Water Reform and Other Legislation Amendment Bill 2014

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 *Water Reform and Other Legislation Amendment Bill 2014.*

Objectives of the Amendments

Framework for management and allocation of water

The objectives of proposed amendments to the Bill include providing for the effective operation of the new chapter 2 of the *Water Act 2000* which establishes a new framework for the management and allocation of water in Queensland. Amendments have been identified in response to the recommendations of the Agriculture, Resources and Environment Committee, the broader community and industry response to the Bill, which will:

- Ensure that where the Bill provides for circumstances where water can be taken or interfered with without a water entitlement, from a designated watercourse, for a domestic purposes or for a the purpose of carrying out a prescribed activity, these authorisations can be appropriately limited by the water planning process, a regulation or restriction notice;
- Ensure appropriate consideration of resource operations licence holder and distribution operations licence holders interests in the development of an operations manual and surrender of a water allocation within a water supply scheme area; and
- Remove references within the Bill that relate to the repealed *Wild Rivers Act 2005*.

A range of other amendments are also proposed to address oversights, improve operation, ensure transitional arrangements operation effectively, provide clarity and correct errors.

River Improvement Trusts

The objectives of amendments to provisions of the Bill that amend the *River Improvement Trust Act 1940* are to address recommendations received through consultation on the Bill and from the Agriculture, Resources and Environment Committee. The amendments will:

- Ensure local governments able to be appropriately represented on the board of river improvement trusts;
- Ensure local governments have flexibility in how they fund contributions to river improvement trusts; and
- Ensure that the *City of Brisbane Act 2010* is appropriately referenced.

Consistent framework for underground water rights for the resources sector

The Bill proposes amendments to the *Water Act 2000*, *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* to establish a more consistent framework for managing the take of underground water by the resources sector. The objective of amendments proposed to these components of the Bill is simply to provide clarity, improve operation of the provisions and correct errors.

Transitional arrangement to deal with the unintentional expiry of water licences

The objective of this amendment is to provide a mechanism for the chief executive to deal with circumstances where water licences have ceased to exist or expired unintentionally under previous iterations of the *Water Act 2000*. Prior to 2011, the Water Act provided that a water licence expired in the circumstance the owner of land to which the licence attached disposed of part of the land. While this is no longer the case, legacy issues exist where a mechanism is required to ensure a water licence can be reinstated or replaced and in particular circumstances be granted as though the licence never expired.

Water rights in special agreement Acts

An amendment is proposed for the objective of correcting an error.

Seizure Powers

The *Mining and Quarrying Safety and Health Act 1999, Coal Mining Safety and Health Act 1999, Petroleum & Gas (Production and Safety) Act 2004* and the *Explosives Act 1999* are safety Acts and in the case of the Explosives Act, a safety and security Act. The Queensland Supreme Court in the case of *Construction, Forestry, Mining & Energy Union v BM Alliance Coal Operations Pty Ltd & Ors* [2011] QSC 381 has referred to High Court decisions to describe these sorts of Acts as "beneficial and remedial legislation".

As safety and/or security beneficial and remedial legislation, each of these Acts contain a provision about the holding and returning of seized things as part of an investigation or prosecution. This is standard in all remedial Acts that contain inspectorial enforcement provisions, however, across different Acts the provisions may be worded differently and may be more or less open ended.

There is uncertainty about the legal effect of the inadvertent holding of seized things as part of an investigation or prosecution for longer than the periods specified under the *Mining and Quarrying Safety and Health Act 1999, Coal Mining Safety and Health Act 1999, Petroleum & Gas (Production and Safety) Act 2004* and the *Explosives Act 1999.* The Acts are silent as to any legal effect of this technical oversight. Recently it was identified that current and pending prosecutions may be in limbo for some time, if this uncertainty and ambiguity is not resolved clearly and urgently through legislative amendment.

The objectives of the amendments are to:

- provide certainty about the legal effect of the inadvertent holding of seized things for longer than the periods specified within the *Mining and Quarrying Health and Safety Act 1999*, *Coal Mining Safety and Health Act 1999*, *Petroleum & Gas (Production and Safety) Act 2004* and the *Explosives Act 1999*;
- provide certainty so that current and pending prosecutions under the above Acts can otherwise run their course; and
- provide a more flexible procedure for the return of seized things that is more consistent with other jurisdictions.

Mineral and Energy Resources (Common Provisions) Act 2014

The objective of the amendments is to clarify the application of certain provisions under the *Mineral and Energy Resources (Common Provisions) Act 2014*;

Amendments to the Petroleum & Gas (Production and Safety) Act 2004, and Petroleum Act 1923

The objectives of the amendments are to:

- make consequential amendments to harmonise safety terminology in the *Petroleum Act 1923* to with the safety terminology in other overlapping safety provisions introduced in the Bill, and to ensure that petroleum tenures under the Petroleum Act are integrated in a similar way to petroleum tenures under the Petroleum and Gas (Production and Safety) Act, in the new safety and health overlapping tenure framework;
- ensure that proceedings can be taken in the one court system for an offence against any part of chapter 9 of the *Petroleum & Gas (Production and Safety) Act 2004* rather than proceedings being split across the mainstream and industrial magistrate courts.
- correct a numbering error.

Achievement of the Objectives

The objectives will be achieved by amending the Bill to:

Framework for management and allocation of water

- Ensure the appropriate powers are provided in relation to limiting or prohibiting the taking of water in times of water shortage;
- Make it clear that a water plan is the relevant consideration for deciding a water licence application, and not a water management protocol;
- Ensure that the taking or interfering with water in a designated watercourse may be limited by a water planning instrument;
- Clarify that the taking or interfering with overland flow water necessary to satisfy the requirements of a development permit for an environmentally relevant activity is only authorised without a water entitlement if the take or interference was assessed as part of the grant of the development permit, and the permit includes a condition about the take or interference;
- Make it clear that an activity prescribed by regulation for which the taking of water is authorised may be limited by the extent or volume specified in the regulation;
- Allow for a water plan to decrease the size of a domestic garden that may be watered without the requirement for a water entitlement;

