.

Subclause (4) makes provision that if the chief executive is satisfied there are reasonable grounds for retaining the thing and decides to retain it, the chief executive must give the owner an information notice about the decision within 30 days after receiving the application. The information notice must include the grounds for retaining the thing; or otherwise return the thing to the owner.

Subsection (5) provides for where there are reasonable grounds for retaining a seized thing. These grounds include where the thing is being, or is likely to be, examined; or the thing is needed, or may be needed, for the purposes of a proceeding for an offence against this Act that is likely to be started or that has been started but not completed; or where there is an appeal from a decision in a proceeding for an offence against this Act; or where it is not lawful for the owner to possess the thing.

Subsection (6) makes clear that subsection (5) does not limit the grounds that may be reasonable grounds for retaining the seized thing and subclause (7) determines that nothing in this section affects a lien or other security over the seized thing.

Subclause (8) makes clear that 'examine' in this section includes: to analyse, test, measure, weigh, grade, gauge and identify.

Subdivision 4 Forfeiture

New section 390ZP Forfeiture by chief executive decision

New section 390ZP provides for a forfeiture by the chief executive

Subclause (1) enables the chief executive to decide a seized thing is forfeited to the State if an authorised officer:

- (a) after making reasonable inquiries, can not find an owner; or
- (b) after making reasonable efforts, can not return it to an owner; or
- (c) for a thing seized for an offence—reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.

Subclause (2) provides that the authorised officer is not required to:

- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
- (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

Subclause (3) provides that regard must be had to the thing's condition, nature and value in deciding:

- (a) whether it is reasonable to make inquiries or efforts; and
- (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

New section 390ZQ Information notice about forfeiture decision

New section 390ZQ provides for information notices about a forfeiture decision.

Subclause (1) provides for the chief executive to decide under section 390ZP (1) that to forfeit a thing, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the former owner) an information notice about the decision.

Subclause (2) provides that if the decision was made under section 390ZP (1)(a) or (b), the information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.

Subclause (3) provides that the information notice must state that the former owner may apply for a stay of the decision if the former owner appeals against the decision.

Subclause (4) makes provision that subsections (1) to (3) do not apply if:

- (a) the decision was made under section 390ZP(1)(a) or (b); and
- (b) the place where the thing was seized is—
 - (i) a public place; or
 - (ii) a place where the notice is unlikely to be read by the former owner.

Subdivision 5 Dealing with property forfeited or transferred to State

New section 390ZR When thing becomes property of the State

New section 390ZR provides that a thing becomes the property of the State when the thing is forfeited to the State under section 390ZP (1); or the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

New section 390ZS How property may be dealt with

New section 390ZS provides for how property may be dealt with when it becomes the property of the State.

Subclause (2) provides that the chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away.

Subclause (3) makes clear that the chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this chapter.

Subclause (4) makes provision that if the chief executive sells the thing, the chief executive must, after deducting the costs of the sale, make reasonable efforts to return the proceeds of the sale to the former owner of the thing.

Subclause (5) in relation to subclause (4) provides that the costs of the sale include the amount of any costs reasonably incurred, after the thing was forfeited or transferred to the State, in storing or transporting the thing.

Subclause (6) clarifies that this section is subject to any disposal order made for the thing.

Division 4 Disposal orders

New section 390ZT Disposal order

New section 390ZT makes provision for disposal orders.

Subclause (1) applies if a person is convicted of an offence against this Act.

Subclause (2) provides for the court to make a disposal order, on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person:

- (a) anything that was the subject of, or used to commit, the offence;
- (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.

Subclause (3) provides for the court to make a disposal order for a thing whether or not it has been seized under this chapter; and if the thing has been seized, whether or not it has been returned to the former owner.

Subclause (4) makes provision for the court, in deciding whether to make a disposal order for a thing, that the court may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and must hear any submissions that any person claiming to have any property in the thing may wish to make.

Subclause (5) provides for the court to make any order it considers appropriate to enforce the disposal order.

Subclause (6) does not limit the court's powers under another law.

Division 5 Other information-obtaining powers of authorised officers

New section 390ZU Power to require name and address

New section 390ZU provides an authorised officer with power to require a person to provide their name and address to the authorised officer where:

- (a) the person is found committing an offence against the Act; or
- (b) the person is found in circumstances that lead the authorised officer to reasonably suspect the person has just committed an offence against the Act; or
- (c) the authorised officer has information that leads the authorised officer to reasonably suspect a person has just committed an offence against the Act.

If the person does not have a residential address, or does not have a residential address in Queensland then the person may provide another address in Queensland where the person may be contacted.

Subsection (3) provides that the authorised person may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to:

- (a) be in possession of evidence of the correctness of the stated name or address; or
- (b) otherwise be able to give the evidence.

When making a person details requirement, the authorised officer must give the person an offence warning for the requirement.

A requirement under section 390ZU is defined as a personal details requirement.

New section 390ZV Offence to contravene personal details requirement

New section 390ZV makes it an offence to not comply with a personal details requirement unless the person has a reasonable excuse. A personal details requirement is defined in section 390ZU.

Subsection (2) provides that a person may not be convicted of such an offence unless the person is found guilty of the offence in relation to which the personal details requirement was made.

The maximum penalty for a contravention of a personal details requirement is 50 penalty units.

New section 390ZW Power to require production of document

New section 390ZW allows an authorised officer to require the production of a document where:

- (a) a document is issued to the person under the Act; or
- (b) a document required to be kept by the person under the Act;
- (c) if a document or information required to be kept by the person under the Act is stored or recorded by means of a device – a document that is a clear written reproduction of the electronic document.

The documents must be made available for inspection, or produced for inspection at a reasonable time and place nominated by the authorised officer.

An authorised officer may keep the document to make a copy of the document, or an entry in the document, and where that occurs the authorised officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry. This requirement is defined as a document certification requirement.

An authorised officer must return the document to the person as soon as practicable after it has been copied however if the authorised officer requires a person to certify the copy the authorised officer may keep the document until the person complies with that requirement.

New section 390ZX Offence to contravene document production requirement

New section 390ZX makes it an offence contravene a document production requirement unless the person has a reasonable excuse. Failure to comply with the requirement because compliance might tend to incriminate the person or expose the person to a penalty is not a reasonable excuse.

The provision includes a reference to new section 390ZZJ which provides evidential immunity for an individual who gives or produces information or a document to an authorised officer under a requirement.

New section 390ZX requires an authorised officer to inform the person that the person must comply with the requirement notwithstanding that complying might tend to incriminate the person or expose them to a penalty and also that there is a limited immunity against the future use of the information or document. Where an authorised officer fails to inform the person of these matters, a person may not be convicted of the offence of contravening a document production requirement.

Where a person is convicted of such an offence, the court may impose a penalty for the offence and may also order the person to comply with the document production requirement.

The maximum penalty for a contravention of a document production requirement is 100 penalty units.

New section 390ZY Offence to contravene document certification requirement

New section 390ZY makes it an offence to contravene a document certification requirement unless a person has a reasonable excuse. Failure to comply with the requirement because compliance might tend to incriminate the person or expose the person to a penalty is not a reasonable excuse.

The provision includes a reference to new section 390ZZJ which provides evidential immunity for an individual who gives or produces information or a document to an authorised officer under a requirement.

New section 390ZY requires an authorised officer to inform the person that the person must comply with the requirement notwithstanding that complying might tend to incriminate the person or expose them to a penalty and also that there is a limited immunity against the future use of the information or document. Where an authorised officer fails to inform the person of these matters, a person may not be convicted of the offence of contravening a document certification requirement.

The maximum penalty for a contravention of a document certification requirement is 100 penalty units.

New section 390ZZ Power to require information

New section 390ZZ provides an authorised officer power to require a person to give the authorised officer information about an offence against the Act that has been committed or the breach of a condition of a lease, licence or permit. The power is only exercisable where the authorised officer reasonably believes an offence against the Act has been committed or a condition of a lease, licence or permit has been breached and the person may be able to give information about the offence or breach.

In these circumstances, the authorised officer may give a notice to the person requiring the person to give the authorised officer information related to the offence or the breach by a stated reasonable time.

Where the information is an electronic document, the person to whom the notice was given must provide a clear image or written version of the electronic document.

For the purposes of section 390ZZ, “information” includes a document.

New section 390ZZA Offence to contravene information requirement

New section 390ZZA makes it an offence to contravene an information requirement unless a person has a reasonable excuse. For this provision, it is a reasonable

excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

Part 5 Obtaining criminal history reports

New section 390ZZB Purpose of part

New section 390ZZB provides that the purpose of this part, dealing with obtaining criminal history reports, is to help an authorised officer to decide whether an authorised officer's unaccompanied entry of a place under Part 3 (Entry of places by authorised officers) would create an unacceptable level of risk to the authorised officer's safety.

Authorised officers are often required to work in remote areas and the ability to obtain advice about whether a person has a history of offences involving violence or firearms before entering a place will enable the authorised officer to be accompanied by a police officer if it is considered appropriate.

New section 390ZZC Chief executive's power to obtain criminal history report

New section 390ZZB provides a new power for the chief executive administering the *Land Act 1994* request from the commissioner of the police service a written report about the criminal history of a person. This power is only exercisable where an authorised officer reasonably suspects the person may be present at a place when the person enters under part 3 and may create an unacceptable level of risk to the authorised officer's safety.

