

Mineral and Energy Resources and Other Legislation Amendment Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (the Bill).

Policy objectives and the reasons for them

The principal policy objectives of the Bill relate to three Queensland Government priorities:

1. Safety and health – to strengthen the safety culture in the resources sector through the introduction of industrial manslaughter offence provisions and requiring that persons appointed to critical safety statutory roles for coal mining operations must be an employee of the coal mine operator;
2. Financial assurance – to implement legislative changes that support mine rehabilitation and financial assurance reforms that mitigate the financial risk to the State and improve rehabilitation outcomes for Queensland; and
3. Regulatory efficiency – to improve the administration and effectiveness of the regulatory framework applying to resource projects.

Streamlining, minor, and miscellaneous amendments to legislation within the Natural Resources, Mines and Energy portfolio are also included in the Bill. These amendments are designed to improve the operation of these Acts and Regulations.

Safety and Health

Industrial manslaughter

The policy objective is to introduce industrial manslaughter offences in the *Coal Mining Safety and Health Act 1999*, the *Mining and Quarrying Safety and Health Act 1999*, the *Explosives Act 1999* and the *Petroleum and Gas (Production and Safety) Act 2004* to ensure that there are sufficient penalties where there is criminal negligence by an employer or senior officer and it has caused a workplace fatality.

Unlike in the *Work Health and Safety Act 2011*, there is no industrial manslaughter offence in the *Coal Mining Safety and Health Act 1999*, the *Mining and Quarrying Safety and Health Act 1999*, the *Explosives Act 1999* and the *Petroleum and Gas (Production and Safety) Act 2004* for the resources industry. The current offences in these Acts are insufficient where actions or omissions involving criminal negligence (recklessness or gross negligence) result in worker fatalities. The new offences will ensure there is consistency in how deaths of workers on Queensland worksites are treated and aligns with the Queensland Government's commitment to ensuring the safety and health of all workers across all industries.

Clarification of appointment requirements for statutory office holders

The policy objective is to ensure that statutory office holders under the *Coal Mining Safety and Health Act 1999* can make safety complaints, raise safety issues, or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment. The *Coal Mining Safety and Health Act 1999* provides for the appointment of statutory office holders for coal mining operations.

These positions are safety critical roles and are important in managing risks to the safety and health of coal mine workers to whom they owe a responsibility. Currently, the *Coal Mining Safety and Health Act 1999* does not prescribe particular persons who may be appointed, for example this may include a contractor or service provider, or an employee of a contractor or service provider. The Bill amends the *Coal Mining Safety and Health Act 1999* to clarify that only persons who are employees of a coal mine operator may be appointed as certain statutory office holders.

Clarification of costs orders

The policy objective is to provide certainty to litigants. It has been identified that the *Industrial Relations Act 1999* and the *Industrial Relations Act 2016* precludes the making of costs orders in respect of costs of the representation in the Industrial Magistrates Court for proceedings under the *Coal Mine Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*, and for proceedings under the *Petroleum and Gas (Production and Safety) Act 2004* prior to December 2014.

The Bill amends the *Coal Mine Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* to provide that costs orders for representation may be made for criminal proceedings before the Industrial Magistrates Court. The Bill also amends the *Coal Mine Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* to validate cost orders made by an Industrial Magistrates Court in relation to a proceeding for an offence against those Acts. Finally, it amends the *Petroleum and Gas (Production and Safety) Act 2004* Act to validate costs orders made by an Industrial Magistrates Court before 5 December 2014 in relation to a proceeding for an offence against that Act.

Explosives regulation-making power

On 1 February 2020, the new security clearance regime provided for in the *Land, Explosives and Other Legislation Amendment Act 2019* commenced. The regime is aimed at ensuring only persons assessed as suitable to have unsupervised access to explosives do so. Under the regime, holders of a security sensitive authority (e.g. holders of an explosives licence or permit associated with security sensitive explosives) have an obligation to ensure certain persons associated with their authority, including employees who have unsupervised access to explosives, hold a valid security clearance. A failure to do so may be grounds for suspension or cancellation of the holder's authority.

The *Explosives Regulation 2017* requires security clearance holders to notify the Chief Inspector of Explosives of any change in circumstance that may affect their suitability to continue to hold a clearance. However, there is no legislative

requirement for a security clearance holder to notify other persons (e.g. their employer) if the status of their clearance changes.

Amendments to the *Explosives Regulation 2017* are proposed to broaden security clearance holder notification requirements and to enable the disclosure and publication of limited security clearance and authority holder information, including in an online register. However, changes to regulation-making powers under the *Explosives Act 1999* are first required to achieve this.

The policy objective is to amend regulation-making powers under the *Explosives Act 1999* to enable regulations to be made about conditions, and other requirements, that apply to a security clearance; and about the keeping of a register of authorities and security clearances, including the disclosure and publication of information in the register.

Financial Assurance

In April 2017, the Queensland Treasury Corporation *Review of Queensland's Financial Assurance Framework* (QTC Report) was released. Included within the QTC Report were a number of recommendations related to better management of the risks associated with resource operators defaulting on their rehabilitation responsibilities and expanding Queensland's Abandoned Mine Lands Program.

In response to these recommendations, the Queensland Government publicly consulted on two discussion papers: *Achieving improved rehabilitation for Queensland: other associated risks and proposed solutions* and *Achieving improved rehabilitation for Queensland: addressing the state's abandoned mines legacy*.

In September 2019, the Queensland Government released the *Queensland Government Consultation Report: Abandoned Mines and Associated Risks* (the consultation report). The consultation report outlined the results of consultation on the two discussion papers.

The Bill proposes to give effect to the results of consultation outlined in the consultation report. The amendments address:

- Increasing the scrutiny around the financial capability of a resource authority holder when there is a change in ownership ('change of control');
- Increasing oversight of resource sites that enter care and maintenance by requiring significant mineral mining lease holders to submit plans on their proposed activities ('care and maintenance'); and
- Broadening the State's authorised person powers for remediating an abandoned mine and abandoned operating plant sites to make them safe, durable, secure and enable productive land uses ('abandoned mines and abandoned operating plants').

Complementary reforms are also proposed by the Bill. The Bill introduces disqualification criteria, against which applicants, transferees and associates of applicants and transferees of prescribed resource authorities may be assessed prior to the resource authority's grant. The disqualification criteria are intended to allow the State to better assess the risk associated with applicants in relation to their ability to adequately manage their tenure and remain compliant with tenure obligations.

The disqualification criteria allow the decision-maker to disqualify from grant applicants or transferees that have a history of:

- Contraventions against prescribed legislation;
- Convictions against prescribed legislation, or within the preceding 10 years, been convicted of an offence involving fraud or dishonesty; and
- Insolvency.

The Bill also proposes to allow the State to tender areas for a mining lease application. This reform will work in conjunction with the State's abandoned mines reforms to allow the targeted release of sites that have been abandoned, and where an opportunity to commercialise a potentially economic mineral resource exists.

Regulatory Efficiency

In 2017, general election commitment 853 committed a re-elected government to investigating whether there were opportunities to improve the efficiency and timeliness of the resource authority approval process. Several proposed amendments included in the Bill are aimed at improving the efficiency and effectiveness of resource assessment processes.

Energy

Energy and Water Ombudsman regulation-making power

The energy sector in Queensland is highly dynamic and subject to fast-paced innovation. New products, services, business models, and modes of consumption are continually emerging. It is essential that the scope of the Queensland Energy and Water Ombudsman's jurisdiction be flexible to ensure that it does not fall behind commercial and technological change; and that the regulatory frameworks that are used to support consumer rights be adaptive and risk-based while retaining an appropriate level of government oversight.

National Energy Retail Law (Queensland)

An amendment is proposed to the *National Energy Retail Law (Queensland) Act 2014* to maintain the existing level of customer protection in the Queensland retail electricity market by removing the time limitation on the derogation banning certain fees and charges for customers on standard retail contracts.

Water

Distributor-retailer infrastructure charges

The local government infrastructure charging framework under the *Planning Act 2016* and *Planning Regulation 2017*, as well as the South East Queensland (SEQ) distributor-retailers infrastructure charging framework under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, have to date been aligned to ensure consistency in the rules and expectations for developers and the community.

The Bill proposes to amend the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* to require greater transparency around infrastructure charges levied and collected by the SEQ distributor-retailers (Urban Utilities and Unitywater).

The proposed amendments will ensure there is consistency in the availability of information on entities collecting and expending monies from infrastructure charges.

It will also ensure a consistent approach is maintained for the types of developments that are prohibited from having infrastructure charges adopted and therefore levied (e.g. non-State schools under a Ministerial designation).

Clarifying full supply level provisions

The proposed amendments to the *Water Supply (Safety and Reliability) Act 2008* will clarify the intent and interaction of the *Water Supply (Safety and Reliability) Act 2008* flood mitigation for dam safety purposes, with resource operations licence, temporary full supply level and reduced full supply level provisions under the *Water Act 2000*. Specifically, they propose to clarify and confirm that necessary actions taken by storage infrastructure operators, e.g. Seqwater and Sunwater, to make water releases to reduce storage capacity as per an approved Flood Mitigation Manual or to meet a dam safety requirement under the *Water Supply (Safety and Reliability) Act 2008*, are separate to obligations stated in the resource operations licence under the *Water Act 2000*.

Queensland Controlling Authority for the Border Rivers

The Bill clarifies existing controlling authority arrangements to ensure proper performance of the Commission's functions within the framework of the *New South Wales-Queensland Border Rivers Act 1946* and the Border Rivers Agreement, and to otherwise satisfy the requirements of the *New South Wales-Queensland Border Rivers Act 1946*.

Other water-related amendments

A minor amendment is proposed to correct an error within the *Water Supply (Safety and Reliability) Act 2008*, which refers to a repealed section of the *Water Act 2000* and needs updating to refer to the correct legislative provision for a Ministerial Declaration of, or regulation about, a water supply emergency.

Achievement of policy objectives

The Bill achieves the above objectives by making the following amendments.

Safety and Health

Industrial manslaughter

The policy objective for industrial manslaughter is to be achieved by amending the *Coal Mining Safety and Health Act 1999*, the *Mining and Quarrying Safety and Health Act 1999*, the *Explosives Act 1999* and the *Petroleum and Gas (Production and Safety) Act 2004* to include an offence for industrial manslaughter for an employer or senior officer where a worker dies in the course of undertaking work or is injured and later dies; and the employer or senior officer's conduct causes the death; and the employer or senior officer is negligent about causing the death. The maximum penalties provided for are for an individual 20 years imprisonment; or for a body corporate, 100,000 penalty units.

Clarification of appointment requirements for statutory office holders

The policy objective is to be achieved by amending the *Coal Mining Safety and Health Act 1999* to clarify that only persons who are employees of a coal mine operator may be appointed to certain statutory office holder positions. This will ensure that statutory office holders can make safety complaints, raise safety issues or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.

Clarification of costs orders

The policy objective is to be achieved by amending the *Coal Mining Safety and Health Act 1999*, and the *Mining and Quarrying Safety and Health Act 1999* to provide that costs orders for representation may be made for criminal proceedings before the Industrial Magistrates Court. The objective is also achieved by amending *Coal Mining Safety and Health Act 1999*, and the *Mining and Quarrying Safety and Health Act 1999* Act to validate cost orders made by an Industrial Magistrates Court in relation to a proceeding for an offence against those Acts; and by amending the *Petroleum and Gas (Production and Safety) Act 2004* to validate costs orders made by an Industrial Magistrates Court before 5 December 2014 in relation to a proceeding for an offence against that Act.

Explosives regulation-making power

The policy objective is to be achieved by amending the regulation-making powers under the *Explosives Act 1999* to enable regulations to be made about conditions, and other requirements, that apply to a security clearance; and about the keeping of a register of authorities and security clearances, including the disclosure and publication of information in the register. This will align regulation-making powers relating to security clearances with existing powers regarding authorities. It will also provide for a register of authorities and security clearances, to support independent verification of a person's security clearance or authority status by industry.

Financial Assurance

Change of control

The Bill proposes to introduce amendments to mitigate the risks associated with changes of control – both direct and indirect.

The Bill proposes amendments to enable the Minister to consider, before an assessable transfer can be registered, whether the proposed transferee has the ability to fund the estimated rehabilitation cost for the resource authority (direct transfer).

Additionally, the Bill also establishes a process where the Minister will have the discretion to assess a holder's financial and technical resources to comply with the resource authority if an indirect change of control occurs. This process will apply when the Minister is notified or made aware that there has been a change in control of the entity holding the resource authority but no transfer of the resource authority has taken place. If a significant risk in relation to the holder's financial and technical resources is identified, the Minister may impose or vary conditions on the resource authority.

Care and maintenance

Currently, development plans enable the State to have oversight over the nature and extent of activities planned under coal and oil shale mining leases and petroleum leases.

The Bill proposes amendments to require development plans from mining lease holders mining prescribed minerals above a prescribed threshold. Requiring development plans will increase the State's oversight over these mineral mines; it also enables the State to have better information regarding sites that may become, or are, in care and maintenance (i.e. ceasing production for six months or more).

Managing abandoned mines and abandoned operating plants

Proposed amendments will clarify and expand the powers of authorised persons undertaking remediation activities for an abandoned mine or abandoned operating plant. These powers reflect the activities required to remediate a site. The activities reflect the Queensland Government's Abandoned Mines Management Policy, which outlines the policy position of making abandoned sites safe, secure, durable and, where possible, productive.

Additionally, the Bill introduces a process through which authorised persons can access land that is outside the original tenure boundary to carry out remediation activities required as a result of the activities carried out on the original resource site. This is called 'affected land'. The consent of owner and occupiers will be required to enter affected land.

Disqualification criteria for resource authority applicants

Amendments will introduce additional criteria (called 'disqualification criteria') against which applicants for prescribed tenures can be assessed to ensure that the State can better assess the risk associated with applicants for a resource authority.

The disqualification criteria include:

- A history of non-compliance with relevant prescribed legislation; or
- Relevant prescribed criminal history; or
- History of mismanagement of a company; or
- They are associated with a person who would fail to meet the requirements of the above three parts.

Prior to an applicant being disqualified, a procedural fairness process will be applied. If the applicant is disqualified, the application is terminated and no further assessment required.

Mining lease tendering process

To support the ability to repurpose abandoned mine sites, it is proposed to amend the *Mineral Resources Act 1989* to introduce a competitive tender process to allow a successful tenderer to apply directly for a mining lease. This will allow the State to test the market for abandoned sites where a commercially viable residual mineral resource remains. Existing requirements for mining lease applications, including native title, objections and the need for an environmental authority will not be affected by the proposal.

Regulatory Efficiency

Dispute resolution framework for overlapping tenure applications or activities

The Bill proposes amendments that create a process to resolve commercial disputes where certain mining lease applicants cannot secure the agreement of the pre-existing tenure holders. This process will allow the Minister to grant overlapping tenure applications that are in the public interest and then require the companies involved to negotiate a co-existence plan. If the companies cannot agree to a co-existence plan, arbitration may be used to resolve the dispute.

The Bill also proposes amendments to create a similar process to resolve commercial disputes where an existing lease holder refuses to agree to the activities of an overlapping petroleum pipeline licence holder or petroleum facility licence holder. This process will require the companies involved to negotiate a co-existence plan. If the companies cannot agree to a co-existence plan, arbitration may be used to resolve the dispute.

Creating notifiable dealings in *Mineral and Energy Resources (Common Provisions) Act 2014*

Non-assessable transfers occur due to the operation of law. They are transfers which happen automatically (for example, a transfer because of a death or bankruptcy). Currently, the *Mineral and Energy Resources (Common Provisions) Act 2014* requires the Minister to assess and approve whether these transfers should be registered by the Chief Executive.

To support the streamlining of regulatory assessments, the Bill proposes that non-assessable transfers will no longer require the Minister's approval before they are registered. The Bill retains the requirement that transfers cannot be registered if there are royalties or contributions to the Financial Provisioning Scheme outstanding.

Other efficiency related amendments

The Bill also proposes improvements to the efficiency of the resources regulatory framework by:

- Consolidating conference provisions throughout the Resource Acts in the *Mineral and Energy Resources (Common Provisions) Act 2014*;
- Allowing *Petroleum Act 1923* tenures to be amalgamated at the time they transition into the *Petroleum and Gas (Production and Safety) Act 2004*;
- Allowing petroleum leases to be counted for relinquishment requirements;
- Removing the requirement for a coordination arrangement if both parties are the same entity;
- Requiring security to be paid prior to the grant of a mining lease;
- Creating an explicit head of power for the Minister to decide 'excluded land' for exploration permits and mineral development licences under the *Mineral Resources Act 1989*;
- Allowing certain documents to be served electronically rather than in hard copy; and
- Clarifying when a royalty return is not required to be provided with an application to transfer or surrender a mining claim or mining lease.

Other Amendments to Resource Acts

The Bill includes some minor and operational amendments to the Resource Acts. These include:

- Clarifying responsibilities for sale of asset powers for terminated mining leases and mineral development licences;
- Establishing the ability for the Minister to request further information to inform a decision on a proposed later development for a petroleum lease; and
- Making prosecution periods consistent across Resource Acts.

Energy

Energy and Water Ombudsman regulation-making power

It is proposed to amend the *Energy and Water Ombudsman Act 2006* to insert a new regulation-making power to enable the Minister responsible for Energy to prescribe: new categories of Ombudsman scheme participant, to set the fee framework for these new scheme participants, and, to defer those fees where appropriate.

National Energy Retail Law (Queensland)

It is proposed to amend the *National Energy Retail Law (Queensland) Act 2014* to remove the time limitation on the derogation banning certain fees and charges (such as late payment and paper bill fees) for energy customers on standard retail contracts.

Water

Distributor-retailer infrastructure charges

The Bill achieves its objectives by requiring the distributor-retailers to:

- Publish online all infrastructure charges notices and their infrastructure charges register;
- Publish online an infrastructure charges register with details of infrastructure levied on developments;
- Annually report on the forecast and actual revenue from and expenditure of infrastructure charges; and
- Report quarterly on the delivery of trunk water and sewerage infrastructure from or instead of infrastructure charge.

Clarifying Full Supply Level provisions

The Bill delivers the policy intent by clarifying that the actions water storage infrastructure operators can take to reduce storage capacity in accordance with an approved Flood Mitigation Manual or to meet a dam safety requirement under the *Water Supply (Safety and Reliability) Act 2008*, are separate to obligations stated in the resource operations licence under the *Water Act 2000*.

Queensland Controlling Authority for the Border Rivers

The appointment of a Queensland controlling authority will ensure proper performance of the Commission's functions within the framework of the *New South Wales-Queensland Border Rivers Act 1946*, the Border Rivers Agreement, and to otherwise satisfy the requirements of the *New South Wales-Queensland Border Rivers Act 1946*.

Other water-related amendments

The Bill delivers on the policy objective by correcting a minor error to ensure that the Ministerial water supply emergency and regulation about water supply emergency sections reflect the current, not repealed, legislative reference.

Alternative ways of achieving policy objectives

The policy objectives cannot be met except by legislative amendment.

Estimated cost for government implementation

No costs to government are currently envisaged for any of the proposed changes. However, if any operational costs do arise they will largely be met from existing agency budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Industrial manslaughter

The new offences of industrial manslaughter potentially infringe the fundamental legislative principle contained in section 4(2)(a) of the *Legislative Standards Act 1992*, that legislation has sufficient regard to rights and liberties of individuals. The offences significantly increase potential penalties for the most serious examples of negligent conduct by an employer or senior officer, which causes the death of a worker. This recognises the extremely serious circumstances of a workplace fatality where the employer or senior officer has been negligent (recklessness or gross negligence) about causing the death.

Industrial manslaughter will be an indictable offence and the usual criminal procedural requirements will apply to such offences. The onus of proof in criminal proceedings will apply and the guideline for industrial manslaughter prosecutions will be the same as those for manslaughter under the Criminal Code. The decision to prosecute will be made by the independent Work Health and Safety (WHS) prosecutor. These factors will provide safeguards around decisions to prosecute.

Similar to other manslaughter offences, industrial manslaughter offences under the *Coal Mining Safety and Health Act 1999*, the *Mining and Quarrying Safety and Health Act 1999*, the *Explosives Act 1999* and the *Petroleum and Gas (Production and Safety) Act 2004* will have no time limitation period for prosecution, as they are an indictable offence.

Clarification of appointment requirements for statutory office holders

The Bill introduces requirements for statutory office holders under the *Coal Mining Safety and Health Act 1999* to be an employee of a coal mine operator. These amendments may infringe the legislative principle contained in s 4(3)(g) of the *Legislative Standards Act 1992* to not adversely affect the rights and liberties of individuals.

These amendments aim to provide employment security for critical safety statutory officer holders so that they feel that they can raise safety issues and make reports about dangerous conditions without fear of reprisal or impact on their employment. This will in turn protect the safety and health of workers more broadly. A transitional period of 12 months for compliance has been adopted and this will ameliorate the impacts on any existing statutory office holders who currently have a different employment status such as those who are contractors.

The Bill also introduces maximum penalties of 500 penalty units for coal mine operators who fail to ensure compliance with the requirements. This recognises the seriousness of this offence. The 12 month transitional period for compliance will provide coal mine operators with time to meet the new requirements.

The amendments for statutory office holders are justified as they are critical for managing the risks to safety and health of workers.

Clarification of costs orders

The Bill retrospectively validates costs orders made before an Industrial Magistrates Court for a proceeding for an offence against the *Coal Mining Safety and Health Act 1999*, the *Mining and Quarrying Safety and Health Act 1999* and the *Petroleum and Gas (Production and Safety) Act 2004*. These amendments potentially infringe the fundamental legislative principle contained in section 4(3)(g) of the *Legislative Standards Act 1992*, that the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

The Bill amends the *Coal Mining Safety and Health Act 1999*, and the *Mining and Quarrying Safety and Health Act 1999* to validate cost orders made by an Industrial Magistrates Court in relation to a proceeding for an offence against those Acts; and amends the *Petroleum and Gas (Production and Safety) Act 2004* to validate costs orders made by an Industrial Magistrates Court before 5 December 2014 in relation to a proceeding for an offence against that Act.

The amendments are justified as they will be beneficial and provide certainty to litigants. Over the past 20 years, costs have been awarded in criminal proceedings in the Industrial Magistrates Court. These costs have been sought by parties to litigation, and ordered by the courts in good faith, on the basis that they were lawfully made. The amendments will benefit parties to a proceeding by validating costs orders previously made for proceedings under the *Coal Mining Safety and Health Act 1999*, the *Mining and Quarrying Safety and Health Act 1999*, and the *Petroleum and Gas (Production and Safety) Act 2004* prior to December 2014.

Explosives regulation-making power

The proposed amendments to the regulation-making powers under the *Explosives Act 1999* potentially infringe the fundamental legislative principle contained in section 4(4)(a) of the *Legislative Standards Act 1992*, that the legislation allows the delegation of legislative power only in appropriate cases and to appropriate persons.

The proposed changes delegate legislative powers to regulations that may be made by the Governor in Council, as opposed to by Parliament. This delegation of

legislative power is appropriate in relation to regulations about conditions, and other requirements, that apply to a security clearance because it is consistent with existing powers relating to explosives authorities. Similarly, the delegation of legislative power in relation to the keeping of a register of authority and security clearance holders is also appropriate as it is necessary for the effective administration of the explosives authority and security clearance regimes.

The proposed changes to regulation-making powers have potential privacy implications as they would permit a regulation to be made about the keeping of a register of authorities and security clearances, including the disclosure and publication of information in the register. Information that could potentially be published may be personal information under the *Information Privacy Act 2009* (e.g. a person's name, their authority or security clearance number, and the status of the authority or clearance). However, the potential encroachment on a person's right to privacy in this context is considered justifiable on the basis that it is a necessary consequence of providing a way for the explosives industry to verify whether a person holds a valid authority or security clearance. This recognises the potential risk to public safety that could result from the misuse of explosives. Further, providing for an online register also aligns with other licencing regimes, which also feature an online register for checking licence status.

Change of control

The Bill establishes a new process where the Minister may assess a changed holder's financial and technical resources to comply with the resource authority, also referred to as an indirect change of control. If a significant risk is identified, the Minister may impose or vary conditions on the resource authority.

Creating a power to impose or vary conditions may be considered as potentially breaching the fundamental legislative principle contained in section 4(2)(a) of the *Legislative Standards Act 1992*, that legislation has sufficient regard to rights and liberties of individuals, dependant on administrative power only if the power is sufficiently defined and subject to appropriate review.

It is important to note that this process only applies to corporations, not individuals. Nevertheless, while this process applies broadly to any indirect change of control circumstance, the trigger is intended to only apply in limited circumstances. That is, if a change of control has been identified and the new controlling entity poses an increased risk to the state because the entity does not have the requisite financial and technical resources to comply with the conditions of the resource authority. If this limited circumstance is triggered, then the indirect change of control process included in the Bill could apply. This means the administrative power is constrained to these limited circumstances. As such, appropriate safeguards are in place to address this concern.