- Clarify stock or domestic water rights for non-riparian landholders to address concerns raised in the Burnett Basin water resource plan area about future non-riparian take of stock and domestic water impacting on security for water entitlement holders in water supply scheme areas;
- Ensure that the holder of, or an applicant for, a petroleum facility licence is an entity that may apply for a water licence;
- Ensure that certain details of a water allocation relevant to surface water, such as flow conditions for when water may be taken, are not required to be registered on the water allocations register for a water allocation for underground water;
- Allow the holder of a resource operations licence or distribution operations licence to place conditions on the surrender of a water allocation supplied under a resource operations licence or distribution operations licence. The Bill currently provides for the cancellation of a water allocation that has been surrendered and the proposed amendment will ensure the resource operations licence or distribution operations licence holder has an opportunity to ensure that the viability of the scheme is taken into account prior to a water allocation being cancelled;
- Ensure that distribution operations licence holders are appropriately considered in the approval process of an operations manual for a water supply scheme with both a resource operations licence and a distribution operations licence;
- Ensure that a regulation may prescribe processes related to water licence dealings, including the effects of land dealings or acquisition of land on water licences;
- Clarify transitional arrangements to ensure that components of existing resource operations plans that are taken to be components of water plans after commencement will have effect for the purpose of the water plan despite not being physically relocated;
- Include a transitional provision to ensure that provisions prescribed by regulation in relation to resource operations licence and distribution operations licence monitoring requirements, and Minister reporting requirements, only apply where there are no longer any conflicting provisions that continue to exist in other planning instruments;
- Ensure that transitional arrangements account for draft resource operations plans and final resource operations plans for which a notice of the release of a draft resource operations plans has been published;
- Ensure that transitional arrangements adequately provide for transition of a distribution operations licence where an operations manual is to be created for the licence;
- Ensure appropriate transitional arrangements for dealing with water licence applications in water resource plan areas where the plan is not transitioned to be a water plan on commencement;
- Correct errors, omissions and make minor changes for clarification, including:
    - Replace the term ‘granting’ with ‘deciding’ to reflect that the application for a water licence may be refused;
    - Remove references to wild rivers to reflect repeal of the *Wild Rivers Act 2005*.
    - Correct incorrect references to section numbers, correct typographical errors and make consequential referencing changes.

River Improvement Trusts

- Ensure that each constituent local government for a river improvement trust area will be able to be represented on the board of the trust.
- Ensure that councillors of a local government are not excluded from being a community member of a river improvement trust.
- Ensure that river improvement trusts are not required to have a seal.
- Allow local governments flexibility in how they fund contributions to river improvement trusts, including what type of rates they may levy for river improvement trusts contributions.
- Ensure that the *City of Brisbane Act 2010* is appropriately referenced alongside the *Local Government Act 2009* in the *River Improvement Trust Act 1940.*

Consistent framework for underground water rights for the resources sector

- Clarify the appropriate chief executive for petroleum tenure holders to report the volume of non-associated underground water take during the transitional period provided by the Bill.
- Make it clear that it is not an offence under the *Water Act 2000* to interfere with underground water under an authorisation under the *Mineral Resources Act 1989* or the *Petroleum and Gas (Production and Safety) Act 2004.*
- Include a timeframe within which a resource tenure holder who is not required to provide a further underground water impact report because the holder did not intend to take any further associated water must notify the chief executive about recommencing such take.

Transitional arrangement to deal with the unintentional expiry of water licences

- Provide the chief executive discretion to reinstate a water licence that expired unintentionally under earlier versions of the *Water Act 2000* and recover any fees and charges that would have been payable if the licence had not expired.

Water rights in special agreement Acts

- Correct a map reference in the definition of Wenlock Basin.

Seizure Powers

The objectives of the amendments will be achieved by amending the *Mining and Quarrying Health and Safety Act 1999*, *Coal Mining Safety and Health Act 1999*, *Petroleum & Gas (Production and Safety) Act 2004* and the *Explosives Act 1999* to:

- provide greater flexibility to extend the period of seizure where there are reasonable grounds to do so, such as carrying out testing or preparing for prosecution.
- allow the person entitled to the seized thing to apply for its return after a specified period. This application process for owners of the seized things and the flexibility to extend the period of seizure based on reasonable grounds are more consistent with the approach under the *Work Health and Safety Act 2011.*
- provide an initial seizure period of 12 months which is consistent with the initial seizure period in the *Fair Trading Inspectors Act 2014*.
- require the seized item to be returned at any time if there are no longer reasonable grounds to retain the thing, for example, if it is no longer necessary for an investigation or proceeding.
- ensure the amendments apply to any current seizures, as well as any seizures after the commencement.

- make consequential amendments to ensure that 'reasonable grounds' decisions are reviewable decisions.

Mineral and Energy Resources (Common Provisions) Act 2014

The *Mineral and Energy Resources (Common Provisions) Act 2014* was passed in September 2014, delivering on the first phase of the Modernising Queensland's Resources Acts program and containing a number of other policy initiatives to reduce red-tape including a new overlapping tenure framework for coal and coal seam gas (CSG).

Issues have been identified that require legislative clarification to ensure the policy intent of certain provisions in the *Mineral and Energy Resources (Common Provisions) Act 2014* can be implemented.

Legislative amendments are required to:

- ensure that neighbours that share a common boundary with the property that contains a proposed mining operation has a right to object to the application under the *Mineral Resources Act 1989*;
- clarify the transitional provisions for existing holders or applicants of mining leases to include restricted land in the area of the lease while maintaining the owners right to consent to any activity on the land;
- clarify the transitional provisions for mining lease holders using incidental coal seam gas;
- insert a new provision to clarify the process for when a petroleum lease (CSG) application (PLA) is lodged more than six months after receiving an advance notice from the coal resource authority holder;
- clarify the transitional provisions for the treatment of existing concurrent undecided mining lease (coal) applications (MLA) and PLAs on commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014;* and
- clarify that regardless of when an authority to prospect application or PLA is granted over an existing mining lease (coal), the pre-amended *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* will apply.

Amendments to the Petroleum & Gas (Production and Safety) Act 2004, and Petroleum Act 1923

Harmonisation of terminology introduced by the *Water Reform and Other Legislation Amendment Bill 2014* and the *Petroleum Act 1923* will be achieved by:

- Amending the definition of safety management plan in section 2 of the *Petroleum Act 1923.* The term needs to be changed to safety management system.
- Changing references to safety management plans in Sections 76R, 76V, 76W, 77, 77T, 78CI, 78CK, 78CL and 177 of the *Petroleum Act 1923* to either joint interaction management plan or safety management system.
- Replacing the reference in 76V to section 388 of the *Petroleum & Gas (Production and Safety) Act 2004* and with a reference to section 705C. The Bill has deleted section 388 and replaced it with new requirements in section 705C.
- Amending section 78CL(2) to reflect that section 387 has been omitted from the *Petroleum & Gas (Production and Safety) Act 2004.* The dispute resolution process from deleted section 387 will be inserted for overlapping tenures with geothermal or GHG to which 78CL applies.

To ensure that proceedings can be taken in the one court system for an offence against any part of chapter 9 of the *Petroleum & Gas (Production and Safety) Act 2004,* an amendment will be made to section 732(1) of the *Petroleum & Gas (Production and Safety) Act 2004* so that the subsection applies to all parts of chapter 9 and not just parts 2, 4 or 6.

