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# Mining and Other Legislation Amendment Bill 2012



## Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Andrew Cripps MP, Minister for Natural Resources and Mines

### Title of the Bill

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

### Objectives of the Amendments

These amendments to the *Mining and Other Legislation Bill 2012* relate to clauses amending the *Geothermal Energy Act 2010*, *Greenhouse Gas Storage Act 2009*, *Petroleum Act 1923*, *Petroleum and Gas (Production and Safety) Act 2004*, *Mineral Resources Act 1989*, *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* and the *Environmental Protection Act 1994*.

The primary objectives of the amendments are to amend the *Mining and Other Legislation Amendment Bill 2012* to address issues raised since introduction of the Bill to Parliament and other minor or consequential amendments that have been identified to:

- Make a declaration in the *Environmental Protection Act 1994* to provide certainty for the commencement of section 127 of the *Mines Legislation (Streamlining) Amendment Act 2012*. This section was subject to a proclamation by the Governor made on 6 December 2012. However, this commencement could not be given effect as it was intended to commence after the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. This amendment gives effect to the commencement as it was originally drafted and passed by parliament.
- Amend clause 4 of the *Mining and Other Legislation Amendment Bill 2012* to provide for transitional requirements to ensure that existing requirements for both financial assurance and rehabilitation will continue until conditions are prescribed for these matters in Regulation.

- Amend the definition of small scale mining activity in clause 20 of *Mining and Other Legislation Amendment Bill 2012* to provide that small scale mining activities can continue to operate in a wild river area, but not in a wild river high preservation area or wild river special floodplain management area.
- Amend clauses 42, 44, 78, 161 and 178 of the *Mining and Other Legislation Amendment Bill 2012* to insert a new wording into the definition of ‘occupier’ in the *Geothermal Energy Act 2010*, *Greenhouse Gas Storage Act 2009*, *Petroleum Act 1923*, *Petroleum and Gas (Production and Safety) Act 2004*, and the *Mineral Resources Act 1989* to make it abundantly clear that an ‘owner’ (as defined under the relevant resource Act) has the ability to confer a right to occupy to another person.
- Amend clause 51 of the *Mining and Other Legislation Amendment Bill 2012* to provide the discretion for the Minister to disqualify an applicant from being granted an exploration permit. As drafted clause 51 specifically disqualifies an applicant from being granted an exploration permit if the Minister reasonably believes that an applicant has at some time contravened mining legislation (including in another jurisdiction) whether convicted or not. The amendment to clause 51, which results from representations from industry stakeholders during consultation on the Bill, will ensure the Minister’s discretion to use disqualification powers remains. Additional amendments will provide the Minister with some guidance in deciding whether or not to exercise the discretion.
- Amend clause 109 to correct a grammatical error.
- Amend clause 188 of the *Mining and Other Legislation Amendment Bill 2012* to remove any potential uncertainty as to whether a safety requirement can be made under the regulations about existing incidental activities provided by section 669 of the *Petroleum and Gas (Production and Safety) Act 2004*. The amendment is intended to make it clear that incidental activities (not just stated pipeline licence incidental activities) are included in the head of power provided by this section.

## **Achievement of Policy Objectives**

The commencement of section 127 of the *Mines Legislation (Streamlining) Amendment Act 2012* as was intended by Parliament will be achieved by the declaration to be made under the *Environmental Protection Act 1994*.

Amending the definition of small scale mining activity in clause 20 of the *Mining and Other Legislation Amendment Bill 2012* will address the unintended exclusion of small scale exploration activities and small scale opal and gemstone miners operating in wild river areas (other than wild river high preservation areas and wild river floodplain management areas) from benefiting from the new small scale mining framework.

The provision of additional transitional arrangements in clause 4 for existing financial assurance and rehabilitation conditions will ensure continuity for such requirements until a Regulation prescribing conditions for these matters can be enacted.

Retention of the extant discretion for the Minister to disqualify a tender applicant from being granted an exploration permit will be achieved by amendments to the clause 51 of the *Mining and Other Legislation Amendment Bill 2012*.

The definition of 'occupier' will be enhanced and address stakeholder concerns through amendments to clauses 42, 44, 78, 161 and 178 of the *Mining and Other Legislation Amendment Bill 2012*.

Amendments to clause 188 of the *Mining and Other Legislation Amendment Bill 2012* will remove any uncertainty as to whether a safety requirement can be made for existing incidental activities under the head of power contained in section 669 of the *Petroleum and Gas (Production and Safety) Act 2004*.

