

# Land and Other Legislation Amendment Bill 2016

## Explanatory Notes

**Resupplied 23 March 2017**

**FOR**

**Amendments during consideration in detail to be moved by the Honourable Dr Anthony Lynham MP**

### **Title of the Bill**

The short title of the Bill is the Land and Other Legislation Amendment Bill 2016.

### **Objectives of the Amendments**

#### *Amendments to Land Act 1994*

The objective of the Land and Other Legislation Amendment Bill 2016 (the Bill) is to improve administration of the *Land Act 1994* (the Land Act) and the *Land Title Act 1994* (the Land Title Act) by implementing a number of miscellaneous amendments. The Bill also makes minor consequential amendments to the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

The Bill was introduced into Parliament on 29 November 2016 and referred to the Agriculture and Environment Committee (the Committee). On 7 March 2017 the Committee tabled its report (No. 32) in relation to the Bill.

The amendments to the Bill respond to issues raised by stakeholders during the consideration of the Bill by the Committee and which were also the subject of recommendations by the Committee.

The object of the amendments is to:

- provide further flexibility to rolling term leaseholders in relation to the timing of an application for extension of the lease;

- facilitate a smooth transition from a resigning trustee of trust land to a replacement trustee;
- ensure a trustee of trust land and other underlying registered interest holders, are provided with notices given under the new prescribed terms framework and are able to make submissions in relation to a notice of intention to cancel an interest and improvements on the relevant land; and
- clarify that where compensation is payable for lawful improvements that become the property of the State under new section 321K, that compensation is payable by the State.

#### *Amendments to Mineral Resources Act 1989 to grant MLA 70460*

The amendments to the *Mineral Resources Act 1989* provide a solution that will give certainty for Byerwen Coal Pty Ltd (Byerwen) and Glencore Coal Queensland Pty Ltd (Glencore) in relation to a long running commercial dispute in the Bowen Basin.

This will be achieved by:

- granting Mining Lease Application 70460 to Glencore;
- providing a framework to decide Byerwen's Mining Lease Application 70434; and
- providing that no compensation is payable by the State or either party as a result of these amendments.

#### *Amendments to validate appointments of statutory office holders under the mining, petroleum and explosives safety legislation*

Amendments are proposed to 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* (collectively referred to as the mining, petroleum and explosives safety legislation) to provide certainty regarding the appointment of the office holders, powers exercised by and information collected by these office holders under the mining, petroleum and explosives safety legislation.

Uncertainty about the validity of the office holders' appointment would have implications for prosecutions, particularly in respect to the evidence used in the cases.

## **Achievement of the Objectives**

To achieve the objectives the following changes to the Bill are proposed:

#### *Amendments to the Land Act 1994*

- amend clause 11 so that an application for extension of a rolling term lease may be made once during each term of the lease, at any time within the term of the lease;
- amend clause 24 to remove the requirement for the Minister to be satisfied of certain matters before a resignation of a trustee of trust land may take effect and instead to allow a resignation of an existing trustee to take effect when a replacement trustee is found or 12 months after the signed resignation is given to the Minister, whichever is the earlier; and
- amend clause 27 of the Bill to:

- allow an underlying registered interest holder to receive a copy of the notice to remedy and notice of intention to cancel and to ensure that in relation to a notice of intention to cancel that the underlying interest holder may make submissions to the Minister including in relation to improvements on the land; and
- have new section 321K explicitly state that any obligation to pay compensation under that section lies with the State.

*Amendments to Mineral Resources Act 1989 to grant MLA 70460*

To provide certainty to the existing project, a new section will be inserted into the *Mineral Resources Act 1989* which will declare mining lease application 70460 to have been granted.

To ensure that the proposed project may go ahead without the risk of being impacted by mining lease application 70460, this section will also define the term of the mining lease, and condition it so that it is not able to be renewed past the term defined in the *Mineral Resources Act 1989*.

Further certainty will be provided by amendments that ensure that Byerwen's proposed project does not require the consent or views from the holder of mining lease 70460 to conduct operations on mining lease 70434, and does not require their consent or views to apply for surface rights upon the area of the proposed project.