Alternative Ways of Achieving Policy Objectives

Framework for management and allocation of water, River Improvement Trusts, Consistent framework for underground water rights for the resources sector, Transitional arrangement to deal with the unintentional expiry of water licences and Water rights in special agreement Acts

The amendments make changes to the existing amendments in the Bill to improve operation, provide clarity, correct errors, oversights and omissions. There are no alternative ways of achieving the policy objectives.

Seizure Powers

Legislative amendments are required to achieve the policy objectives. There are no alternative ways of achieving the policy objectives.

Mineral and Energy Resources (Common Provisions) Act 2014

There are no alternative options to achieving the policy objectives. Amendments are required to the *Mineral and Energy Resources (Common Provisions) Act 2014* to ensure the policy intent is implemented as intended.

Amendments to the Petroleum & Gas (Production and Safety) Act 2004, and Petroleum Act 1923

Amendments to the Bill and other legislation are required to achieve the policy objectives.

Estimated Cost for Government Implementation

Framework for management and allocation of water, River Improvement Trusts, Consistent framework for underground water rights for the resources sector, Transitional arrangement to deal with the unintentional expiry of water licences and Water rights in special agreement Acts

The amendments are not expected to increase the administrative cost to government of implementing the amendments in the Bill.

Seizure Powers

The amendments are not expected to create any additional cost to government to implement.

Mineral and Energy Resources (Common Provisions) Act 2014

Amendments to the Bill are not expected to create any additional cost to government to implement.

Amendments to the Petroleum & Gas (Production and Safety) Act 2004, and Petroleum Act 1923

The amendments are not expected to create any additional cost to government to implement.

Consistency with Fundamental Legislative Principles

Framework for management and allocation of water
The amendments are consistent with fundamental legislative principles.

River Improvement Trusts
The amendments are consistent with fundamental legislative principles.

Consistent framework for underground water rights for the resources sector
The amendments are consistent with fundamental legislative principles.

Transitional arrangement to deal with the unintentional expiry of water licences

Individual's rights and liberties: retrospectivity

This amendment proposes new transitional provisions that provide, in certain exceptional circumstances, that the chief executive may decide to reinstate or replace an expired water licence. These proposed new provisions contain several elements to the chief executive's decision that may have a retrospective effect:

- Under proposed sections 1273A (9) and 1273B (3), the chief executive may decide to issue a validating declaration. The effect of the validating declaration is that the renewal, reinstatement or replacement of the original licence is taken, for all purposes, to have happened on the initial expiry of the expired licence.
- Where the chief executive decides to reinstate or replace a licence under this section, the chief executive may also decide to recover any fees and charges, or part of any fee or charge, that would otherwise have been payable for the licence from the day it initially expired.

For the decision to issue a validating declaration, while it is retrospective in effect, the potential breach of fundamental legislative principles is considered justified because the provision does not adversely affect the water licence holder.

For the decision to recover all or part of the fees and charges, the effect of the provision adversely affects the licence holder because it retrospectively makes them liable for fees and charges that did not apply because the licence was not if force. This potential breach is justified, firstly, because action under the proposed provision is initiated by the licence holder making an application meaning that the licence holder makes the application knowing that fees and charges may apply. Also, the imposition of the liability for the fees and charges would not occur without the licence holder's acceptance of the requirement as (in effect) a condition of the reinstatement of the licence.

It is the intention that this provision will be used in circumstances where the expiry or lapse of the licence was unintentional, and arose because the licence holder was not notified in writing of the impending expiry or within a reasonable time after the expiry.

Water rights in special agreement Acts
The amendment is minor and agreed to by the relevant company and is consistent with fundamental legislative principles.

Seizure Powers
Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. The amendments could be perceived as a breach of this fundamental legislative principle. However, retrospective legislation may be justified if it is curative, beneficial or validating in nature. This potential breach is considered justified for this general reason and for the following reasons.

The *Mining and Quarrying Health and Safety Act 1999*, *Coal Mining Safety and Health Act 1999*, *Petroleum & Gas (Production and Safety) Act 2004* and the *Explosives Act 1999* are safety Acts and are beneficial and remedial legislation. Without amendment, these Acts are silent as to the legal effect of inadvertently holding a seized thing for longer than the periods specified.

The Queensland Supreme Court case of *Construction, Forestry, Mining & Energy Union v BM Alliance Coal Operations Pty Ltd & Ors* [2011] QSC 381 provides guidance about statutory interpretation when there are ambiguities or when provisions are silent as to particular matters, in legislation that is classified as "beneficial and remedial legislation". It guides against technical decisions by the Courts related to beneficial and remedial legislation and concludes that in some circumstances a deficiency in legislation cannot be easily cured by statutory interpretation by the Courts and should be left to Parliament to remedy the deficiency.

At paragraphs 36 and 37 of this case, the Honourable Justice Martin noted that the interpretation that will best achieve the purpose of the Act is to be preferred; and that safety legislation is beneficial legislation and should be given a fair, large and liberal interpretation rather than one which is a literal or technical interpretation. At paragraph 71 of this case, the Honourable Justice Martin concluded that when statutory interpretation is inconclusive, it should be left to Parliament to remedy the deficiency through legislative amendment.

In the current circumstances surrounding the seizure provisions, there is also a compelling reason to remedy the uncertainty, as soon as possible through legislative amendment. If not remedied through urgent amendments, the uncertainty also has the potential to impact on pending prosecutions over a number of future years, and may undermine some of the key overall safety objectives of the safety Acts.

The amendments remove uncertainty from the legislation and validate past seizure actions or ongoing seizures prior to the commencement of the amendments. This does not adversely affect any potential rights or interests of owners of the seized things as the potential rights have not been exercised.

Those potentially entitled to the return of seized things under the pre-amended provisions have not requested the return of the seized things. They have not exercised any potential rights to request the return or have waived the right to request the return of the seized things or have not been aware of the potential right. They have consequently, not been prejudiced.

The new provisions will provide a clear right to request the return of seized things after 12 months, however the chief inspector may retain the seized thing for a longer period if there are reasonable grounds. The amendments provide a more flexible, comprehensive seizure

framework and external review procedures are available if a seized thing is held for more than 12 months.

The amendments include validating provisions. Validating provisions must operate retrospectively and rebut the presumption against retrospectivity. In this case, actions taken under the pre-amended provisions must be validated otherwise current and pending prosecutions may be left in limbo for a considerable period of time.

The legislative amendments are the only way to provide certainty within a short, practical time frame. The amendments are the only way to provide certainty, as soon as possible, so that there is no remaining risk of serious and costly consequences relating to previous, current and future prosecutions. It is in the overriding public interest that the key overall safety, remedial and beneficial objectives of the Acts be supported through the amendments.