Where such a report is requested, the commissioner of police must provide it to the chief executive. The report is required to contain only criminal history which is within the commissioner's possession or to which the commissioner has access.

This provision does not provide an authorised officer blanket access to a " criminal history of a person. The chief executive must examine the report and identify, to the extent it is reasonably practicable to do so, offences involving the use of a weapon or violence against a person. It is this information that the chief executive may give to the authorised officer.

New section 390ZZD Criminal history is confidential document

New section 390ZZD makes it an offence for a person to directly or indirectly, disclose to anyone else a report about a person's criminal history or information within the report of the chief executive provided under 390ZZC(5).

A person does not commit an offence against this provision where the disclosure of the report or information is for the purpose of the other person performing a function in relation to this Act, or where the disclosure of the report or information is otherwise required or permitted by law.

The report or information must be destroyed as soon as practicable after the authorised officer considers the risk in section 390ZZB.

The maximum penalty for a contravention of this provision is 100 penalty units.

Part 6 Miscellaneous provisions relating to authorised officers

Division 1 Damage

New section 390ZZE Duty to avoid inconvenience and minimise damage

New sections 390ZZE and 390ZZF replace section 401 of the Land Act which is being omitted.

New section 390ZZE places a duty on an authorised officer, in exercising a power, to take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

The provision also refers to new section 390ZZG which allows a person to claim compensation from the State where a person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised officer including a loss arising from compliance with a requirement made of the person under Chapter 6A Investigation and Enforcement.

New section 390ZZF Notice of damage

New section 390ZZF replaces current section 401 and provides a process for an authorised officer to notify a person of damage, other than trivial damage, which has occurred when an authorised officer or their assistant has exercised or has purported to exercise a power.

The notice of damage must be given to the person who appears to be the owner, or person in control of the thing damaged. Where the authorised officer reasonably believes, there is no apparent owner or the thing has been abandoned there is no requirement to provide a notice of damage.

Where it is not practicable to give the notice to the owner or person in control of the thing damaged the authorised officer must leave the notice at the place where the damage happened and ensure it is left in a conspicuous position and in a reasonably secure way. If the authorised officer reasonably suspects that giving the notice to the person or leaving it in a conspicuous position may frustrate or hinder an investigation the authorised officer may delay the giving of the notice only while the authorised officer holds that reasonable suspicion and remains in the vicinity of the place.

The notice must state the particulars of the damage, and that the person who suffered the damage may claim compensation under section 390ZZG.

The notice may also include a statement that the authorised officer believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised officer.

Division 2 Compensation

New section 390ZZG Compensation

New section 390ZZG replaces current section 402 and provides for a person to claim compensation from the State if the person incurs a loss, because of the exercise, or purported exercise, of a power, by or for an authorised officer. A loss arising from compliance with a requirement about the seizure of property by authorised officers and forfeiture, or a requirement to provide information.

The provision allows compensation to be claimed and ordered in a proceeding –

- (a) brought in a court within jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an alleged offence against the Act the investigation of which gave rise to the claim for compensation.

The court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case. In that respect, the court must have regard to any relevant offence committed by the claimant; any relevant breach of condition of any licence, lease or permit of the claimant; and whether the loss arise from a lawful seizure or lawful forfeiture.

New section 390ZZG, like current section 402 provides that a regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

The provision also confirms that new section 390ZZE does not provide for a statutory right of compensation other than as provided by this section.

Division 3 Other offences relating to authorised officers

New section 390ZZH Giving authorised officer false or misleading information

New section 390ZZH replaces section 403A of the Land Act and makes it an offence to give an authorised officer information the person knows is false or misleading in a material particular in relation to the administration of the Land Act.

The giving of false and misleading information will not be an offence if the person, when giving information in a document

- (a) tells the authorised officer, to the best of the person's ability, how the document is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information then gives the correct information.

New section 390ZZI Impersonating authorised officer

New section 390ZZI replaces section 403 of the Land Act and continues to make it an offence to impersonate an authorised officer.

Division 4 Other provisions

New section 390ZZJ Evidential immunity for individuals complying with particular requirements

New section 390ZZJ provides limited evidential immunity in relation to information or a document provided to an authorised officer under a requirement for reasonable help (new section 390ZE) or under a requirement for the production of a document (new section 390ZW).

New section 390ZZJ mitigates the abrogation of the privilege against self-incrimination by providing that evidence of the information or document, and other derivative evidence, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual or expose the individual to a penalty in the proceeding.

The evidential immunity does not extend to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

Omission of ch 7, pt 1, divs 2—5

Clause 204 omits divisions 2 to 5 of Chapter 7, part 1.

Insertion of new ch 7, pts 1A—1C

Clause 205 inserts new chapter 7, parts 1A to 1C.

Part 1A Safety notices

Division 1 Show cause procedure for particular safety notices

New section 403D Show cause notice

New section 403D provides a show cause notice process where the chief executive proposes to give a person on a safety notice to demolish or remove a building, structure or equipment on the land because the chief executive reasonably believes the building, structure or equipment is dangerous and poses a serious risk to the safety of the public.

Before giving a safety notice requiring demolition or removal the chief executive must first give a show cause notice stating that the chief executive proposes to give a safety notice to the person, and which includes the grounds for giving the proposed safety notice, the facts and circumstances forming the basis for the grounds and that the person may make written representations within the show cause period (at least 21 days after the person is given the show cause notice).

New section 403E Representations about show cause notice

New section 403E allows for a person who is given a show cause notice to make written representations to the chief executive within the show cause period about

why the safety notice should not be given. The provision requires the chief executive to consider the written representations.

New section 403F Ending show cause process without further action

New section 403F provides that where the chief executive has considered the representations in relation to the show cause notice and no longer believes a ground exists to give the safety notice, the chief executive must not take any further action about the show cause notice and must notify the person that no further action is to be taken in that regard.

The chief executive may still give the person a safety notice to repair or rectify the same building, structure or equipment to make it safe or to fence off the building, structure or equipment to protect the public.

Division 2 Giving of safety notices and related matters

New section 403G Chief executive may give safety notice

New section 403G allows the chief executive to give a safety notice to an occupier in relation to a building, structure or equipment on relevant non-freehold land where the chief executive believes that building, structure or equipment is dangerous and poses a serious risk to the safety of the public.

The safety notice may require a person to repair or rectify the building, structure or equipment to make it safe, or to fence off the building, structure or equipment to protect the public.

Where the chief executive reasonably believes it is not possible or practicable to take steps to repair or rectify or fence off the building, structure or equipment and a show cause notice process has been undertaken then the person may be required, by safety notice, to demolish or remove the building, structure or equipment.

An information notice, which provides certain information about a decision including the reasons for the decision and the rights of review and appeal which attach, must accompany or be included with a safety notice.

“Occupier” is defined for the purposes of new section 403G.

New section 403H Person must comply with safety notice

New section 403H requires a person to comply with a safety notice unless the person has a reasonable excuse. The maximum penalty for contravention of this provision is 400 penalty units.

Division 3 Noncompliance with safety notices

New section 403I Safety notice requiring repair, rectification or fencing

New section 403I allows the State to undertake the work required under the safety notice and recover the costs of taking the action as a debt due to the State where a person is given a safety notice to rectify or repair or fence off a building, structure or equipment and the person to whom the notice was given has failed to comply.

New section 403J Safety notice requiring demolition or removal

New section 403J deals with circumstances where a person has been given a safety notice requiring demolition or removal and the person has not undertaken the required work.

In those circumstances, the chief executive may give a warning notice to the person which serves to notify the person who has not taken the necessary action under the safety notice that the person has 7 days to do so, and if the action is not taken within that time the State may take the safety action. The reasonable costs of undertaking the action, including disposal or removal costs, may be recovered from the person as a debt owing to the State.

An information notice, which provides certain information about a decision including the reasons for the decision and the rights of review and appeal which attach, must accompany or be included with a warning notice.

New section 403J enables the State to remove anything in or on the building, structure or equipment for the purpose of taking the safety action. The State may recover from the person the reasonable costs of taking the safety action as a debt due to the State.

On starting to take the safety action, the building, structure, or equipment to which the safety notice applies is forfeited to the State. In this circumstance, the chief executive may deal with the forfeited thing as considered appropriate, including for example, by destroying it, giving it away or otherwise disposing of it.

The costs associated with taking safety action (disposal costs) include any costs reasonably incurred in disposing of the forfeited thing such as transport costs, and dump fees, and any costs reasonably incurred in removing a thing in or on the forfeited thing.

Where the chief executive sells the forfeited property, or part of it, the amount for which the thing or part of the thing is sold must be offset against the amount recoverable from the person as a debt owing to the State.

If the amount for which the forfeited property is sold is greater than the reasonable costs of taking the safety action and any disposal costs, the chief executive may, after deducting the costs of taking the safety action and any disposal costs, return the proceeds of the sale to the person.

Part 1B **Regulatory and other notices on unallocated State land and particular trust land**

New section 403K Regulatory notices

New section 403K allows the chief executive to regulate or prohibit stated activities, by regulatory notice, on an area of unallocated State land or trust land of which the State is the trustee, or trust land for which there is no trustee.