The amendments also provide that no compensation is payable by the State, or by either of the parties as a result of the enactment or operation of these amendments.

*Amendments to validate appointments of statutory office holders under the mining, petroleum and explosives safety legislation*

The objectives will be achieved by:

- validating the appointment of statutory office holders under the *Mining and Quarrying Safety and Health Act 1999*, the *Coal Mining Safety and Health Act 1999*, the *Explosives Act 1999*, and the *Petroleum and Gas (Production and Safety) Act 2004*; and
- removing any question as to the validity of anything done or omitted to be done by the statutory office holders; and
- ensuring that any evidence obtained through the purported exercise of the powers is taken to be, and always have been, lawfully obtained.

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

*Amendments to the Land Act 1994*

The Bill must be amended to achieve the policy objectives and ensure the most effective operation of the provisions at commencement.

*Amendments to Mineral Resources Act 1989 to grant MLA 70460*

There are no alternative ways to achieve the policy objectives. The policy objectives can only be achieved by legislative amendment.

*Amendments to validate appointments of statutory office holders under the mining, petroleum and explosives safety legislation*

There is no alternative way of achieving the policy objectives other than by legislative amendment.

## **Estimated Cost for Government Implementation**

*Amendments to the Land Act 1994*

Amendments to the Bill are not expected to create any additional implementation costs. Current departmental fact sheets, web content, forms and work processes and systems will be amended where appropriate to take into account the proposed changes to the Bill.

*Amendments to Mineral Resources Act 1989 to grant MLA 70460*

There are no implementation costs associated with these amendments.

*Amendments to validate appointments of statutory office holders under the mining, petroleum and explosives safety legislation*

There are no implementation costs associated with these amendments.

## **Consistency with Fundamental Legislative Principles**

*Amendments to the Land Act 1994*

The amendments to the Bill have been drafted with regard to fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* and are consistent with these provisions.

*Amendments to the Mineral Resources Act 1989 to grant MLA 70460*

If the outstanding tenure applications were determined administratively by the Minister or the Minister's delegate, then the previous applicant Byerwen would have the right to provide its views or consent on the MLA 70460. This legislation will mean that Byerwen will be deprived of the right to provide its views or consent.

This would appear to be inconsistent with the intention behind section 4(2) of the *Legislative Standards Act 1992*, which provides that legislation should have sufficient regard to the rights of individuals. However, section 4(2) does not technically apply to Byerwen because it is a company.

It is arguable that once MLA 70460 has been granted, Glencore as prior lease holder should obtain a right to have its views or consent heard on MLA 70434. These amendments, however, explicitly exclude this right as Glencore would not have this right except for the action of these amendments.

This would again appear to be inconsistent with the intention behind section 4(2) of the *Legislative Standards Act 1992*, however, as above, section 4(2) does not technically apply to Glencore because it is a company.

In relation to the provision 334ZJK it could be argued that the removal of a potential liability owed by the State to another person, and also the potential right of the two parties to seek

remedies against each other due to the operation or execution of these amendments is a breach of fundamental legislative principles.

However, the provisions explicitly preserve the existing legal position under the *Mineral Resources Act 1989* for compensation to landholders, therefore the Bill is not altering the position of any landholder entity, or impacting on any rights they would normally have under section 279 and 280 of the *Mineral Resources Act 1989*.

These amendments provide certainty to Glencore and Byerwen and preserve the State's interest in proper management of its resources. The compensation provisions provide finality and foreclose the possibility of future dispute over these matters between the State and the parties.

*Amendments to validate appointments of statutory office holders under the mining, petroleum and explosives safety legislation*

The amendments for validation of the appointment of statutory office holders under the mining, petroleum and explosives safety legislation, and validation of any exercise of powers and evidence collected by these office holders, will operate retrospectively. However, they simply validate any existing appointments and actions of statutory office holders to whom the provisions apply and do not impose obligations on individuals retrospectively. Accordingly, in the circumstances, the amendments have sufficient regard to the fundamental legislative principles stated in section 4 of the *Legislative Standards Act 1992*.