Mineral and Energy Resources (Common Provisions) Act 2014
The proposed amendments are consistent with fundamental legislative principles and have sufficient regard to the rights and liberties of individuals.

Amendments to the Petroleum & Gas (Production and Safety) Act 2004, and Petroleum Act 1923
The proposed amendments are consistent with fundamental legislative principles and have sufficient regard to the rights and liberties of individuals.

Consultation

Framework for management and allocation of water
Consultation has been undertaken with key industry groups in finalising these amendments.

River Improvement Trusts
Amendments have been discussed and agreed with the State Council of River Trusts Queensland.

Consistent framework for underground water rights for the resources sector
The amendments proposed simply address errors and clarify policy intent of the provisions of the Bill. Consequently, further consultation was not considered necessary.

Transitional arrangement to deal with the unintentional expiry of water licences
This amendment is in response to the issue being raised by landholders. Peak industry groups were consulted, including the Australian Petroleum Production & Exploration Association (APPEA), Queensland Resources Council (QRC), Queensland Farmers Federation (QFF) and AgForce, who support the proposed amendment.

Water rights in special agreement Acts
This amendment is a minor correction and has been agreed to by the relevant company.

Seizure Powers
The uncertainty to be remedied was recently identified and the amendments were progressed urgently to ensure that current and pending prosecutions can continue to run their course, despite seized evidence having been held for longer than the periods specified in the Acts. Only consultation within government was undertaken.

Mineral and Energy Resources (Common Provisions) Act 2014

The amendments to the *Mineral and Energy Resources (Common Provisions) Act 2014* seek to clarify the application of the provisions to ensure they deliver on the policy, as consulted through the development of the Act. As a result no further consultation has been undertaken on these amendments with the exception of amendments to the overlapping tenure framework.

Extensive consultation has been undertaken with the coal and CSG industries on the proposed amendments to the overlapping tenure framework. The coal and CSG industries support the proposed amendments.

Amendments to the Petroleum & Gas (Production and Safety) Act 2004, and Petroleum Act 1923

As these are minor and consequential amendments consultation is not required.

NOTES ON PROVISIONS

Clause 2 (Commencement)

Clause 1 amends clause 2 (Commencement) of the Water Reform and Other Legislation Amendment Bill 2014 to allow amendments relating to the seizure powers to commence on assent.

Mineral and Energy Resources (Common Provisions) Act 2014

After clause 8—

Clause 2 inserts new Part 3A Amendment of Mineral and Energy Resources (Common Provisions) Act 2014.

Act amended

New clause 8A states that this part amends the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Insertion of new section 142A (Petroleum production notice given more than 6 months after advance notice)

New clause 8B amends chapter 4, part 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to insert new clause 142A which applies if the petroleum resource authority holder lodges a petroleum lease (CSG) application (PLA) more than 6 months after receiving the advance notice from the mining lease (ML) (coal) holder and the PLA is granted before the ML application (MLA).

The mining commencement date for an initial mining area in the overlapping area will be taken to be the lesser of:

- 9 years after the giving of the advance notice; or
- the date that is 11 years from the giving of the advance notice less the period between the giving of the advance notice and the giving of the petroleum production notice.

That means the maximum period for the notice period will be 9 years. However, this section does not limit the petroleum resource authority holder from issuing an exceptional circumstances notice or the ML (coal) holder from issuing an acceleration notice. An agreed joint development plan is still required to be in place within 12 months after the giving of the advance notice.

If the MLA is granted before the PLA, then chapter 4, part 2 will apply as if the petroleum resource authority holder is an authority to prospect holder.

Insertion of new ch 7, pt 4, div 4A (Undecided ML (coal) and PL applications)

Clause 241A Application for ML (coal) and application for PL both undecided before commencement

New clause 8C amends chapter 7, part 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to insert a new Division 4A which applies for existing undecided concurrent MLAs and PLAs for an overlapping area following the commencement of chapter 7. This clause establishes a mining commencement date of 6 years to be included in the advance notice after the commencement of chapter 7 regardless of when the MLA and PLA were lodged.

As the applications are taken to have been lodged upon commencement of chapter 7, the following actions must be undertaken: the advance notice must be given by the coal resource authority holder to the petroleum resource authority holder within 10 business days of commencement; the petroleum resource authority holder must give the coal resource authority holder a petroleum production notice within 10 business days of commencement; and an agreed joint development plan must be in place within 12 months of commencement.

If both the MLA and the PLA are not granted within 6 years after the commencement of chapter 7, then the new overlapping tenure provisions in chapter 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014* will apply. That is, if the MLA is the first to be granted after the 6 years have ended, then the mining commencement date may be at least 3 months after the grant of the MLA. If the PLA is the first to be granted after the 6 years have ended, then the mining commencement date may be at least an additional 5 years after the end of the 6 year period.

This section also allows the overlapping petroleum resource authority holder and the ML (coal) holder to agree to an alternative mining commencement date.

Amendment of s 408 (Insertion of new s 826)

New clause 8D amends section 408 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to clarify that regardless of when an authority to prospect application or PLA are granted over an existing mining lease (coal) overlapping area, then the pre-amended *Mineral Resources Act 1989* and the pre-amended *Petroleum and Gas (Production and Safety) Act 2004* will apply.

The clause also renumbers section 826(5) to 826(6) and inserts new subsection (5) that clarifies the operation of applying section 138 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to the offering of incidental coal seam gas by the holder of a mining lease for coal to an overlapping petroleum resource authority holder. Inserted subsection (5)(a) clarifies that the holder of a mining lease for coal can offer incidental coal seam gas to an overlapping petroleum resource authority where the requirements related to initial mining areas (IMA) or rolling mining areas (RMA) under section 138(2)(a) to (c) are not relevant where the wider provisions of the *Mineral and Energy Resources (Common Provisions) Act 2014* chapter 4 do not apply.

Inserted subsection (5)(b) clarifies the operation of section 138(3) of the *Mineral and Energy Resources (Common Provisions) Act 2014.* Once an offer is made and the written notice is received, the petroleum resource authority has 12 months to accept the offer from the mining lease holder, or a later period agreed to by the mining lease holder.

Inserted subsection (5)(c) clarifies the operation of section 138(7) of the *Mineral and Energy Resources (Common Provisions) Act 2014.* The requirement under section 138(7) for the mining lease holder to re-offer relates only to undiluted incidental coal seam gas.

Amendment of s 436 (Replacement of ss 252-252D)

New clause 8E amends the definition of "adjoining land" for replaced section 252A of the *Mineral Resources Act 1989* by section 436 of the *Mineral and Energy Resources (Common Provisions) Act 2014*. The amended definition defines adjoining land as private land that adjoins land subject to a mining lease application or a lot of land (as defined by the *Land Act 1994* or *Land Title Act 1994*) that contains any land subject to the mining lease application. The land is considered to be adjoining if it connects or is in contact with the land, including where only a common corner is shared. It is also considered adjoining if it is separated by a road, watercourse, railway, stock route, reserve or drainage or other easement. Land that adjoins land necessary only for access or transportation to the proposed mining lease is excluded by the definition.