Further, a procedural fairness process is also provided to the resource authority holder before the Minister may impose or vary conditions of a resource authority. That is, the Minister has the discretion to request further information from the resource authority holder to assist with the change holder assessment. If a varied or new condition is proposed on the resource authority, the Minister must give the holder the proposed decision, reasons for the proposed decision and the holder may

make a submission to the Minister about the proposed decision. The Minister must consider this submission before making the final decision.

The decision is also subject to appropriate review as the decision is subject to judicial review. This is considered appropriate as the decision to impose or vary a condition is a Ministerial power and is consistent with other Ministerial powers provided for in the Resource Acts.

Care and maintenance

The Bill introduces the requirement for larger mineral mining leases under the *Mineral Resources Act 1989* to submit a development plan. Larger mineral mining leases are those that will mine above the threshold prescribed in the *Mineral Resources Regulation 2013*.

This amendment potentially infringes the fundamental legislative principle provided for in section 4(4)(b) of the *Legislative Standards Act 1992*, that legislation has sufficient regard to the institution of Parliament. This is because the ability to change the threshold for prescribed mineral mining leases is provided through subordinate legislation and could be considered to be delegating the power to change the requirement to have a development plan to an entity other than Parliament.

However, the inclusion of the power to prescribe the mineral mining lease threshold in subordinate legislation in these circumstances is justified as flexibility is required to add new minerals and adjust thresholds if circumstances warrant a change.

Disqualification criteria for resource authority applicants

The disqualification criteria provide that a decision-maker may refuse the grant of an applicant for a prescribed resource authority if the applicant triggers the disqualification criteria. This may potentially breach the fundamental legislative principle in section 4(3)(a) of the *Legislative Standards Act 1992* that legislation has sufficient regard to the rights and liberties of individuals, and that it is only dependant on administrative power if the power is sufficiently defined and subject to appropriate review.

The Bill establishes disqualification criteria to assess the risk associated with applicants for new resource authorities. Generally, the process will help mitigate the potential risk that the site may be disclaimed or left with other outstanding debts through an upfront assessment of the applicant's suitability to hold a resource authority.

The disqualification criteria do not apply retrospectively and will only apply to new resource authority applicants and transfers made following the commencement of the relevant provisions.

The power to disqualify an applicant only occurs under specific circumstances, where the criteria are met and the matters are of a serious nature. The disqualification criteria include:

- A history of non-compliance with relevant prescribed legislation; or
- Relevant prescribed criminal history; or
- A history of mismanagement of a company; or

- They are associated with a person who would fail to meet the requirements of the above three parts.

These criteria are considered to be sufficiently defined in the Bill, and are critical considerations in determining the suitability of an applicant to hold a resource authority in Queensland.

Further, the Bill also provides an applicant with procedural fairness. Without mechanisms in place to ensure procedural fairness is protected, this may potentially breach the fundamental legislative principle contained in section 4(3)(b).

Where an applicant may trigger the disqualification criteria, the Bill establishes an administrative process that provides the decision-maker with the power to consider the nature and seriousness of the disqualification criteria matter. The decision-maker may request further information from the applicant before making a decision whether to refuse or grant the application.

Before an applicant can be disqualified, they must be issued a notice outlining the proposed decision and reasons why the applicant has triggered the disqualification criteria. The applicant has the opportunity to make submissions about the notice and the decision-maker is required to consider the submission in determining whether the application will proceed or be refused.

The decision is also subject to appropriate review as the decision is subject to judicial review. This is considered appropriate as the decision to impose or vary a condition is a Ministerial power and is consistent with other Ministerial powers provided for in the Resource Acts.

The criminal history of applicants, or associates of applicants, may be obtained from the police commissioner. This power may interact with general fundamental legislative principle of rights and liberties of individuals (refer to section 4 of the *Legislative Standards Act 1992*). However, sufficient safeguards are in place to prevent infringement. The criminal history may only be able to be obtained with the consent of the relevant person and further, spent convictions are not able to be considered.

Abandoned mines and abandoned operating plants

The Bill inserts a new framework by which authorised persons may enter land affected by previous resource activities but outside the original resource site (affected land), to undertake remediation activities. The Bill also expands the definition of remediation activities under both Acts to include additional activities.

The entry powers may infringe upon the fundamental legislative principle contained in section 4(3)(a) of the *Legislative Standards Act 1992* that legislation has sufficient regard to the rights and liberties of individuals, and that it is only dependant on administrative power if the power is sufficiently defined and subject to appropriate review. The power is appropriately and sufficiently defined, as the chief executive may only authorise access to land for remediation or rehabilitation purposes. Both of these terms are defined terms.

Sufficient safeguards are in place to ensure that the rights and liberties of individuals are adequately protected. Entry to land that was originally the site of the resource activity is justified because the intent is to make abandoned sites safe, secure, durable and, where possible, productive.

The powers of entry to affected land are limited to where the chief executive is satisfied that the land has been affected by an abandoned mine or that entry is required to undertake remediation activities. Further, entry may only occur with the consent of the owner and occupier of the property, unless the entry is required to preserve life or property. Consent may be given on reasonable conditions (other than compensation). The person which enters land must also provide the owner and occupier of the land with a report about the entry including activities undertaken.

Given the nature of the power is to remediate or rehabilitate land affected by previous resource activities, and that consent is required for affected land, judicial review of the chief executive's decision is considered to be appropriate.

Mining lease tendering process

The Bill establishes an administrative process that provides the Minister with the administrative power to release an area of land for tenure, and to appoint a preferred tenderer who has the sole right to apply for a mining lease over that area of land.

This process is consistent with the fundamental legislative principle that rights and liberties should be dependent on administrative power only if that power is sufficiently defined and subject to appropriate review (as expressed in section 4(3)(a) of the *Legislative Standards Act 1992*).

The administrative process to release land for tender and select a preferred tenderer is established through the insertion of new part 1B of chapter 6 of the *Mineral Resources Act 1989*.

These clauses establish a public tender process which is open to all eligible entities (persons and corporations). The clauses also define the criteria and conditions upon which a decision can be made. In this process the Minister is an independent and informed decision maker who has the power to request further information from applicants if required to make the decision.

Because the process is fully transparent, has defined application processes and is overseen by an independent decision maker, it is considered that the process is consistent with the fundamental legislative principle that legislation should be consistent with the principles of natural justice (as expressed in s4(3)(b) of the *Legislative Standards Act 1992*).

The decision is also subject to appropriate review as it is subject to judicial review. This is considered appropriate as the decision to appointing a preferred tenderer is a Ministerial power and is consistent with other Ministerial powers provided for in the Resource Acts.

Dispute resolution framework for overlapping tenure applications or activities

The Bill establishes an administrative process that provides the Minister with a new administrative power to grant a specific purpose mining lease or a transportation mining lease when the underlying tenure holder does not provide consent. This power may only be exercised if the Minister is satisfied that activities for the proposed tenure can be carried out in a way that is compatible with the activities of the existing tenure, and that the co-existence of the two tenures would optimise the development and use of the State's resources to maximise the benefit for all Queenslanders.

This process is consistent with the fundamental legislative principle that rights and liberties should only be dependent on administrative power if that power is sufficiently defined and subject to appropriate review (as expressed in s4(3)(a) of the *Legislative Standards Act 1992*).

The administrative process to grant a specific purpose mining lease or a transportation mining lease in this way is established through new section 271AB of the *Mineral Resources Act 1989*. Section 271AB establishes a transparent decision making process whereby the Minister has the power to request further information from applicants if required to make the decision.

The amendments are also consistent with the fundamental legislative principle that legislation should be consistent with the principles of natural justice (as expressed in s4(3)(b) of the *Legislative Standards Act 1992*). Procedural fairness is provided as mining lease applications are subject to public notification, and the existing tenure holder may make an objection to the application. The Minister must consider all objections in deciding to grant or refuse an application.

Consolidating concerns conferences provisions

The Bill consolidates the concerns conferences provisions from the respective Resource Acts into one framework under the *Mineral and Energy Resources (Common Provisions) Act 2014*. Concerns conferences are available to landholders and resource authority holders who wish to attend a conference with a departmental officer. This amendment does not infringe on the fundamental legislative principle in section 4(2)(g) of the *Legislative Standards Act 1992*, that legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

The consolidated concerns conferences provisions only apply to new conferences following the commencement of the relevant provisions. Conferences that are underway before commencement will continue to operate under the respective pre-amended Resource Acts. Further, there was minimal change to the policy intent for the concerns conference framework.

Creating notifiable dealings in *Mineral and Energy Resources (Common Provisions) Act 2014*

The Bill provides that a regulation may prescribe dealings with a resource authority notification to the chief executive and registration to have effect.

This delegation of legislative power is consistent with the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament

(as expressed in s4(2)(b) of the *Legislative Standards Act 1992*). This is because the power is consistent with the policy objectives of the *Mineral and Energy Resources (Common Provisions) Act 2014*, and contains only matters that are appropriate for subordinate legislation.

Making prosecution periods consistent across Resource Acts

The changes to the *Mineral Resources Act 1989*, the *Geothermal Energy Act 2010* and the *Greenhouse Gas Storage Act 2009* will strengthen the regulatory framework by increasing the time in which a proceeding can be brought against someone who contravenes the provisions of these Acts.

This will likely have adverse effects on an individual who has proceedings initiated against them who would otherwise have avoided these proceedings. However this change is necessary to ensure that contraventions of the legislative framework are appropriately addressed.

Energy and Water Ombudsman regulation-making power

The proposed amendment to section 7 of the *Energy and Water Ombudsman Act 2006* potentially infringes the fundamental legislative principle contained in section 4(4)(a) of the *Legislative Standards Act 1992*, that the legislation allows the delegation of legislative power only in appropriate cases and to appropriate persons.

The proposed change delegates legislative power to regulations that may be made by the Governor in Council, as opposed to by Parliament. However, this delegation of legislative power is limited to the establishment of new categories of ombudsman scheme participant and the setting of associated scheme participant fees. This change is consistent with the *Energy and Water Ombudsman Act 2006*, ensuring that dispute resolution is widely available to relevant small energy consumers. The energy sector is undergoing significant review and changes both through new providers and new consumer technologies. It is important that the legislation is sufficiently flexible and able to respond quickly to these changes, ensuring in particular that vulnerable customers are protected.

Consultation

Safety and Health

External stakeholders were consulted through a discussion paper on industrial manslaughter offences in late November 2018. Further consultation was undertaken in November 2019 through an information paper and a draft Bill for the industrial manslaughter provisions. Consultation occurred with external stakeholders including: the Construction, Forestry, Maritime, Mining and Energy Union; the Australian Workers' Union; the Australian Manufacturing Workers' Union; the Queensland Resources Council; Cement and Concrete Aggregates Australia; the Mine Managers' Association of Australia; the Australasian Explosives Industry Safety Group; and the Australian Petroleum Production and Exploration Association; industry organisations; and the Queensland Law Society. Stakeholders had polarised views with unequivocal support being given by the unions, and industry stakeholders either not supporting or raising concerns with some of the details of the proposal.

External stakeholder consultation was also undertaken on amendments to clarify costs orders and explosives regulation-making powers. The Queensland Resources Council, Cement and Concrete Aggregates Australia, and the Australian Petroleum Production and Exploration Association were also consulted on costs orders amendments; and the Australasian Explosives Industry Safety Group was consulted on explosives amendments. No concerns were raised by stakeholders.

Financial Assurance

On 31 May 2018, the Queensland Government released two discussion papers for public consultation in response to the matters identified for reform by the QTC review:

- a. *Achieving improved rehabilitation for Queensland: other associated risks and proposed solutions*, which proposed reform ideas relating to care and maintenance, changes in the control of resource authorities, and disclaimed mines; and
- b. *Achieving improved rehabilitation for Queensland: addressing the state's abandoned mine legacy* which proposed reform ideas relating to abandoned mines.

A consultation report was developed in response to submissions on the two discussion papers: *Queensland Government Consultation Report: Abandoned Mines Legacy and Other Associated Risks* and was released in September 2019.

The Bill implements the policy positions included in the consultation report that require legislative changes. Targeted consultation was undertaken during the development of the Bill in November – December 2019.

Stakeholders included representatives from the Queensland Resources Council, the Australian Petroleum Production & Exploration Association, the Association of Mining and Exploration Companies, the Environmental Defenders Office, the Queensland Farmers' Federation, AgForce, the Lock the Gate Alliance, the Queensland Law Society, and WWF-Australia.

The stakeholders were generally supportive of the intent of the financial assurance amendments included in Bill. The main issues raised included clarity regarding timeframes for imposing or varying conditions for indirect change of control, nature and types of conditions that may be imposed due to an indirect change of control, and broadening the remediation activities powers for abandoned mines and abandoned operating plants.

Where appropriate, the Bill has been amended to address stakeholder concerns.

Regulatory efficiency

Community consultation occurred on the regulatory efficiency investigation via the request for submissions during the investigation between 4 September 2018 and 4 October 2018. Forty-four written submissions were received.

DNRME also met with the Queensland Resources Council, the Association of Mining and Exploration Companies, AgForce, the Queensland Farmers' Federation, WWF-Australia and the Environmental Defenders Office to discuss the scope of the election commitment and investigation. These organisations also provided a written submission.

Targeted consultation was undertaken during the development of the Bill in November – December 2019.

Stakeholders included representatives from the Queensland Resources Council, the Australian Petroleum Production & Exploration Association, the Association of Mining and Exploration Companies, the Environmental Defenders Office, the Queensland Farmers' Federation, AgForce, the Lock the Gate Alliance, the Queensland Law Society, and WWF-Australia.

The stakeholders were generally supportive of the intent of the regulatory efficiency amendments included in the Bill, and no significant issues were raised.

Energy

Energy and Water Ombudsman regulation-making power

No specific consultation has been undertaken on the proposed amendment. However, stakeholder feedback at the Consumer and Industry Reference Group meeting, a regular stakeholder consultation forum involving consumer groups and the energy industry (in particular, energy retailers), held 11 April 2019 made it very clear that both energy retailers and consumer groups (such as the Queensland Council of Social Service) are in favour of a more adaptive, responsive framework for the operation of the Queensland Energy and Water Ombudsman. Further consultation will occur prior to the regulation-making power being applied and will include regulatory impact assessments where required.

National Energy Retail Law (Queensland)

The decision to maintain the ban on certain fees and charges for customers on standard retail contracts follows comprehensive public consultation by the Department of Natural Resources, Mines and Energy as part of a statutory review of the operation of the National Energy Retail Law in Queensland. Consumer group submissions strongly supported the continuation of the derogation to maintain stability and the current level of customer protection in Queensland. While retailers' submissions consistently requested the removal of all derogations in the name of regulatory harmony, there was no quantification of, or discussion, regarding the level of impact of this particular derogation on retailer's business operations. It is also worth noting that the number of South East Queensland customers on standard retail contracts has been declining in recent years, with only 14 per cent of customers remaining on a standard contract in 2019.

Water

Clarifying Full Supply Level provisions

The impacted entities, Seqwater and Sunwater, have been consulted and are supportive of amendments to clarify the circumstances in which temporary full supply level or full supply level provisions can be used.

Distributor-retailer infrastructure charges

The Department of Natural Resources, Mines and Energy has consulted with the council owned South East Queensland distributor-retailers, namely Urban Utilities and Unitywater, who are supportive of have greater transparency for the collection and distribution of monies collected from infrastructure charges.

Queensland Controlling Authority for the Border Rivers

The Department of Natural Resources, Mines and Energy has consulted with the Border Rivers Commission and Sunwater regarding the appointment of a Queensland controlling authority. They are supportive of the proposed amendments.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. The amendments in the Bill do not impact on other jurisdictions or the Commonwealth, and are not affected by any national legislation or work plans through the Council of Australian Governments.

In many cases, amendments are specifically being made to address errors in drafting or interpretation that only arise in Queensland due to the content of the existing legislation.

However, the policy development of the disqualification criteria considered similar processes established in other jurisdictions, mainly New South Wales, Northern Territory and Victoria. These three jurisdictions already have in a place a legislated process that considers the past performance and behaviour of applicants before the tenure is granted.

As such, the amendments for the disqualification criteria have been developed to, in some instances, align with those in New South Wales, Northern Territory and Victoria.

The amendment to the *National Energy Retail Law (Queensland) Act 2014* to maintain an existing state-based customer protection does not affect the operation of the National Energy Retail Law in other states, nor does it alter the current operation of the National Energy Retail Law in Queensland. The amendment simply ensures the continuation of an existing Queensland derogation, which prevents retailers from charging certain types of fees to customers supplied under standard retail energy contracts.

Notes on provisions

Part 1 – Preliminary

Short title

Clause 1 provides that the short title is the *Mineral and Energy Resources and Other Legislation Amendment Act 2020*.

Commencement

Clause 2 provides for the commencement of provisions included in the Bill.

Part 2 – Amendment of Coal Mining Safety and Health Act 1999

Act amended

Clause 3 states that this part of the Bill amends the *Coal Mining Safety and Health Act 1999*.

Amendment of s 54 (Appointment of site senior executive)

Clause 4 amends section 54 (Appointment of site senior executive) to require that a coal mine operator must not appoint a person to be a site senior executive unless the person is an employee of the coal mine operator. A maximum penalty of 500 penalty units will apply.

Amendment of s 57 (Appointment of another site senior executive during temporary absence)

Clause 5 amends section 57 (Appointment of another site senior executive during temporary absence) to require that a coal mine operator must not appoint a person to be a site senior executive during the temporary absence of a site senior executive, unless the person is an employee of the coal mine operator. A maximum penalty of 500 penalty units will apply.

Amendment of s 59 (Additional requirements for management of surface mines)

Clause 6 amends section 59 (Additional requirements for management of surface mines) to require that require that a person must not be appointed to carry out the responsibilities and duties prescribed under a regulation in 1 or more surface mine excavations, unless the person is an employee of a coal mine operator.

A coal mine operator is required to ensure that a person is not appointed to such a position, if they are not an employee of the coal mine operator. A maximum penalty of 500 penalty units will apply.

Amendment of s 60 (Additional requirements for management of underground mines)

Clause 7 amends section 60 (Additional requirements for management of underground mines) to require that a person must not be appointed to be an underground mine manager, unless the person is an employee of a coal mine operator. This also includes an alternate underground mine manager.

It also requires that a person who is appointed to be responsible for the control and management of underground activities when the manager is not in attendance, must be an employee of a coal mine operator.

In addition, a person cannot be appointed to have control of activities in 1 or more explosion risk zone, unless the person is an employee of a coal mine operator.

Finally a person cannot be appointed to control and manage the mechanical and electrical engineering activities of a mine, unless the person is an employee of a coal mine operator.

A coal mine operator is required to ensure that a person is not appointed to the above positions, if they are not an employee of the coal mine operator. A maximum penalty of 500 penalty units will apply.

Amendment of s 61 (Appointment of ventilation officer)

Clause 8 amends section 61 (Appointment of ventilation officer) to require that a person must not be appointed to be a ventilation officer unless the person is an employee of the coal mine operator.

A coal mine operator is required to ensure that a person is not appointed to be ventilation officer, if they are not an employee of the coal mine operator. A maximum penalty of 500 penalty units will apply.

Amendment of s 61A (Absence of ventilation officer)

Clause 9 amends section 61A (Absence of ventilation officer) to require that a person must not be appointed to be a ventilation officer, in the absence of the ventilation officer, unless the person is an employee of the coal mine operator.

A coal mine operator is required to ensure that a person is not appointed to be ventilation officer in the absence of the ventilation officer, if they are not an employee of the coal mine operator. A maximum penalty of 500 penalty units will apply.

Insertion of new pt 20, div 9

Clause 10 inserts a new part 20, div 9 Transitional provisions for the *Mineral and Energy Resources and Other Legislation Amendment Act 2020*.

New section 319 provides that the obligation for a coal mine operator to ensure that a person is an employee as required in sections 54, 57, 59, 60, 61 and 61A does not apply until 12 months from the commencement date.

New section 320 provides that any person who is in such a position identified in the above provisions 12 months after the commencement date, and is not an employee of a coal mine operator – the person will no longer hold a valid appointment to the position. The section also provides that the State will not be liable for the payment of any compensation, in the event that a person no longer holds a valid appointment, as a result of section 320.

Insertion of new pt 3A

Clause 11 inserts a new part 3A for industrial manslaughter.

New section 48A inserts definitions for the part including for an employer, a senior officer of an employer for a coal mine and an executive officer if the employer is a corporation. Whether a person is a senior officer will depend on the individual circumstances of each case, including the person's position and role in taking part in management decisions of the employing entity.

In addition, it provides that a person's conduct causes death if it substantially contributes to the death.

New section 48B provides that section 23 of the Criminal Code, which provides for a defence of accident, does not apply to an offence for industrial manslaughter.

New section 48C provides for a new offence for an employer for a coal mine if a coal mine worker dies in the course of carrying out work at the coal mine or is injured and later dies; and the employer's conduct causes the death; and the employer is negligent about causing the death of the worker. The new offence recognises the extremely serious circumstances in which both a fatality has occurred and there has been criminal negligence by an employer.

The maximum penalty for an individual is 20 years imprisonment and for a body corporate is 100,000 penalty units. The offence is a crime.

New section 48D provides for a new offence for a senior officer of an employer for a coal mine if a coal mine worker dies in the course of carrying out work at the coal mine or is injured and later dies; and the senior officer's conduct causes the death; and the senior officer is negligent about causing the death of the worker. The new offence recognises the extremely serious circumstances in which both a fatality has occurred and there has been criminal negligence by a senior officer.

The maximum penalty is 20 years imprisonment. The offence is a crime.

Amendment of s 255 (Proceedings for offences)

Clause 12 amends section 255 (Proceedings for offences) to exclude an industrial manslaughter offence from being dealt with by way of summary proceedings before

an industrial magistrate. It provides that an industrial manslaughter offence is a serious offence and therefore the provisions about who may bring a proceeding for a serious offence will apply. This does not affect the ability of the director of public prosecutions to bring proceedings.

This clause also inserts a note referring to section 264 in relation to the ability to make costs orders with respect to representation in a proceeding for an offence under the Act.

Amendment of s 256B (Procedure if prosecution not brought)

Clause 13 amends section 256B so that if proceedings have not been brought for an industrial manslaughter offence within six months, a person may make a written request to the WHS prosecutor that a prosecution be brought in relation to the industrial manslaughter offence.

Amendment of s 257 (Limitation on time for starting proceedings)

Clause 14 amends section 257 so that the limitation on time for the commencement of proceedings for an offence does not apply to an industrial manslaughter offence.

Amendment of s 264 (Costs of investigation)

Clause 15 amends section 264 to provide that an Industrial Magistrates Court may award a represented party in a proceeding for an offence under the Act; the costs of representation.

This applies despite section 530(6) of the *Industrial Relations Act 2016*.

The clause also includes a definition of represented party for a proceeding.

Insertion of new s 321

Clause 16 inserts new section 321 into part 20, div 9 Transitional provision for the *Mineral and Energy Resources and Other Legislation Amendment Act 2020*.

New section 321 provides for the validation of costs orders for the costs of representation, made by an Industrial Magistrate Court, in relation to a proceeding for an offence against this Act, before the commencement. The section provides that the making of the costs order and anything done under the costs order is, and is taken to always have been, valid.

Amendment of sch 3 (Dictionary)

Clause 17 amends the dictionary to include further definitions.

Part 3 – Amendment of Energy and Water Ombudsman Act 2006

Act amended

Clause 18 states that this part of the Bill amends the *Energy and Water Ombudsman Act 2006*.

Amendment of s 6D (Who is a relevant energy customer)

Clause 19 amends section 6D(1) of the *Energy and Water Ombudsman Act 2006* to include persons who are supplied energy by a ‘prescribed energy entity’ in the definition of ‘relevant energy customer’. ‘Prescribed energy entity’ is a new term defined in the *Energy and Water Ombudsman Act 2006* (see new term inserted into section 7 by the Bill).

Amendment of s 7 (What is an energy entity)

Clause 20 amends section 7 of the *Energy and Water Ombudsman Act 2006* to include in the definition of ‘energy entity’ any exempt seller or other entity prescribed to be an energy entity by regulation (referred to as a ‘prescribed energy entity’). This regulation-making power will allow the Minister responsible for administering the *Energy and Water Ombudsman Act 2006* to more efficiently implement jurisdictional changes to the energy and water ombudsman scheme via regulation in order to meet the needs of Queensland energy customers.