## **Consultation**

*Amendments to the Land Act 1994*

Feedback provided through the Agriculture and Environment Committee submission process has been considered in preparing these amendments.

The proposed amendments to clauses 24 and 27 of the Bill in relation to the resignation of trustees of trust land and the prescribed terms framework have been further developed in consultation with the Local Government Association of Queensland (LGAQ).

*Amendments to Mineral Resources Act 1989 to grant MLA 70460*

The Department has offered ongoing assistance to both Glencore and Byerwen to resolve their dispute, however, the two parties have been unwilling to negotiate a mutually agreeable outcome. There has been consultation with Byerwen and Glencore on the intent of these amendments.

*Amendments to validate appointments of statutory office holders under the mining, petroleum and explosives safety legislation*

There has been no consultation external to Government.

## NOTES ON PROVISIONS

### Amendment 1 - After clause 2

*Amendment 1* inserts new clauses 2A to 2F into the Bill to insert amendments to the *Coal Mining Safety and Health Act 1999* and the *Explosives Act 1999*.

The new part 1A of the Bill inserts validating provisions into part 20 of the *Coal Mining Safety and Health Act 1999*.

The new clause 2A of the Bill provides that the part amends the *Coal Mining Safety and Health Act 1999*.

The new clause 2B of the Bill amends the heading of part 20 of the *Coal Mining Safety and Health Act 1999* to provide that part 20 also includes validation provisions as well as repeal and transitional provisions.

The new clause 2C of the Bill inserts a new division containing the new section 305 (Validation of particular appointments) into the *Coal Mining Safety and Health Act 1999*. The new section provides that if an officer or employee of the public service was purportedly appointed before commencement of the amendments, then the officer or employee is declared to always have been validly appointed. An officer or employee of the public service may be appointed by the chief executive as an inspector, inspection officer, or chief inspector under section 125 of the *Coal Mining Safety and Health Act 1999*. An officer or employee of the public service may be appointed by the chief executive as an authorised officer under section 129A of the *Coal Mining Safety and Health Act*.

The new section 305 also provides that any exercise of powers by a chief inspector, inspector, inspection officer, or authorised officer that was allowed under the Act, if the appointments were originally valid, is taken to be, and always to have been, valid and lawful. This section further declares that, without limiting the validation of exercise of powers, any evidence obtained in the exercise of a power is taken to be, and always have been, lawfully obtained.

The new clause 2D of the Bill provides that the part amends the *Explosives Act 1999*.

The new clause 2E of the Bill amends the heading of part 10 of the *Explosives Act 1999* to provide that part 10 also includes validation provisions as well as transitional provisions.

The new clause 2F inserts a new division containing the new section 147 (Validation of particular appointments) into the *Explosives Act 1999*. The new section provides that if a person was purportedly appointed before commencement of the amendments, then the person is declared to always have been validly appointed. A person may be appointed by the chief executive as a chief inspector or inspector under section 78 of the *Explosives Act 1999*.

The new section 147 also provides that any exercise of powers by a chief inspector or inspector that was allowed under the Act, if the appointments were originally valid, is taken to be, and always to have been, valid and lawful. This section further declares that, without limiting the validation of exercise of powers, any evidence obtained in the exercise of a power is taken to be, and always have been, lawfully obtained.

**Amendment 2 - Clause 11 (Amendment of s 164C (Making extension of application or giving expiry advice))**

*Amendment 2* amends clause 11 of the Bill to remove from section 164C(5) of the Land Act the requirement that an extension application be made in the last 20 years of the term of the lease or at an earlier time approved by the Minister if the Minister is satisfied special circumstances exist.

In its place, the amendment will allow an application for extension of a rolling term lease to be made, once, at any time during the term of the lease. Removal of the restriction as to when an application may be made will provide further flexibility to rolling term lease holders to seek an application at a time that suits their needs, for example, in relation to obtaining finance or succession planning.

**Amendment 3 - Clause 24 Amendment of s 50 (Vacation of office by trustee)**

*Amendment 3* amends clause 24 of the Bill to facilitate a smooth transition from a resigning trustee to a replacement trustee and enable a trustee of trust land to resign by signed notice to the Minister to take effect on the earlier of:

- a date agreed between the Minister and trustee; or
- a date stated by the Minister; or
- 12 months after the resignation is given to the Minister.