A definition of "private land" is also inserted by the clause as the meaning under section 13 of the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Amendment of s 463 (Insertion of new ss 827 to 832)

New clause 8F amends section 463 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to clarify the operation of the transitional provision, section 832, inserted into the *Mineral Resources Act 1989.* This section, and new section 832A, allows restricted land to be included in the grant area of a mining lease.

New section 832 - New application for inclusion of restricted land in mining lease granted before or after commencement

New section 832 to the *Mineral Resources Act 1989* clarifies the process for mining lease holders to apply to the Minister to have restricted land that was excluded from the mining lease area at the time of grant, included in the mining lease area. The section applies to mining leases that were granted prior to commencement of the section or granted after commencement of this section from an application lodged prior to commencement.

The Minister may grant the application, even where the consent of the owner of restricted land has not been obtained; however the mining lease holder cannot access the restricted land unless the owner has provided consent. While a compensation agreement is not required, if consent is given, the owner may impose conditions, which are then taken to be conditions of the mining lease. The consent cannot be withdrawn during the period stated in the consent.

In applying for the restricted land to be included in the granted mining lease, provisions that relate to the new restricted land framework under chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* and associated changes to section 245 of the *Mineral Resources Act 1989* do not apply.

New section 832A Inclusion of restricted land in application for mining lease not decided before commencement

New section 832A to the *Mineral Resources Act 1989* is added to clarify the transitional arrangement for mining lease applications made but undecided at commencement. The section allows the applicant to agree to include restricted land in the proposed mining lease area if it is granted, even where the consent of the owner of the restricted land is not obtained prior to grant. If this is to apply, a new certificate of application must be issued and the applicant must restart the application process from section 252 of the *Mineral Resources Act 1989*.

If the mining lease is granted over areas of restricted land, the mining lease holder cannot access the restricted land unless the consent of the owner is obtained. While a compensation agreement is not required, if consent is given, the owner may impose conditions, which are then taken to be conditions of the mining lease. The consent cannot be withdrawn during the period stated in the consent.

Consistent framework for underground water rights for the resources sector

Clause 15 (Insertion of new s 186)

Clause 3 amends clause 15 to make it clear that the appropriate chief executive for petroleum tenure holders to report the volume of non-associated underground water take during the transitional period provided by the Bill is the chief executive administering the *Petroleum and Gas (Production and Safety) Act 2004*.

River Improvement Trust

Clause 22 (Insertion of new s 2A)

Clause 4 Clause 4 amends clause 22 of the River Improvement Trust Act 1940, to correct a minor cross referencing error.

Clause 24 (Amendment of s 5 (Membership of trust))

Clause 5 amends clause 24 to ensure that, where a trust may be established by a regulation in the alternate way, the Governor in Council must appoint at least 1 councillor for each local government or more if provided for in the regulation, for each constituent local government comprising the trust. Nothing prevents a regulation providing for different numbers of local government nominees where more than 2 local governments are provided for. The councillor(s) must be nominated by the respective local government(s). This amendment further provides that the regulation may provide for a person to be nominated by any other entity that is specified in the regulation and entitled to nominate a person to the trust. Lastly the amended clause provides for the Minister to also nominate a person or persons to the trust, again as provided for in the regulation.

A regulation made under this provision may also provide for members of a trust to be termed directors or any other name as stated in the regulation.

Clause 24 (Amendment of s 5 (Membership of trust))

Clause 6 amends clause 24 to distinguish its application to refer to subsection 5(1) only of the River Improvement Trust Act 1940, this makes the referencing style in the Act more uniform.

Clause 25 (Amendment of s 5A (Appointment of members to vacancies))

Clause 7 amends clause 25 to provide that where a vacancy occurs in a trust comprising members nominated under sections 5(1A)(a) or by another entity under section 5(1A)(b)(i). The amended clause provides for the Minister to take the views of the local government or the entity as appropriate and stated in the regulation, into account when making a recommendation to the Governor in Council.

After clause 25—

Clause 8 inserts new clause 25A into the Bill. Clause 25A amends section 5C of the River Improvement Trust Act 1940 to ensure that where a person is nominated by a local government under the alternate provisions in the Act, such person’s term as a councillor of a local government, must not have expired or the office otherwise have become vacant.

Clause 28 (Amendment of s 5K (Removal from office as member))

Clause 9 amends clause 28 to make a consequential renumbering change to reflect the changes to section 5 of the River Improvement Trust Act 1940.

Clause 35 (Replacement of s 7 (Trusts are bodies corporate))

Clause 10 amends clause 35 to remove the requirement for a river improvement trust to have a seal.

Clause 41 (Amendment of s 14 (Liability of local government to contribute to trust))

Clause 11 amends clause 41 to provide flexibility to local governments to determine how they fund contributions to river improvement trusts.

Clause 51 (Amendment of sch 1 (Dictionary))

Clause 12 amends the clause 51 definition of ‘councillor’ to ensure that it includes a councillor under the City of Brisbane Act 2010.

Framework for management and allocation of water

Clause 65 (Insertion of new s 6)

Clause 13 amends clause 65 to allow for a water plan to vary the size of a domestic garden that may be watered without a water entitlement.

Clause 68 (Insertion of new ch 2)

Clause 14 amends clause 68 to remove the term first notice as it is no longer required. Initially the Bill provided that the Minister could publish a notice to replace the first notice, however the amended provision will simply provide that the Minister may publish another notice.

Clause 68 (Insertion of new ch 2)

Clause 15 amends clause 68 to make it clear that the notice remains in force for a period of not more than one year.

Clause 68 (Insertion of new ch 2)

Clause 16 amends clause 68 to ensure that the chief executives powers to limit the taking of water in times of water shortage can be exercised in relation to water that is authorised to be taken without the requirement for a water entitlement.

Clause 68 (Insertion of new ch 2)

Clause 17 amends clause 68 to provide for a chief executive restriction notice to remain in force for a period of not more than one year.

Clause 68 (Insertion of new ch 2)

Clause 18 amends clause 68 to make it clear that the criteria for deciding applications for water licences is not something that may be stated in a water management protocol. This will ensure that section 67 is consistent with new section 114 under which a water management protocol is not something to which the chief executive must have regard to, or something to which a water licensing decision must be consistent with. Criteria relating to water licencing decisions will be stated in water plans, which are prepared by the Minister.

Clause 68 (Insertion of new ch 2)

Clause 19 amends clause 68 to make it clear that any proposed water allocation holder may give the chief executive a notice about the way in which the holders wish to be recorded on the water allocations register. This amendment acknowledges that proposed water allocation holders may not always be existing water entitlement holders.