Amendment of s 12 (Restrictions on functions—energy entities)

Clause 21 amends one of the restrictions on the energy and water ombudsman’s functions under section 12 of the *Energy and Water Ombudsman Act 2006*. The current subsection 12(1)(d) prevents the energy and water ombudsman from accepting referrals about, or investigating disputes between, a ‘small customer’ or an ‘eligible non-residential energy customer’ and their ‘on-supplier’. The amendment removes this limitation where an ‘on-supplier’ is a ‘prescribed energy entity’.

Amendment of s 64 (Scheme participation—energy entities)

Clause 22 amends section 64 of the *Energy and Water Ombudsman Act 2006*. This amendment seeks to make clear that regardless of whether a particular ‘exempt seller’ is a ‘scheme participant’ under section 64(1), once an entity is listed as a ‘prescribed energy entity’ in the regulation, that entity becomes a ‘scheme participant’ under section 64(3) and their customers can access the dispute resolution services provided by the energy and water ombudsman.

Amendment of s 66 (When participation fee is payable)

Clause 23 inserts a new section 66(5) of the *Energy and Water Ombudsman Act 2006* to make clear that, where a scheme participant is a ‘prescribed energy entity’,

the energy and water ombudsman must comply with the requirements of the regulation regarding the invoicing and payment of participation fees.

Amendment of s 67 (Amount of participation fee—energy entity)

Clause 24 amends section 67 of the *Energy and Water Ombudsman Act 2006* to make clear that, for a ‘prescribed energy entity’, amounts for participation fees will be set by regulation.

Amendment of s 68 (When user-pays fee is payable)

Clause 25 amends section 68 of the *Energy and Water Ombudsman Act 2006* to make clear that this section does not apply to a ‘prescribed energy entity’.

Amendment of s 69 (Working out user-pays fee)

Clause 26 amends section 69 of the *Energy and Water Ombudsman Act 2006* to make clear that this section does not apply to a ‘prescribed energy entity’.

Insertion of new s 69A

Clause 27 inserts a new section 69A of the *Energy and Water Ombudsman Act 2006* to make clear that, for a ‘prescribed energy entity’, the user-pays fee amounts, the timeframe for ‘when’ user-pays fees are due, and the way those fees should be invoiced, will be set by regulation.

Amendment of schedule (Dictionary)

Clause 28 amends the schedule (Dictionary) of the *Energy and Water Ombudsman Act 2006* to insert a new definition.

Part 4 – Amendment of Explosives Act 1999

Act amended

Clause 29 states that this part of the Bill amends the *Explosives Act 1999*.

Insertion of new pt 4A

Clause 30 inserts a new part 4A for industrial manslaughter.

New section 54A inserts definitions for the part including for an employer, a senior officer of an employer, and an executive officer if the employer is a corporation. Whether a person is a senior officer will depend on the individual circumstances of each case, including the person’s position and role in taking part in management decisions of the employing entity.

In addition, it provides that a person’s conduct causes death if it substantially contributes to the death.

New section 54B provides that section 23 of the Criminal Code, which provides for a defence of accident, does not apply to an offence for industrial manslaughter.

New section 54C provides for a new offence for an employer if an employee dies in the course of doing an act involving explosives or is injured and later dies; and the employer's conduct causes the death; and the employer is negligent about causing the death of the employee. The new offence recognises the extremely serious circumstances in which both a fatality has occurred and there has been criminal negligence by an employer.

The maximum penalty for an individual is 20 years imprisonment and for a body corporate is 100,000 penalty units. The offence is a crime.

New section 54D provides for a new offence for a senior officer of an employer if an employee dies in the course of an act involving explosives or is injured and later dies; and the senior officer's conduct causes the death; and the senior officer is negligent about causing the death of the employee. The new offence recognises the extremely serious circumstances in which both a fatality has occurred and there has been criminal negligence by a senior officer.

The maximum penalty is 20 years imprisonment. The offence is a crime.

Amendment of s 118 (Proceeding for offence)

Clause 31 amends section 118 (Proceeding for offence) to exclude an industrial manslaughter offence from being dealt with by way of summary proceedings. It provides that an industrial manslaughter offence is a serious offence and therefore the provisions about who may bring a proceeding for a serious offence will apply. This does not affect the ability of the director of public prosecutions to bring proceedings.

Amendment of s 118C (Procedure if prosecution not brought)

Clause 32 amends section 118C so that if proceedings for an industrial manslaughter offence have not been brought within six months, a person may make a written request to the WHS prosecutor that a prosecution be brought in relation to the industrial manslaughter offence.

Amendment of s 135 (Regulation-making power)

Clause 33 amends section 135 (Regulation-making power) to provide that a regulation may be made about conditions, and other requirements, that apply to a security clearance. This amendment ensures regulation-making powers relating to a security clearance are aligned with existing powers relating to an authority. The clause also inserts a new regulation-making power to provide that a regulation may be made about the keeping of a register of authorities and security clearances, including the disclosure and publication of information in the register. This amendment will enable the establishment of a register of authorities and security clearances under a regulation and will potentially permit disclosure and publication of

limited register information online (e.g. the holder's name, clearance or authority number and the status).

Amendment of sch 2 (Dictionary)

Clause 34 amends the dictionary to include further definitions.

Part 5 – Amendment of Geothermal Energy Act 2010

Act amended

Clause 35 provides that this part of the Bill amends the *Geothermal Energy Act 2010*.

Insertion of new s 36A

Clause 36 inserts a new section 36A in the *Geothermal Energy Act 2010* to require the Minister to reject an application for a geothermal permit if the Minister decides the applicant is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the geothermal permit. On rejection of the application, the Minister must give the applicant a notice about the decision.

Insertion of new s 78A

Clause 37 inserts a new section 78A in the *Geothermal Energy Act 2010* to require the Minister to reject an application for a geothermal lease if the Minister decides the applicant is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the geothermal lease. On rejection of the application, the Minister must give the applicant a notice about the decision.

Insertion of new s 133A

Clause 38 inserts new section 133A in the *Geothermal Energy Act 2010*. The inserted section gives the Minister a discretionary power to assess whether the holder of a geothermal tenure has the financial and technical resources to comply with the conditions of the tenure if the Minister reasonably believes, or is notified, that there has been an indirect change in the control of the tenure holder.

The intent is to mitigate the risk that a geothermal tenure holder will be unable to meet its regulatory obligations under the tenure because of an indirect change in the control of the holder.

Indirect changes of control are defined in the provision as a change that happens under section 50AA (Control) or section 46 (What is a subsidiary) of the *Corporations Act 2001* (Cth). Under these sections, controlling entities are essentially identified as entities that can exert practical influence or power over another entity's financial and

operating policies, or parent companies who control the board of its subsidiary, or hold the majority voting rights or shares in its subsidiary.

These indirect changes of control have the potential to impact on the ability of a tenure holder to comply with the tenure obligations, particularly if the controlling entity controls or exerts influence over the financial and operating affairs of the tenure holder.

Indirect changes of control are not currently subject to assessment under the Resource Acts as the ultimate holder of the resource authority does not change. Further, the State's ability to regulate these transactions is limited as they are regulated under the *Corporations Act 2001* (Cth).

These new amendments enable the Minister to consider whether, after an indirect change of control, the holder of a geothermal tenure continues to have the financial and technical resources to comply with the conditions of its tenure.

If the Minister considers the holder of the tenure may not have the financial and technical resources to comply with the conditions of the geothermal tenure, the Minister is given the power to impose new conditions or to amend the existing conditions of the tenure. The types of conditions that may be imposed will vary depending on the individual circumstances but will, nevertheless, need to relate to ameliorating the risk arising from the indirect change and be consistent with the purpose of the Act. These conditions may include, for example, increased reporting obligations or that certain activities be undertaken.

The chief executive will be notified of an indirect change in control relating to a resource authority holder through a new requirement inserted into section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. An amendment to section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* inserted by the Bill will require the scheme manager to provide a copy of a notice given under section 42 to the chief executive (resources).

Section 42(1) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* currently requires a resource authority holder to notify the scheme manager of a 'changed holder event'. A 'changed holder event' is defined in new section 31A of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to include changes of control under sections 46 and 50AA of the *Corporations Act 2001* (Cth). Failure to comply with the requirement is an offence under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

If, for whatever reason, a notice of a changed holder event is not received under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, but the Minister reasonably believes that a change has happened, the Minister can require the holder of the geothermal tenure to give the Minister information or a document about whether or not the change has happened.

The Minister also has the power to require the geothermal tenure holder to give the Minister any information or document required by the Minister to make a decision about imposing a new or amended condition under this section.

The Minister must give the geothermal tenure holder a written notice about the information or documents required, and give the holder at least 10 business days to comply. This period may be extended by the Minister.

A procedural fairness process is also provided that requires the Minister to advise the holder of a proposed decision to impose a new or amended condition resulting from the change of control, and the reasons for the decision. The geothermal tenure holder may make a submission about the proposed decision within 10 business days, or a longer period extended by the Minister.

In deciding whether to impose new or varied conditions on the geothermal tenure, the Minister must consider any information or documents that were given by the geothermal tenure holder in response to a requirement to give that material, as well as any submission made by the holder.

If the Minister decides to impose a new or varied condition on the geothermal tenure, the Minister must give a notice stating the decision and the reasons for the decision.

Amendment of ch 7, hdg (Conferences, enforcement, offences and proceedings)

Clause 39 removes a reference to conferences in the heading to chapter 7 of the *Geothermal Energy Act 2010*. This amendment is consequential to consolidating the conference provisions in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Omission of ch 7, pt 1 (Conferences with eligible claimants or owners and occupiers)

Clause 40 removes the entirety of chapter 7, part 1 of the *Geothermal Energy Act 2010*, which contained the provisions for conferences with eligible claimants or owners and occupiers. These provisions are consolidated in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Renumbering of ch 7, pts 2 to 5

Clause 41 renumbers parts 2 to 5 of chapter 7 of the *Geothermal Energy Act 2010* to parts 1 to 4, as a consequence of the removal of the previous part 1 which contains the conference provisions.

Amendment of s 346 (Offences under Act are summary)

Clause 42 amends section 346 of the *Geothermal Energy Act 2010*, to update the period within which a proceeding for an offence must be started, and align this with the period under other Resource Acts, which are also being amended by the Bill.

A proceeding for an offence will now be required to be commenced either within one year after the commission of the offence or within one year after the offence comes to the complainants knowledge (but within two years after the commission of the

offence). This will provide departmental officers involved in the investigation and prosecution of offences a reasonable period in which to investigate and commence proceedings.

Insertion of new ch 9, pt 6

Clause 43 inserts a new part 6 in chapter 9 of the *Geothermal Energy Act 2010*, which contains transitional provisions for amendments made in the Bill.

New section 414 provides that the power of the Minister to impose a new or amended condition on a geothermal tenure under section 133A applies to existing tenures, but only if the indirect change of control occurs after the commencement.

New section 415 provides a transitional provision for the circumstance where an authorised officer had asked parties to attend a conference before commencement, and at commencement the conference had not taken place. Under this circumstance, the conference must take place under chapter 7, part 1 of the *Geothermal Energy Act 2010* as in force immediately before commencement. To remove all doubt, this provision also clarifies that the new provisions on conferences which the Bill inserts into chapter 3, part 8 of the *Mineral and Energy Resources (Common Provisions) Act 2014* do not apply to that conference.

Amendment of sch 2 (Dictionary)

Clause 44 amends the dictionary to remove obsolete definitions.

Part 6 – Amendment of Greenhouse Gas Storage Act 2009

Act amended

Clause 45 provides that this part of the Bill amends the *Greenhouse Gas Storage Act 2009*.

Insertion of new s 35A

Clause 46 inserts a new section 35A in the *Greenhouse Gas Storage Act 2009* to require the Minister to reject a tender for a GHG permit if the Minister decides the tenderer is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the permit. On rejection of the tender, the Minister must give the tenderer a notice about the decision.

Insertion of new s 92A

Clause 47 inserts new section 92A in the *Greenhouse Gas Storage Act 2009*. The inserted section gives the Minister a discretionary power to assess whether the holder of a GHG permit has the financial and technical resources to comply with the conditions of the permit if the Minister reasonably believes, or is notified, that there has been an indirect change in the control of the permit holder.

The intent is to mitigate the risk that a GHG permit holder will be unable to meet its regulatory obligations under their permit because of an indirect change in the control of the holder.

Indirect changes of control are defined in the provision as a change that happens under section 50AA (Control) or section 46 (What is a subsidiary) of the *Corporations Act 2001* (Cth). Under these sections, controlling entities are essentially identified as entities that can exert practical influence or power over another entity's financial and operating policies, or parent companies who control the board of its subsidiary, or hold the majority voting rights or shares in its subsidiary.

These indirect changes of control have the potential to impact on the ability of a permit holder to comply with their permit obligations, particularly if the controlling entity controls or exerts influence over the financial and operating affairs of the permit holder.

Indirect changes of control are not currently subject to assessment under the Resource Acts as the ultimate holder of the resource authority does not change. Further, the State's ability to regulate these transactions is limited as they are regulated under the *Corporations Act 2001* (Cth).

These new amendments enable the Minister to consider whether, after an indirect change of control, the holder of a GHG permit continues to have the financial and technical resources to comply with the conditions of its permit.

If the Minister considers the holder of the permit may not have the financial and technical resources to comply with the conditions of the GHG permit, the Minister is given the power to impose new conditions or to amend the existing conditions of the permit. The types of conditions that may be imposed will vary depending on the individual circumstances but will, nevertheless, need to relate to ameliorating the risk arising from the indirect change and be consistent with the purpose of the Act. These conditions may include, for example, increased reporting obligations or that certain activities be undertaken.

The chief executive will be notified of an indirect change in control relating to a resource authority holder through a new requirement inserted into section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. An amendment to section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* inserted by the Bill will require the scheme manager to provide a copy of a notice given under section 42 to the chief executive (resources).

Section 42(1) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* currently requires a resource authority holder to notify the scheme manager of a 'changed holder event'. A 'changed holder event' is defined in new section 31A of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to include changes of control under sections 46 and 50AA of the *Corporations Act 2001* (Cth). Failure to comply with the requirement is an offence under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

If, for whatever reason, a notice of a changed holder event is not received under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, but the Minister reasonably believes that a change has happened, the Minister can require the holder of the GHG permit to give the Minister information or a document about whether or not the change has happened.

The Minister also has the power to require the GHG permit holder to give the Minister any information or document required by the Minister to make a decision about imposing a new or amended condition under this section.

The Minister must give the GHG permit holder a written notice about the information or documents required, and give the holder at least 10 business days to comply. This period may be extended by the Minister.

A procedural fairness process is also provided that requires the Minister to advise the holder of a proposed decision to impose a new or amended condition resulting from the change of control, and the reasons for the decision. The GHG permit holder may make a submission about the proposed decision within 10 business days, or a longer period extended by the Minister.

In deciding whether to impose new or varied conditions on the GHG permit, the Minister must consider any information or documents that were given by the GHG permit holder in response to a requirement to give that material, as well as any submission made by the holder.

If the Minister decides to impose a new or varied condition on the GHG permit, the Minister must give a notice stating the decision and the reasons for the decision.

Insertion of new s 115

Clause 48 inserts a new section 115 in the *Greenhouse Gas Storage Act 2009* to require the Minister to reject a permit-related application for a GHG lease if the Minister decides the person making the application is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the GHG lease. On rejection of the application, the Minister must give the person a notice about the decision.

Insertion of new s 126A

Clause 49 inserts a new section 126A in the *Greenhouse Gas Storage Act 2009* to require the Minister to reject a tender for a proposed GHG lease if the Minister decides the tenderer is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the GHG lease. On rejection of the tender, the Minister must give the tenderer a notice about the decision.

Insertion of new s 173A

Clause 50 inserts new section 173A in the *Greenhouse Gas Storage Act 2009*. The inserted section gives the Minister a discretionary power to assess whether the

holder of GHG lease has the financial and technical resources to comply with the conditions of the lease if the Minister reasonably believes, or is notified, that there has been an indirect change in the control of the lease holder.

The intent is to mitigate the risk that a GHG lease will be unable to meet its regulatory obligations under their lease because of an indirect change in the control of the holder.

Indirect changes of control are defined in the provision as a change that happens under section 50AA (Control) or section 46 (What is a subsidiary) of the *Corporations Act 2001* (Cth). Under these sections, controlling entities are essentially identified as entities that can exert practical influence or power over another entity's financial and operating policies, or parent companies who control the board of its subsidiary, or hold the majority voting rights or shares in its subsidiary.

These indirect changes of control have the potential to impact on the ability of a lease holder to comply with their lease obligations, particularly if the controlling entity controls or exerts influence over the financial and operating affairs of the lease holder.

Indirect changes of control are not currently subject to assessment under the Resource Acts as the ultimate holder of the resource authority does not change. Further, the State's ability to regulate these transactions is limited as they are regulated under the *Corporations Act 2001* (Cth).

These new amendments enable the Minister to consider whether, after an indirect change of control, the holder of a GHG lease continues to have the financial and technical resources to comply with the conditions of its lease.

If the Minister considers the holder of the lease may not have the financial and technical resources to comply with the conditions of the GHG lease, the Minister is given the power to impose new conditions or to amend the existing conditions of the lease. The types of conditions that may be imposed will vary depending on the individual circumstances but will, nevertheless, need to relate to ameliorating the risk arising from the indirect change and be consistent with the purpose of the Act. These conditions may include, for example, increased reporting obligations or that certain activities be undertaken.

The chief executive will be notified of an indirect change in control relating to a resource authority holder through a new requirement inserted into section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. An amendment to section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* inserted by the Bill will require the scheme manager to provide a copy of a notice given under section 42 to the chief executive (resources).

Section 42(1) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* currently requires a resource authority holder to notify the scheme manager of a 'changed holder event'. A 'changed holder event' is defined in new section 31A of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to include changes of control under sections 46 and 50AA of the *Corporations Act 2001* (Cth).

Failure to comply with the requirement is an offence under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

If, for whatever reason, a notice of a changed holder event is not received under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, but the Minister reasonably believes that a change has happened, the Minister can require the holder of the GHG lease to give the Minister information or a document about whether or not the change has happened.

The Minister also has the power to require the GHG lease holder to give the Minister any information or document required by the Minister to make a decision about imposing a new or amended condition under this section.

The Minister must give the GHG lease holder a written notice about the information or documents required, and give the holder at least 10 business days to comply. This period may be extended by the Minister.

A procedural fairness process is also provided that requires the Minister to advise the holder of a proposed decision to impose a new or amended condition resulting from the change of control, and the reasons for the decision. The GHG lease holder may make a submission about the proposed decision within 10 business days, or a longer period extended by the Minister.

In deciding whether to impose new or varied conditions on the GHG lease, the Minister must consider any information or documents that were given by the GHG lease holder in response to a requirement to give that material, as well as any submission made by the holder.

If the Minister decides to impose a new or varied condition on the GHG lease, the Minister must give a notice stating the decision and the reasons for the decision.

Amendment of ch 6, hdg (Conferences, investigations and enforcement)

Clause 51 removes a reference to conferences in the heading to chapter 6 of the *Greenhouse Gas Storage Act 2009*. This amendment is consequential to consolidating the conference provisions in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Omission of ch 6, pt 1A (Conferences with eligible claimants or owners and occupiers)

Clause 52 removes the entirety of chapter 6, part 1A of the *Greenhouse Gas Storage Act 2009*, which contained the provisions for conferences with eligible claimants or owners and occupiers. These provisions are consolidated in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 407 (Offences under Act are summary)

Clause 53 amends section 407 of the *Greenhouse Gas Storage Act 2009*, to update the period within which a proceeding for an offence must be started, and align this

with the period under other Resource Acts, which are also being amended by the Bill.

A proceeding for an offence will now be required to be commenced either within one year after the commission of the offence or within one year after the offence comes to the complainants knowledge (but within two years after the commission of the offence). This will provide departmental officers involved in the investigation and prosecution of offences a reasonable period in which to investigate and commence proceedings.

Insertion of new ch 8, pt 5

Clause 54 inserts a new part 5 in chapter 8 of the *Greenhouse Gas Storage Act 2009*, which contains transitional provisions for amendments made in the Bill.

New section 450 provides that the power of the Minister to impose a new or amended condition on a GHG permit under section 92A or a GHG lease under section 173A applies to existing permits and leases, but only if the indirect change of control occurs after the commencement.

New section 451 provides a transitional provision for the circumstance where an authorised officer had asked parties to attend a conference before commencement, and at commencement the conference had not taken place. Under this circumstance, the conference is to take place under chapter 6, part 1A of the *Greenhouse Gas Storage Act 2009*, as in force immediately before commencement. To remove all doubt, this provision also clarifies that the new provisions on conferences which the Bill inserts into chapter 3, part 8 of the *Mineral and Energy Resources (Common Provisions) Act 2014* do not apply to that conference.

Amendment of sch 2 (Dictionary)

Clause 55 amends the dictionary to remove obsolete definitions.

Part 7 – Amendment of Mineral and Energy Resources (Common Provisions) Act 2014

Act amended

Clause 56 provides that this part of the Bill amends the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 3 (Main purposes)

Clause 57 inserts a new subparagraph into section 3 to expand the main purposes of the *Mineral and Energy Resources (Common Provisions) Act 2014* to include providing for the disqualification of persons from the grant or transfer of particular resource authorities.

The clause also includes consequential renumbering.

Amendment of s 4 (How main purposes are achieved)

Clause 58 inserts a new subparagraph into section 4(1) to support the additional purpose statement relating to the disqualification of persons from the grant or transfer of particular resource authorities.

This clause also includes other minor and consequential amendments.

Amendment of s 16 (What is a dealing)

Clause 59 amends section 16 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to expand the definition of a dealing to include any circumstance which is prescribed by regulation and that affects the resource authority. A circumstance could be, for example, if the resource authority is held by a body corporate, a change in the body corporate's name.

Replacement of s 17 (Prescribed dealings require registration)

Clause 60 omits the existing section 17 of the *Mineral and Energy Resources (Common Provisions) Act 2014*, and inserts new sections 17 and 17A.

New section 17 requires prescribed dealings to be approved by the Minister and registered to have effect. This amendment simplifies and clarifies the drafting of the previous section 17 without materially changing its effect.

New section 17A provides that a regulation may prescribe a notifiable dealing, which requires notification to chief executive of the dealing. The dealing takes effect upon registration by the chief executive.

Together, sections 17 and 17A establish a framework which separates dealings into prescribed dealings that require approval of the Minister and registration by the chief executive, and notifiable dealings which only require notification to the chief executive and subsequent registration.

Amendment of s 19 (Application for Minister's approval to register dealing)

Clause 61 amends the existing section 19 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to clarify that the Minister's approval is only required for a prescribed dealing (rather than all dealings).

The amendments also provide that if a Ministerial approval is given, then the chief executive must register the prescribed dealing as soon as possible. The Ministerial approval, however, is subject to the limitations provided in sections 20 and 21.

The clause also includes some consequential renumbering of subclauses and corrects cross-references to chapters amended by this Bill, which are required because of the creation of notifiable dealings.

Insertion of new ss 19A and 19B

Clause 62 inserts new sections 19A and 19B in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

New section 19A provides that the Minister must reject an application to transfer a resource authority, or a share in a resource authority, if the Minister decides the intended transferee is disqualified under section 196C of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

This section does not apply to an application that is a transfer of a share in a resource authority if the intended transferee is an existing shareholder in the authority, and the person transferring the share continues to remain a shareholder in the authority (i.e. they are only transferring part of their share in the authority to an existing shareholder). This is because the entities which hold the tenure will remain the same after the transfer, albeit in different shares.

New section 19B provides the process for an entity to notify the chief executive of a notifiable dealing. The process requires the notice to be in the approved form, and accompanied by the fee prescribed by regulation.

Once a notice has been given, the chief executive must register the prescribed dealing as soon as possible subject to the limitations in sections 20 and 21.

Section 19B also re-introduces the regulation-making power that was omitted from section 19. This regulation-making power allows the ordinary rule about entities that may give notice to the chief executive of a notifiable dealing to be changed.

New section 19B also provides that the chief executive may only register the proposed notifiable dealing if the proposed transferee is an eligible person under the relevant Resource Act and a registered suitable operator under the *Environmental Protection Act 1994*.

Replacement of s 20 (Unpaid royalties prevent transfer of resource authority)

Clause 63 omits the existing section 20 of the *Mineral and Energy Resources (Common Provisions) Act 2014* which previously dealt only with prescribed dealings, and replaces it with an expanded section 20 which deals with both notifiable and prescribed dealings.

The section ensures that a prescribed or notifiable dealing cannot be registered, and has no effect, until any royalty payable by the holder of the resource authority has been paid.

Amendment of s 20A (Failure to pay contribution to scheme fund or give surety prevents registration of prescribed dealing)

Clause 64 amends the existing section 20A of the *Mineral and Energy Resources (Common Provisions) Act 2014* which previously dealt only with prescribed dealings to also deal with the newly created class of notifiable dealings.