A regulatory notice will be another tool which may be utilised to appropriately manage land and allow for a penalty to be applied where a person does not comply with the notice.

The notice is to be erected or displayed at or near the access points to the area of land to which the notice applies and must be easily visible to passers-by, identify the area to which the sign applies, and state the activity which is regulated or prohibited.

The purposes for which an activity may be regulated or prohibited in a regulatory notice are:

- (a) to protect public health or safety;
- (b) to prevent a nuisance in the area;
- (c) to protect infrastructure in the area;
- (d) to protect the cultural or environmental value of the area.

Examples of activities which may be regulated or prohibited include camping, trail bike riding and four wheel driving.

It is an offence to contravene a requirement of a regulatory notice unless the person has a reasonable excuse. The maximum penalty for contravention of a regulatory notice is 400 penalty units.

Subsection (6) provides evidential support for regulatory notices in that evidence that the regulatory notice was erected or displayed at or near an access point to the restricted use area is evidence that the notice was erected or displayed by the chief executive.

New section 403L Regulatory information notices

New section 403L provides for regulatory information notices to be erected or displayed at or near the access points to an area to which a regulatory notice applies and which states that a contravention of a requirement of the regulatory notice is an offence against the Act and the penalty for the offence.

A regulatory information notice will be required where a regulatory notice does not state that a contravention of a requirement of the notice is an offence against the Act and the penalty for the offence. A regulatory information notice may also include other information about the area that the chief executive considers appropriate.

The notices must be placed where at least one of them is easily visible to passers-by.

New section 403M Person must not interfere with notices

New section 403M makes it an offence to interfere with a regulatory notice or regulatory information notice. The maximum penalty for moving, destroying, damaging, defacing, altering or otherwise interfering with these notices is 400 penalty units.

Part 1C Directions to leave unallocated State land and particular trust land

New section 403N Authorised officer may give direction

New section 403N provides an authorised officer with power to direct, verbally or in writing, a person on unallocated State land or relevant trust land to leave the land where:

- (a) it is unsafe for the person to remain on the land; or
- (b) the person is contravening a requirement of a regulatory notice and leaving the land is the only way the person can comply with the requirement.

In managing land it may be necessary for the State to undertake activities such as controlled burns which may present a risk to public safety if access to the area is not regulated.

Relevant trust land is trust land of which the State is trustee, or trust land for which there is no trustee.

A direction to leave for the person's safety, whether verbal or in writing, must address why it is unsafe for the person to remain on the land and that it is an offence not to comply with the direction unless the person has a reasonable excuse. A direction to leave because the person is contravening a regulatory notice, whether verbally or in writing, must address the requirement the authorised officer believes is being contravened, the way it is being contravened and that it is an offence to not comply with the direction to leave unless the person has a reasonable excuse.

Non-compliance with a direction is subject to a maximum penalty of 400 penalty units.

New section 403O Authorised officer must make record of direction

New section 403O applies where an authorised officer gives a direction orally, or in writing, but does not have a copy of the direction. In this circumstance, the authorised officer must make a written record of a direction given which includes the name of the person to whom the direction was given, details of the direction and the day and time given.

Insertion of new s 405AA

New section 405AA Definitions for division

Clause 206 inserts new section 405AA and signposts definitions for the terms “compliance period” and “relevant period”.

Amendment of s 406 (Notice to person to leave land, remove structures etc.)

Clause 207 amends section 406 to allow a trespass notice to be given to a person by fixing the notice in a conspicuous position and in a reasonably secure way on the land to which the trespass notice relates or on a thing on the land to which the trespass notice relates.

The amendment also allows for the period for compliance with the trespass notice to differ subject to the way in which the notice is given. Where the notice is given by fixing the notice in a conspicuous position, the compliance period commences after the person becomes aware of the existence of the notice. Where the notice is given, other than by fixing the notice in a conspicuous position, the compliance period commences when the notice is given to the person.

The Land Regulation 2009 is also amended in a complementary way by Part 8 of the Bill.

Replacement of s 408 (Improvements etc. forfeited)

Clause 208 replaces section 408 and provides for forfeiture of improvements, goods or anything else which is on land to which a trespass notice relates.

Where a trespass notice has been given but there has been no compliance with that notice and a person has not started proceedings regarding a trespass related act within the period prescribed by amended 409(2), then any improvements, goods or anything else belonging to the person that is on the land is forfeited to the State.

The amendment to section 408 complements amendments to section 406 of the Land Act and section 48 of the Land Regulation.

Amendment of s 409 (Person may start proceeding in Magistrates Court)

Clause 209 amends section 409 to complement amendments to the trespass notice provisions. Subsection (2) is amended to allow for a period within which proceedings to the Magistrates Court must be commenced. The period allowed, differs according to the compliance period stated in the trespass notice.

Where the compliance period stated in the trespass notice is 7 days or less, the proceeding must be started within 7 days. Otherwise the proceeding must be started within the compliance period stated in the trespass notice.

This amendment complements amendments to sections 406 and 408 and allows a person who has received a trespass notice related to camping, to commence

proceedings within 7 days and only after that 7 days has passed can forfeiture of improvements, goods or anything else on the land occur.

Amendment of s 410 (Chief executive may start proceeding)

Clause 210 consequentially amends section 410 to specify that the chief executive may start a proceeding in the Magistrates Court only after the relevant period has expired under the trespass notice, and the person has not started a proceeding under this division about the trespass notice.

Insertion of new ch 7, pt 2, div 5

Clause 211 inserts new division 5 into part 2 of chapter 7 of the Land Act.

Division 5 Dealing with property forfeited to the State

New section 420AA How property may be dealt with

New section 420AA provides for the manner in which property forfeited to the State under section 408 or by a trespass order may be dealt with.

The chief executive is provided with a power to deal with the property as is considered appropriate, including by destroying it, giving it away or otherwise disposing of it. A safeguard is provided so that the chief executive cannot deal with the property in a way that could prejudice the outcome of an appeal against the making of a trespass order.

Where the property is disposed of by the chief executive, the cost of disposal costs may be recovered from the former owner (the person who owned the property immediately before the forfeiture) as a debt due to the State. Examples of disposal costs include transport costs, dump fees, storage costs and costs of sale.

Where the chief executive sells the property, or part of the property, the amount obtained must be offset against the amount that may be otherwise recovered from the former owner. Where the amount obtained by sale of the property is more than the disposal costs the chief executive may return the proceeds of sale to the former owner.

Insertion of new ch 7, pt 3, div 1AA

Clause 210 inserts a new division 1AA into part 3 of chapter 7.

Division 1AA Preliminary

New section 420J Definitions for part

New section 420J provides definitions for part 3 of chapter 7. Definitions of “court” and “relevant original decision” are included to provide for review by the Magistrates Court or Land Court in relation to:

- seizing evidence at a place that may be entered without consent or warrant;

- seizing evidence at a place that may be entered only with consent or warrant;
- return of a seized thing; and
- forfeiture by chief executive decision.

Insertion of new s 420K

New section 420K Right of appeal

Clause 213 inserts a new section 420K which provides a right of appeal where a person is given, or is entitled to be given, an information notice about an original decision. New section 420K does not limit any other provision that gives a person a right to appeal against an original decision.

Amendment of s 421 (Notice of right of appeal to be given)

Clause 214 amends section 421 so that the requirement under section 421 to give a notice to a person of the person's appeal rights and how the appeal is started does not apply in relation to a an original decision for which a person is entitled to be given an information notice.

Replacement of s 440 (Obstruction of officers etc.)

Clause 215 replaces section 440 which deals with obstruction of officers.

New section 440 makes it an offence to obstruct a relevant officer exercising a power under the Act. It is also an offence for a person to obstruct a person helping a relevant officer exercising a power under the Act.

A relevant officer is an authorised officer or a public service employee employed in the department. It is not an offence to contravene the provision if a person has a reasonable excuse. The maximum penalty for contravention of this provision is 400 penalty units.

Where a person has obstructed a relevant officer or someone helping a relevant officer and the relevant officer proceeds with the exercise of the power, the relevant officer must warn the person that it is an offence to cause an obstruction unless the person has a reasonable excuse and the relevant officer consider the person's conduct an obstruction.

The definition of obstruct is broad, and includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

Amendment of s 441 (Protection from liability)

Clause 216 amends section 441 to take into account the protections provided by the *Public Service Act 2008* and appropriately provides coverage to an authorised officer or a person acting under the direction of an authorised officer who may not have the benefit of protection under the *Public Service Act 2008*.

New section 528 Identity cards issued before commencement

New section 528 is a transitional provision to allow identity cards issued to authorised persons under the Land Act prior to commencement to be taken to be identity cards issued to a person under new section 390L.

New section 529 Compensation

New section 529 is a transitional provision to continue the application of existing section 402 regarding compensation for a loss or expense incurred because of the exercise or purported exercise of a power in accordance with section 402.

Amendment of sch 2 (Original decisions)

Clause 219 amends Schedule 2 to re-define 'original decision'. The definition is narrower than the previous description of 'original decisions'. The definition is narrower to support the compliance framework.