Clause 68 (Insertion of new ch 2)

Clause 20 amends clause 68 to remove reference to regulation. This makes it clear that the subdivision is about authorisations that may not be limited by a water planning instrument and that some authorisations under this subdivision may in fact be limited by a regulation made under this subdivision.

Clause 68 (Insertion of new ch 2)

Clause 21 amends clause 68 to remove reference to the take of water from a designated watercourse. It is now proposed that the authorisation to take water from a designated watercourse may be limited by a water planning instrument.

Clause 68 (Insertion of new ch 2)

Clause 22 amends clause 68 to remove reference to the interference with water from a designated watercourse. It is now proposed that the authorisation to interfere with water in a designated watercourse may be limited by a water planning instrument.

Clause 68 (Insertion of new ch 2)

Clause 23 replaces clause 68 so that the clause now authorises the take of water for domestic purposes. This will ensure that the take of water by riparian landholders for domestic purposes will not be limited by a planning instrument, however, the revised section maintains the limit on the take of water for domestic purposes on land declared by regulation where the land is subdivided after the regulation declaring the land is made.

Clause 68 (Insertion of new ch 2)

Clause 24 amends clause 68 which allows the taking of overland flow water without an entitlement where it is necessary to satisfy the requirements of a development permit for carrying out an environmentally relevant activity, only applies where the impacts of the take were assessed as a part of the grant of the development permit and the a development permit was granted with a condition about the take.

Clause 68 (Insertion of new ch 2)

Clause 25 amends clause 68 to ensure the heading appropriately reflects the provision. While section 101 provides authorities to take or interfere with water that are subject to relevant alterations or limitations, the heading referred only to ‘limited’.

Clause 68 (Insertion of new ch 2)

Clause 26 amends clause 68 to renumber a subsection.

Clause 68 (Insertion of new ch 2)

Clause 27 amends clause 68 to include the take or interference with water from a designated watercourse. Initially, the Bill provided that the take or interference with water from a designated watercourse was unable to be limited by a water planning process. This amendment ensures that flexible management arrangements can be applied and adapted appropriately in different areas of the State.

Inserted subsection (2) provides clarity that the authorisation to take water if doing so is necessary to carry out a prescribed activity authorised by paragraph (1)(a) is a qualified right which applies within limitations prescribed by regulation.

Clause 68 (Insertion of new ch 2)

Clause 28 amends clause 68 to reflect that the take of water for domestic purposes will now be authorised under section 96.

Clause 68 (Insertion of new ch 2)

Clause 29 amends clause 68 to include the holder of, or an applicant for, a pipeline licence or petroleum facility licence under the Petroleum and Gas (Production and Safety) Act 2004. This will ensure that such holders or applicants are able to apply for a water licence without being the owner of land. Currently, while the Bill proposes to include the holder of a pipeline licence, it does not include the holder of a petroleum facility licence or include the applicant for either licence.

Clause 68 (Insertion of new ch 2)

Clause 30 amends clause 68 to correct an error in a heading.

Clause 68 (Insertion of new ch 2)

Clause 31 amends clause 68 to correct an error in terminology. Initially the Bill provided that the chief executive must give the applicant an information notice about the decision within 30 business days of granting the application. However, section 114 allows for the chief executive to grant, grant in part or refuse a water licence application. As such, the correct terminology is ‘deciding’ the application.

Clause 68 (Insertion of new ch 2)

Clause 32 amends clause 68 to make it clear that this provision applies in relation to the application for a seasonal water assignment of a water licence.

Clause 68 (Insertion of new ch 2)

Clause 33 amends clause 68, insertion of new ch 2, section 150 (Amending water allocations), to clarify that the allocation referred to is a water allocation.

Clause 68 (Insertion of new ch 2)

Clause 34 amends clause 68 to structure the section in a way that improves clarity about the administrative operation of the provision.

Clause 68 (Insertion of new ch 2)

Clause 35 amends clause 68 to ensure that details relevant for a water allocation to take surface water are not required to be recorded in relation to a water allocation to take underground water.

Clause 68 (Insertion of new ch 2)

Clause 36 amends clause 68 to provide that the consent of a resource operations licence holder or distribution operations licence holder for the surrender of a water allocation may be given with or without conditions. This amendment will allow the resource operations licence or distribution operations licence holder to stipulate binding conditions around the surrender, including conditions preventing the cancellation of the water allocation by the chief executive under section 163.

Clause 68 (Insertion of new ch 2)

Clause 37 amends clause 68 to make it clear that for a surrendered water allocation the chief executive is only liable for fees that accrue after the chief executive acquires the allocation. The chief executive would not be liable for other fees that may remain unpaid prior to the allocation being surrendered, including for example exit fees for the cessation of distribution services or termination fees that might be associated with the cancellation of the water allocation. The provision also provides clarity that in dealing with a surrendered water allocation the chief executive is subject to any conditions that may have been imposed by the holder of a relevant resource operations licence or distribution operations licence in consenting to the surrender.

Clause 68 (Insertion of new ch 2)

Clause 38 amends clause 68 to make it clear that an operations manual for a water supply scheme that is operated by both the holder of a resource operations licence and the holder of a distribution operations licence, is not considered to have sufficient information unless it includes information about the impact of the manual on the other holder.

Clause 68 (Insertion of new ch 2)

Clause 39 amends clause 68 to provide that where the chief executive has not approved an operations manual for a water supply scheme which includes both a resource operations licence and a distribution operations licence, and the reason for not approving the manual includes the impacts on, or lack of consultation with, the other licence holder in the scheme, the chief executive must provide information to the referral panel about the impact of the amendment on the holder of the other a licence.

Clause 68 (Insertion of new ch 2)

Clause 40 amends clause 68 to remove a reference to wild rivers which was an oversight in the Bill. The Wild Rivers Act 2005 is now repealed so the reference was incorrect.

Clause 68 (Insertion of new ch 2)

Clause 41 amends clause 68 to renumber the paragraph correctly.

Clause 68 (Insertion of new ch 2)

Clause 42 amends clause 68 to renumber the paragraph correctly.

Clause 68 (Insertion of new ch 2)

Clause 43 amends clause 68 to remove a reference to wild rivers which was an oversight in the Bill. The Wild Rivers Act 2005 is now repealed so the reference was incorrect.

Clause 68 (Insertion of new ch 2)

Clause 44 amends clause 68 to remove a reference to wild rivers which was an oversight in the Bill. The Wild Rivers Act 2005 is now repealed so the reference was incorrect.