Amendment, relocation and renumbering of s 22 (Effect of registration and Minister's approval)

Clause 65 amends section 22 of the *Mineral and Energy Resources (Common Provisions) Act 2014* by expanding its scope to provide that the registration of a notifiable dealing or approval of the Minister does not give a dealing more effect than it would otherwise have.

This amendment simply extends section 22 so that it continues to have the effect it had before the separation of dealings into 'notifiable' and 'prescribed' dealings.

This provision puts beyond doubt that the Minister's approval of a prescribed dealing, or registration of a prescribed or notifiable dealing by the chief executive, is not taken to validate or give effect to that dealing. The relevant steps within the part that are required to be met, must be undertaken and satisfied before the dealing takes effect or is valid. This includes the requirement under the part that there are no unpaid royalties.

The amendment also relocates section 22 to chapter 2, part 1, and renumbers the section as section 23A.

Renumbering of ss 20A and 21

Clause 66 renumbers sections 20A and 21 of the *Mineral and Energy Resources (Common Provisions) Act 2014* as sections 21 and 22.

Amendment of s 32 (What is an associated agreement)

Clause 67 amends section 32 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to ensure that the new notifiable dealings are excluded from the definition of an associated agreement.

The amendment also includes consequential renumbering.

Insertion of new ch 3, pt 8

Clause 68 inserts a new part 8 in chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*. These provisions create a single set of conference provisions that cover resource authorities across the Resource Acts. The provisions are substantially the same as the conference provisions that have been repealed from the other Resource Acts.

New section 101D provides that certain parties may give a notice to an authorised officer, requesting a conference, when they have a particular concern that relates to a resource authority.

An owner or occupier of land that may be affected by a resource authority may give notice to an authorised officer relating to:

- A concern about the authority of the resource authority holder (or a person acting, or purporting to act for the resource authority holder) to enter or be on the land;
- A concern about activities of the resource authority holder (or a person acting, or purporting to act for the resource authority holder) that may affect the land; or
- A concern about the conduct of the resource authority holder (or a person acting, or purporting to act for the resource authority holder).

A resource authority holder may also give notice to an authorised officer relating to a concern involving the holder and an owner or occupier of land.

New section 101E provides that if an officer receives a notice about a concern under the new section 101D, or is aware of a concern about a resource authority, they may ask various persons (each referred to as a ‘party’) to participate in a conference conducted by the authorised officer.

The persons who may participate in the conference are the resource authority holder, the owner or occupier of land that may be affected by the resource authority, or another person interested in the concern.

New section 101F provides that the conference must be conducted under the prescribed requirements, which are inserted by this Bill into section 35A of the *Mineral and Energy Resources (Common Provisions) Regulation 2016*.

This section also provides that the authorised officer must endeavour to help the parties attending the conference to reach an early and inexpensive settlement relating to the concern that is the subject of the conference.

If a party does not attend the conference, the authorised officer may continue to conduct the conference, and a party who attends the conference may apply to the Land Court for an order requiring a party who did not attend the conference to pay the attending party’s reasonable costs of attending. The Land Court must decide the amount of the costs, but is prevented from making an order for a party to pay attendance costs if the party has a reasonable excuse for not attending the conference.

Finally, nothing said by a person at the conference is admissible as evidence in a proceeding without the person’s consent.

Amendment of s 103 (Definitions for ch 4)

Clause 69 amends section 103 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to omit the definition of ‘mining safety legislation’ as the definition has been moved to the dictionary.

Omission of ch 4, pt 6, div 2 (Ministerial powers)

Clause 70 omits chapter 4, part 6, division 2 of the *Mineral and Energy Resources (Common Provisions) Act 2014* as the matters covered by this division will now be captured in the new chapter 5 which is inserted by the Bill.

This division previously provided the Minister with the power to require a resource authority holder to give the Minister a copy of an agreed joint development plan, or require such a plan to be amended. The division also provided guidance and timeframes about those powers.

Renumbering of ch 4, pt 6, div 3 (Compensation)

Clause 71 renumbers chapter 4, part 6, division 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* as chapter 4, part 6, division 2.

Renumbering of chs 5 to 8

Clause 72 renumbers chapters 5, 6, 7 and 8 of the *Mineral and Energy Resources (Common Provisions) Act 2014* as chapters 6, 8, 9 and 10.

Insertion of new ch 5

Clause 73 inserts a new chapter 5 into the *Mineral and Energy Resources (Common Provisions) Act 2014* after section 174.

New section 174A provides the definitions for the chapter.

New section 174B provides that the Minister may by written notice, require a resource authority holder to whom an agreed plan applies to give the Minister a copy of the agreed plan within 30 business days of the notice. It also provides that this section does not apply if the agreed plan no longer has any effect.

This section replaces some of the provisions that were removed when chapter 4, part 6, division 2 (Ministerial powers) was omitted and expands them to include agreed co-existence plans.

New section 174C provides that the Minister may require a resource authority holder to whom an agreed plan applies to amend the agreed plan.

The section also outlines the criteria the Minister must first consider before deciding to require an amendment, and the requirement that an information notice about the decision must be given.

This section replaces the remainder of the provisions that were removed when chapter 4, part 6, division 2 (Ministerial powers) was omitted and expands them to include agreed co-existence plans.

New section 174D provides the Minister with the power to ask, by written notice, a resource authority holder to give the Minister any information the Minister considers

appropriate to optimise the development and use of the State's resources or to ensure safe mining or operations in the overlapping or co-existing area.

New section 174E provides that if the Minister decides to require an amendment to an agreed plan, then chapter 12, part 2 (Appeals and external review) of the *Petroleum and Gas (Production and Safety) Act 2004* applies with necessary changes.

Relocation and renumbering of ch 4, pt 6, div 4 (Dispute resolution)

Clause 74 relocates chapter 4, part 6, division 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014* and renumbers it as chapter 5, part 3.

Amendment of s 175 (Application of div 4)

Clause 75 amends section 175 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to define the existing disputes captured by the section as 'overlap disputes'. The clause also applies the division to 'co-existence disputes' which are matters contained in new section 271AB of the *Mineral Resources Act 1989*, and sections 400 and 440 of the *Petroleum and Gas (Production and Safety) Act 2004* that are inserted by the Bill.

Amendment of s 176 (Definitions for div 4)

Clause 76 amends section 176 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to omit definitions and insert new definitions for the part.

Amendment of s 178 (Arbitrator's functions)

Clause 77 expands section 178 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to provide that an arbitrator's award for a co-existence dispute must be consistent with optimising the development and use of the State's resources as well as with safety and health requirements under mining safety legislation.

Amendment of s 179 (Expert appointed by arbitrator)

Clause 78 expands section 179 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to provide that for co-existence disputes, the arbitrator may appoint another appropriately qualified person to report to the arbitrator on specific issues.

Insertion of new ch 7

Clause 79 inserts a new chapter 7 in the *Mineral and Energy Resources (Common Provisions) Act 2014*. This chapter introduces disqualification criteria, against which applicants, transferees and associates of applicants and transferees of prescribed resource authorities may be assessed prior to the grant or transfer of a resource authority. The disqualification criteria are intended to allow the Minister to better assess the risk associated with applicants in relation to their ability to adequately manage their tenure and remain compliant with tenure obligations.

Disqualification criteria are introduced to assess a person's risk profile in relation to holding a tenure in Queensland. The policy intent is to disqualify persons or entities that:

- Continually or repeatedly fail to meet their obligations under existing tenures (such as a repeated failure to pay rent), which raises the risk of this happening under future tenures – single instances of non-compliance in the past that did not result in serious consequences will generally not result in an applicant being disqualified;
- Significantly breach the Resource Acts (for example, a breach which has resulted in the cancellation of a tenure);
- Have committed a serious offence against relevant legislation for which a conviction is recorded;
- Have been convicted of fraud or dishonesty offences within the last 10 years; or
- Have significantly mismanaged a business or their own personal financial affairs in the past – for example, if the applicant has been through a liquidation process that led to the disclaiming of a mine, this may result in the disqualification of an applicant.

The disqualification criteria extend to associates of resource authority applicants, including company directors and parent companies, as well as entities that can control or substantially influence the operations of those holding a tenure.

New section 196A sets out the definitions for the new chapter.

New section 196B identifies that the new chapter applies to each of the following prescribed matters:

- An application for the grant of a prescribed resource authority;
- A tender for a prescribed resource authority;
- An application for approval of a transfer of a prescribed resource authority, or the transfer of a share in a prescribed resource authority.

Prescribed resource authorities are defined in the new definitions section 196A by reference to specified tenures – generally exploration and production tenures – which may be granted under the various Resource Acts. The new framework does not apply to tenures like water monitoring authorities, as they are ancillary to exploration and production tenures.

New section 196C outlines that a decision-maker may decide that an applicant for a prescribed matter is disqualified from being granted the resource authority or being transferred the resource authority.

The criteria that may be considered in deciding whether an applicant (or intended transferee) is disqualified from being granted the authority include whether:

- The applicant, or an associate of the applicant, has contravened the *Mineral and Energy (Common Provisions) Act 2014* or a Resource Act, other than chapter 9 of the *Petroleum and Gas (Production and Safety) Act 2004*;

- The applicant, or an associate of the applicant, has been convicted of an offence against certain specified legislation;
- The applicant, or an associate of the applicant, has been convicted of an offence against a corresponding law;
- The applicant, or an associate of the applicant, has, within 10 years before the application was made, been convicted of an offence involving fraud or dishonesty;
- The applicant, or an associate of the applicant, is an insolvent under administration;
- Whether the applicant, or an associate of the applicant, is or was, within 10 years before the application was made, a director of a body corporate that is or was the subject of a winding-up order or for which a controller or administrator is or was appointed;
- The applicant, or an associate of the applicant, is disqualified from managing corporations because of the Corporations Act, part 2D.6.

The criteria are not exhaustive, and the decision-maker may consider any other matter the decision-maker considers relevant, as well as any submissions made by the applicant under new section 196G (as part of the procedural fairness process).

The disqualification criteria also apply to associates of the resource authority applicant or holder. An associate is defined in the new definitions section 196A and includes directors and parent companies, as well as persons or entities who are able to control or substantially influence the operations and decisions about the management of the resource authority. This may extend to related bodies corporate and ultimate holding companies, provided they meet the criteria of being able to control or substantially influence the affairs of the applicant.

A contravention or conviction for an offence mentioned in the disqualification criteria may be disregarded by the decision-maker having regard to a range of mitigating factors, such as:

- The degree of seriousness of the contravention or offence;
- The degree of harm caused by the contravention or offence;
- The length of time that has elapsed from the commission of the contravention or offence;
- The extent to which the applicant or associate was involved in the commission of the contravention or offence; and
- Any other matter the decision-maker considers relevant.

New section 196D provides that the decision-maker may require the applicant to give further information or a document that the decision-maker requires to make a decision under section 196C. The applicant must be given a notice requiring the applicant to comply within a period of at least 10 business days, which may be extended by further notice given to the applicant.

If the applicant does not comply with the requirement, the decision-maker may make a decision under section 196C without the further information or document.

New section 196E provides that the decision-maker may ask the police commissioner for a report about the criminal history of the applicant or an associate of the applicant, but only if the applicant or associate has given their written consent to the request.

The police commissioner must comply with the request to the extent that the information is in the police commissioner's possession, or it is information to which the commissioner has access.

The decision-maker must destroy the report as soon as practicable after the decision under section 196C is made.

New section 196F provides that the decision-maker may require the applicant to pay the reasonable costs of obtaining a criminal history report under section 196E about the applicant or an associate of the applicant. The costs must be no more than the actual costs of obtaining a report.

The decision-maker must refund the money if the decision-maker refuses the application without asking for the report or the applicant withdraws the application before the decision-maker asks for the report.

New section 196G provides procedural fairness to the applicant. Before making a decision under section 196C, the decision-maker must give a notice to the applicant stating:

- The proposed decision;
- The reasons for the proposed decision; and
- That the applicant may, within 20 business days after the notice is given, make submissions to the decision-maker about the proposed decision.

The decision-maker may extend the period for making submissions.

New section 196H provides that if a decision is made to disqualify the applicant under section 196C, the applicant must be given a notice stating the decision and the reasons for the decision.

Insertion of new ch 10, pt 3

Clause 80 inserts a new chapter 10, part 3 in the *Mineral and Energy Resources (Common Provisions) Act 2014* to establish two transitional provisions for the amendments made to notifiable dealings and the new disqualification criteria.

New section 247 provides that if an application was made under section 19 for approval to register a prescribed dealing which would be a notifiable dealing under the new section 19B, and that dealing had not been registered before commencement, the application must be treated as though it were an application to register a notifiable dealing.

This transitional provision ensures that undecided applications that would be notifiable dealings after commencement will be dealt with as notifiable dealings.

New section 248 provides that the power of a decision-maker to decide an applicant is disqualified for a prescribed matter under new section 196C of the *Mineral and Energy Resources (Common Provisions) Act 2014* only applies to resource authority applications, tenders and transfers made after the commencement.

Amendment of sch 2 (Dictionary)

Clause 81 amends the dictionary to insert new definitions and remove obsolete definitions.

Part 8 – Amendment of Mineral and Energy Resources (Common Provisions) Regulation 2016

Regulation amended

Clause 82 provides that this part of the Bill amends the *Mineral and Energy Resources (Common Provisions) Regulation 2016*.

Amendment of s 4 (Prescribed dealings–Act, s 17)

Clause 83 amends section 4 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* by omitting non-assessable transfers and changes to the resource authority holder's name from the list of prescribed dealings. This is because these dealings will now be notifiable dealings.

This clause also includes consequential renumbering.

Insertion of new s 4A

Clause 84 inserts a new section 4A into the *Mineral and Energy Resources (Common Provisions) Regulation 2016* which prescribes non-assessable transfers and changes to the resource authority holder's name as notifiable dealings.

Amendment of s 6 (Transmission by death–Act, s 19)

Clause 85 amends section 6 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* to provide that a dealing that occurs because of the death of a resource authority holder is no longer a prescribed dealing but is now a notifiable dealing.

Amendment of s 7 (Sale by mortgagee–Act, s 19)

Clause 86 amends section 7 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* to provide that a dealing that occurs because of the exercise of a power of sale in relation to a resource authority by a mortgagee or the holder of a charge is no longer a prescribed dealing but is now a notifiable dealing.

Amendment of s 8 (Bankruptcy–Act, s 19)

Clause 87 amends section 8 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* to provide that a dealing that occurs because of the bankruptcy of the resource authority holder is no longer a prescribed dealing but is now a notifiable dealing.

Amendment of s 9 (Administration, receivership or liquidation–Act, s 19)

Clause 88 amends section 9 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* to provide that a dealing that occurs because the resource authority holder has gone into administration, receivership or liquidation is no longer a prescribed dealing but is now a notifiable dealing.

Amendment of s 10 (Deciding application for registration of prescribed dealing that is assessable transfer–Act ss 19 and 194)

Clause 89 inserts a new subparagraph (fa) into section 10(2) of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* to expand what the Minister must consider when deciding an application for approval to register a prescribed dealing that is an assessable transfer.

The additional criteria in new subparagraph (fa) only applies to a transfer of a resource authority that authorises the carrying out of a resource activity under an environmental authority in relation to which an ERC decision has been made. For such transfers, the Minister must consider whether the proposed transferee has the financial resources to fund the estimated rehabilitation cost for the resource activity as stated in the ERC decision. This will mean that the Minister must consider the financial ability of the proposed transferee to fulfil their rehabilitation obligation.

Subparagraphs (fa) and (g) of section 10(2) are consequentially renumbered as (g) and (h) to accommodate the new subparagraph.

A new subsection (7) is also inserted into section 10 which defines ‘ERC decision’ as a decision of the administering authority under section 300 of the *Environmental Protection Act 1994* about the estimated rehabilitation cost for a resource authority.

The intent of these amendments is to mitigate the risk associated with direct transfers of resource authorities by enabling the Minister to consider whether the proposed transferee has the financial capability to comply with the estimated costs of rehabilitation under the tenure.

Amendment of s 11 (Deciding application for registration of prescribed dealing other than assessable transfer–Act ss 19 and 194)

Clause 90 amends section 11 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* to omit two subsections as a consequence of the creation of notifiable dealings.

Amendment of s 15 (Instruments not prevented from being registered—Act, s 26)

Clause 91 provides for consequential amendments to section 15 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* required due to the creation of notifiable dealings.

Insertion of new s 35A

Clause 92 inserts a new section 35A into the *Mineral and Energy Resources (Common Provisions) Regulation 2016*. This section prescribes the requirements for conducting a conference for the new section 101F(2) of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

The authorised officer conducting the conference must give the parties a written notice requesting their attendance at the conference. The notice must state when and where the conference will be held, and the particular concern to be discussed at the conference.

The party given notice of the conference may attend and take part in the conference. However, a party must not be represented by a lawyer at the conference unless each of the other parties attending the conference agrees, and the authorised officer is satisfied that there will be no disadvantage to each other party.

A person who is not a party or a lawyer representing a party is restricted from attending the conference, unless the authorised officer has approved that person's attendance.

Apart from the prescribed requirements in this section, the authorised officer may decide the way in which the conference must be conducted.

Replacement of s 53 (Prescribed arbitration institutes—Act, s 176)

Clause 93 replaces section 53 in the *Mineral and Energy Resources (Common Provisions) Regulation 2016*. This section now defines the entities that are a prescribed arbitration institute for schedule 2 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Insertion of new ch 7

Clause 94 inserts transitional provisions for amendments to the *Mineral and Energy Resources (Common Provisions) Regulation 2016* included in the Bill.

New section 63 provides that any existing applications made under section 19 of the *Mineral and Energy Resources (Common Provisions) Act 2014* for approval to register a prescribed dealing that is an assessable transfer must be decided by the Minister under section 10 of the Regulation as in force before the commencement.

New section 64 provides that if a dealing (which would be a notifiable dealing after commencement) was registered before commencement, the dealing is taken to be a notifiable dealing. This transitional provision is required to provide certainty for these dealings that were registered prior to commencement.

Amendment of sch 2 (Fees)

Clause 95 amends schedule 2 of the *Mineral and Energy Resources (Common Provisions) Regulation 2016* to provide that there is a fee of \$51.15 for an application for registration of a prescribed dealing for a mining claim or notification of a notifiable dealing. A fee of \$136.80 for an application for registration of a prescribed dealing applies for all other types of tenure.

The fees for dealings have not changed, but the amendments are necessary to provide that the existing fees will still apply to notifiable dealings.

Part 9 – Amendment of Mineral and Energy Resources (Financial Provisioning) Act 2018

Act amended

Clause 96 provides that this part amends the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

Insertion of new s 31A

Clause 97 inserts a new section 31A of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

This amendment streamlines the *Mineral and Energy Resources (Financial Provisioning) Act 2018* by locating a common definition for ‘a changed holder event’ within a single section, rather than duplicating the definition in multiple sections within the Act.

The definition of a changed holder event is expanded from what is currently within the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to include a reference to the new notifiable dealing provisions within the *Mineral and Energy Resources (Common Provisions) Act 2014*. This amendment is necessary to ensure that both notifiable and prescribed dealings are dealt with as changed holder events by the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

Amendment of s 32 (Scheme manager may review risk category allocation if changed holder)

Clause 98 amends section 32(1)(c) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to omit the changed holder event matters which are now defined in the new section 31A. Section 32 now references a changed holder event as defined in the new section 31A.

Amendment of s 33 (Application to scheme manager if proposed changed holder)

Clause 99 amends section 33 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to omit the changed holder event matters which are now defined in the new section 31A. Section 33 now references a changed holder event as defined in the new section 31A.

The clause also makes consequential amendments to section 33 to ensure that an application for a changed holder review may be conducted as if any of the changed holder events had occurred. This change is required to ensure that the section applies to both notifiable and prescribed dealings.

Amendment of s 34 (Scheme manager must notify interested entity of indicative changed holder review allocation)

Clause 100 amends section 34 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to omit the changed holder event matters which are now defined in the new section 31A. Section 34 now references a changed holder event as defined in the new section 31A.

Replacement of s 37 (When changed holder review decision takes effect)

Clause 101 replaces the existing section 37 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

Section 37 has been expanded to define when a changed holder review decision takes effect for notifiable and prescribed dealings, and cross-reference the appropriate sections within the *Mineral and Energy Resources (Common Provisions) Act 2014* that have also been amended by the Bill.

The section has also been updated to cross-reference the definition of a changed holder event in new section 31A.

Replacement of s 42 (Holder must give scheme manager notice if changed holder)

Clause 102 replaces the existing section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* with a version of section 42 which cross-references the common definition of a changed holder event in new section 31A.

The new version of section 42 has also been expanded to include notifiable dealings, which are being inserted into the *Mineral and Energy Resources (Common Provisions) Act 2014* by the Bill.

Section 42 has also been amended to require that the scheme manager must provide a copy of the notice of a changed holder event received under section 31A(c) or (d) to the chief executive (resources) within 10 business days. This is required to implement the indirect change of control reforms included in the Bill.

Amendment of sch 1 (Dictionary)

Clause 103 amends the dictionary to insert new definitions and remove an obsolete definition.

Part 10 – Amendment of Mineral Resources Act 1989

Act amended

Clause 104 provides that this part of the Bill amends the *Mineral Resources Act 1989*.

Amendment of s 16 (Land excluded from prospecting permit)

Clause 105 amends section 16 of the *Mineral Resources Act 1989* to provide that an area which has been made the subject of a call for mining lease tenders will be excluded from any prospecting permit which is granted.

This amendment ensures that once an area has been gazetted as a proposed lease area for the tendering of a mining lease, the tendering process cannot be circumvented by another eligible person applying for a prospecting permit over the same area.

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

Clause 106 amends section 51 of the *Mineral Resources Act 1989* to provide that a mining claim cannot be granted over an area which has been made the subject of a call for mining lease tenders.

This amendment ensures that once an area has been gazetted as a proposed lease area for the tendering of a mining lease, the tendering process cannot be circumvented by another eligible person applying for a mining claim over the same area.

Insertion of new s 61A

Clause 107 inserts a new section 61A in the *Mineral Resources Act 1989* to require the Minister to reject an application for a mining claim if the Minister decides the applicant is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the mining claim. On rejection of the application, the Minister must give the applicant a notice about the decision.

Amendment of s 64 (Issue of mining claim notice)

Clause 108 inserts a new subparagraph (c) in section 64(1) of the *Mineral Resources Act 1989*. This section now provides that the chief executive may issue a mining claim notice if, in addition to the existing matters, the chief executive is satisfied the applicant for the mining claim is not disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the mining claim.

Amendment of s 85A (Minister may refuse to grant mining claim if compensation not determined)

Clause 109 amends section 85A of the *Mineral Resources Act 1989* to add an additional circumstance for when the Minister may refuse to grant a mining claim if compensation not determined. The additional circumstance inserted by this clause is when:

- There was an objection (or objections) to a mining claim; and
- The objection was withdrawn under section 71A of the Act before the objection was referred to the Land Court under section 72.

If three months has elapsed since written notice of the withdrawal of the last objection, the Minister may refuse to grant the mining claim if compensation has not been determined or the applicant has not applied to the Land Court to determine compensation.

Amendment of s 132 (Exclusion of land from area of exploration permit if subject to other authority under Act)

Clause 110 amends section 132 of the *Mineral Resources Act 1989* to provide that an area which has been made the subject of a call for mining lease tenders will be excluded from any exploration permit which is subsequently granted.

This amendment ensures that once an area has been gazetted as a proposed lease area for the tendering of a mining lease, the tendering process cannot be circumvented by another person applying for an exploration permit over the same area.

Insertion of new s 133A

Clause 111 inserts a new section 133A in the *Mineral Resources Act 1989* to require the Minister to reject an application for an exploration permit if the Minister decides the applicant is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the permit. On rejection of the application, the Minister must give the applicant a notice about the decision.

Amendment of s 136A (Obtaining exploration permit by competitive tender)

Clause 112 amends section 136A(4) of the *Mineral Resources Act 1989* to provide that the Minister must not publish a gazette notice inviting tenders for an exploration permit for a mineral other than coal over an area which has been made the subject of a call for mining lease tenders.

This amendment eliminates the possibility of conflicting tendering processes being run for the same area of land.

Amendment of s 136C (Call for tenders)

Clause 113 inserts subsection 136C(5)(c) into the *Mineral Resources Act 1989* to provide that the Minister must not publish a gazette notice inviting tenders for an exploration permit for coal over an area which has been made the subject of a call for mining lease tenders.

This amendment eliminates the possibility of conflicting tendering processes being run for the same area of land.

Insertion of new s 136EA

Clause 114 inserts a new section 136EA in the *Mineral Resources Act 1989* to require the Minister to reject a tender for an exploration permit for coal if the Minister decides the tenderer is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the permit. On rejection of the tender, the Minister must give the tenderer a notice about the decision.