Amendment of sch 6 (Dictionary)

Clause 220 amends Schedule 6 (Dictionary) to remove certain definitions from the dictionary and inserts other new definitions. It also amends three definitions in the dictionary. The amendments are necessary to support the compliance framework.

Part 8 Amendment of Land Regulation 2009

Regulation Amended

Clause 221 provides that Part 8 of the Bill amends the Land Regulation 2009.

Amendment of s 48 (Required time for trespass notice – Act, s 406)

Clause 222 amends section 48 of the Land Regulation 2009 to provide for a compliance period for the purposes of section 406 of the Land Act. Section 48 as amended prescribes the compliance period for compliance with a trespass notice for three categories of trespass related acts:

- (a) for a trespass related act that is building, placing or maintaining an improvement, other than a relevant improvement, on the land – 28 days; or
- (b) for a trespass related act, other than an act to which paragraph (a) applies or an act related to camping – 7 days; or
- (c) for a trespass related act related to camping – 4 hours.

Part 9 Amendment of Land Title Act 1994

Division 1 Preliminary

Act Amended

Clause 223 provides for the amendment of the *Land Title Act 1994*.

Division 2 Amendments commencing on assent

Insertion of new s 10A

New section 10A Registration of, or dealing with, particular instruments or other documents

Clause 224 inserts new section 10A which provides the registrar of titles a discretion to register or otherwise deal with an instrument or document that has been lodged or deposited other than in compliance with a requirement under the Land Title Act if the registrar is satisfied it is reasonable not to require the compliance. It is intended that this discretion will be exercised only in relation to unusual and complex matters, for example where the instrument or document is of a class required to be lodged using an Electronic Lodgement Network but the complexity of the transaction or the need for particular evidence to be provided with the document makes it impracticable to lodge in this way.

This amendment is similar to new section 287A of the *Land Act 1994*.

Insertion of new section 29A

New section 29A Particulars the registrar may remove

Clause 225 allows a means for ensuring the integrity of the freehold land register by providing the registrar of titles a discretion to remove irrelevant records from the register. The new section allows for the removal of records where the registrar of titles no longer considers the thing should be recorded to ensure the register is an accurate, comprehensive and useable record of freehold land in the State and the removal of the thing will not prejudice the rights of the holder of an interest recorded in the register.

The new section is introduced so that instances such as those brought about by the repeal of the *Strategic Cropping Land Act 2011* may be appropriately dealt with. The new section will allow the registrar of titles to remove the now irrelevant administrative advices recorded under that Act which are not otherwise able to be removed.

This amendment is similar to new section 280AA of the *Land Act 1994*.

Amendment of s 54D (Registration of building management statement)

Clause 226 amends section 54D to clarify and remove any doubt that registered building management statements bind successors in title to the registered owner of each lot to which the statement applies. This amendment is similar to the amendment made to section 294E of the *Land Act 1994*.

Amendment of s 69 (Surrendering a lease)

Clause 227 amends section 69 to provide that an instrument evidencing a whole or partial surrender of a registered lease by operation of law may be registered if the registrar of titles is satisfied that every registered mortgagee and sublessee of the

surrendered lease has been given notice of the surrender. The amendment allows for mortgagees and sublessees to be aware of dealings which affect their registered interests.

This amendment is similar to the amendment made to section 328 of the *Land Act 1994*.

Amendment of s 111 (Registering personal representative)

Clause 228 amends section 111 for streamlining and clarity and to facilitate the evolving conveyancing environment. The amendment removes the express requirement that the original or an office copy of specific evidence in support of an application be deposited. This will allow the registrar of titles an appropriate amount of flexibility in specifying the evidence required to be deposited with an application under the section and allow for the various different modes of deposit, including electronic conveyancing.

This amendment is similar to the amendment made to section 377 of the *Land Act 1994*.

Amendment of s 114 (Applying for Supreme Court order)

Clause 229 amends section 114 to broaden the scope of persons who may apply to the Supreme Court for an order that they be registered as proprietor of a lot. As the Supreme Court continues to retain jurisdiction to supervise claims made under trusts or in cases of land owned by deceased proprietors, the amendment is to allow for circumstances where only the court may properly make a determination in instances where a relevant lot is registered in the name of a person as personal representative.

This amendment is similar to the amendment made to section 380 of the *Land Act 1994*.

Amendment of s 121 (Requirements of caveats)

Clause 230 amends section 121 to provide that the information required to be stated on a caveat includes the name and address of the registered proprietor of the lot affected by the caveat and each other person whose interest or whose right to registration of an instrument is affected by the caveat. This amendment allows for clarification for related actions in the provisions for caveats, in particular, for the giving of notices. The amendment also clarifies that the address stated may be the address of a stated legal practitioner.

This amendment is similar to the amendment made to section 389C of the *Land Act 1994*.

Replacement of s 123 (Notifying caveat)

Clause 231 replaces section 123 to clarify that the registrar of titles must give written notice of the lodgement of a caveat to each registered proprietor of the lot affected by the caveat and to each other person whose interest or whose right to registration of

an instrument is affected by the caveat. This will require notice of a caveat to be given to persons who are intending to acquire an interest under a dealing which has been lodged but is not yet registered. This amendment is similar to the amendment made to section 389E of the *Land Act 1994*.

Amendment of s 124 (Effect of lodging caveat)

Clause 232 amends section 124 to clarify that, where a caveator has the benefit of a subsisting order of an Australian court in restraining a registered proprietor from dealing with a lot, lodgement of the caveat does not prevent registration of an instrument for a dealing other than a dealing restrained by the order.

This amendment is similar to the amendment made to section 389F of the *Land Act 1994*.

Amendment of s 126 (Lapsing of caveat)

Clause 233 amends section 126 to clarify that where a notice is served by a caveatee on a caveator requiring the caveator to start a proceeding in a court of competent jurisdiction to establish the interest claimed in the caveat, the caveator must also notify the registrar of titles of the service of the notice within 14 days by depositing an instrument.

The amendments also clarify that if a caveator does not want a caveat to lapse, the caveator must start a proceeding in a court of competent jurisdiction to establish the interest claimed under the caveat either within 14 days after the caveatee serves notice on the caveator, or within 3 months after lodging the caveat. The caveator must also notify the registrar of titles that a proceeding has been started by depositing an instrument.

These amendments are to provide better clarity in notification provisions for caveats so that the lapsing of a caveat may be clearly ascertained.

Amendment of s 128 (Cancelling a caveat)

Clause 234 amends section 128 to provide that the registrar of titles may cancel a caveat under the section if the caveat has been lodged by a person with the benefit of a subsisting order of an Australian court in restraining a registered proprietor from dealing with a lot and the registrar is satisfied that the proceeding in which the order was made has been discontinued or dismissed or otherwise ended.

The amendment also provides that the registrar of titles may cancel a caveat lodged by a person with the benefit of such a subsisting order of an Australian court if an instrument for a dealing other than a dealing restrained by the order is registered and, because of the registration of the instrument, the order can have no further effect to restrain dealings by the person subject to the order.

This amendment clarifies that a caveat does not interfere with dealings which are not restrained by the relevant subsisting order. For example, a transfer by a mortgagee following exercise of the mortgagee's power of sale may be lodged. Registration of the transfer is not prevented by the caveat and the consequent change of registered

owner means the court order can have no further effect. This amendment is similar to the amendment made to section 389I of the *Land Act 1994*.

Amendment of s 156 (Requisitions)

Clause 235 amends section 156 to allow a requisition to be given by the registrar of titles if the registrar is satisfied that a lodged instrument or document is not capable of registration and the reason is not a matter for which a requisition may be given requiring re-execution, completion, correction or the provision of specified information or a specified instrument or document.

This amendment will allow for an appropriate requisition to be given in circumstances such as where a transfer is lodged followed by the lodgement of a mortgage given by the transferor, not the transferee. The mortgage is not capable of registration because of the preceding transfer.

This amendment is similar to the amendment made to section 305 of the *Land Act 1994*.

Amendment of s 157 (Rejecting instrument or document for failure to comply with requisition)

Clause 236 amends section 157 to provide that the registrar of titles may reject an instrument or document to which a requisition relates and any instrument that depends on it for registration where the requisition is given by the registrar stating that the instrument or document is not capable of registration and stating why the instrument or document is not capable of registration.

This amendment is similar to the amendment made to section 306 of the *Land Act 1994*.

Amendment of s 197 (Service)

Clause 237 amends section 197 to clarify that the section does not apply to a notice on a caveator under part 7 division 2. As section 131 of the *Land Title Act 1994* specifically provides how a notice to a caveator may be sufficiently served under the division, this amendment provides clarification for service of notices on a caveator.

Amendment of s 199 (Regulation-making power)

Clause 238 amends section 199 to allow that a regulation may be made by the Governor in Council about the requirements for lodging and depositing instruments and other documents. The amendment specifically allows that such a regulation may require instruments or other documents of a stated class, or those lodged or deposited by a person of a stated class, to be lodged or deposited using an Electronic Lodgement Network. The amendment provides that 'Electronic Lodgement Network' has the meaning given by section 13 of the Electronic Conveyancing National Law (Queensland).