Consistent framework for underground water rights for the resources sector

Clause 81 (Insertion of new ss 370A and 370B)

Clause 45 amends clause 81 to include a timeframe of 10 business days within which the responsible entity must notify the chief executive of the exercise of underground water rights. Currently the Bill proposes an offence under section 370B for failing to notify the chief executive. This offence applies in the circumstance a tenure holder is exempt from the requirement to provide a further underground water impact report on the basis that they do not anticipate exercising the underground water right in the future. Without a timeframe within which to notify it would be difficult to determine compliance with this offence.

Clause 171 (Amendment of s 808 (Unauthorised taking, supplying or interfering with water))

Clause 46 amends clause 171 to ensure that it is not an offence for a resource tenure holder to interfere with water under an authorisation provided under the relevant resources legislation. This will recognise the statutory right provided by the Bill in the Mineral Resources Act 1989 to take or interfere with associated water, and the similar existing right under the Petroleum and Gas (Production and Safety) Act 2004. While the current provision of the Bill amends section 808 to make it clear that it is not an offence to take water under these authorities, it was an oversight that this was not acknowledged in relation to interference with water.

Water rights in Special Agreement Acts

Clause 181 (Amendment of s 992G (Definitions for pt 3C))

Clause 47 amends clause 181, amendment of s992G (Definitions for pt 3C), to correct an incorrect reference to a map.

Framework for management and allocation of water

Clause 188 (Replacement of s 1009 (Public inspection and purchase of documents))

Clause 48 amends clause 188, replacement of s 1009 (Public inspection and purchase of documents), to address and oversight by including a water development option as a document that must be kept available for public inspection.

Clause 193 (Amendment of s 1014 (Regulation-making power))

Clause 49 amends clause 193, amendment of s 1014 (Regulation-making power), to ensure that a regulation may prescribe processes for dealings with water licences and state the effect of land dealings or acquisition of land on water licences.

Clause 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 50 amends clause 201, amendment of ch 9 (Transitional provisions and repeals), insertion of section 1250, to provide clarity that a 'consultation process' is a process where a draft of a new water resource plan or resource operations plan or draft of an amendment or replacement of a water resource plan or a resource operations plan has been formally released for consultation.

Clause 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 51 amends clause 201, amendment of ch 9 (Transitional provisions and repeals), to insert new section 1256A which provides for the decision making criteria in a water resource plan to be considered as part of water licencing decision in the period between the commencement of the Act's licencing provisions, and the transition of the relevant water resource plan.

Clause 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 52 amends clause 201, amendment of ch 9 (Transitional provisions and repeals), to amend the heading of new section 1259 to accurately reflect the change to new section 1259.

Clause 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 53 amends clause 201, amendment of ch 9 (Transitional provisions and repeals), insertion of section 1259, to provide clarity that during the transition of a resource operations plan, those provisions which would normally be part of a statutory water plan are taken to have effect as though part of a water plan (rather than actually being included in the water plan).

Clause 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 54 amends clause 201, amendment of ch 9 (Transitional provisions and repeals), insertion of section 1259, to provide clarity that the transition of a resource operations plan will not occur until the finalisation of a consultative process triggered by the release of a draft of a new water resource plan or resource operations plan or draft of an amendment or replacement of a water resource plan or a resource operations plan has been formally released for consultation.

Clause 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 55 amends clause 201, amendment of ch 9 (Transitional provisions and repeals), insertion of section 1259, to provide clarity that the transition of a resource operations plan will not occur until the finalisation of a consultative process triggered by the release of a draft of a new water resource plan or resource operations plan or draft of an amendment or replacement of a water resource plan or a resource operations plan has been formally released for consultation.

Clause 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 56 amends clause 201, amendment of ch 9 (Transitional provisions and repeals), insertion of section 1259, to provide clarity that after transition, those provisions which would normally be part of a statutory water plan and under this provision are taken to have effect as though part of a water plan continue to have effect until such time as the plan is amended to include the relevant provisions. An amendment of a water plan to achieve this must include a declaration that the amendment is giving effect to this transitional arrangement; and such an amendment does not require the consultative and administrative processes that the making of a water plan would otherwise require.

Clause 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 57 amends clause 201, amendment of ch 9 (Transitional provisions and repeals), insertion of section 1262, to clarify that provisions of a distribution operations licence that are to be included in an operations manual as part of the transitional arrangements are not also to be included in the distribution operations licence itself.

Clause 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 58 amends clause 201, amendment of ch 9 (Transitional provisions and repeals), insertion of section 1263, to clarify that this provision relates to a water licence to take or interfering with water, not just water licence to interfere with water.

Clause 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 59 amends clause 201, amendment of ch 9 (Transitional provisions and repeals), insertion of section 1264, to provide clarity that the resource operations plan zones referred to in the provision are the water supply scheme and water management area zones, and to provide a transitional arrangement for water management areas as well as water management area zones.

Transitional arrangement to deal with the unintentional expiry of water licences

Clause 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 60 amends clause 201, amendment of ch 9 (Transitional provisions and repeals), to insert new sections 1273A and 1273B to provide for the reinstatement or replacement of particular water licences and for the making of validating declarations about the renewed, reinstated or replacement licences.

New section 1273A provides for applications to reinstate or replace particular water licences that expired under section 221 or 229 of the *Water Act 2000* or as previously in force or under the repealed *Water Resources Act 1989*. The section only applies in circumstances where a water licence expired without the holder of the licence being notified prior to or within a reasonable time after the expiry. The section also only applies where the licence expired before 1 July 2013 and no application to renew or reinstate was received prior to this date (on 1 July 2013 water licences existing at that time were extended to be in force until 2111) or where the licence expired as a result of a land dealing under section 229 prior to 24 November 2011(which is when the Act was amended to remove the automatic expiry of a licence due to a land dealing) or under the repealed *Water Resources Act 1989* which also had automatic expiry of water licences due to land dealings.

Under these circumstances, an owner of land may apply to the chief executive to reinstate or replace the licence. The application can also seek a validating declaration which would declare that if granted, the reinstated or renewed licence is taken to have never expired. As land dealings may have occurred since the expiry of an original licence, the section provides that if there is more than one owner of land to which the licence had attached, then one or more owners may make a joint application, or an owner may apply but must give a copy of the application to each other owner of the land (or part thereof) who is not a party to the application to which the licence had attached. This ensures that all owners who have an interest in the land to which licence originally attached can identify an interest in the water licence.

In making a decision, the chief executive must consider any water plan that would apply to the licence and the terms and conditions of the expired licence and the follow the decision process provided for in the water licencing framework under section 114 of the *Water Act 2000*. The chief executive may then reinstate or replace the licence if satisfied it is appropriate to do so including having regard for the circumstances as to why and how the licence has expired. The chief executive may seek the payment of fees and charges that would have otherwise been payable if the licence had not expired. The chief executive may also make a validating declaration, also having regard to the circumstances of the expiry, that has the effect that a renewed or reinstated water licence is taken to have never expired.