Amendment of s 137 (Prescribed criteria for grant of exploration permit)

Clause 115 amends section 137 of the *Mineral Resources Act 1989* by omitting subsections (4) to (6). These subsections are no longer necessary as the new framework under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* for deciding if a resource authority applicant is disqualified from being granted a tenure cover these matters.

Insertion of new ss 137AA and 137AB

Clause 116 inserts new sections 137AA and 137AB in the *Mineral Resources Act 1989*.

New section 137AA provides that the area of an exploration permit does not include land that, under section 137AB, is excluded land for the permit.

New section 137AB allows the Minister to decide excluded land for an exploration permit. This section provides that the Minister may decide land is excluded land for an exploration permit. This power may only be used when the Minister is deciding whether to grant or renew the exploration permit. The excluded land must be within the areas set out in the application for an exploration permit, or in the case of a renewal, in the original area of the permit. The area of excluded land cannot be a whole sub-block.

The Minister may decide the appropriate way to describe excluded land. Land ceases to be excluded land for an exploration permit if:

- The sub-block on which the land is located is relinquished or ceases to be in the area of the exploration permit; or
- A mineral development licence is granted over any of the area of the exploration permit and the land is excluded land for the mineral development licence.

The provision also includes a note that refers to section 176A which provides an application process to add excluded land into an existing exploration permit.

Insertion of new s 141BA

Clause 117 inserts new section 141BA in the *Mineral Resources Act 1989*. The inserted section gives the Minister a discretionary power to assess whether the holder of an exploration permit has the financial and technical resources to comply with the conditions of the permit if the Minister reasonably believes, or is notified, that there has been an indirect change in the control of the permit holder.

The intent is to mitigate the risk that an exploration permit holder will be unable to meet its regulatory obligations under their permit because of an indirect change in the control of the holder.

Indirect changes of control are defined in the provision as a change that happens under section 50AA (Control) or section 46 (What is a subsidiary) of the *Corporations Act 2001* (Cth). Under these sections, controlling entities are essentially identified as entities that can exert practical influence or power over another entity's financial and operating policies, or parent companies who control the board of its subsidiary, or hold the majority voting rights or shares in its subsidiary.

These indirect changes of control have the potential to impact on the ability of a permit holder to comply with their permit obligations, particularly if the controlling entity controls or exerts influence over the financial and operating affairs of the permit holder.

Indirect changes of control are not currently subject to assessment under the Resource Acts as the ultimate holder of the resource authority does not change. Further, the State's ability to regulate these transactions is limited as they are regulated under the *Corporations Act 2001* (Cth).

These new amendments enable the Minister to consider whether, after an indirect change of control, the holder of an exploration permit continues to have the financial and technical resources to comply with the conditions of its permit.

If the Minister considers the holder of the permit may not have the financial and technical resources to comply with the conditions of the exploration permit, the Minister is given the power to impose new conditions or to amend the existing conditions of the permit. The types of conditions that may be imposed will vary depending on the individual circumstances but will, nevertheless, need to relate to ameliorating the risk arising from the indirect change and be consistent with the purpose of the Act. These conditions may include, for example, increased reporting obligations or that certain activities be undertaken.

The chief executive will be notified of an indirect change in control relating to a resource authority holder through a new requirement inserted into section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. An amendment to section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*

inserted by the Bill will require the scheme manager to provide a copy of a notice given under section 42 to the chief executive (resources).

Section 42(1) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* currently requires a resource authority holder to notify the scheme manager of a 'changed holder event'. A 'changed holder event' is defined in new section 31A of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to include changes of control under sections 46 and 50AA of the *Corporations Act 2001* (Cth). Failure to comply with the requirement is an offence under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

If, for whatever reason, a notice of a changed holder event is not received under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, but the Minister reasonably believes that a change has happened, the Minister can require the holder of the exploration permit to give the Minister information or a document about whether or not the change has happened.

The Minister also has the power to require the exploration permit holder to give the Minister any information or document required by the Minister to make a decision about imposing a new or amended condition under this section.

The Minister must give the exploration permit holder a written notice about the information or documents required, and give the holder at least 10 business days to comply. This period may be extended by the Minister.

A procedural fairness process is also provided that requires the Minister to advise the holder of a proposed decision to impose a new or amended condition resulting from the change of control, and the reasons for the decision. The exploration permit holder may make a submission about the proposed decision within 10 business days, or a longer period extended by the Minister.

In deciding whether to impose new or varied conditions on the exploration permit, the Minister must consider any information or documents that were given by the exploration permit holder in response to a requirement to give that material, as well as any submission made by the holder.

If the Minister decides to impose a new or varied condition on the exploration permit, the Minister must give a notice stating the decision and the reasons for the decision.

Amendment of s 148 (Continuation of exploration permit if application for other tenure)

Clause 118 amends section 148 to replace the word 'mining' with 'mineral'. This amendment fixes a minor typographical error.

Amendment of s 182 (Land is excluded from area of mineral development licence if covered by other authority under Act)

Clause 119 amends section 182 of the *Mineral Resources Act 1989* to provide that an area which has been made the subject of a call for mining lease tenders will be excluded from any mineral development licence which is subsequently granted.

This amendment ensures that once an area has been gazetted as a proposed lease area for the tendering of a mining lease, the tendering process cannot be circumvented by another eligible person applying for a mineral development licence over the same area.

Insertion of new s 185A

Clause 120 inserts a new section 185A in the *Mineral Resources Act 1989* to require the Minister to reject an application for a mineral development licence if the Minister decides the applicant is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the mineral development licence. On rejection of the application, the Minister must give the applicant a notice about the decision.

Insertion of new ss 186AA and 186AB

Clause 121 inserts new section 186AA and 186AB in the *Mineral Resources Act 1989*.

New section 186AA provides that the area of a mineral development licence does not include land that, under section 186AB, is excluded land for the licence.

New section 186AB allows the Minister to decide excluded land for a mineral development licence. This power may only be used when the Minister is deciding whether to grant or renew the mineral development licence. The excluded land must be within the area set out in the application for a mineral development licence, or in the case of a renewal, in the original area of the licence. The Minister may decide the appropriate way to describe excluded land. Land ceases to be excluded land for a mineral development licence if the land on which the excluded land is located is relinquished or the land ceases to be in the area of the mineral development licence.

The provision also includes a note that refers to section 226AA which provides an application process to add excluded land into an existing mineral development licence.

Insertion of new s 194ABA

Clause 122 inserts new section 194ABA in the *Mineral Resources Act 1989*. The inserted section gives the Minister a discretionary power to assess whether the holder of a mineral development licence has the financial and technical resources to comply with the conditions of the licence if the Minister reasonably believes, or is notified, that there has been an indirect change in the control of the licence holder.

The intent is to mitigate the risk that a mineral development licence holder will be unable to meet its regulatory obligations under their licence because of an indirect change in the control of the holder.

Indirect changes of control are defined in the provision as a change that happens under section 50AA (Control) or section 46 (What is a subsidiary) of the *Corporations Act 2001* (Cth). Under these sections, controlling entities are essentially identified as entities that can exert practical influence or power over another entity's financial and operating policies, or parent companies who control the board of its subsidiary, or hold the majority voting rights or shares in its subsidiary.

These indirect changes of control have the potential to impact on the ability of a licence holder to comply with their licence obligations, particularly if the controlling entity controls or exerts influence over the financial and operating affairs of the licence holder.

Indirect changes of control are not currently subject to assessment under the Resource Acts as the ultimate holder of the resource authority does not change. Further, the State's ability to regulate these transactions is limited as they are regulated under the *Corporations Act 2001* (Cth).

These new amendments enable the Minister to consider whether, after an indirect change of control, the holder of a mineral development licence continues to have the financial and technical resources to comply with the conditions of its licence.

If the Minister considers the holder of the licence may not have the financial and technical resources to comply with the conditions of the mineral development licence, the Minister is given the power to impose new conditions or to amend the existing conditions of the licence. The types of conditions that may be imposed will vary depending on the individual circumstances but will, nevertheless, need to relate to ameliorating the risk arising from the indirect change and be consistent with the purpose of the Act. These conditions may include, for example, increased reporting obligations or that certain activities be undertaken.

The chief executive will be notified of an indirect change in control relating to a resource authority holder through a new requirement inserted into section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. An amendment to section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* inserted by the Bill will require the scheme manager to provide a copy of a notice given under section 42 to the chief executive (resources).

Section 42(1) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* currently requires a resource authority holder to notify the scheme manager of a 'changed holder event'. A 'changed holder event' is defined in new section 31A of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to include changes of control under sections 46 and 50AA of the *Corporations Act 2001* (Cth). Failure to comply with the requirement is an offence under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

If, for whatever reason, a notice of a changed holder event is not received under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, but the Minister reasonably believes that a change has happened, the Minister can require the holder of the mineral development licence to give the Minister information or a document about whether or not the change has happened.

The Minister also has the power to require the mineral development licence holder to give the Minister any information or document required by the Minister to make a decision about imposing a new or amended condition under this section.

The Minister must give the mineral development licence holder a written notice about the information or documents required, and give the holder at least 10 business days to comply. This period may be extended by the Minister.

A procedural fairness process is also provided that requires the Minister to advise the holder of a proposed decision to impose a new or amended condition resulting from the change of control, and the reasons for the decision. The mineral development licence holder may make a submission about the proposed decision within 10 business days, or a longer period extended by the Minister.

In deciding whether to impose new or varied conditions on the mineral development licence, the Minister must consider any information or documents that were given by the mineral development licence holder in response to a requirement to give that material, as well as any submission made by the holder.

If the Minister decides to impose a new or varied condition on the mineral development licence, the Minister must give a notice stating the decision and the reasons for the decision.

Amendment of s 230 (Plant remaining on former mineral development licence may be sold etc.)

Clause 123 amends section 230 of the *Mineral Resources Act 1989* to provide that the Minister (rather than the chief executive) may sell, dispose of, or destroy plant (rather than directing the chief executive to do so). This amendment also provides that the Minister (rather than the chief executive) may pay amounts as unclaimed moneys. These amendments do not materially change the intent of the section.

Amendment of s 232 (Eligible person may apply for mining lease)

Clause 124 amends section 232 of the *Mineral Resources Act 1989* so that it interacts with the new chapter 6, part 1B to ensure that a person may not lodge, unless they are the preferred tenderer, a mining lease application over an area that is the subject of a call for mining tenders.

Insertion of new s 233A

Clause 125 inserts a new section 233A in the *Mineral Resources Act 1989* to require the Minister to reject an application for a mining lease if the Minister decides the applicant is disqualified under chapter 7 of the *Mineral and Energy Resources*

(Common Provisions) Act 2014 from being granted the lease. On rejection of the application, the Minister must give the applicant a notice about the decision.

Amendment of s 245 (Application for grant of mining lease)

Clause 126 is a consequential amendment required as a result of the insertion of new section 246 in the *Mineral Resources Act 1989*.

Insertion of new s 246

Clause 127 inserts new section 246 into the *Mineral Resources Act 1989*.

New section 246 sets out the additional requirement for particular mining lease applications for a prescribed mineral. A mining lease application for a mineral must include an initial development plan that complies with the prescribed requirements in the following three circumstances. If:

- An applicant of a proposed mining lease proposes to mine a threshold amount of a prescribed mineral;
- The proposed mining lease will be part of an existing mining project that is comprised of prescribed mineral mining leases; or
- The proposed mining lease will be part of an existing or proposed mining project which intends to mine a threshold amount of a prescribed mineral in one or more of the first five lease years.

Where a proposed mining lease application will form part of an existing mining project comprised of prescribed mineral mining leases, the applicant may include a later development plan instead of an initial development plan, if they choose to have one development plan covering the entire mining project.

The Bill inserts new chapter 6, part 1A in the *Mineral Resources Act 1989* that sets out the development plan requirements for prescribed mineral mining leases.

Amendment of s 248 (Applicant must obtain consent or views of existing authority holders)

Clause 128 amends section 248 of the *Mineral Resources Act 1989* to provide that the section is subject to the new section 271AB which allows the Minister to grant a specific purpose mining lease or transportation mining lease in circumstances where consent of the existing authority holder has not been obtained.

The section also includes a clarifying amendment to replace 'application can' with 'mining lease can' as well as consequential renumbering of subsections.

Amendment of s 252 (Issue of mining lease notice)

Clause 129 inserts a new subparagraph (c) in section 252(1) of the *Mineral Resources Act 1989* to provide that the chief executive may issue a mining lease notice if, in addition to the existing matters, the chief executive is satisfied the

applicant for the mining lease is not disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the lease.

Amendment of s 271A (Deciding mining lease application)

Clause 130 amends section 271A of the *Mineral Resources Act 1989* to clarify that the mining lease may only be granted if the proposed development plan is approved for the proposed mining lease. This applies to an application for:

- A prescribed mineral mining lease;
- An application for a coal mining lease; or
- An application for an oil shale mining lease.

Insertion of new s 271AB

Clause 131 inserts a new section 271AB in the *Mineral Resources Act 1989*.

The new section creates a power for the Minister to grant a mining lease (the later mining lease) that is a specific purpose mining lease or transportation mining lease over land in the area of an existing exploration permit, mineral development licence or mining lease (existing authority), despite the applicant having not obtained the consent of the existing authority holder.

The Minister may only grant the later mining lease if satisfied that the authorised activities for the later mining lease can be carried out in a way that is compatible with the existing authority, and that the co-existence of the two authorities will optimise the development and use of the State's resources to maximise the benefit for all Queenslanders.

The section provides that the Minister may require the later applicant or the existing authority holder to provide any information or document that the Minister requires to make a decision. The document or information must be supplied within 10 business days. The Minister may extend that period by notice.

The later mining lease holder, if granted a lease under this section, has limited rights and may only carry out activities within the area of the existing authority only if carrying out of those activities is consistent with an agreed co-existence plan.

The section provides the requirements of a co-existence plan, and requires both parties to negotiate in good faith and use all reasonable endeavours to reach agreement.

The later mining lease holder must give notice to the chief executive, within 20 business days of the plan being in place, of the following matters:

- That the plan is in place;
- The period for which the plan has effect; and
- Any other information prescribed by regulation.

If a coexistence plan cannot be agreed within three months, the later mining lease applicant may apply for arbitration of the dispute. Alternatively, both parties may

jointly apply for arbitration at any time. Compliance with an agreed co-existence plan becomes a condition of tenure for both authorities.

The section also provides the definitions necessary for the section to operate.

Insertion of new s 276C

Clause 132 inserts new section 276C in the *Mineral Resources Act 1989*. The inserted section gives the Minister a discretionary power to assess whether the holder of a mining lease has the financial and technical resources to comply with the conditions of the lease if the Minister reasonably believes, or is notified, that there has been an indirect change in the control of the lease holder.

The intent is to mitigate the risk that a mining lease holder will be unable to meet its regulatory obligations under their lease because of an indirect change in the control of the holder.

Indirect changes of control are defined in the provision as a change that happens under section 50AA (Control) or section 46 (What is a subsidiary) of the *Corporations Act 2001* (Cth). Under these sections, controlling entities are essentially identified as entities that can exert practical influence or power over another entity's financial and operating policies, or parent companies who control the board of its subsidiary, or hold the majority voting rights or shares in its subsidiary.

These indirect changes of control have the potential to impact on the ability of a lease holder to comply with their lease obligations, particularly if the controlling entity controls or exerts influence over the financial and operating affairs of the lease holder.

Indirect changes of control are not currently subject to assessment under the Resource Acts as the ultimate holder of the resource authority does not change. Further, the State's ability to regulate these transactions is limited as they are regulated under the *Corporations Act 2001* (Cth).

These new amendments enable the Minister to consider whether, after an indirect change of control, the holder of a mining lease continues to have the financial and technical resources to comply with the conditions of its lease.

If the Minister considers the holder of the lease may not have the financial and technical resources to comply with the conditions of the mining lease, the Minister is given the power to impose new conditions or to amend the existing conditions of the lease. The types of conditions that may be imposed will vary depending on the individual circumstances but will, nevertheless, need to relate to ameliorating the risk arising from the indirect change and be consistent with the purpose of the Act. These conditions may include, for example, increased reporting obligations or that certain activities be undertaken.

The chief executive will be notified of an indirect change in control relating to a resource authority holder through a new requirement inserted into section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. An amendment to

section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* inserted by the Bill will require the scheme manager to provide a copy of a notice given under section 42 to the chief executive (resources).

Section 42(1) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* currently requires a resource authority holder to notify the scheme manager of a 'changed holder event'. A 'changed holder event' is defined in new section 31A of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to include changes of control under sections 46 and 50AA of the *Corporations Act 2001* (Cth). Failure to comply with the requirement is an offence under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

If, for whatever reason, a notice of a changed holder event is not received under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, but the Minister reasonably believes that a change has happened, the Minister can require the holder of the mining lease to give the Minister information or a document about whether or not the change has happened.

The Minister also has the power to require the mining lease holder to give the Minister any information or document required by the Minister to make a decision about imposing a new or amended condition under this section.

The Minister must give the mining lease holder a written notice about the information or documents required, and give the holder at least 10 business days to comply. This period may be extended by the Minister.

A procedural fairness process is also provided that requires the Minister to advise the holder of a proposed decision to impose a new or amended condition resulting from the change of control, and the reasons for the decision. The mining lease holder may make a submission about the proposed decision within 10 business days, or a longer period extended by the Minister.

In deciding whether to impose new or varied conditions on the mining lease, the Minister must consider any information or documents that were given by the mining lease holder in response to a requirement to give that material, as well as any submission made by the holder.

If the Minister decides to impose a new or varied condition on the mining lease, the Minister must give a notice stating the decision and the reasons for the decision.

Amendment of s 277 (Provision of security)

Clause 133 amends section 277 of the *Mineral Resources Act 1989* to provide that security for a mining lease must be provided before the grant or renewal of a mining lease may be approved. This amendment makes the requirement to pay security prior to grant of the mining lease consistent with requirements for other mining tenements.

The clause also amends other parts of the provision as a consequence of this amendment.

Amendment of s 279A (Minister may refuse to grant mining lease if compensation not determined)

Clause 134 amends section 279A of the *Mineral Resources Act 1989* to add an additional circumstance for when the Minister may refuse to grant a mining lease if compensation not determined. The additional circumstance inserted by this clause is when:

- There was an objection (or objections) to a mining lease; and
- The objection was withdrawn under section 261 of the Act before the objection was referred to the Land Court under section 265.

If three months has elapsed since written notice of the withdrawal of the last objection, the Minister may refuse to grant the mining lease if compensation has not been determined or the applicant has not applied to the Land Court to determine compensation.

Insertion of new s 286AA

Clause 135 inserts new section 286AA in the *Mineral Resources Act 1989*.

New section 286AA sets out the additional requirements for a prescribed mineral mining lease renewal application. A renewal application for a prescribed mineral mining lease will require a development plan in two circumstances.

The first circumstance is when the renewal application is for a prescribed mineral mining lease. In this circumstance, the applicant will already have a development plan in place for the lease. The applicant must include a later development plan with the renewal application which complies with the later development plan requirements. The application must state whether the current development plan for the lease has been complied with; if the development plan has not been complied with, details and reasons for each noncompliance must be provided.

The second circumstance is when an initial development plan must be included with the renewal application for a prescribed mineral. This applies if during one or more of the first 5 years of the renewed term, the:

- Holder of the renewal mining lease application proposes to mine the threshold amount of a prescribed mineral in a lease year in one or more of the first five lease years; or
- Application for the renewal of a mining lease proposes to be part of a mining project that proposes to mine the threshold amount of a prescribed mineral in a lease year in one or more of the first five lease years.

The Bill inserts new chapter 6, part 1A in the *Mineral Resources Act 1989* that sets out the development plan requirements for prescribed mineral mining leases.

If the renewal application is lodged less than 6 months before the end of the term of the mining lease, the fee will be 10 times the prescribed renewal fee.

This section also clarifies that the renewal application for a mining lease cannot be made after the mining lease has ended.

Amendment of s 286A (Decision on application)

Clause 136 amends section 286A of the *Mineral Resources Act 1989* to clarify that the application to renew a mining lease may only be granted if the proposed development plan for the mining lease is approved. This applies to an application for renewal of a:

- Prescribed mineral mining lease;
- Coal mining lease; or
- Oil shale mining lease.

Amendment of s 286C (Continuation of lease while application being dealt with)

Clause 137 amends section 286C of the *Mineral Resources Act 1989* to provide that the renewal application for a prescribed mineral mining lease remains in force until the application is withdrawn, refused or granted. This means if the plan period for the current development plan ends during this time, it will remain in force until a decision on the application has been made.

Amendment of s 313 (Application for approval to remove mineral and property)

Clause 138 amends section 313 of the *Mineral Resources Act 1989* to provide that applications to remove mineral or property from the land should be directed to the Minister (rather than the chief executive). This amendment does not materially change the intent of the section.

Amendment of s 314 (Property remaining on former mining lease may be sold)

Clause 139 amends section 314 of the *Mineral Resources Act 1989* to provide that the Minister (rather than the chief executive) may sell, dispose of, or destroy property remaining on a former mining lease. This amendment does not materially change the intent of the section.

Amendment of s 316 (Mining lease for transportation through land)

Clause 140 amends section 316 of the *Mineral Resources Act 1989* to require that an application for a mining lease under this section, if proposed to cover the area of an existing mining lease, must be accompanied by the consent of the lease holder. This requirement for consent, however, is subject to the new section 271AB which provides that the Minister has the power to grant the mining lease application without the consent of the existing authority holder in certain circumstances.

Section 316 has also been amended to provide that a mining lease for transportation cannot be granted over an area which has been made the subject of a call for mining lease tenders. This ensures that once an area has been gazetted as a proposed lease area for the tendering of a mining lease, another person cannot apply for a

mining lease for transportation over the area and thereby circumvent the tendering process.

Renumbering of s 318 (Improvement restoration for mining lease)

Clause 141 renumbers section 318 of the *Mineral Resources Act 1989* as section 317A.

Insertion of new ch 6, pts 1A and 1B

Clause 142 inserts new part 1A and part 1B into chapter 6 of the *Mineral Resources Act 1989*.

Part 1A inserts a requirement for development plans for particular mining leases that extract prescribed minerals.

New section 317B sets out the function and purpose of development plans for prescribed mineral mining leases. It outlines that the purpose of a development plan is to provide the Minister with sufficient information to make resource management decisions and ensure that there is appropriate development of the minerals specified in the lease.

The section also outlines that, for prescribed mineral mining leases that are part of a mining project, development plans may relate to more than one prescribed mineral mining lease. The section also clarifies that once a development plan is approved, it replaces any existing current development plan for the mining lease.

New section 317C defines when a granted or renewed mining lease becomes a 'prescribed mineral mining lease'.

A mining lease will become a prescribed mineral mining lease in two circumstances.

The first circumstance is if there was already a development plan in place for the lease when it was granted or renewed. This includes circumstances where a mining lease applicant has received approval of a development plan prior to having their mining lease application approved because they anticipated that they would mine at least or in exceedance of the threshold for any prescribed mineral (whether as part of a project or individually). It should be noted that applicants for mining leases that anticipate mining the threshold amount of a prescribed mineral are required to have an approved development plan in place prior to the lease's grant due to amendments made to section 271A of the *Mineral Resources Act 1989* by this Bill.

The second circumstance is where, at least once in the past project or lease year (referred to in this section as a 'threshold year'), a mining lease holder has mined the threshold amount of a prescribed mineral. Lease year and project year are defined in the dictionary contained in schedule 2.

This section clarifies that a prescribed mineral mining lease continues as a prescribed mineral mining lease even in circumstances where the threshold is not met. That is, if the threshold amount is not mined in a project or lease year, the

development plan requirements will still apply to the mining lease. However, a mining lease may stop being a prescribed mineral mining lease in circumstances outlined in new section 317X.

New section 317D outlines when a prescribed mineral mining lease is a *new* prescribed mineral mining lease. A mining lease becomes a new prescribed mineral mining lease:

- At the end of the first threshold year (defined in section 317C) under which the threshold amount for a prescribed mineral was mined; and
- Ends following the approval of the initial development plan for the lease or a decision to refuse to approve the plan and the initial plan period has ended.

The section also outlines that the initial plan period for a new prescribed mineral mining lease is six months from the end of the threshold year under which a threshold amount for a prescribed mineral was mined. In effect, this six month period is the period in which a new prescribed mineral mining lease holder must ensure it has a development plan in place.

New section 317E clarifies that a development plan for a prescribed mineral mining lease is its current approved plan (either its initial development plan or later development plan). The period that applies to the development plan is its 'plan period'.

New section 317F outlines that it is a condition of the mining lease for a prescribed mineral mining lease holder to have a development plan for the lease.

New section 317G provides that it is a condition of each prescribed mineral mining lease that its holder must comply with the development plan for the lease.