Omission of s 154 (Returning certificate of title for cancellation)

Clause 243 removes the requirement for certificates of title for a lot to be returned for cancellation to allow an instrument to be registered for the lot.

Amendment of s 164 (Dispensing with production of paper instrument)

Clause 244 omits provisions for the registrar of titles to dispense with the production of a certificate of title for a lot, which are no longer relevant.

Amendment of s 166 (Destroying instrument in certain circumstances)

Clause 245 omits subsections which reference certificates of title.

Amendment of s 189 (Matters for which there is no entitlement to compensation)

Clause 246 includes a definition of 'certificate of title' for the section.

Insertion of new pt 12, div 7, sdiv 2

Subdivision 2 Certificates of title

Clause 247 inserts new part 12, division 7, subdivision 2

Paper certificates of title have not been needed in Queensland since 1994 when the land registry was computerised. Only a small percentage of paper certificates of title still exist. For efficiency in preventing unnecessary duplication and to allow for the evolving conveyancing environment, on the commencement, provision for issuing duplicate paper certificates of title will be removed and any existing paper duplicates will no longer have any effect.

New section 214 Definition for subdivision

New section 214 includes a new definition of 'certificate of title' for the subdivision which provides that a certificate of title means a certificate of title issued under the *Land Title Act 1994* before the commencement.

New section 215 Certificates of title cease to be instruments

New section 215 provides that on the commencement a certificate of title ceases to be an instrument and ceases to be evidence, conclusive or otherwise, of the indefeasible title for the lot for which it was issued.

New section 216 Registration of particular instruments lodged before commencement without certificate of title

New section 216 allows for transition for the requirements of the 'former section 154' which is defined for the section. Where an instrument was lodged before the commencement and could not be registered because the certificate of title had not been returned for cancellation under former section 154 and the instrument had not

been rejected immediately before the commencement, the new section allows for the instrument to be registered despite non-compliance with former section 154.

New section 217 Provisions of other Acts relating to certificates of title

New section 217 provides that to the extent a provision in another Act requires or permits a person to take an action in relation to a certificate of title, from the commencement the provision is taken not to apply.

Amendment of sch 2 (Dictionary)

Clause 248 amends Schedule 2 (Dictionary) to omit the definitions of 'certificate of title' and to omit reference to 'certificate of title' in the definition of 'instrument'.

Part 10 Amendment of Mineral and Energy Resources (Common Provisions) Act 2014

Act amended

Clause 249 provides for amendments to the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 103 (Definitions for ch 4)

Clause 250 amends the definition of relevant matter so that a relevant matter includes all of the matters that must be included in a joint development plan under sections 130(3) and 142(3).

The effect of this amendment is that all matters that must be contained in a joint development plan can be referred to arbitration under the overlapping tenure framework contained in chapter 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 165 (What is PL connecting infrastructure)

Clause 251 amends the definition of PL connecting infrastructure under section 165(1) by deleting all words from 'in an overlapping area'. This amendment ensures that petroleum lease holders can, if applicable, receive compensation for PL connecting infrastructure regardless of the location of the connecting petroleum well.

Section 167 makes a mining lease (for coal) liable to compensate a petroleum lease (for coal seam gas) holder when the mining lease holder carries out authorised activities within an initial mining area or rolling mining area and because of these activities, the PL connecting infrastructure is or will be physically severed and the petroleum lease holder is or will need to replace the PL connecting infrastructure. Currently, section 165 limits the application of section 167 by providing that a PL connecting infrastructure means infrastructure that connects PL major gas infrastructure to a petroleum well in an overlapping area the subject of the petroleum lease.

The definition is being amended because the location of the petroleum well that the infrastructure connects to should not have a bearing on whether a compensation liability arises for PL connecting infrastructure.

Insertion of new ch 7, pt 5

Part 5 Provisions about application of s 232

Clause 252 inserts a new part 5 in chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to clarify the application of transitional provisions for the overlapping tenure framework for coal and coal seam gas contained in chapter 4 of the Act. It contains two provisions: 243A and 243B.

New section 243A Application generally

New section 243A provides that section 232 of the *Mineral and Energy Resources (Common Provisions) Act 2014* does not, and never did, affect the operation of section 826 of the *Mineral Resources Act 1989*.

Section 232 is a transitional provision for the overlapping tenure framework. Section 232 applies if a coal resource authority overlaps a petroleum lease that was granted before the *Mineral and Energy Resources (Common Provisions) Act 2014* commenced.

If section 232 applies, the intent is that the provisions contained in the pre-amended *Mineral Resources Act 1989* apply as if the *Mineral and Energy Resources (Common Provisions) Act 2014* had not been enacted. However, the way this existing section is drafted potentially conflicts with the transitional provision for incidental coal seam gas in section 826 of the *Mineral Resources Act 1989*, because section 826 was inserted under the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Inserting section 243A clarifies that section 232 does not, and never did, affect the operation of section 826 of the *Mineral Resources Act 1989*.

New section 243B Application to coal resource authority granted over replacement PL

New section 243B clarifies that section 232 of the *Mineral and Energy Resources (Common Provisions) Act 2014* applies to a replacement tenure under section 908(2) of the *Petroleum and Gas (Production and Safety) Act 2004*.

PLs granted under the *Petroleum Act 1923* are able to become a replacement tenure under section 908(2) of the *Petroleum and Gas (Production and Safety) Act 2004*. Currently, if a replacement tenure was granted after the commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014*, it would be treated as the grant of a new PL under the *Petroleum and Gas (Production and Safety) Act 2004* and would therefore fall under the new overlapping tenure framework.

This amendment ensures that a replacement tenure under section 908(2), if granted after the commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014*, will be treated as a PL that was granted prior to the commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014* for the purposes of section 232.

Part 11 Amendment of Mineral Resources Act 1989

Act amended

Clause 253 provides for amendments to the *Mineral Resources Act 1989*.

Insertion of new ch 15, pt 10A

Part 10A Other provision for Mineral and Energy Resources (Common Provisions) Act 2014

New section 837A Application of Common Provisions Act, s 138 to particular coal mining leases

Clause 254 inserts a new section 837A in chapter 15 of the *Mineral Resources Act 1989*. This section addresses a gap in the transitional provisions for the new incidental coal seam gas provisions in section 826 of the *Mineral Resources Act 1989* for certain overlapping tenure holders. The new section 837A should be read in conjunction with section 826 of the *Mineral Resources Act 1989*.

The new section 837A applies when:

- a mining lease (for coal) that was granted after section 826 commenced overlaps the area of a petroleum lease (for coal seam gas) granted before section 826 commenced; and
- the overlapping tenure provisions contained in chapter 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014* do not apply.

Under the current legislation, the new incidental coal seam gas provisions apply to this overlapping tenure relationship. The incidental coal seam gas provisions are subject to section 138 of the *Mineral and Energy Resources (Common Provisions) Act 2014*, which provides for a right of first refusal to any petroleum resource authority holder in the overlapping area in relation to incidental coal seam gas.

Section 138 is part of the overlapping tenure framework and provides for how an offer of incidental coal seam gas to an overlapping petroleum authority holder should be made. It refers to concepts such as an initial mining area and rolling mining area. Such concepts would not apply to this particular overlapping tenure relationship because, under section 232 of the *Mineral and Energy Resources (Common Provisions) Act 2014*, the overlapping tenure framework does not apply.

The new section 837A addresses this gap and clarifies how the mining lease holder makes an offer of incidental coal seam gas in accordance with section 138 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Part 12 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Division 1 Preliminary

Act amended

Clause 255 provides for amendments to the *Petroleum and Gas (Production and Safety) Act 2004* and notes there are also amendments to this Act in schedule 1, parts 1 and 3.

Division 2 Amendments commencing on assent

Amendment of s 343 (Exclusion)

Clause 256 amends section 343 of the *Petroleum and Gas (Production and Safety) Act 2004* to clarify when the State will tender an area for a PL where certain overlapping tenure relationships exist.

Section 343 currently provides that the Minister cannot make a call for tenders for a PL in the area of a coal or oil shale mining lease. This restriction only applies to mining leases that are granted and does not restrict a call for tenders for a PL in the area of an application for a coal or oil shale mining lease.

This clause amends section 343 to provide that the Minister cannot make a call for tenders for a PL in the area of a coal or oil shale mining lease application. It will not affect the ability of an ATP related PL application to proceed where an overlapping tenure holder exists.

Amendment of s 670 (What is an operating plant)

Clause 257 amends section 670 to confirm when water bore drilling facilities are operating plant. Section 670(2)(k) is amended to confirm that drilling facilities for water bores are only operating plant if they are used to drill, complete, maintain, repair, convert or decommission authorised water bores.

A definition of authorised water bores in new subsection (10) limits the application of operating plant to water bores authorised under the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923*, for holders of petroleum tenure or water monitoring authorities. New subsection (8) provides a drilling facility in relation to an authorised water bore stops being operating plant if, under the Act, the authorised water bore is transferred to a landholder or the bore is decommissioned and responsibility for the bore passes from the holder.

Amendment of s 677 (Operator responsible for compliance with safety management system)

Clause 258 amends section 677 to insert a reasonableness test for this safety obligation. This requires an operator to take all reasonable steps to ensure that

everyone who has an obligation under the safety management system complies with that obligation.