The amendment to clause 24 of the Bill provides a notice period within which a replacement trustee for the trust land may be found. It also allows sufficient flexibility to address the particular circumstances of a resigning trustee.

The amendment to clause 24 provides for a maximum notice period of 12 months with flexibility to have the resignation take effect at an earlier time.

**Amendment 4 - Clause 27 Insertion of new ch 6, pt 3, div 3**

*Amendment 4* amends clause 27 to require a designated officer under new section 321E to give a copy of a notice to remedy to an underlying interest holder. An underlying interest holder is a person who has a registered interest in land over which a registered document creates an interest and to which prescribed terms apply but is not a person bound by the prescribed terms.

This amendment will address concerns that, as drafted, clause 27 may not always capture a trustee of trust land over which further registered documents, such as a sub sublease, have been created.

New section 321E will enable an underlying registered interest holder who holds an interest in land over which registered document creates an interest to receive a copy of a notice to remedy. Only a person bound by the prescribed term will be entitled to appeal against the decision to give the notice.

**Amendment 5 - Clause 27 Insertion of new ch 6, pt 3, div 3**

*Amendment 5* amends clause 27 to limit the application of new section 321F so that a person not bound by the prescribed terms and who receives a copy of a notice to remedy as an underlying interest holder is not obliged to comply with the notice to remedy.

**Amendment 6 - Clause 27 Insertion of new ch 6, pt 3, div 3**

*Amendment 6* amends clause 27, new section 321G, to provide that the Minister may give a notice to cancel the registered interest where a person bound by the prescribed term for the interest has failed to comply with a notice to remedy.

Where a notice to cancel the interest is given, the Minister must give the notice to both the person bound by the prescribed term and all underlying registered interest holder.

**Amendment 7 - Clause 27 Insertion of new ch 6, pt 3, div 3**

*Amendment 7* amends clause 27, new section 321G, to enable an underlying registered interest holder who receives a notice of intention to cancel registration of a document to make submissions to the Minister about:

- the intention of the Minister to cancel the registration of the document; and
- why the registration should not be cancelled; and
- whether or not improvements on the land owned by a person with an interest in the land created by the registration of the document should be removed if the registration is cancelled.

**Amendment 8 - Clause 27 Insertion of new ch 6, pt 3, div 3**

*Amendment 8* amends clause 27, new section 321J to require the Minister to consider all submissions about improvements made under new section 321G in relation to a notice of intention to cancel when considering an application to remove the improvements.

**Amendment 9 - Clause 27 Insertion of new ch 6, pt 3, div 3**

*Amendment 9* amends clause 27, new section 321K to clarify that where compensation is payable for lawful improvements under that section, that compensation is payable by the State.

This liability for compensation would likely arise only in very limited circumstances, namely where it is in the public interest for the State to own the improvements.

**Amendment 10 - Clause 30 (Amendment of sch 6 (Dictionary))**

*Amendment 10* introduces a new provision to define the term 'underlying interest holder' for the purposes of new section 321E(5).

**Amendment 11 - After Clause 41 Insertion of new Part 3A Amendment of Mineral Resources Act 1989**

*Amendment 11* introduces a new part. Part 3A, 41A declares the Act to be amended as the *Mineral Resources Act 1989*, Part 3A 41B declares the insertion of a new chapter 12, pt 4B into the *Mineral Resources Act 1989*.

The new Part 4B contains the new sections 334ZJH, 334ZJI, 334ZJJ, and 334ZJK.

Section 334ZJH contains definitions of the entities that the part applies to.

Section 334ZJI contains provisions which define the section as applying to mining lease application 70460. Mining lease application 70460 is for a mining lease for transportation



through land under section 316. The provision grants mining lease application 70460 to Glencore, specifies that the grant expires on 31 December 2032 and that it cannot be renewed. The remainder of the Act, with the exception of sections 286 and 287, apply to the mining lease as if the lease had been granted by the Minister under section 271 on the day of assent.