New section 317H establishes the requirements for compliance for a new prescribed mineral mining lease holder that must prepare a proposed initial development plan for approval.

This section provides that the condition on prescribed mineral mining lease holders to have a development plan for the lease (section 317F), as well as the obligation to comply with the development plan (section 317G), is complied with by a new prescribed mineral mining lease only if a proposed initial development plan:

- Has been lodged within the 6 month period that applies after a mining lease becomes a new prescribed mineral mining lease; and
- The initial development plan complies with the prescribed requirements; and
- Is accompanied by the relevant fee.

This section also provides that if a decision to refuse a proposed initial development plan is made and the initial plan period for the lease has not ended, a new prescribed mineral mining lease holder may lodge another proposed initial development plan. However, the new application must be made within the initial plan period.

This section also outlines what the relevant fee for a proposed initial development plan for a new prescribed mineral mining lease. If the proposed plan is lodged on

time, the relevant fee is the fee prescribed by regulation. If the application is lodged late, the relevant fee will be 10 times the prescribed fee.

New section 317I outlines the consequences for new prescribed mineral mining lease holders that do not, within the initial plan period:

- Comply with the obligation to lodge a proposed initial development plan; or
- Lodge another proposed initial development plan following a previous application's refusal.

The new prescribed mineral mining lease holder must be given an information notice requiring them to lodge a proposed initial development plan within 40 business days of the notice being given.

The requirement to lodge the proposed initial development plan must be complied with, and if it is not, the holder's lease is cancelled. However, the cancellation does not take effect until the holder is given notice of the cancellation.

New section 317J outlines the initial development plan requirements for proposed mining leases. That is, it outlines the requirements for mining leases that are currently being applied for (rather than existing mining leases, to which the requirements in new section 317K apply).

The period for the plan will be five years from the start of the prescribed mineral mining lease's term, unless the term of the lease is shorter, in which case the period will be until the end of the term.

New section 317K outlines the initial development plan requirements that apply to existing mining leases that require an initial development plan.

The period for the plan will be five years, unless the remaining term of the relevant mining lease is shorter.

New section 317L requires the Minister to decide whether to approve a proposed initial development plan that is:

- Included with an application or renewal application for a mining lease for a prescribed mineral; or
- Lodged by the holder of a new prescribed mineral mining lease.

New section 317M provides the process by which a prescribed mineral mining lease applicant or new prescribed mineral mining lease holder may amend a proposed initial development plan. An amendment to the plan must be made by lodged notice and be lodged before the Minister makes a decision on the plan.

This section also enables the Minister to request information that is reasonably required to decide whether to approve the plan. If the applicant does not comply with the requirement, the Minister may refuse to approve the proposed initial development plan.

New section 317N provides the matters that the Minister must consider when deciding whether to approve or refuse a proposed initial development plan for a proposed prescribed mineral mining lease or prescribed mineral mining lease.

New section 317O outlines that it is a condition of each prescribed mineral mining lease that its holder is to lodge a proposed later development plan:

- Between 40 to 100 business days before the end of the current development plan period for the lease; or
- As soon as practicable after the prescribed mineral mining lease holder becomes aware of a significant change to the nature and extent of activities not already addressed under the lease's current development plan.

This section also provides that if the Minister decides to refuse a proposed later development plan and the current plan period for the lease has not ended, the holder may lodge another proposed later development plan. However, the new application must be made within the current plan period.

The condition will only be complied with where the proposed later development plan is lodged, complies with the prescribed requirements, and is accompanied by the relevant fee. The relevant fee is prescribed by regulation. If the application is lodged late, the relevant fee will be 10 times the prescribed fee.

New section 317P outlines the consequences for prescribed mineral mining leases that do not, before the end of the current development plan period:

- Comply with the obligation to lodge a proposed later development plan; or
- Lodge another proposed later development plan following a previous application's refusal.

The prescribed mineral mining lease holder must be given a notice requiring them to lodge a proposed later development plan within 40 business days of the notice being given.

The requirement to lodge the proposed later development plan must be complied with, and if it is not, the holder's lease is cancelled. However, the cancellation does not take effect until the holder is given notice of the cancellation.

New section 317Q outlines the requirements for proposed later development plans for prescribed mineral mining leases. Proposed later development plans must comply with the initial development plan requirements for a prescribed mineral mining lease and highlight any significant changes from the current development plan for the lease. It must also outline whether the current development plan has been complied with and, if not, why it has not been complied with.

If the proposed later development plan represents a significant change to any activity under the current development plan, the proposed plan must also state the reasons for the change. This will be required, for example, where a lease is entering care and maintenance (i.e. ceasing production for six months or more) and this cessation of production was not anticipated in the current development plan applying to the lease.

New section 317R outlines that if a proposed later development plan has been lodged under new section 317O, the prescribed mineral mining lease holder is taken to have a development plan and authorised activities on the lease can continue even if the period for the current development plan period for the lease ends.

This section continues to apply until either:

- The proposed later development plan is approved and the holder is given notice of the approval; or
- The proposed later development plan is refused and the refusal takes effect under new section 317V.

New section 317S outlines that the Minister must decide whether or not to approve a proposed later development plan.

New section 317T outlines that the Minister may approve or refuse a proposed later development plan. It also outlines the matters to be considered by the Minister when making that decision, including whether any cessation or reduction of mining is reasonable and whether the holder has taken all reasonable steps to prevent the cessation or reduction.

This section also enables the Minister to request information that is reasonably required to decide whether to approve the plan. If the applicant does not comply with the requirement, the Minister may refuse to approve the proposed later development plan.

New section 317U outlines the action the Minister may take if a proposed later development plan provides for a significant change that is a cessation or reduction of mining (or other purposes for which the lease was granted).

The Minister may approve the proposed plan but decide to:

- Defer the effect of the approval until the lease holder applies to surrender an area of the lease on or before a stated day; and
- Provide that if the surrender application is not made on or before the stated day, the decision to approve the proposed later development plan will be replaced with a decision to refuse the plan.

The abovementioned decision is called a 'deferral decision'.

Alternatively, the Minister may impose a condition (referred to as a 'surrender condition') on the mining lease requiring the holder to apply to surrender areas of the lease at stated times or intervals.

The Minister must consider the public interest before making a deferral decision or imposing a surrender condition.

New section 317V provides that once a proposed initial development plan or proposed later development plan is approved by the Minister, the chief executive is required to give the applicant or holder a notice of the approval.

Where a proposed initial development plan or proposed later development plan has been refused, a deferral decision has been made, or a surrender condition has been imposed on the lease, the chief executive must give an information notice to the applicant or holder of the mining lease. The information notice must state:

- The reasons for the decision;
- That the decision can be appealed; and
- How to make an appeal against the decision.

An approval that is not a deferral decision, takes effect when the notice is given or if the notice states a later day, the later day.

The section provides that a refusal does not take effect until the end of the appeal period under new section 317W.

New section 317W provides for the appeal process for the following decisions:

- A refusal of a proposed initial development plan or proposed later development plan; or
- A deferral decision is made or a surrender condition is imposed on a proposed later development plan.

If these decisions were made, the *Petroleum and Gas (Production and Safety) Act 2004*, chapter 12, part 2 applies with necessary changes, as if:

- The decision were mentioned in schedule 1, table 2 of that Act; and
- The schedule stated the Land Court as the appeal body; and
- A reference in that part to an information notice were a reference to a notice under section 317V.

New section 317X outlines the circumstances under which a mining lease stops being a prescribed mineral mining lease. This will only be the case if:

- The prescribed mineral stops being a prescribed mineral; or
- The threshold amount of the prescribed mineral increases and the increased threshold amount of the prescribed mineral has not been mined under the lease in any lease year or, if the lease is part of a mining project, the prescribed mineral has not been mined in a project year.

Part 1B inserts a competitive tender process for identifying a preferred tenderer to apply for a mining lease.

New section 317Y sets out that the new part 1B provides for a competitive tender process for selecting a preferred tenderer who will be eligible to apply for a mining lease over a specified area of land under section 232 of the *Mineral Resources Act 1989*.

New section 317Z provides that the Minister may publish a gazette notice which invites tenders from eligible persons who want to apply for a mining lease over the specified area of land.

The gazette notice establishes:

- The area of land that will become the proposed area of the lease;

- The dates by which tenders must be received;
- That details – about the proposed conditions of the lease – are available at a stated place;
- That details – about the period in which a proposed mining program or proposed initial development plan will apply for the lease – are available at a stated place;
- Any special criteria which will be used to decide the call;
- Whether security is required, and if so, how much;
- Whether a cash bid component will be used to decide the call; and
- Any other matters which are relevant to the proposed area of the lease or the tender process.

The section also provides for the interaction with existing section 276 of the *Mineral Resources Act 1989* by declaring that it does not limit the Minister's power to decide the conditions of the mining lease under section 276(1)(n).

The section also provides that the Minister must not act under the section if any or all of the land in the proposed area of the lease is already subject to a mining tenement other than a prospecting permit, or an application for a mining tenement other than a prospecting permit. This ensures that pre-existing mining tenements will not have a tender declared over the area of land they are operating on.

New section 317ZA establishes that only an eligible person may tender for a proposed mining lease. The tender must be made before the closing time for the call and must be for the whole area of the proposed mining lease.

New section 317ZB outlines what is required in a tender for a mining lease. A tender for a mining lease must:

- Be in the approved form;
- Be accompanied by a statement which describes the mining program or initial development program for the mining lease, including details about the estimated human, technical and financial resources which are to be committed to those programs;
- Be accompanied by a separate statement which details the tenderer's financial and technical resources; and
- Be accompanied by the required identification and fees, and any security or cash-bid that is required for a particular tender.

New section 317ZC requires the Minister to reject a tender for a mining lease if the Minister decides the tenderer is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the permit. On rejection of the tender, the Minister must give the tenderer a notice about the decision.

New section 317ZD provides that the Minister may use a gazette notice to terminate a call for tenders at any time before a decision is made on the call. It provides that all tenders made in response to the call lapse and that no compensation is payable as a result of the termination.

The section also provides that, subject to sections 317ZF(4) and 317ZI(4), the Minister must refund any tender security which has been given.

New section 317ZE allows for amendments to be made to a proposed mining program or proposed initial development plan before a tenderer has become the preferred tenderer for the call, and that otherwise, the tender may be amended at any time until, but not after, the closing time of the call.

The section also provides that if the tenderer is a company, a change to the name of the tenderer can be made at any time if the tenderer's Australian Company Number and registered business name have not changed.

New section 317ZF allows a person who has lodged a tender to withdraw their tender at any time before an application for the mining lease is granted.

The withdrawal takes effect when the notice is lodged, and it does not affect the Minister's power to appoint another tenderer. This ensures that if a preferred tenderer withdraws their tender before the mining lease is granted, the Minister may appoint a different tenderer as preferred tenderer without having to restart the tender process.

The section also provides that if a tender is withdrawn, the Minister has the power to retain all or part of any tender security given by the tenderer. Whether the Minister retains whole or part of the security is dependent on what is reasonable in the circumstances.

New section 317ZG establishes that any process the Minister considers appropriate may be used to decide the call.

This section is subject to new section 317ZH(2) which requires the Minister to be satisfied that the prescribed conditions of a mining lease are likely to be met if an application for a mining lease is made; it is also subject to new section 317ZH(3) which requires the Minister to consider any special criteria for the call.

This section also provides that the Minister may require a tenderer, within a reasonable period, to give information needed to assess the tender.

New section 317ZH provides that the Minister may appoint a preferred tenderer or refuse to appoint a preferred tenderer.

To appoint a preferred tenderer, the Minister must:

- Be satisfied that the prescribed conditions of a mining lease are likely to be met if an application for a mining lease is made; and
- Consider any special criteria for the call.

If a tenderer is appointed, they must be given a notice of the decision which states the period within which they may apply for a mining lease.

New section 317ZI provides the Minister with powers that may be exercised in relation to a preferred tenderer.

This section allows the Minister to:

- Require the tenderer to pay any amounts that are required to enable an application for the mining lease to be granted;
- Give security for the lease under section 277;
- Pay rent for the first year of the term of the lease under section 290; and
- Revoke a preferred tenderer's appointment if the tenderer does not:
 - apply for the lease in a timely fashion; or
 - comply with the requirements of the section; or
 - do the things that are reasonably necessary to allow an application for the mining lease to be granted.

The section provides for procedural fairness to the preferred tenderer if the Minister proposes to revoke a tenderer's appointment by establishing a show-cause process that requires the Minister to give the preferred tenderer a reasonable opportunity to provide reasons for and rectify the tenderer's failure.

If the Minister revokes the appointment of the preferred tenderer, the section also allows the Minister to retain all or part of any tender security given, and to appoint a new tenderer as the preferred tenderer. Whether the Minister retains whole or part of the security is dependent on what is reasonable in the circumstances.

New section 317ZJ requires a notice to be given to all tenderers not appointed as the preferred tenderer once a call has been decided. The section also provides that, subject to sections 317ZF(4) and 317ZI(4), the Minister must refund any tender security which has been given.

Amendment of s 318DO (Requirement for coordination arrangement to transfer or sublet mining lease in area of petroleum lease)

Clause 143 amends section 318DO of the *Mineral Resources Act 1989* to provide that a coordination arrangement will not be required if the proposed transferee and the overlapping tenure holder are the same entity.

The requirement that a transfer of a petroleum lease must not be approved under the *Mineral and Energy Resources (Common Provisions) Act 2014* unless the proposed transferee and the mining lease holders are parties to a coordination arrangement is maintained for parties that are not the same entity.

Amendment of s 325 (Royalty return and payment upon transfer or surrender of mining claim or mining lease)

Clause 144 amends section 325 of the *Mineral Resources Act 1989* to remove the requirement for a royalty return to be lodged, when transferring or surrendering a mining claim or mining lease, if the return has been lodged under section 320(4) of the *Mineral Resources Act 1989*, and the royalty has either been paid or is not required to be paid.

Omission of ch 13, pt 2 (Conferences with eligible claimants or owners and occupiers)

Clause 145 removes the entirety of chapter 13, part 2 of the *Mineral Resources Act 1989*, which contained the provisions for conferences with eligible claimants or owners and occupiers. This amendment is consequential to consolidating the conference provisions in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Replacement of ch 13, pt 4, hdg (Access to abandoned mines and final rehabilitation sites)

Clause 146 replaces the heading of chapter 13, part 4 of the *Mineral Resources Act 1989*.

Replacement of ss 344–344D

Clause 147 omits sections 344 to 344D of the *Mineral Resources Act 1989* and inserts new provisions concerning the remediation of abandoned mine sites. As a consequence of these changes, amendments have been made to provisions relating to the rehabilitation of final rehabilitation sites. However, the intent of the provisions regulating final rehabilitation sites has not changed.

New section 344 provides for the definitions for this part.

New section 344A provides for the definition of ‘remediation activity’.

The activities that may be a remediation activity have been clarified and, in some circumstances, broadened, to make sure that authorised persons have clear and appropriate powers to ensure that abandoned mine sites are safe, secure, durable and, where possible, productive.

The new power in subparagraph (1)(k) allows for the assessment of a site for the purpose of re-commercialisation under the *Mineral Resources Act 1989* as a remediation activity. This will enable authorised persons to assess if there are commercial quantities of residual resources remaining, the area could be released under the new mining lease tendering provisions provided for in this Bill. An authorised person may also appraise the site for an alternative managed land use such as a park, renewable energy generation or water resource.

The amendments also achieve consistency, where possible, between the remediation activities for abandoned mine sites and abandoned operating plants under the *Petroleum and Gas (Production and Safety) Act 2004*.

New section 344B provides for the definition of ‘rehabilitation activity’. Subsection (1) maintains, with updates to reflect contemporary drafting style, the definition of rehabilitation activities from the omitted section 344A(3).

New section 344C provides for the process for the chief executive to authorise a person to enter land to carry out one or more remediation activities.

The chief executive's power in the omitted section 344A(1) to authorise a person to undertake remediation activities on an abandoned mine site is maintained in section 344C(1).

The chief executive's powers have been expanded to allow the authorisation of persons to enter onto land beyond the boundaries of the abandoned mine site to carry out remediation activities (defined as 'affected land'). The chief executive must be satisfied that:

- Remediation activities on the affected land are, or may be required, because of the direct or indirect impacts of previous mining activities on the abandoned mine site; and
- The entry is necessary to carry out remediation activities on an abandoned mine site.

The intention is to allow authorised persons to carry out remediation activities on the land if that land has been affected (directly or indirectly) by the abandoned mine site even if that land is not directly next to the abandoned mine site. For example, where there is a mine shaft near the edge of a tenure boundary and remediation activities need to be undertaken on the nearby property in order to adequately remediate the shaft.

The chief executive's authorisation under this section must be in writing and state the period of the authorisation.

New section 344D provides for the process for the chief executive to authorise the holder of an environmental authority or PRCP schedule for mining activities to enter a final rehabilitation site to carry out one or more rehabilitation activities.

The chief executive's authorisation allows the holder of the environmental authority or PRCP schedule for mining activities to carry out rehabilitation activities, and also extends to the following persons:

- An officer or employee of the holder;
- A person engaged by the holder under a contract or other arrangement to carry out the rehabilitation activities.

The authorisation does not allow the holder to carry out an activity that is an act to which the right to negotiate provisions apply.

New section 344E establishes the process for entering land to carry out remediation activities (on abandoned mine sites) or rehabilitation activities (on final rehabilitation sites).

To enter an abandoned mine site or a final rehabilitation site, an authorised person must give a notice of entry to the owner and occupier of the land in accordance with the requirements set out in new section 344F.

To enter affected land, an authorised person must obtain the consent of the owner and occupier of the land, in accordance with the requirements set out in new section 344G.

An authorised person may enter land adjacent to an abandoned mine site or final rehabilitation site if:

- The entry is for the purpose of carrying out remediation activities or rehabilitation activities on the abandoned mine site or final rehabilitation site, or to carry out remediation or rehabilitation activities on land to preserve life or property; and
- Entering the adjacent land is the only reasonably practicable way for the authorised person to enter the site; and
- The owner or occupier has been given a notice of entry in accordance with the requirements set out in new section 344F.

Entry to land may occur at any time to carry out remediation or rehabilitation activities if the activities are necessary to preserve life or property. This is subject to giving a notice of entry within 10 business days after entering the land in accordance with new section 344F(1)(a).

The section does not authorise entry to a structure used for residential purposes without the consent of the occupier of the structure.

New section 344F outlines the notice of entry requirements under this part. An authorised person must give the owner and occupier of the land a written notice about the entry at least 10 business days before entering the land or a shorter period agreed by the owner or occupier.

If the land is entered to carry out remediation or rehabilitation activities necessary to preserve life or property, a written notice about the entry must be given within 10 business days after entering the land.

The section also provides that the written notification must state the following:

- When the entry was or is to be made;
- The purpose of the entry;
- If the notice relates to land other than affected land, that the authorised person is permitted under the *Mineral Resources Act 1989* to enter the land without consent or a warrant; and
- The remediation or rehabilitation activities carried out or proposed to be carried out.

New section 344G provides that for the purpose of obtaining consent to enter affected land, an authorised person may:

- Enter land around the premises to the extent that is reasonable to make contact; or
- Enter part of the land the authorised person reasonably believes the public may ordinarily enter when they wish to contact an occupier of the place.

When asking for the consent, the authorised person must tell the owner or occupier:

- About the purpose of the entry;

- The proposed day, time and duration of the entry;
- That the person does not have to consent to the entry; and
- Consent may be given subject to conditions (other than compensation) and may be withdrawn at any time.

If the owner or occupier gives consent, the authorised person may ask the owner or occupier to sign an acknowledgement of consent regarding the authorised person's proposed entry to land. The acknowledgement must contain particular information, including the purpose of the entry, the activities to be carried out and any conditions attached to the consent.

The authorised person must give a copy of the acknowledgement to the owner and occupier.

New section 344H reinserts requirements that were included in omitted section 344D. These requirements have not changed.

New section 344I provides that an authorised person must give the owner and occupier of affected land a report about the entry within 30 days after the entry ended.

The report must state:

- Whether or not any remediation activities were carried out on the affected land; and
- The location, nature and extent of any activities carried out on the land; and
- Any other matter prescribed by regulation.

The authorised person is not required to give a report to the owner or occupier of the affected land if the owner or occupier does not want it.

Replacement of s 399 (Mode of service of documents)

Clause 148 omits section 399 of the *Mineral Resources Act 1989*, and inserts new sections 399 and 399A.

New section 399 provides the methods for documents to be served by a prescribed person to an owner of land or affected person. The use of email will now be available. The email address must have been given to the prescribed person for the purpose of communicating. If the recipient requests that the email stop being used, the prescribed person may not send the document via email.

A prescribed person is a holder or applicant of a mining tenement, or a person who is carrying out or intending to carry out an action under section 386V of the *Mineral Resources Act 1989*.

New section 399A provides the process for the Minister, the Land Court, a tribunal authorised officer, or another person to serve documents generally under the Act. The use of email will now be available. The email address used must have been given to the sending entity in question for the purpose of communicating.

Amendment of s 411 (Indemnity against liability)

Clause 149 amends section 411 of the *Mineral Resources Act 1989* as a consequence of the restructuring of provisions in part 4 of Chapter 13 by the Bill relating to remediation of abandoned mine sites.

Amendment of s 412 (Offences and recovery of penalties etc.)

Clause 150 amends section 412 of the *Mineral Resources Act 1989* to update the period within which a proceeding for an offence must be started, and align this with the period under other Resource Acts, which are also being amended by the Bill.

A proceeding for an offence will now be required to be commenced either within one year after the commission of the offence or within one year after the offence comes to the complainants knowledge (but within two years after the commission of the offence). This will provide departmental officers involved in the investigation and prosecution of offences a reasonable period in which to investigate and commence proceedings.

Insertion of new ch 15, pt 19

Clause 151 inserts a new part 19, chapter 15 in the *Mineral Resources Act 1989* to provide transitional provisions for the amendments in the Bill.

New section 871 provides a transitional provision clarifying that the amendment to section 85A(1)(d)(ii) regarding the Minister's power to refuse an application for the grant of a mining claim, will not apply to an application for the grant of a mining claim that was made, but not decided, before the commencement of the Bill.

New section 872 provides that if a person made an application or tender for an exploration permit before commencement, and the exploration permit has not been granted, then section 137 of the *Mineral Resources Act 1989* as in force before the commencement continues to apply in relation to the grant of the permit.

New section 873 provides that the power of the Minister to impose a new or amended condition on a resource authority under section 141BA, 194ABA or 276C applies to existing authorities, but only if the indirect change of control occurs after the commencement.

New section 874 provides that the new section 271AB applies to an application for a later mining lease mentioned in section 271AB(1)(a) whether the application was made before or after commencement.

New section 875 provides that the amendment to require security to be deposited before the grant or renewal of a mining lease does not apply to mining leases that were granted on commencement. The requirement under section 277 as in force immediately before commencement continues to apply to these mining lease holders, which requires that the holder must pay security prior to commencing operations.

New section 876 provides that the amendment to the requirement for security to be deposited before the grant or renewal of a mining lease applies to an application for the grant or renewal of a mining lease which has been made, but not decided, before commencement.

New section 877 provides a transitional provision clarifying that the amendment to section 279A(1)(d)(ii) (regarding the Minister's power to refuse an application for the grant of a mining lease) will not apply to an application for the grant of a mining lease that was made, but not decided, before the commencement of the Bill.

New section 878 sets out the process if an existing application for the grant or renewal of a mining lease that is for a prescribed mineral has been made but not decided before commencement. This section provides that the existing application must be decided under chapter 6, part 1, as in force before commencement.

New section 879 sets out the process if an existing mining lease is considered a prescribed mineral mining lease on the commencement of chapter 6, part 1A of the *Mineral Resources Act 1989* (a 'transitioning mining lease'). The section also applies to any lease that was granted through an application captured by new section 878 before the three year transitional period ends (also, a 'transitioning mining lease').

A transitioning mining lease that is a prescribed mineral mining lease will have three years from commencement of this section to have an initial development plan for the lease approved.

For a transitioning mining lease, the lease is considered to have complied with new section 317F and 317G only in the following circumstances:

- The proposed initial development plan is lodged within 6 months before the end of the transitional period;
- It complies with the development plan requirements; and
- Is accompanied by the relevant fee.

This applies until either the proposed initial development plan is approved or a decision to refuse to approve the plan is made. If the lease adheres to the abovementioned process but the decision is made after the end of the transitional period, the condition in new section 317F continues to be complied with until the decision has been made.

New section 880 provides a transitional provision for the circumstance where an application for grant or renewal of a mining lease for a prescribed mineral that is captured by new section 878 is decided after the three year transitional period. The lease is taken to be a new prescribed mineral mining lease and the holder of the lease is required to have an initial development plan in place within 6 months of the grant or renewal of the lease.