Amendment of s 693 (Site safety manager's obligations)

Clause 259 amends section 693 to insert a reasonableness test for a site safety manager, requiring the site safety manager to take all reasonable steps to ensure safety obligations relevant to the site are met.

Omission of ch 9, pt 4, div 2 (Operating plant owners)

Clause 260 repeals division 2, part 4 of chapter 9, (section 698). This obligation is redundant given the operator obligations under the Act for a safety management system to address the skills, competency and training of workers.

Replacement of s 699 (General obligation to keep risk to acceptable level)

Clause 261 amends section 699 to make it clear that the safety obligation in section 699 extends to all persons who have duties under the *Petroleum and Gas (Production and Safety) Act 2004* in respect of operating plant, not just persons physically located at the operating plant. The amended section 699 confirms that a person who has a safety obligation relating to an operating plant or who may affect the safety of others at an operating plant must take all reasonable and necessary action to ensure that to the extent of the person's obligation, no person or property is exposed to more than an acceptable level of risk.

Amendment of s 702 (Requirement to comply with safety management system)

Clause 262 amends section 702 to insert a reasonableness test for this safety obligation. A person at an operating plant may affect the safety of others at the plant and must take all reasonable steps to comply with safety procedures and other obligations under the safety management system.

Amendment of s 725 (What is gas work)

Clause 263 amends section 725 which defines *gas work* by omitting the term *gas device*. This removes legislative ambiguity from the definition of *gas work* caused by *gas device* being included in this definition and in the definition of *gas system*, which is an integral part of the *gas work* definition. There is no change to the intention that gas work incorporates the activities of installing, removing, altering, repairing, servicing, testing, or certifying a gas system which may or may not include a connected gas device. A corresponding amendment is made to the definition of *gas system* in schedule 2 Dictionary.

Insertion of new ch 10, pt 3

Part 3 Remediation of abandoned operating plant

Clause 264 inserts new part 3 in the *Petroleum and Gas (Production and Safety) Act 2004* that provides a framework for the remediation of abandoned operating plant.

New section 799B Definitions for part

Section 799B provides definitions for the part.

New section 799C Meaning of abandoned operating plant

Section 799C provides that an abandoned operating plant is or was an operating plant under section 670 for which a relevant tenure or authority (as defined under section 799B) and environmental authority were required and are no longer in force. This may occur where both the relevant tenure or authority and environmental authority are disclaimed by a company under the *Corporations Act 2001 (Cth)*.

An abandoned operating plant can also be any other thing prescribed by regulation that is or was an operating plant for section 670.

An abandoned operating plant does not include a site where a bore drilled under the *Water Act 2000* or where a legacy borehole is located.

New section 799D Authorised person to carry out remediation activities

Section 799D provides that the chief executive may authorise a person to carry out remediation activities in relation to an abandoned operating plant. Remediation activities include any of the following:

- investigate the condition of the abandoned operating plant or primary land for the abandoned operating plant;
- cap a wellhead;
- drill a well or water bore on the primary land to monitor or remediate the abandoned operating plant or the primary land;
- maintain the abandoned operating plant to make the abandoned operating plant safe;
- decommission the abandoned operating plant;
- remove, or make safe, structures or equipment on the primary land associated with the abandoned operating plant;
- repair erosion, or prevent further erosion, of the primary land or vegetation on the primary land;
- clean up pollution remaining on the primary land;
- if the primary land is contaminated land under the *Environmental Protection Act 1994*, conduct work to remediate the primary land;
- any other activity prescribed by regulation that relates to ensuring the safety of the abandoned operating plant or the primary land.

New section 799E Entering land to carry out remediation activities

Section 799E provides that an authorised person may enter primary land to carry out remediation activities. Primary land for an abandoned operating plant is defined under section 799B.

Section 799E also provides that an authorised person may enter land that is adjacent to the primary land if the person has no other reasonably practicable way of entering the primary land without entering the adjacent land. However, the

authorised person may only enter adjacent land for the purposes of entering primary land for an abandoned operating plant.

An authorised person may enter the land to carry out the remediation activities at any time if it is necessary to preserve life or property. Otherwise, an authorised person may enter the land after the owner and any occupier of the land is given a notice of entry under section 799F.

An authorised person is not permitted to enter a structure, or a part of a structure, used for residential purposes without the consent of the occupier.

New section 799F Notice of entry

An authorised person must give the owner and any occupier of the land a notice of the entry:

- within 10 business days after the entry is made, if the carrying out of remediation activities is necessary to preserve life or property; or
- before entering the land.

The notice must state the information contained under section 799F(2).

New section 799G Obligation of authorised person in carrying out remediation activities

Section 799G provides that an authorised person who enters land must not cause, or contribute to, unnecessary damage to any structure or works on the land and must also take all reasonable steps to ensure as little inconvenience and damage, as practicable, is caused.

New section 799H Abandoned operating plant is not operating plant

Section 799H provides that for the purposes of chapter 9 of the *Petroleum and Gas (Production and Safety) Act 2004* and *Work Health and Safety Act 2011*, an abandoned operating plant is not an operating plant. This section applies despite section 670.

This means the *Work Health and Safety Act 2011* applies to an authorised person accessing land and carrying out remediation activities in relation to an abandoned operating plant.

Replacement of s 813 (False or misleading information)

Clause 265 replaces section 813 to separate an existing offence into two separate offences. This clause also includes an exemption for giving false and misleading information in a document and reduces the maximum penalty amount.

The offence provision for not stating or giving a document with false or misleading information is now structured in section 813 as two offences, one that provides a person is not to state anything that the person knows is false or misleading in a

material particular. The other offence for giving of false or misleading information in a document.

A separate provision for the offence related to statements ensures that it is an offence to state false or misleading information in a material matter, whether or not this information responds to a direction or requirement under the Act.

The offence for giving false or misleading information in a document does not apply to a person if they advise how the document is false or misleading and take steps to give the correct information.

The maximum penalty for each of the three offence provisions is 100 penalty units, consistent with equivalent provisions in Queensland's general workplace and mining safety legislation.

Amendment of s 814 (Liability of executive officer—particular offences committed by corporation)

Clause 266 amends section 814(5) to include the additional offence provision for false and misleading information in section 813.

Amendment of s 814A (Executive officer may be taken to have committed offence)

Clause 267 amends section 814A to make changes to what are *deemed executive liability provisions* by omitting the offence provision for the repealed section 698 and inserting a reference to the additional false and misleading information offence in section 813.

Replacement of s 836 (Safety management systems)

Clause 268 amends section 836 to confirm what the safety management system for an operating plant is at a particular time, if this is relevant to a proceeding. The amendment clarifies that the safety management system relevant for the proceeding is the safety management system that could be accessed from the plant in accordance with section 676(1)(a) at the particular time.

Amendment of s 837 (Offences under Act are summary)

Clause 269 amends section 837 to redraft subsection (1) in line with current drafting practice. Subsection (4) is amended to simplify requirements to start a proceeding for an offence. A proceeding must start within 2 years after the offence first comes to the notice of the complainant. The clause also renumbers subsection (4).

Replacement of s 840 (Conduct of representatives)

New section 840 Responsibility for acts or omissions of representative

Clause 270 amends section 840 to confirm that a person who has a representative, is responsible for an act done or not done by the representative, within the scope of

the representative's actual or apparent authority, unless the person can prove that, by the exercise of reasonable precautions and proper diligence, doing the act or omission could not have been prevented. This is to ensure a person is responsible for the duly authorised conduct of his or her representative, so far as it relates to offences under the Act. The amendment removes the legislative ambiguity that allowed an interpretation where the application of the provision is limited to circumstances where a person's state of mind is relevant.

New section 840A Costs of investigation

This clause also inserts new section 840A to provide that a court may order that a person who has committed an offence under this Act to pay the costs that are reasonable for the department to investigate the matter and prosecute for the offence.

Amendment of s 851A (Public statements)

Clause 271 amends section 851A to provide that the Minister, chief executive, commissioner and chief inspector will not be liable for any loss or damage caused by the release of information in good faith.

Amendment of s 856 (Protection from liability for particular persons)

Clause 272 amends section 856 of the *Petroleum and Gas (Production and Safety) Act 2004* to include an authorised person carrying out remediation activities under Chapter 10, Part 3. This means the authorised person does not incur a civil liability for an act done, or omission made, honestly and without negligence under the *Petroleum and Gas (Production and Safety) Act 2004*.

Insertion of new ch 15, pt 22

Part 22 Transitional provisions for Land, Explosives and Other Legislation Amendment Act 2018

Clause 273 inserts new chapter 15, part 22 to insert transitional provisions relevant for gas safety amendments.

New section 996 Definition for part

New section 996 inserts a definition of 'former' for the Part.

New section 997 Offence proceedings

New section 997 provides that where a proceeding is initiated for an act or omission done before commencement, sections 837 and 840 would apply as they were prior to commencement.

Amendment of sch 2 (Dictionary)

Clause 274 amends Schedule 2 Dictionary to omit the definition for *multi-tenanted premises*.

The definition of *distribution system* is amended to reflect the omission of multi-tenanted premises.