## **Alternative Ways of Achieving Policy Objectives**

Amendment of the *Mining and Other Legislation Amendment Bill 2012* is the only means of achieving the policy objectives.

## **Estimated Cost for Government Implementation**

There are no additional costs resulting from the amendments. The amendment to clause 4 of the *Mining and Other Legislation Amendment Bill 2012* will ensure that the state does not carry the cost or liability for rehabilitating a site when the operator of a small scale mining activity cancels their environmental authority.

## **Consistency with Fundamental Legislative Principles**

The amending provisions are generally consistent with the standards required under the *Legislative Standards Act 1992*. However, a potential concern regarding conformity with fundamental legislative principles may be raised in relation to the following provision.

*S 4(3)(a) of the Legislative Standards Act 1992, (a) "makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review."*

Clause 51 of the *Mining and Other Legislation Amendment Bill 2012* currently provides no discretion for the Minister in disqualifying an applicant for an exploration permit. As a result

of representations from industry the discretionary power in the extant legislation is to be reinstated through an amending provision.

The amendment to clause 51 provides for an administrative power for the Minister to apply discretion when deciding if a person is suitable to be granted an exploration permit. The provision has been redrafted through this Amendment during Consideration in Detail process to provide for some confinement on the exercise of the Minister's discretion by expressly stating the matters to which the Minister may have regard. Without this clarification, the section could be in breach of the Fundamental Legislative Principle as defined under section 4(3)(a) of the *Legislative Standards Act 1992*, which states "*the legislation (a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.*"

The potential breach of fundamental legislative principle has been mitigated by providing for some confinement on the exercise of the Minister's discretion.

## **Consultation**

### **Government and Industry**

The amendments were identified during consultation of the Bill by Government and non-government industry entities through the Agriculture Resources and Environment Committee's Inquiry into the *Mining and Other Legislation Amendment Bill 2012*.

Additional issues were raised by government agencies and industry stakeholders directly with the Department of Natural Resources and Mines.

The Department of Premier and Cabinet and the Office of Queensland Parliamentary Counsel have been consulted on the amendments.

The Department of Environment and Heritage Protection proposed the amendments relating to small scale mining activities in wild river areas and to facilitate the transition of financial assurance and rehabilitation requirements that will continue to apply to small scale mining activities after the environmental authority is cancelled.

### **Community**

Several amendments have been made as a result of recommendations in the report from the Agriculture Resources and Environment Committee on their inquiry into the *Mining and Other Legislation Amendment Bill 2012 (Mining and Other Legislation Amendment Bill, Report No. 18, Agriculture, Resources and Environment Committee, March 2013)*. This report considered industry, community and local government submissions in preparing the recommendations.

## Notes on Provisions

**Amendment 1** provides a declaration to be made under the *Environmental Protection Act 1994*, inserted before clause 4 of the *Mining and Other Legislation Amendment Bill*, that, section 127 of the *Mines Legislation (Streamlining) Amendment Act 2012* is taken to have commenced immediately after the commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. The commencement has effect despite the proclamation made by the Governor on 6 December 2012.

**Amendment 2** inserts, a minor correction into clause 4 (Insertion of new ch13, pt19) to replace the word 'provision' with 'provisions'.

**Amendment 3** provides additional transitional provisions in clause 4 (Insertion of new ch13, pt19) to facilitate the transition of financial assurance and rehabilitation requirements that will continue to apply to small scale mining activities after the environmental authority is cancelled.

Existing financial assurance and rehabilitation requirements will continue to apply until new conditions are prescribed in the *Environmental Protection Regulation 2008*, which cannot occur until after the Bill has received Royal Assent and the Act has commenced. These new conditions will replace the conditions that would otherwise be lost when the environmental authority for these activities is cancelled.

**Amendment 4** prevents the unintentional operation of the transitional provision for financial assurance in circumstances where someone not eligible to have their environmental authority cancelled has asked for it to be cancelled.

The amendment, to clause 4 (Insertion of new ch13, pt19), also removes any doubt about when the provision starts to apply. The amendment clarifies that the provision only applies from the time when the chief executive cancels the environmental authority, rather than when the holder of the authority gives the chief executive a notice asking the chief executive to cancel the authority.