Section 334ZJJ specifies that section 248 does not apply to Byerwen for the mining lease application 70434, another application for a mining lease or an application under section 275 for surface area to be included in a mining lease, to the extent those applications relate to land that is subject to the mining lease granted under section 334ZJI(2). Section 334ZJJ also specifies that the subsection only applies while the mining lease granted under section 334ZJI is in force.

Section 334ZJK provides that no compensation is payable by the State, Glencore, or Byerwen in relation to the operation or enactment of this part. An exception is provided for compensation as required under sections 279 or 280 of the *Mineral Resources Act*. The new section 334ZJK also provides that it applies despite any other Act or Law.

Section 41C also amends schedule 2 of the *Mineral Resources Act 1989* to refer definitions of the entities back to section 334ZJH.

**Amendment 12 – before part 4 Insertion of new Part 3B Amendment of *Mining and Quarrying Safety and Health Act 1999* and insertion of new Part 3C Amendment of the *Petroleum and Gas (Production and Safety) Act 2004*.**

*Amendment 12* introduces two new parts: 3B and 3C. Part 3B relates to amendments to the *Mining and Quarrying Safety and Health Act 1999*. Part 3C relates to amendments to the *Petroleum and Gas (Production and Safety) Act 2004*.

The new clause 41D of the Bill provides that the part amends the *Mining and Quarrying Safety and Health Act 1999*.

The new clause 41E amends the heading of part 20 of the *Mining and Quarrying Safety and Health Act 1999* to provide that part 20 also includes validation provisions as well as transitional provisions.

The new clause 41F of the Bill inserts a new division containing the new section 281 (Validation of particular appointments) into the *Mining and Quarrying Safety and Health Act 1999*. The new section provides that if an officer or employee of the public service was purportedly appointed before commencement of the amendments, then the officer or employee is declared to always have been validly appointed. An officer or employee may be appointed by the chief executive as a chief inspector, inspector, or inspection officer under section 122 of the *Mining and Quarrying Safety and Health Act 1999*. An officer or employee may be appointed by the chief executive as an authorised officer under section 126A of the *Mining and Quarrying Safety and Health Act 1999*.

The new section 281 also provides that any exercise of powers by a chief inspector, inspector, inspection officer or authorised officer that was allowed under the Act, if the appointments were originally valid, is taken to be, and always have been, valid and lawful. This section further declared that, without limiting the validation of exercise of powers any evidence obtained in the exercise of a power is taken to be, and always have been, lawfully obtained.

The new clause 41G of the Bill provides that the part amends the *Petroleum and Gas (Production and Safety) Act 2004*.

The new clause 41H amends the heading of chapter 15, part 20 of the *Petroleum and Gas (Production and Safety) Act* to provide that chapter 15, part 20 also includes validation provisions as well as transitional provisions.

The new clause 41I of the Bill inserts a new division containing the new section 992 (Validation of particular appointments) into the *Petroleum and Gas (Production and Safety) Act 2004*. The new section provides that if a public service officer was purportedly appointed before commencement of the amendments, then the public service officer is declared to always have been validly appointed. A public service officer may be appointed by the chief executive as a chief inspector, deputy chief inspector, inspector, authorised officer under section 735 of the *Petroleum and Gas (Production and Safety) Act 2004*.

The new section 992 also provides that any exercise of powers by a chief inspector, deputy chief inspector, inspector, or authorised officer that was allowed under the Act, if the appointments were originally valid, is taken to be, and always have been, valid and lawful. This section further declared that, without limiting the validation of exercise of powers any evidence obtained in the exercise of a power is taken to be, and always have been, lawfully obtained.

### **Amendment 13 - Long title**

*Amendment 13* changes the long title of the Bill to include reference to additional amendments to the *Coal Mining Safety and Health Act 1999*, the *Explosives Act 1999*, the *Mineral Resources Act 1989*, the *Mining and Quarrying Safety and Health Act 1999*, and the *Petroleum and Gas (Production and Safety) Act 2004*. These amendments are in addition to the amendments originally proposed in the Bill to the *Land Act 1994* and the *Land Title Act 1994*.