New section 881 provides that if during the three year transitional period a transitioning mining lease holder submits a renewal application, the application must include an initial development plan.

New section 882 sets out that for a transitioning mining lease or a renewal application, the requirements in chapter 6, part 1A, division 3 applies to the proposed initial development plan with necessary changes.

New section 883 provides a transitional provision for the circumstance where an authorised officer had asked parties to attend a conference before commencement, and at commencement the conference had not taken place. Under this circumstance, the conference must take place under chapter 13, part 2 of the *Mineral Resources Act 1989*, as in force immediately before commencement. To remove all doubt, this provision also clarifies that the new provisions on conferences which the Bill inserts into chapter 3, part 8 of the *Mineral and Energy Resources (Common Provisions) Act 2014* do not apply to that conference.

New section 884 provides for the continuation of an authorised person's authorisation and powers under the current chapter 13, part 4 to carry out remediation or rehabilitation activities for abandoned mine sites or final rehabilitation sites.

Amendment of sch 2 (Dictionary)

Clause 152 amends the dictionary to insert new definitions and remove obsolete definitions.

Part 11 – Amendment of Mineral Resources Regulation 2013

Regulation amended

Clause 153 states that this part amends the *Mineral Resources Regulation 2013*.

Insertion of new s 97A

Clause 154 inserts new section 97A in the *Mineral Resources Regulation 2013* to provide for the definition of *prescribed mineral* as defined in schedule 2 of the *Mineral Resources Act 1989*. A *prescribed mineral* is each mineral mentioned in schedule 2A of the *Mineral Resources Regulation 2013*. Similarly, the new section provides for the definition of *prescribed threshold* as defined in schedule 2 of the *Mineral Resources Act 1989*. The *prescribed threshold* is the amount mentioned opposite a prescribed mineral in schedule 2A of the *Mineral Resources Regulation 2013*.

Insertion of new sch 2A

Clause 155 inserts schedule 2A into the *Mineral Resources Regulation 2013*. This schedule details the prescribed minerals and prescribed threshold for mining lease holders that require an initial development plan or later development plan.

Part 12 – Amendment of Mining and Quarrying Safety and Health Act 1999

Act amended

Clause 156 states that this part amends the *Mining and Quarrying Safety and Health Act 1999*.

Insertion of new pt 3A

Clause 157 inserts a new part 3A for industrial manslaughter.

New section 45A inserts definitions for the part including for an employer, a senior officer of an employer of a worker and an executive officer if the employer is a corporation. Whether a person is a senior officer will depend on the individual circumstances of each case, including the person's position and role in taking part in management decisions of the employing entity.

In addition, it provides that a person's conduct causes death if it substantially contributes to the death.

New section 45B provides that section 23 of the Criminal Code, which provides for a defence of accident, does not apply to an offence for industrial manslaughter.

New section 45C provides for a new offence for an employer if a worker dies in the course of carrying out work at the mine or is injured and later dies; and the employer's conduct causes the death; and the employer is negligent about causing the death of the worker. The new offence recognises the extremely serious circumstances in which both a fatality has occurred and there has been reckless or gross negligence by an employer.

The maximum penalty for an individual is 20 years imprisonment and for a body corporate is 100,000 penalty units. The offence is a crime.

New section 45D provides for a new offence for a senior officer of an employer if a worker dies in the course of carrying out work at the mine or is injured and later dies; and the senior officer's conduct causes the death; and the senior officer is negligent about causing the death of the worker. The new offence recognises the extremely serious circumstances in which both a fatality has occurred and there has been criminal negligence by a senior officer.

The maximum penalty is 20 years imprisonment. The offence is a crime.

Amendment of s 234 (Proceedings for offences)

Clause 158 amends section 234 to exclude an industrial manslaughter offence from being dealt with by way of summary proceedings before an industrial magistrate. It provides that an industrial manslaughter offence is a serious offence and therefore

the provisions about who may bring a proceeding for a serious offence will apply. This does not affect the ability of the director of public prosecutions to bring proceedings.

The clause also inserts a note referring to section 243 in relation to the ability to make costs orders with respect to representation in a proceeding for an offence under the Act.

Amendment of s 235B (Procedure if prosecution not brought)

Clause 159 amends section 235B so that if proceedings for an industrial manslaughter offence have not been brought within 6 months, a person may make a written request to the WHS prosecutor that a prosecution be brought in relation to the industrial manslaughter offence.

Amendment of s 236 (Limitation on time for starting proceedings)

Clause 160 amends section 236 so that the limitations on time for the commencement of proceedings for an offence does not apply to an industrial manslaughter offence.

Amendment of s 243 (Costs of investigation)

Clause 161 amends section 243 (Costs of investigations) to provide that an Industrial Magistrates Court may award a represented party in a proceeding for an offence under the Act; the costs of representation.

This applies despite section 530(6) of the *Industrial Relations Act 2016*.

The clause also includes a definition of represented party for a proceeding.

Insertion of new pt 20, div 7

Clause 162 inserts a new part 20, div 7 Validation provision for the *Mineral and Energy Resources and Other Legislation Amendment Act 2020*.

New section 294 provides for the validation of costs orders for the costs of representation, made by an Industrial Magistrate Court in relation to a proceeding for an offence against this Act, before the commencement. The section provides that the making of the costs order and anything done under the costs order is, and is taken to always have been, valid.

Amendment of sch 2 (Dictionary)

Clause 163 amends the dictionary to include further definitions.

Part 13 – Amendment of National Energy Retail Law (Queensland) Act 2014

Act amended

Clause 164 states that this part amends the *National Energy Retail Law (Queensland) Act 2014*.

Amendment of schedule (Modification of application of National Energy Retail Law)

Clause 165 amends the schedule of the *National Energy Retail Law (Queensland) Act 2014*, section 15 (Rule 22A Additional Queensland provision about standing offer prices for particular retailers, subsection (4)) to remove the time limitation on the effect of this particular provision.

Part 14 – Amendment of New South Wales-Queensland Border Rivers Act 1946

Act amended

Clause 166 states that this part amends the *New South Wales-Queensland Border Rivers Act 1946*.

Insertion of new s 22A

Clause 167 inserts a new section 22A

New section 22A states that the department in which the *Water Act 2000* is administered is authorised in relation to the State of Queensland to exercise the powers conferred and fulfil the obligations imposed by the agreement on a controlling authority.

Part 15 – Amendment of Petroleum Act 1923

Act amended

Clause 168 states that this part amends the *Petroleum Act 1923*.

Amendment of s 2 (Definitions)

Clause 169 removes obsolete definitions.

Insertion of new s 40AA

Clause 170 inserts a new section 40AA in the *Petroleum Act 1923* to require the Minister to reject an application for a lease if the Minister decides the applicant is disqualified under chapter 7 of the *Mineral and Energy Resources (Common*

Provisions) Act 2014 from being granted the lease. On rejection of the application, the Minister must give the applicant a notice about the decision.

Amendment of s 53E (Deciding whether to approve proposed plan)

Clause 171 inserts new subsections in section 53E of the *Petroleum Act 1923* to enable the Minister to request information that is reasonably required to decide whether to approve the plan. If the applicant does not comply with the requirement, the Minister may refuse to approve the proposed plan.

Insertion of new s 74TA

Clause 172 inserts new section 74TA in the *Petroleum Act 1923*. The inserted section gives the Minister a discretionary power to assess whether the holder of a petroleum lease has the financial and technical resources to comply with the conditions of the lease if the Minister reasonably believes, or is notified, that there has been an indirect change in the control of the lease holder.

The intent is to mitigate the risk that a lease holder will be unable to meet its regulatory obligations under their lease because of an indirect change in the control of the holder.

Indirect changes of control are defined in the provision as a change that happens under section 50AA (Control) or section 46 (What is a subsidiary) of the *Corporations Act 2001* (Cth). Under these sections, controlling entities are essentially identified as entities that can exert practical influence or power over another entity's financial and operating policies, or parent companies who control the board of its subsidiary, or hold the majority voting rights or shares in its subsidiary.

These indirect changes of control have the potential to impact on the ability of a lease holder to comply with their lease obligations, particularly if the controlling entity controls or exerts influence over the financial and operating affairs of the lease holder.

Indirect changes of control are not currently subject to assessment under the Resource Acts as the ultimate holder of the resource authority does not change. Further, the State's ability to regulate these transactions is limited as they are regulated under the *Corporations Act 2001* (Cth).

These new amendments enable the Minister to consider whether, after an indirect change of control, the holder of a lease continues to have the financial and technical resources to comply with the conditions of its lease.

If the Minister considers the holder of the lease may not have the financial and technical resources to comply with the conditions of the lease, the Minister is given the power to impose new conditions or to amend the existing conditions of the lease. The types of conditions that may be imposed will vary depending on the individual circumstances but will, nevertheless, need to relate to ameliorating the risk arising from the indirect change and be consistent with the purpose of the Act. These

conditions may include, for example, increased reporting obligations or that certain activities be undertaken.

The chief executive will be notified of an indirect change in control relating to a resource authority holder through a new requirement inserted into section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. An amendment to section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* inserted by the Bill will require the scheme manager to provide a copy of a notice given under section 42 to the chief executive (resources).

Section 42(1) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* currently requires a resource authority holder to notify the scheme manager of a 'changed holder event'. A 'changed holder event' is defined in new section 31A of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to include changes of control under sections 46 and 50AA of the *Corporations Act 2001* (Cth). Failure to comply with the requirement is an offence under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

If, for whatever reason, a notice of a changed holder event is not received under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, but the Minister reasonably believes that a change has happened, the Minister can require the holder of the lease to give the Minister information or a document about whether or not the change has happened.

The Minister also has the power to require the lease holder to give the Minister any information or document required by the Minister to make a decision about imposing a new or amended condition under this section.

The Minister must give the lease holder a written notice about the information or documents required, and give the holder at least 10 business days to comply. This period may be extended by the Minister.

A procedural fairness process is also provided that requires the Minister to advise the holder of a proposed decision to impose a new or amended condition resulting from the change of control, and the reasons for the decision. The lease holder may make a submission about the proposed decision within 10 business days, or a longer period extended by the Minister.

In deciding whether to impose new or varied conditions on the lease, the Minister must consider any information or documents that were given by the lease holder in response to a requirement to give that material, as well as any submission made by the holder.

If the Minister decides to impose a new or varied condition on the lease, the Minister must give a notice stating the decision and the reasons for the decision.

Omission of pt 6R (Conferences with eligible claimants or owners and occupiers)

Clause 173 removes the entirety of part 6R of the *Petroleum Act 1923*, which contained the provisions for conferences with eligible claimants or owners and occupiers. These provisions are consolidated in the new chapter 3 part 8 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Insertion of new pt 17

Clause 174 inserts a new part 17 in the *Petroleum Act 1923*, which contains transitional provisions for amendments made by the Bill.

New section 208 provides that the power of the Minister to impose a new or amended condition on a petroleum lease under section 74TA applies to existing leases, but only if the indirect change of control occurs after the commencement.

New section 209 provides a transitional provision for the circumstance where an authorised officer had asked parties to attend a conference before commencement, and at commencement the conference had not taken place. Under this circumstance, the conference must take place under part 6R of the *Petroleum Act 1923*, as in force immediately before commencement. To remove all doubt, this provision also clarifies that the new provisions on conferences which the Bill inserts into chapter 3, part 8 of the *Mineral and Energy Resources (Common Provisions) Act 2014* do not apply to that conference.

Part 16 – Amendment of Petroleum and Gas (Production and Safety) Act 2004

Act amended

Clause 175 states that this part of the Bill amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Insertion of new s 37A

Clause 176 inserts a new section 37A in the *Petroleum and Gas (Production and Safety) Act 2004* to require the Minister to reject a tender for an authority to prospect if the Minister decides the tenderer is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the authority to prospect. On rejection of the tender, the Minister must give the applicant a notice about the decision.

Amendment of s 66 (Part usually required to be relinquished)

Clause 177 amends section 66(1) of the *Petroleum and Gas (Production and Safety) Act 2004* to reference new section 66A.

Insertion of new ss 66A and 66B

Clause 178 inserts new sections 66A and 66B in the *Petroleum and Gas (Production and Safety) Act 2004*.

New section 66A provides that the relinquishment condition is deferred if the holder of an authority to prospect has made an application for a petroleum lease, and the application has not been decided by the end of the relinquishment day.

Section 66A(2) provides that the deferral of the standard relinquishment condition applies only until either the petroleum lease is granted or 20 business days after the day the application is withdrawn or refused. The section also provides the definitions necessary for the operation of the section.

New section 66B clarifies that an area of an authority to prospect that has been converted to a petroleum lease before the relinquishment day may be counted towards the relinquishment condition.

Amendment of s 67 (Sub-blocks that can not be counted towards relinquishment)

Clause 179 makes consequential amendments to section 67 of the *Petroleum and Gas (Production and Safety) Act 2004* as a result of the insertion of sections 66A and 66B.

Amendment of s 68 (Adjustments for sub-blocks that can not be counted)

Clause 180 makes a consequential amendment to section 68 of the *Petroleum and Gas (Production and Safety) Act 2004* as a result of the insertion of section 66A and 66B.

Insertion of new s 80A

Clause 181 inserts new section 80A in the *Petroleum and Gas (Production and Safety) Act 2004*. The inserted section gives the Minister a discretionary power to assess whether the holder of an authority to prospect has the financial and technical resources to comply with the conditions of the authority if the Minister reasonably believes, or is notified, that there has been an indirect change in the control of the authority holder.

The intent is to mitigate the risk that an authority to prospect holder will be unable to meet its regulatory obligations under their authority because of an indirect change in the control of the holder.

Indirect changes of control are defined in the provision as a change that happens under section 50AA (Control) or section 46 (What is a subsidiary) of the *Corporations Act 2001* (Cth). Under these sections, controlling entities are essentially identified as entities that can exert practical influence or power over another entity's financial and

operating policies, or parent companies who control the board of its subsidiary, or hold the majority voting rights or shares in its subsidiary.

These indirect changes of control have the potential to impact on the ability of an authority holder to comply with their authority obligations, particularly if the controlling entity controls or exerts influence over the financial and operating affairs of the authority holder.

Indirect changes of control are not currently subject to assessment under the Resource Acts as the ultimate holder of the resource authority does not change. Further, the State's ability to regulate these transactions is limited as they are regulated under the *Corporations Act 2001* (Cth).

These new amendments enable the Minister to consider whether, after an indirect change of control, the holder of an authority to prospect continues to have the financial and technical resources to comply with the conditions of its authority.

If the Minister considers the holder of the authority may not have the financial and technical resources to comply with the conditions of the authority to prospect, the Minister is given the power to impose new conditions or to amend the existing conditions of the authority. The types of conditions that may be imposed will vary depending on the individual circumstances but will, nevertheless, need to relate to ameliorating the risk arising from the indirect change and be consistent with the purpose of the Act. These conditions may include, for example, increased reporting obligations or that certain activities be undertaken.

The chief executive will be notified of an indirect change in control relating to a resource authority holder through a new requirement inserted into section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. An amendment to section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* inserted by the Bill will require the scheme manager to provide a copy of a notice given under section 42 to the chief executive (resources).

Section 42(1) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* currently requires a resource authority holder to notify the scheme manager of a 'changed holder event'. A 'changed holder event' is defined in new section 31A of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to include changes of control under sections 46 and 50AA of the *Corporations Act 2001* (Cth). Failure to comply with the requirement is an offence under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

If, for whatever reason, a notice of a changed holder event is not received under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, but the Minister reasonably believes that a change has happened, the Minister can require the holder of the authority to prospect to give the Minister information or a document about whether or not the change has happened.

The Minister also has the power to require the authority to prospect holder to give the Minister any information or document required by the Minister to make a decision about imposing a new or amended condition under this section.

The Minister must give the authority to prospect holder a written notice about the information or documents required, and give the holder at least 10 business days to comply. This period may be extended by the Minister.

A procedural fairness process is also provided that requires the Minister to advise the holder of a proposed decision to impose a new or amended condition resulting from the change of control, and the reasons for the decision. The authority to prospect holder may make a submission about the proposed decision within 10 business days, or a longer period extended by the Minister.

In deciding whether to impose new or varied conditions on the authority to prospect, the Minister must consider any information or documents that were given by the authority to prospect holder in response to a requirement to give that material, as well as any submission made by the holder.

If the Minister decides to impose a new or varied condition on the authority to prospect, the Minister must give a notice stating the decision and the reasons for the decision.

Amendment of s 107AD (Term of declaration)

Clause 182 corrects an error in section 107AD of the *Petroleum and Gas (Production and Safety) Act 2004*, which was introduced by the *Natural Resources and Other Legislation Amendment Act 2019*. This provision is yet to commence.

This amendment will permit the Minister to decide the term of the declaration for the amalgamated potential commercial area, which may be for a period of up to 15 years from the making of the latest declaration. It also provides the matters the Minister must consider in deciding a shorter period. These include when a petroleum discovery was made, materials presented with the application, as well as any independent viability assessment.

Insertion of new s 118A

Clause 183 inserts a new section 118A in the *Petroleum and Gas (Production and Safety) Act 2004* to require the Minister to reject an authority to prospect (ATP) related application for a petroleum lease if the Minister decides the applicant is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the petroleum lease. On rejection of the application, the Minister must give the applicant a notice about the decision.

Insertion of new s 128A

Clause 184 inserts a new section 128A in the *Petroleum and Gas (Production and Safety) Act 2004* to require the Minister to reject a tender for a petroleum lease if the Minister decides the tenderer is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the petroleum lease. On rejection of the tender, the Minister must give the applicant a notice about the decision.

Amendment of s 147 (Deciding whether to approve proposed plan)

Clause 185 inserts new subsections in section 147 of the *Petroleum and Gas (Production and Safety) Act 2004* to enable the Minister to request information that is reasonably required to decide whether to approve the plan. If the applicant does not comply with the requirement, the Minister may refuse to approve the proposed plan.

Insertion of new s 160A

Clause 186 inserts new section 160A in the *Petroleum and Gas (Production and Safety) Act 2004*. The inserted section gives the Minister a discretionary power to assess whether the holder of a petroleum lease has the financial and technical resources to comply with the conditions of the lease if the Minister reasonably believes, or is notified, that there has been an indirect change in the control of the lease holder.

The intent is to mitigate the risk that a petroleum lease holder will be unable to meet its regulatory obligations under their lease because of an indirect change in the control of the holder.

Indirect changes of control are defined in the provision as a change that happens under section 50AA (Control) or section 46 (What is a subsidiary) of the *Corporations Act 2001* (Cth). Under these sections, controlling entities are essentially identified as entities that can exert practical influence or power over another entity's financial and operating policies, or parent companies who control the board of its subsidiary, or hold the majority voting rights or shares in its subsidiary.

These indirect changes of control have the potential to impact on the ability of a lease holder to comply with their lease obligations, particularly if the controlling entity controls or exerts influence over the financial and operating affairs of the lease holder.

Indirect changes of control are not currently subject to assessment under the Resource Acts as the ultimate holder of the resource authority under the Resource Acts does not change. Further, the State's ability to regulate these transactions is limited as they are regulated under the *Corporations Act 2001* (Cth).

These new amendments enable the Minister to consider whether, after an indirect change of control, the holder of a petroleum lease continues to have the financial and technical resources to comply with the conditions of its lease.

If the Minister considers the holder of the lease may not have the financial and technical resources to comply with the conditions of the petroleum lease, the Minister is given the power to impose new conditions or to amend the existing conditions of the lease. The types of conditions that may be imposed will vary depending on the individual circumstances but will, nevertheless, need to relate to ameliorating the risk arising from the indirect change and be consistent with the purpose of the Act. These conditions may include, for example, increased reporting obligations or that certain activities be undertaken.

The chief executive will be notified of an indirect change in control relating to a resource authority holder through a new requirement inserted into section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. An amendment to section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* inserted by the Bill will require the scheme manager to provide a copy of a notice given under section 42 to the chief executive (resources).

Section 42(1) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* currently requires a resource authority holder to notify the scheme manager of a 'changed holder event'. A 'changed holder event' is defined in new section 31A of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to include changes of control under sections 46 and 50AA of the *Corporations Act 2001* (Cth). Failure to comply with the requirement is an offence under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

If, for whatever reason, a notice of a changed holder event is not received under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, but the Minister reasonably believes that a change has happened, the Minister can require the holder of the petroleum lease to give the Minister information or a document about whether or not the change has happened.

The Minister also has the power to require the petroleum lease holder to give the Minister any information or document required by the Minister to make a decision about imposing a new or amended condition under this section.

The Minister must give the petroleum lease holder a written notice about the information or documents required, and give the holder at least 10 business days to comply. This period may be extended by the Minister.

A procedural fairness process is also provided that requires the Minister to advise the holder of a proposed decision to impose a new or amended condition resulting from the change of control, and the reasons for the decision. The petroleum lease holder may make a submission about the proposed decision within 10 business days, or a longer period extended by the Minister.

In deciding whether to impose new or varied conditions on the petroleum lease, the Minister must consider any information or documents that were given by the petroleum lease holder in response to a requirement to give that material, as well as any submission made by the holder.

If the Minister decides to impose a new or varied condition on the petroleum lease, the Minister must give a notice stating the decision and the reasons for the decision.

Omission of s 170A (Application of subdivision)

Clause 187 omits section 170A of the *Petroleum and Gas (Production and Safety) Act 2004*. This is a consequential amendment required as a result of the insertion of the new section 170B.

Amendment and renumbering of s 170B (Applying to amalgamate)

Clause 188 amends the heading of section 170B of the *Petroleum and Gas (Production and Safety) Act 2004* to clarify that the amalgamation relates to petroleum leases. It also renumbers this section as 170A.

Insertion of new s 170B

Clause 189 inserts a new section 170B of the *Petroleum and Gas (Production and Safety) Act 2004*. This section provides that a person may apply to the Minister to amalgamate two or more *Petroleum Act 1923* leases into a single petroleum lease under the *Petroleum and Gas (Production and Safety) Act 2004*.

New section 170B sets out that the application to amalgamate is on the condition that:

- The holder of each individual lease has also applied under section 908 for a replacement tenure; and
- All holders of the individual leases agree to the proposed amalgamation; and
- The holders of the amalgamated lease will be the same as the holders of the individual leases; and
- The holders of individual leases are compliant with the provisions of the *Petroleum Act 1923*.

New section 170B also provides that if the application for replacement tenure is withdrawn or rejected, then the application for amalgamation is taken to be withdrawn or lapsed respectively.

Amendment of s 317 (Proposed mining lease declared a coordinated project)

Clause 190 corrects an error in section 317 of the *Petroleum and Gas (Production and Safety) Act 2004*. This clause substitutes the words 'mining lease application' with 'petroleum lease application' to correct the error.

Amendment of s 379 (Requirement for coordination arrangement to transfer petroleum lease in tenure area of mining lease)

Clause 191 amends section 379 of the *Petroleum and Gas (Production and Safety) Act 2004* to provide that a coordination arrangement will not be required if the proposed transferee and the overlapping tenure holder are the same entity.

The requirement that a transfer of a petroleum lease must not be approved under the *Mineral and Energy Resources (Common Provisions) Act 2014* unless the proposed transferee and the mining lease holders are parties to a coordination arrangement is maintained for parties that are not the same entity.

Replacement of s 400 (Restriction if there is an existing geothermal, GHG or mining lease)

Clause 192 replaces section 400 of the *Petroleum and Gas (Production and Safety) Act 2004* with an expanded section 400. This section provides that if land in the area

of a pipeline licence is also in the area of a geothermal lease, GHG lease or mining lease and the lease was granted before the pipeline licence, an authorised activity for the pipeline licence may only be carried out if:

- The lease holder has agreed in writing to the carrying out of the activity, the agreement has been lodged with the chief executive, and the agreement is still in force; or
- The activity is consistent with an agreed co-existence plan.

The section allows the pipeline licence holder to give the existing lease holder a notice that they wish to negotiate a co-existence plan. The notice must comply with prescribed requirements.

The section provides the requirements of a co-existence plan, and requires both parties to negotiate in good faith and use all reasonable endeavours to agree on such a plan.

If a coexistence plan cannot be agreed within three months, the pipeline licence holder may apply for arbitration of the dispute. Alternatively, both parties may jointly apply for arbitration at any time. Compliance with an agreed co-existence plan is a condition of tenure for both resource authority holders.

The section also provides the definitions necessary for the section to operate.

Insertion of new s 409B

Clause 193 inserts a new section 409B in the *Petroleum and Gas (Production and Safety) Act 2004* to require the Minister to reject an application for a pipeline licence if the Minister decides the applicant is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the pipeline licence. On rejection of the application, the Minister must give the applicant a notice about the decision.