**Amendment 5** replaces the term 'wild river area' in the definition of 'small scale mining activity' in clause 20 (Amendment of s 62 (Amendment of sch 4 (Dictionary))) with 'wild river high preservation area or wild river special floodplain management area'.

This addresses an unintended restriction contained in the Bill, as raised by the Queensland Small Mining Council in their submission to the Agriculture, Resources and Environment Committee.

Significant numbers of opal mining leases have been granted in the Cooper Creek and Georgina and Diamantina Basins Wild River Areas. The Bill currently excludes operations in wild rivers areas from being eligible to operate without an environmental authority.

The provision was drafted too broadly as it is not the intention to exclude mining leases in these areas from benefiting from the new small scale mining framework. Accordingly, an amendment will provide that small scale mining activities will continue to be eligible to operate in a wild river area, but not in a wild river high preservation area or wild river special floodplain management area.

**Amendment 6** makes structural change to clause 42 (Amendment of sch 2 (Dictionary)) to give effect to amendment 7.

**Amendment 7** inserts additional wording into the definition of ‘occupier’ in clause 42 to amend the *Geothermal Energy Act 2010* to make it abundantly clear that an ‘owner’ (as defined under the relevant Act) has the ability to confer a right to occupy to another person.

**Amendment 8** makes structural change to clause 44 (Amendment of sch 2 (Dictionary)) to give effect to amendment 9.

**Amendment 9** inserts additional wording into the definition of ‘occupier’ in clause 44 to amend the *Greenhouse Gas Storage Act 2009* to make it abundantly clear that an ‘owner’ (as defined under the relevant Act) has the ability to confer a right to occupy to another person.

**Amendments 10** replaces existing subclause 137(2)(e) in clause 51 (Replacement of s 137 (Grant of exploration permit)) with a new subclause which recognises that the Minister has the discretion to disqualify a tender applicant from being granted an exploration permit.

**Amendment 11** inserts provisions into section 51 of the *Mining and Other Legislation Amendment Bill 2012* to provide Ministerial discretion in a decision whether to disqualify an applicant from being granted an exploration permit under the *Mineral Resources Act 1989*.

New subclause 137(4) provides that the Minister may decide an applicant is disqualified from being granted an exploration permit if the Minister reasonably believes the applicant or associate of the applicant has contravened provisions of this Act and other mining legislation whether an applicant or associate of the applicant has been charged or convicted of an offence.

New subclause 137(5) provides that the Minister must have regard to the nature of contravention in terms of determining whether an applicant is not a suitable person to carry out the activities under the exploration permit.

The amendment ensures that consistency with the extant provisions of s 137(4) of the *Mineral Resources Act 1989* is retained.

**Amendment 12** inserts additional wording into the definition of ‘occupier’ in clause 78 (Amendment of sch 2 (Dictionary)) to amend the *Petroleum Act 1923* to make it abundantly clear that an ‘owner’ (as defined under the relevant Act) has the ability to confer a right to occupy to another person.

**Amendment 13** amends a grammatical error in clause 109(1) (Amendment of s 141 (Conditions of exploration permit)) replacing the word ‘it’ with ‘it applies’.

**Amendment 14** amends a grammatical error in clause 109(1) by replacing the word ‘codes’ with ‘codes apply’.

**Amendment 15** clause 161 ((Amendment of s 2 (Definitions)) makes structural change to clause 161 to give effect to amendment 16.

**Amendment 16** inserts additional wording into the definition of ‘occupier’ in clause 161 to amend the *Petroleum and Gas (Production and Safety) Act 2004* to make it abundantly clear that an ‘owner’ (as defined under the relevant Act) has the ability to confer a right to occupy to another person.

**Amendment 17** inserts additional wording into the definition of ‘occupier’ in clause 178 (Amendment of sch 2 (Dictionary)) to amend the *Mineral Resources Act 1989* to make it abundantly clear that an ‘owner’ (as defined under the relevant Act) has the ability to confer a right to occupy to another person.

**Amendment 18** amends clause 188 (Amendment of s 669 (Making Safety Requirements)) of the *Mining and Other Legislation Amendment Bill 2012* to remove any uncertainty as to whether a safety requirement can be made for existing incidental activities under the head of power contained in section 669 of the *Petroleum and Gas (Production and Safety) Act 2004*. The amendment makes it clear that incidental activities (not just stated pipeline licence incidental activities) are included in the head of power to make a safety requirement under the regulations.