The definition of *gas system* is amended to confirm that elements listed can be in any combination and that the system is designed or intended to be used with fuel gas. Further clarification is provided by adding the 'rough-in' example.

New definitions are inserted to support the new abandoned operating plant framework.

Division 3 Amendments commencing by proclamation

Amendment of s 18 (Types of authority under Act)

Clause 275 amends section 18 of the *Petroleum and Gas (Production and Safety) Act 2004* to provide that a gas device approval authority is an authority under the Act and confirms that like a gas work licence and a gas work authorisation, it is not a petroleum authority.

Amendment of s 670 (What is an operating plant)

Clause 276 amends section 670 to rationalise operating plant categories related to fuel gas delivery networks. A new operating plant category for fuel gas delivery network replaces the following categories which are omitted from section 670:

- bulk fuel storage (section 670(2)(g)),
- tanker delivery of bulk fuel gas (section 670(5)(b)),
- cylinder storage (section 670(5)(c)) and
- liquefied petroleum gas (LPG) delivery network (section 670(5)(a)).

A definition for *fuel gas delivery network* is included in Schedule 2 Dictionary.

The amendments provide a consistent regulatory approach for all fuel gas including compressed natural gas, LPG and automotive LPG. While the amendments provide consistent approach to safety obligations, they do not change what fuel gas activities or places are regulated under the Act. Consequential amendments are also to be made to the *Petroleum and Gas (Production and Safety) Regulation 2004*.

This clause also renumbers subsections 670(2) and 670(5).

Amendment of 673 (Who is the operator of an operating plant)

Clause 277 amends section 673(3) and repeals section 673(4) to confirm that the meaning of person is no longer limited to an individual or natural person. The amendment confirms the term person who is the operator of operating plant is now consistent with the general meaning of person under section 32D(1) of the *Acts Interpretation Act 1954* which includes a body corporate. Previously, some operator-related provisions of the *Petroleum and Gas (Production and Safety) Act 2004* could only apply to a natural person. This and other amendments make clear that the operator of an operating plant can be either an individual or a corporation.

This change acknowledges that for operating plant operated by major petroleum and gas companies, there is no one individual solely responsible for managing safety of operating plant, with safety responsibilities spread across different positions within an organisation. There is still scope for an operator to be an individual which acknowledges other types of operating plant that are operated by individuals (for example, LPG delivery from a regional hardware store).

Omission of s 673A (Operator must ensure chief inspector is given notice before a plant is commissioned or operated)

Clause 278 repeals section 673A. The obligation for an operator of a plant to give written notice 20 business days before a plant is commissioned is now incorporated in the new information notice requirements (division 3, part 3, of chapter 9).

Amendment of s 688 (Executive safety manager's general obligations)

Clause 279 amends the obligations for an executive safety manager in section 688. The requirement to appoint an operator is removed as this is now determined by the operation of amended section 673.

A new obligation requires the executive safety manager to nominate an operator representative if the operator of operating plant is a corporation. The role of an operator representative is to provide a means of communications between the operator and the government regulator. Additional provisions make it clear that the exchange of information with an operator representative is taken to be an exchange of documents with the operator and that the nomination of an operator representative does not alter the operator's responsibility to comply with safety obligations under the Act.

Omission of ss 689— 691

Clause 280 omits sections 689, 690 and 691 and a new division 3, part 3, of chapter 9 establishes new requirements for the executive safety manager and the operator to provide relevant safety information about operating plant.

The information and reporting requirements in former section 690(1)(g) and section 691 are not replaced given equivalent reporting and information requirements for overlapping tenure operations in division 5, part 4, chapter 9 of the Act and requirements for coal and oil shale mining hazard information in section 19 of the *Petroleum and Gas (General Provisions) Regulation 2017*.

Replacement of s 694 (Operator is default site safety manager)

Clause 281 amends section 694 as a consequence of allowing an operator to be a corporation. Section 694 provides that if a person has not been appointed as site safety manager, the default site safety manager is the operator (if an individual) or the executive safety manager (if the operator is a corporation).

Insertion of new ch 9, pt, 3, div 3

Division 3 Information notices

New section 694A Executive safety manager and operator to give information notices

Clause 282 inserts new division 3, *Information notices*, to modernise and streamline safety reporting requirements previously required as an annual safety report under sections 689 and 690. Penalty provisions for not providing information is equivalent to what was in place for not providing the annual safety report.

New section 694A provides that the executive safety manager is required to provide information about who are the key statutory position holders (operator, executive safety manager and if relevant, operator's representative) for the operating plant. Information about these position holders is to be provided within 10 business days of commencement and after that, any time this information changes.

The operator is required to give information necessary for ensuring and promoting safety at an operating plant as prescribed by regulation. The examples provided set out the types of information to be prescribed in regulation – the operating plant's location, nature and extent of activities and details of its commissioning and decommissioning.

The information notice must be given in the approved form, and in the way prescribed by regulation. Regulation provisions will also prescribe timeframes for the different types of information required to be given by the operator.

Amendment of s 726 (Gas work for which licence is required)

Clause 283 amends section 726 to provide that a person does not commit an offence, if gas work is carried out for an operating plant under a safety management system in the circumstances prescribed under a regulation.

This amendment allows specific low-risk gas work (such as the replacement of a broken fitting on an LPG cylinder) to be prescribed by regulation so that it can be carried out by a person for an operating plant. The work is to be undertaken under the safety management system for the operating plant and the person carrying out the work is to be assessed as competent to carry out the work under the safety management system.

Amendment, relocation and renumbering of s 730 (Register of gas work licences and authorisations)

Clause 284 amends the heading and requires the chief inspector to keep a register of gas device approval authorities in addition to existing register requirements for gas work licences and gas work authorisations. The provisions are relocated and renumbered as section 734AB.

Amendment, relocation and renumbering of s 731 (Access to register)

Clause 285 amends section 731 to replace the reference to types of registers with a reference to the renumbered section 734AB which requires the three types of registers. The clause also applies the provision exempting the registers from disclosing residential address to the holders of a gas device approval authority. The provision is relocated and renumbered as section 734AC.

Insertion of new ch 9, pt 6A

Part 6A Approval of gas devices

Division 1 Approval requirement

Clause 286 inserts new Part 6A *Approval of gas devices* in Chapter 9 to replace section 733.

New section 731AA Approval of gas devices for supply, installation and use

New Division 1, new section 731AA replaces the offence provisions omitted from subsections 733(1) and 733(2). Subsection 733(3) is not replaced as the status of gas device approvals will be incorporated into regulation provisions to provide general conditions for a gas device approval authority in new section 731AF(a).

The approval requirement for gas fittings in section 733 is removed. Ensuring gas fittings meet appropriate safety and technical standards will rely on existing safety requirements in the Act and regulation prescribing Australian Standards. These standards set minimum safety and technical safety requirements for gas fittings. This regulatory approach is consistent with arrangements in other Australian jurisdictions.

Division 2 Gas device approval authorities

New Division 2 establishes a transparent statutory appointment process for persons that approve gas devices in Queensland that is consistent with requirements in other states. Statutory provisions establish accountability requirements for applicants, holders and decision makers with provisions adding integrity and transparency to administrative processes.

New section 731AB Who may apply

New section 731AB provides a person make an application.

New section 731AC Requirements for application

New section 731AC requires the application to be in the approved form and to comply with any requirements prescribed in a regulation.

New section 731AD Deciding application

New section 731AD provides that the chief inspector must decide whether to grant or refuse an application.

New subsection 731AD(2) provides that the chief inspector must refuse the application if the person does not have the relevant qualifications and experience (to be prescribed in regulation) or is not suitable to hold the authority.

New subsection 731AD(3) sets out factors that the chief inspector may consider in determining whether a person is suitable to hold an authority.

New subsection 731AD(4) allow the chief inspector to impose conditions in granting the gas device approval authority, additional to general conditions prescribed in a regulation under new section 731AF.

New subsection 731AD(5) provides that if the chief inspector refuses an application or imposes conditions on the grant of an authority, an information notice must be given to the applicant. An information notice provides the basis for internal and external review of these decisions under chapter 12 of the Act.

New section 731AE Term of gas device approval authority

New section 731AE provides that a gas device approval authority takes effect on the day on which it is granted or on a later day specified in the authority and remains in force for the period specified in the authority, subject to any cancellation or suspension of the authority. If the term is not stated in the authority, it will continue until it is suspended or cancelled.

New section 731AF Conditions for gas device approval authority

Section 731AF provides the head of power for a regulation to prescribe a condition for a gas device approval authority and requirements for the chief inspector to comply with if a condition imposed under section 731AD is to be varied or revoked.

New section 731AG Offence not to comply with conditions

Section 731AG provides that a holder of a gas device approval authority that does not comply with the authority, including any conditions, commits an offence for which there is a maximum penalty of 250 penalty units.

Omission of s 733 (Approval of gas devices and gas fittings for supply, installation and use)

Clause 287 omits section 733. Equivalent provisions to subsections 733(1) and 733(2) are inserted by new section 731AA in part 6A of chapter 9.

Amendment of s 734A (Safety obligations of gas system installer)

Clause 288 amends section 734A to replace the reference to *LPG delivery network* with *fuel gas delivery network* as a consequence to the new definition in Schedule 2 Dictionary.