Insertion of new s 424A

Clause 194 inserts new section 424A in the *Petroleum and Gas (Production and Safety) Act 2004*. The inserted section gives the Minister a discretionary power to assess whether the holder of a pipeline licence has the financial and technical resources to comply with the conditions of the licence if the Minister reasonably believes, or is notified, that there has been an indirect change in the control of the licence holder.

The intent is to mitigate the risk that a pipeline licence holder will be unable to meet its regulatory obligations under their licence because of an indirect change in the control of the holder.

Indirect changes of control are defined in the provision as a change that happens under section 50AA (Control) or section 46 (What is a subsidiary) of the *Corporations Act 2001* (Cth). Under these sections, controlling entities are essentially identified as entities that can exert practical influence or power over another entity's financial and

operating policies, or parent companies who control the board of its subsidiary, or hold the majority voting rights or shares in its subsidiary.

These indirect changes of control have the potential to impact on the ability of a licence holder to comply with their licence obligations, particularly if the controlling entity controls or exerts influence over the financial and operating affairs of the licence holder.

Indirect changes of control are not currently subject to assessment under the Resource Acts as the ultimate holder of the resource authority does not change. Further, the State's ability to regulate these transactions is limited as they are regulated under the *Corporations Act 2001* (Cth).

These new amendments enable the Minister to consider whether, after an indirect change of control, the holder of a pipeline licence continues to have the financial and technical resources to comply with the conditions of its licence.

If the Minister considers the holder of the licence may not have the financial and technical resources to comply with the conditions of the pipeline licence, the Minister is given the power to impose new conditions or to amend the existing conditions of the licence. The types of conditions that may be imposed will vary depending on the individual circumstances but will, nevertheless, need to relate to ameliorating the risk arising from the indirect change and be consistent with the purpose of the Act. These conditions may include, for example, increased reporting obligations or that certain activities be undertaken.

The chief executive will be notified of an indirect change in control relating to a resource authority holder through a new requirement inserted into section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. An amendment to section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* inserted by the Bill will require the scheme manager to provide a copy of a notice given under section 42 to the chief executive (resources).

Section 42(1) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* currently requires a resource authority holder to notify the scheme manager of a 'changed holder event'. A 'changed holder event' is defined in new section 31A of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to include changes of control under sections 46 and 50AA of the *Corporations Act 2001* (Cth). Failure to comply with the requirement is an offence under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

If, for whatever reason, a notice of a changed holder event is not received under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, but the Minister reasonably believes that a change has happened, the Minister can require the holder of the pipeline licence to give the Minister information or a document about whether or not the change has happened.

The Minister also has the power to require the pipeline licence holder to give the Minister any information or document required by the Minister to make a decision about imposing a new or amended condition under this section.

The Minister must give the pipeline licence holder a written notice about the information or documents required, and give the holder at least 10 business days to comply. This period may be extended by the Minister.

A procedural fairness process is also provided that requires the Minister to advise the holder of a proposed decision to impose a new or amended condition resulting from the change of control, and the reasons for the decision. The pipeline licence holder may make a submission about the proposed decision within 10 business days, or a longer period extended by the Minister.

In deciding whether to impose new or varied conditions on the pipeline licence, the Minister must consider any information or documents that were given by the pipeline licence holder in response to a requirement to give that material, as well as any submission made by the holder.

If the Minister decides to impose a new or varied condition on the pipeline licence, the Minister must give a notice stating the decision and the reasons for the decision.

Replacement of s 440 (Restriction if there is an existing mining lease)

Clause 195 replaces section 440 of the *Petroleum and Gas (Production and Safety) Act 2004* with an expanded section 440. This section provides that if land in the area of a petroleum facility licence is also in the area of a mining lease, and the mining lease was granted before the petroleum facility licence, an authorised activity for the petroleum facility licence may only be carried out if:

- The lease holder has agreed in writing to the carrying out of the activity, the agreement has been lodged with the chief executive, and the agreement is still in force; or
- The activity is consistent with an agreed co-existence plan.

The section allows the petroleum facility licence holder to give the existing mining lease holder a notice that they wish to negotiate a co-existence plan. The notice must comply with prescribed requirements.

The section provides the requirements of a co-existence plan, and requires both parties to negotiate in good faith and use all reasonable endeavours to agree on such a plan.

If a coexistence plan cannot be agreed within three months, the petroleum facility licence holder may apply for arbitration of the dispute. Alternatively, both parties may jointly apply for arbitration at any time. Compliance with an agreed co-existence plan becomes a condition of tenure for both resource authority holders.

The section also provides the definitions necessary for the section to operate.

Insertion of new s 445B

Clause 196 inserts a new section 445B in the *Petroleum and Gas (Production and Safety) Act 2004* to require the Minister to reject an application for a petroleum

facility licence if the Minister decides the applicant is disqualified under chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* from being granted the licence. On rejection of the application, the Minister must give the applicant a notice about the decision.

Insertion of new s 455A

Clause 197 inserts new section 455A in the *Petroleum and Gas (Production and Safety) Act 2004*. The inserted section gives the Minister a discretionary power to assess whether the holder of a petroleum facility licence has the financial and technical resources to comply with the conditions of the licence if the Minister reasonably believes, or is notified, that there has been an indirect change in the control of the licence holder.

The intent is to mitigate the risk that a petroleum facility licence holder will be unable to meet its regulatory obligations under their licence because of an indirect change in the control of the holder.

Indirect changes of control are defined in the provision as a change that happens under section 50AA (Control) or section 46 (What is a subsidiary) of the *Corporations Act 2001* (Cth). Under these sections, controlling entities are essentially identified as entities that can exert practical influence or power over another entity's financial and operating policies, or parent companies who control the board of its subsidiary, or hold the majority voting rights or shares in its subsidiary.

These indirect changes of control have the potential to impact on the ability of a licence holder to comply with their licence obligations, particularly if the controlling entity controls or exerts influence over the financial and operating affairs of the licence holder.

Indirect changes of control are not currently subject to assessment under the Resource Acts as the ultimate holder of the resource authority does not change. Further, the State's ability to regulate these transactions is limited as they are regulated under the *Corporations Act 2001* (Cth).

These new amendments enable the Minister to consider whether, after an indirect change of control, the holder of a petroleum facility licence continues to have the financial and technical resources to comply with the conditions of its licence.

If the Minister considers the holder of the licence may not have the financial and technical resources to comply with the conditions of the petroleum facility licence, the Minister is given the power to impose new conditions or to amend the existing conditions of the licence. The types of conditions that may be imposed will vary depending on the individual circumstances but will, nevertheless, need to relate to ameliorating the risk arising from the indirect change and be consistent with the purpose of the Act. These conditions may include, for example, increased reporting obligations or that certain activities be undertaken.

The chief executive will be notified of an indirect change in control relating to a resource authority holder through a new requirement inserted into section 42 of the

Mineral and Energy Resources (Financial Provisioning) Act 2018. An amendment to section 42 of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* inserted by the Bill will require the scheme manager to provide a copy of a notice given under section 42 to the chief executive (resources).

Section 42(1) of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* currently requires a resource authority holder to notify the scheme manager of a 'changed holder event'. A 'changed holder event' is defined in new section 31A of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* to include changes of control under sections 46 and 50AA of the *Corporations Act 2001* (Cth). Failure to comply with the requirement is an offence under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

If, for whatever reason, a notice of a changed holder event is not received under the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, but the Minister reasonably believes that a change has happened, the Minister can require the holder of the petroleum facility licence to give the Minister information or a document about whether or not the change has happened.

The Minister also has the power to require the petroleum facility licence holder to give the Minister any information or document required by the Minister to make a decision about imposing a new or amended condition under this section.

The Minister must give the petroleum facility licence holder a written notice about the information or documents required, and give the holder at least 10 business days to comply. This period may be extended by the Minister.

A procedural fairness process is also provided that requires the Minister to advise the holder of a proposed decision to impose a new or amended condition resulting from the change of control, and the reasons for the decision. The petroleum facility licence holder may make a submission about the proposed decision within 10 business days, or a longer period extended by the Minister.

In deciding whether to impose new or varied conditions on the petroleum facility licence, the Minister must consider any information or documents that were given by the petroleum facility licence holder in response to a requirement to give that material, as well as any submission made by the holder.

If the Minister decides to impose a new or varied condition on the petroleum facility licence, the Minister must give a notice stating the decision and the reasons for the decision.

Amendment of ch 10, hdg (Conferences, investigations and enforcement)

Clause 198 removes a reference to conferences in the heading to chapter 10 of the *Petroleum and Gas (Production and Safety) Act 2004*. This amendment is consequential to consolidating the conference provisions in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Omission of ch 10, pt 1AA (Conferences with eligible claimants or owners and occupiers)

Clause 199 removes the entirety of part 1AA of the *Petroleum and Gas (Production and Safety) Act 2004*, which contained the provisions for conferences with eligible claimants or owners and occupiers. These provisions are consolidated in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 799B (Definitions for part)

Clause 200 amends section 799B of the *Petroleum and Gas (Production and Safety) Act 2004* to omit definitions and insert new definitions required for this part.

Insertion of new s 799CA

Clause 201 inserts new section 799CA in the *Petroleum and Gas (Production and Safety) Act 2004* to provide for the definition of 'remediation activity'.

The activities which are remediation activities have been clarified and, in some circumstances, broadened, to make sure that authorised persons have clear and appropriate powers to ensure that abandoned operating plants and sites can be appropriately remediated and managed by:

- Ensuring they are safe, secure and durable; and
- Implementing measures to mitigate, manage and monitor impacts of abandoned sites and abandoned operating plant on the surrounding and downstream environment.

It is also intended to ensure that, where appropriate, the remediation activities under the *Petroleum and Gas (Production and Safety) Act 2004* are aligned with the remediation activities able to be undertaken under the *Mineral Resources Act 1989*.

Replacement of ss 799D–799G

Clause 202 omits sections 799D to 799G of the *Petroleum and Gas (Production and Safety) Act 2004* and inserts new sections.

New section 799D provides for the process for the chief executive to authorise a person to enter land to carry out one or more remediation activities.

The chief executive may authorise a person to enter land that is an abandoned site to carry out one or more remediation activities on the abandoned site if the entry to land is necessary to carry out remediation activities.

The chief executive's powers have been expanded to allow the authorisation of persons to enter onto land beyond the boundaries of the abandoned site to carry out remediation activities (defined as 'affected land'). The chief executive must be satisfied that:

- Remediation activities on the affected land are, or may be required, because of the direct or indirect impacts of previous petroleum activities on the abandoned site; and

- The entry is necessary to carry out remediation activities on an abandoned mine site.

The intention is to allow authorised persons to carry out remediation activities on the land if that land has been affected (directly or indirectly) by previous petroleum activities even if that land is not directly next to the abandoned site. For example, where a bore is located near the edge of an abandoned site and remediation activities need to be undertaken on a nearby property in order to adequately remediate the bore.

The chief executive's authorisation under this section must be in writing and state the period of the authorisation.

New section 799E establishes the process for entering land to carry out remediation activities on abandoned sites and affected land.

For entering an abandoned site, an authorised person must give a notice of entry to the owner and occupier of the land in accordance with the requirements set out in new section 799F.

For entering affected land, an authorised person must obtain the consent of the owner and occupier of the land, in accordance with the requirements set out in new section 799G.

An authorised person may also enter land adjacent to an abandoned site if:

- The entry is only for the purpose of carrying out remediation activities on the abandoned site, or to carry out remediation activities on land to preserve life or property; and
- Entering the adjacent land is the only reasonably practicable way for the authorised person to enter the site; and
- The owner and occupier has been given a notice of entry in accordance with the requirements set out in new section 799F.

Entry to any land may occur at any time to carry out remediation activities if the activities are necessary to preserve life or property. This extends to any land and is subject to giving a notice of entry within 10 business days after entering the land in accordance with new section 799F(1)(a).

The section does not authorise entry to a structure used for residential purposes without the consent of the occupier of the structure.

New section 799F provides that an authorised person must give the owner and occupier of the land a written notice about the entry at least 10 business days before entering the land or a shorter period agreed to by the owner and occupier.

If the land is entered to carry out remediation activities necessary to preserve life or property, a written notice about the entry must be given within 10 business day after entering the land.

The section also provides that the written notification must state the following:

- When the entry was or is to be made;
- The purpose of the entry;
- If the notice relates to land other than affected land, that the authorised person is permitted under the *Petroleum and Gas (Production and Safety) Act 2004* to enter the land without consent or a warrant; and
- The remediation or rehabilitation activities carried out or proposed to be carried out.

New section 799G provides that for the purpose of obtaining consent to enter affected land, an authorised person may:

- Enter land around the premises to the extent that is reasonable to make contact; or
- Enter part of the land the authorised person reasonably believes the public may ordinarily enter when they wish to contact an occupier of the place.

When asking for the consent, the authorised person must tell the owner or occupier:

- About the purpose of the entry;
- The proposed day, time and duration of the entry;
- That the person does not have to consent to the entry; and
- Consent may be given subject to conditions and may be withdrawn at any time.

If the owner or occupier gives consent, the authorised person may ask the owner or occupier to sign an acknowledgement of consent regarding the authorised person's proposed entry to land. The acknowledgement must contain particular information, including the purpose of the entry, the activities to be carried out and any conditions attached to the consent.

The authorised person must give a copy of the acknowledgement to the owner and occupier.

New section 799GA reinserts requirements that were included in omitted section 799G. These requirements have not changed.

New section 799GB provides that an authorised person must give the owner and occupier of affected land a report about the entry within 30 days after the entry ended.

The report must state:

- Whether or not any remediation activities were carried out on the affected land; and
- The location, nature and extent of any activities carried out on the land; and
- Any other matter prescribed by regulation.

The authorised person is not required to give a report to the owner or occupier of the affected land if the owner or occupier does not want it.

Insertion of new ch 11, pt 1AA

Clause 203 inserts a new part 1AA into chapter 11 of the *Petroleum and Gas (Production and Safety) Act 2004* for industrial manslaughter.

New section 799I inserts definitions for the part including for an employer, a senior officer of an employer, and an executive officer if the employer is a corporation. Whether a person is a senior officer will depend on the individual circumstances of each case, including the person's position and role in taking part in management decisions of the employing entity.

In addition, it provides that a person's conduct causes death if it substantially contributes to the death.

New section 799J provides that section 23 of the Criminal Code, which provides for a defence of accident, does not apply to an offence for industrial manslaughter.

New section 799K provides for a new offence for an employer if a worker dies in the course of carrying out an activity related to the operating plant or gas work or is injured and later dies; and the employer's conduct causes the death; and the employer is negligent about causing the death of the worker. The new offence recognises the extremely serious circumstances in which both a fatality has occurred and there has been criminal negligence by an employer.

The maximum penalty for an individual is 20 years imprisonment and for a body corporate is 100,000 penalty units. The offence is a crime.

New section 799L provides for a new offence for a senior officer of an employer if a worker dies in the course of carrying out an activity related to the operating plant or gas work or is injured and later dies; and the senior officer's conduct causes the death; and the senior officer is negligent about causing the death of the worker. The new offence recognises the extremely serious circumstances in which both a fatality has occurred and there has been criminal negligence by a senior officer.

The maximum penalty is 20 years imprisonment. The offence is a crime.

Amendment of s 837 (Offences under Act are summary)

Clause 204 amends section 837 to exclude an industrial manslaughter offence from being dealt with by way of summary proceedings. It provides that an industrial manslaughter offence is a serious offence and therefore the provisions about who may bring a proceeding for a serious offence will apply. This does not affect the ability of the director of public prosecutions to bring proceedings.

Amendment of s 837C (Procedure if prosecution not brought)

Clause 205 amends section 837C so that if proceedings for an industrial manslaughter offence have not been brought within six months, a person may make a written request to the WHS prosecutor that a prosecution be brought in relation to the industrial manslaughter offence.

Insertion of new s 991A

Clause 206 inserts a new section 991A Validation of particular orders for costs.

New section 991A provides for the validation of costs orders for the costs of representation, made by an Industrial Magistrate Court before 5 December 2014, in relation to a proceeding for an offence against the Act. The section provides that the making of the costs order and anything done under the costs order is, and is taken to always have been, valid.

Insertion of new ch 15, pt 27

Clause 207 inserts a new part 27 in chapter 15 of the *Petroleum and Gas (Production and Safety) Act 2004* to provide transitional provisions for the amendments in this Bill.

New section 1013 provides that the power of the Minister to impose a new or amended condition on a petroleum authority under section 80A, 160A, 424A, or 455A applies to existing authorities, but only if the indirect change of control occurs after the commencement.

New section 1014 provides that section 400 as in force after the commencement applies in relation to a pipeline licence whether the pipeline licence was granted before or after the commencement. This means that if a pipeline licence holder has not reached a written agreement with an existing authority holder, the pipeline licence holder may utilise section 400 as amended by the Bill to negotiate a coexistence plan with the existing authority holder.

New section 1015 provides that section 440 as in force after the commencement applies in relation to a petroleum facility licence whether the petroleum facility licence was granted before or after the commencement. This means that if a petroleum facility licence holder has not reached a written agreement with an existing mining lease holder, the petroleum facility licence holder may utilise section 440 as amended by the Bill to negotiate a coexistence plan with the existing mining lease holder.

New section 1016 provides a transitional provision for the circumstance where an authorised officer had asked parties to attend a conference before commencement, and at commencement the conference had not taken place. Under this circumstance, the conference must take place under chapter 10, part 1AA of the *Petroleum and Gas (Production and Safety) Act 2004* as in force immediately before commencement. To remove all doubt, this provision also clarifies that the new provisions on conferences which the Bill inserts in chapter 3, part 8 of the *Mineral and Energy Resources (Common Provisions) Act 2014* do not apply to that conference.

New section 1017 provides for the continuation of an authorised person's authorisation and powers under the current chapter 10, part 3 to carry out remediation activities in relation to an abandoned operating plant.

Amendment of sch 2 (Dictionary)

Clause 208 amends the dictionary to insert new definitions and remove obsolete definitions.

Part 17 – Amendment of South-East Queensland Water (Distribution and Retail Restructuring) Act 2009

Act amended

Clause 209 states that this part of the Bill amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

Amendment of s 99BRCF (Power to adopt charges by board decision)

Clause 210 amends section 99BRCF to prohibit the distributor-retailers from adopting infrastructure charges for trunk infrastructure related to development for a non-State school under a designation. The amendment also provides definitions for ‘designation’ and ‘non-State school’.

Amendment of s 99BT (Keeping particular documents available for inspection and purchase)

Clause 211 amends section 99BT to require the distributor-retailers to keep available on their website their infrastructure charges register in a way that can be electronically searched, enables a person to download the results of an electronic search, and states the day the information was last updated.

An SEQ service provider that contravenes section 99BT commits an offence with a maximum penalty of 200 penalty units.

Replacement of s 99BU (Requirements for infrastructure charges register)

Clause 212 omits the previous section 99BU and replaces it with a new section.

New section 99BU provides for the requirements for a distributor-retailer’s infrastructure charges register.

A distributor-retailer’s infrastructure charges register must include the following information for each infrastructure charge levied:

- The amount of the charge;
- Whether the charge has been paid in full and, if not, the amount outstanding;
- The real property description of the land to which the charge applies;
- The suburb or other locality (e.g. local government area) in which the land to which the charge applies is situated;
- The charges schedule under which the charge was levied;
- The charge rate, stated in the charges schedule, under which the charge was levied;

- If an automatic increase provision under chapter 4C, part 7 applies to the charge—that the charge is subject to automatic increase and how the increase is worked out;
- If an offset was given in relation to the charge—the amount of the offset;
- If a refund was given in relation to the charge—the amount of the refund;
- If the charge was levied under a water approval—the reference number of the approval, and the date the approval starts and lapses; and
- If the charge is the subject of an infrastructure agreement—the name of the agreement, the day the agreement was entered into and the infrastructure to be supplied under the agreement.

The information required above is to be updated in the distributor-retailer's infrastructure charges register quarterly. A quarter is defined as a period of three months starting on 1 January, 1 April, 1 July or 1 October.

The new section also provides requirements to report annually and quarterly. Additionally, the infrastructure charges register must include a copy of each infrastructure charges notice issued by the distributor-retailer. Infrastructure charges notices are to be uploaded to the distributor-retailer's website as soon as practicable after the end of the quarter in which the infrastructure charges notice was issued.

Annual documents must be included in the register within five months after the end of the financial year (i.e. before 1 December each year). The document must include the following information for the previous financial year:

- The total amount of charges levied and collected;
- The total amount of offsets and refunds given;
- The total amount of collected charges spent on providing trunk infrastructure; and
- The total amount of charges collected that were not spent.

Annual documents must also include information about infrastructure charges forecast to be levied, and trunk infrastructure forecast to be supplied, in the current financial year and next three financial years. Forecasts for the current financial year are to be provided before 1 December of the year. For example, forecasts for the 2021/22 financial year are to be provided before 1 December 2021. Forecasts for the following three financial years are to be provided in the infrastructure charges register before 1 December of the same year. For example, forecasts for the following three financial years of 2022/23, 2023/24, 2024/25 are to be included in the infrastructure charges register before 1 December 2021.

Each quarter the distributor-retailer must include a report in their infrastructure charges register. The report must include information on trunk infrastructure supplied throughout the quarter and be uploaded to the register as soon as practicable after the end of the quarter. Information must detail:

- A description of the infrastructure;
- The suburb or other locality in which the infrastructure is situated;
- The cost of supplying the infrastructure;
- The trunk infrastructure network with which the infrastructure is associated;

- Whether the infrastructure is included in the distributor-retailer's Water Netserv plan and, if so, the reference number of the plan;
- Whether the infrastructure was supplied under a water approval and, if so, the reference number of the approval; and
- Whether the infrastructure is the subject of an infrastructure agreement and, if so, the name of the agreement.

A distributor-retailer who contravenes section 99BU commits an offence with a maximum penalty of 200 penalty units.

Insertion of new ch 6, pt 13

Clause 213 inserts a new part 13 in chapter 6 of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* to provide transitional provisions for the amendments in this Bill.

New section 153 provides that obligations under section 99BU(2)(b), (4)(b) or (6) for a distributor-retailer to include in the infrastructure charges register certain documents for each financial year, applies from the financial year starting on 1 July 2021.

Part 18 – Amendment of Water Supply (Safety and Reliability) Act 2008

Act amended

Clause 214 states that this part of the Bill amends the *Water Supply (Safety and Reliability) Act 2008*.

Amendment of s 41 (Restricting water supply)

Clause 215 amends section 41(2)(d) to fix incorrect cross-references to the *Water Act 2000*.

Amendment of s 390 (Minister may declare temporary full supply level)

Clause 216 amends the note to section 390 to state that under the *Water Act 2000*, section 813(3)(c)(i) and (4)(a), if a declaration is in force for a temporary full supply level for the dam, a reference in the resource operations licence to the full supply level for the dam is taken to be a reference to the temporary full supply level declared for the dam.

This section also inserts a new note to provide clarification for dam owners that under the *Water Act 2000*, section 813(3)(c) and (4)(c), if both a declaration is in force for a temporary full supply level for the dam and the full supply level of the dam is reduced under chapter 4, part 4 of the *Water Supply (Safety and Reliability) Act 2008*, a reference in the resource operations licence to the full supply level for the dam is taken to be a reference to the lower of the temporary full supply level and the reduced full supply level under section 399B(2).

To remove any doubt, new subsection (6A) has been inserted to provide clarification for dam owners using this section in order to maintain the operation of the dam during inflow events if the Minister has declared a temporary full supply level for a dam under subsection (2). For example, releasing water from the dam to maintain the temporary full supply level in response to an inflow event.

Amendment of s 399B (Dam owner may reduce full supply level in certain circumstances)

Clause 217 amends the note to section 399B to state that under the *Water Act 2000*, section 813(3)(c)(i) and (4)(b), if the full supply level for the dam is reduced, a reference in the resource operations licence to the full supply level for the dam is taken to be a reference to the reduced full supply level.

This section also inserts a new note to provide clarification for dam owners that under the *Water Act 2000*, section 813(3)(c) and (4)(c), if both a declaration is in force for a temporary full supply level for the dam and the full supply level of the dam is reduced under chapter 4, part 3 of the *Water Supply (Safety and Reliability) Act 2008*, a reference in the resource operations licence to the full supply level for the dam is taken to be a reference to the lower of the temporary full supply level and the reduced full supply level under section 390(2).

To remove any doubt, new subsection (4A) has been inserted to provide clarification for dam owners using this section in order to maintain the operation of the dam during inflow events if the dam owner has reduced the full supply level under subsection (2). For example, releasing water from the dam to maintain the reduced full supply level in response to an inflow event.

Part 19 – Minor and consequential amendments

Legislation amended

Clause 218 provides that Schedule 1 amends the legislation it mentions.

Schedule 1 – Minor and consequential amendments

Schedule 1 of the Bill makes minor amendments to legislation listed in the schedule to correct incorrect cross-referencing and update terminology to reflect amendments made by the Bill.