Insertion of new s 734AA

New section 734AA Safe use of gas devices

Clause 289 inserts new section 734AA to ensure the safe use of a gas device by requiring a person to take reasonable steps to ensure its safe operation. A maximum penalty of 100 penalty units applies for a breach of this provision. A person does not contravene the requirement if using a Type A device in accordance with the manufacturer's instructions and if using a Type B device in accordance with its approval and the manufacturer's instructions.

Amendment of s 789 (Operation of div 4)

Clause 290 amends section 789(2)(b) to add a gas device approval authority as an authority for which action can be taken if there is non-compliance with requirements associated with the authority.

Amendment of s 790 (Types of noncompliance action that may be taken)

Clause 291 amends section 790 to provide that a gas device approval authority may be suspended or cancelled for non-compliance. The clause also renumbers subsection 790(1) and makes a consequential change in subsection 790(2).

Amendment of s 814 (Liability of executive officer—particular offences committed by corporation)

Clause 292 amends section 814(5) to revise the section referencing the offence for unapproved supply, installation and use of gas devices.

Amendment of s 814A (Executive officer may be taken to have committed offence)

Clause 293 amends section 814A to revise the section referencing the offence for supplying a gas device without the required notification and to insert a reference for the offence for breaching conditions of a gas device approval authority.

Insertion of new ss 998–1000

Clause 294 inserts additional transitional provisions to chapter 15, part 22.

New section 998 Existing approvals

New section 998 provides transitional arrangements for gas device and gas fitting approvals and approving authorities under former section 733(1)(a)(ii). Unless approvals for gas devices or gas devices were cancelled or suspended before the

commencement of the Act, approvals are taken to have been made by the holder of a gas device approval authority.

New section 999 Persons or bodies approved by the chief inspector

New section 999 provides a person who is currently an approving authority under section 733(1)(a)(ii) may continue operating under that approval for 12 months after new arrangements commence. A person who is currently an approving authority could apply for a gas device approval authorisation once new arrangements commence but will not be able to hold both types of approval.

New section 1000 Fuel gas delivery networks

New section 1000 provides that where a fuel gas delivery network was an LPG delivery network and not operating plant prior to commencement, the application of section 670(5) is delayed for three months following commencement.

Amendment of sch 1 (Reviews and appeals)

Clause 295 amends schedule 1, table 1 to include particular decisions by the chief inspector about gas device approval authorities. Decisions to refuse an application (section 731AD) and to impose conditions (section 731AD), other than a condition agreed to or requested by the applicant, are subject to internal review under section 817. Section 823 provides for external review of these decisions by QCAT.

This clause also amends schedule 1, table 1 to apply the internal and external review processes in chapter 12 about decisions to suspend or cancel a gas device approval authority after completing a show cause process in subdivision 4, division 4, part 2 of chapter 10. The amendment to schedule 1, table 2 also provides an appeal right to the industrial court for these decisions.

Amendment of sch 2 (Dictionary)

Clause 296 amends Schedule 2 Dictionary to omit the definitions for *bulk fuel gas storage facility* and *LPG delivery network*.

New insertions include a reference to the definition of a *gas device approval authority* in section 18 and a new definition for *fuel gas delivery network*.

The *fuel gas delivery network* definition incorporates activities and places that were previously designated as operating plant under the following categories:

- LPG delivery networks;
- bulk fuel storage;
- tanker delivery of bulk fuel gas; and
- cylinder storage.

The definition also captures automotive LPG.

The definition of *holder* in (d) is amended to include the holder of a gas device approval authority.

Part 13 Amendment of State Penalties Enforcement Regulation 2014

Regulation amended

Clause 297 provides for the amendment of the State Penalties Enforcement Regulation 2014.

Amendment of sch 1 (Infringement notice offences and fines for nominated laws)

Clause 298 amends schedule 1 and prescribes infringement notice offences under the Land Act 1994 and the applicable fine which may be applied by issuing a Penalty Infringement Notice. An authorised officer appointed under the Land Act may serve an infringement notice.

Part 14 Amendment of Torres Strait Islander Land Act 1991

Act amended

Clause 299 provides for amendments to the *Torres Strait Islander Land Act 1991*.

Amendment of s 28B (Definitions for pt 2A)

Clause 300 replaces an incorrect reference to 'registered lease' with the correct reference of 'registered sublease'.

Amendment of s 28R (Dwelling on available land)

Clause 301 amends the section to provide that the term 'price' is used instead of 'value' when determining the amount that must be paid for the dwelling.

The clause also provides that the 'price' of the dwelling can be decided by agreement between the housing chief executive and the trustee of the land as an alternative method to the existing method of deciding the 'price' through use of an agreed valuation methodology.

Amendment of section 28T (Offer to allocate available land)

Clause 302 amends the section by replacing the term 'value' with the term 'price' to reflect that the price to be paid for a social housing dwelling is what is determined, not the value of the dwelling.

Amendment of s 36 (Appointment of grantee to hold land for benefit of Torres Strait Islanders)

Clause 303 amends the section to provide the additional power, where the Minister is satisfied it is appropriate in the circumstances, to appoint a registered native title body corporate as grantee to hold land for the benefit of Torres Strait Islanders

where there has been no determination that native title exists in relation to all or a part of the land.

It is up to the parties seeking the grant to the registered native title body corporate to provide evidence that it is appropriate to grant in the circumstances. However, the amendment provides examples of how the Minister could be satisfied that it is appropriate to appoint a registered native title body corporate as grantee to hold land where there has been no determination that native title exists. The examples are not a definitive list but simply indicative.

Amendment of s 60 (Transfer to entity to hold land for benefit of Torres Strait Islanders)

Clause 304 amends the section to allow for the transfer of Torres Strait Islander land (which is vested in the State) to a registered native title body corporate where there has been no determination that native title exists in relation to all or a part of the land.

The amendment reflects the amendments made to section 36 providing for the appointment of a registered native title body corporate as grantee to hold land for the benefit of Torres Strait Islanders where there has been no determination that native title exists in relation to all or a part of the land.

Amendment of s 71 (Transfer of Torres Strait Islander land)

Clause 305 amends the section to relocate a condition, on the transfer of land to a CATSI corporation, to section 73 (Minister's approval to transfer) as all other conditions are located in that section.

Amendment of s 72 (Application for approval to transfer)

Clause 306 amends the section to enable a trustee to apply for the Minister's approval for the transfer land to registered native title body corporate where there has been no determination that native title exists in relation to all or a part of the land.

The amendment reflects the amendments made to section 36 providing for the appointment of a registered native title body corporate to hold land for the benefit of Torres Strait Islanders where there has been no determination that native title exists in relation to all or a part of the land.

Amendment of s 73 (Minister's approval to transfer)

Clause 307 amends the section to enable the Minister to approve an application by a trustee (under section 72) to transfer land to registered native title body corporate where there has been no determination that native title exists in relation to all or a part of the land.

The amendment reflects the amendments made to section 36 providing for the appointment of a registered native title body corporate to hold land for the benefit of

Torres Strait Islanders where there has been no determination that native title exists in relation to all or a part of the land.

Amendment of s 76 (Transfer of Torres Strait Islander land)

Clause 308 amends the section to allow for a CATSI corporation, as trustee of Torres Strait Islander land, to transfer the land, with the Minister's written approval, to a registered native title body corporate where there has been no determination that native title exists in relation to all or a part of the land.

The amendment reflects the amendments made to section 36 providing for the appointment of a registered native title body corporate to hold land for the benefit of Torres Strait Islanders where there has been no determination that native title exists in relation to all or a part of the land.

Amendment of s 78 (Minister's approval to transfer)

Clause 309 amends the section to enable the Minister to approve an application by a trustee (under section 77) to transfer land to registered native title body corporate where there has been no determination that native title exists in relation to all or a part of the land.

The amendment reflects the amendments made to section 36 providing for the appointment of a registered native title body corporate to hold land for the benefit of Torres Strait Islanders where there has been no determination that native title exists in relation to all or a part of the land.

Amendment of s 93 (Additional conditions and requirements for social housing dwelling)

Clause 310 amends the section to provide that the term 'price' is used instead of 'value' when determine the amount that must be paid for the dwelling.

The clause also provides that the 'price' of the dwelling can be decided by agreement between the housing chief executive and the trustee of the land as an alternative method to the existing method of deciding the 'price' through use of an agreed valuation methodology.

Amendment of s 192 (Dealing with particular trust property)

Clause 311 amends the section to provide that the term 'price' is used instead of 'value' when determine the amount that must be paid for the dwelling. This reflects the amendments to section 93.

Amendment of sch 1 (Dictionary)

Clause 312 inserts into the dictionary a definition of a 'native title determination'.

The clause also amends the definition of 'social housing' to remove the term 'value'. This reflects that it is the price to be paid for a social housing dwelling, not the value of the dwelling that is being determined.

Part 15 Other amendments

Legislation amended

Clause 313 amends the legislation mentioned in schedule 1.

Schedule 1 Other amendments

Schedule 1 contains minor amendments to the Acts listed to update terminology, to reflect current drafting style, to omit redundant references and to update section references as a consequence from other amendments, and to make other minor consequential amendments.

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