New section 1273B applies where a licence expired without the licence holder being notified in writing of the expiry within a reasonable time, and subsequently (but before commencement of this section) the licence has already been reinstated or replaced by a licence granted under section 211 of the Water Act as it was in force before commencement of this Bill.

If the licence holder makes a request, the chief executive may make a validating declaration that the water licence is taken, for all purposes, to have been renewed or replaced immediately before it expired. Without limiting the effect of this provision, this includes all purposes within chapter 2 and chapter 3 of the Water Act.

The chief executive, in deciding whether to make the validating declaration, must consider whether it is appropriate to do so having regard to all the circumstances in which the initial licence expired, and the consequences for the applicant if the validating declaration is not made.

The chief executive, in deciding whether to make the validating declaration, must also decide whether the applicant should pay all of the fees and charges that would have been payable if the licence had in fact remained in force, or whether they should pay part of these fees and charges. The applicant must pay the amount decided by the chief executive before the chief executive makes the validating declaration.

Framework for management and allocation of water

Clause 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 61 amends clause 201, amendment of ch 9 (Transitional provisions and repeals), to insert new section 1280A which provides clarity about the Ministerial reporting requirements (for a water plan) and the monitoring and reporting requirements imposed on the holders of resource operations licences or distribution operations licence holders, which are now able to be stated in a water regulation that will apply to the entire state. The provision makes it clear that where there are inconsistent requirements specified in a water plan or water management protocol, and in a regulation, the requirements in the water plan or water management protocol will prevail.

Seizure Powers

Coal Mining Safety and Health Act 1999

After clause 208

Clause 62 inserts new sections 208A to 208E into the Water Reform and Other Legislation Amendment Bill 2014.

New clause 208A Replacement of s 149 (Return of things that have been seized)

New clause 208A replaces section 149 of the *Coal Mining Safety and Health Act 1999* (Return of things that have been seized) with a new section 149. The section applies if a seized thing has some intrinsic value and is not forfeited. The new section 149 enables the owner of a seized thing to apply to the chief inspector, for its return if it has not been returned within 1 year after it was seized. The new section 149(5) provides a non-exhaustive list of reasonable grounds for retaining a seized thing for longer than 1 year after it was seized.

New clause 208B Amendment of pt 14, div 2, hdg (Appeals against chief inspector's directives and review decisions)

New clause 208B amends the heading of part 14, division 2 (Appeals against chief inspector's directives and review decisions) of the *Coal Mining Safety and Health Act 1999* so that the decision of the chief inspector under section 149(3)(a) about 'reasonable grounds' is a decision that may be appealed. Currently the part only refers to appeals against review decisions or directives.

New clause 208C - Amendment of s 243 (Who may appeal)

New clause 208C amends section 243 of the *Coal Mining Quarrying Safety and Health Act 1999* to enable an appeal against a decision of the chief inspector under section 149(3)(a) to retain a seized thing.

New clause 208D Amendment of s 244 (How to start appeal)

New clause 208D amends section 244 of the *Coal Mining Safety and Health Act 1999* to provide for how to start an appeal against a decision under section 149(3)(a) to retain a seized thing. This amendment is consequential to the amendment made by section 208A.

New clause 208E Amendment of s 248 (Powers of court on appeal)

New clause 208E amends section 248(1) of the *Coal Mining Safety and Health Act 1999* to omit the word review. This is a consequential amendment as there is now a decision of the chief inspector as well as review decisions of the chief inspector that may be appealed. The remaining reference to "decision" now covers a decision under section 149(3)(a) as well as review decisions of the chief inspector.

Clause 210 (Insertion of new pt 20, div 4)

Clause 63 amends clause 210 of the Bill to omit **"**Provision" and replace with "and validation provisions".

Clause 210 (Insertion of new pt 20, div 4)

Clause 64 amends clause 210 of the Bill to insert a new section 304 into the Coal Mining Safety and Health Act 1999 to confirm that the new section 149 applies to things seized before the commencement. If a thing was not returned to its owner within the time required under the old section 149, retention of those things is taken to have been as lawful as it would have been apart from the non-compliance with old section 149. The State is not liable to pay any compensation or incur any other liability, for the retention of the thing in contravention of old section 149. This applies for all purposes including a legal proceeding started before the commencement.

Explosives Act 1999

After clause 212

Clause 65 inserts a new Division 1A Amendment of Explosives Act 1999 (Amendments of Explosives Act 1999).

New clause 212A - Act amended

New clause 212A provides that this division amends the *Explosives Act 1999.*

New clause 212B Replacement of s 95 (Return of seized things)

New clause 212B replaces section 95 of the *Explosives Act 1999* with a new section 95. The section applies if a thing has been seized other than in the course of dealing with a dangerous situation and has some intrinsic value and is not forfeited. A dangerous situation could be for example, deteriorated explosives, a lack of authority to possess explosives, unstable explosives or explosives too dangerous to transport.

The new section 95 enables the owner of a seized thing to apply to the chief inspector, for its return if it has not been returned within 1 year after it was seized. The new section 95 provides a non-exhaustive list of reasonable grounds for retaining a seized thing for longer than 1 year after it was seized.

New clause 212C - Amendment of s 111 (Application for external review)

New clause 212C amends section 111 of the *Explosives Act 1999* to enable an appeal by an owner of a seized thing who is given an information notice under section 95(3)(a).

New clause 212D - Insertion of new pt 10, div 4

New clause 212D inserts a new part 10, division 4 into the *Explosives Act 1999* which provides for transitional and validation provisions.

New clause 212D confirms that the new section 95 applies to things seized before the commencement. If a thing was not returned to its owner within the time required under the old section 95, it is taken to have been as lawful as it would have been apart from the non-compliance with old section 95. The State is not liable to pay any compensation or incur any other liability, for the retention of the thing in contravention of old section 95. This applies for all purposes including a legal proceeding started before the commencement.

Mining and Quarrying Safety and Health Act 1999

Clause 215 (Amendment of s 175 (Application of div 4))

Clause 66 amends clause 215 to corrects a typographical error in clause 215 of the Act. The section reference number is corrected to be section 175.

After clause 216

Clause 67 inserts new sections 216A to 216F into the Water Reform and Other Legislation Amendment Bill 2014.

New clause 216A Replacement of s 146 (Return of things that have been seized)

New clause 216A replaces section 146 (Return of seized things) of the *Mining and Quarrying Safety and Health Act 1999* with new section 146.

The new section applies if a seized thing has some intrinsic value and is not forfeited. The new section 146 enables the owner of a seized thing to apply to the chief inspector, for its return if it has not been returned within 1 year after it was seized. The new section 146(5) provides a non-exhaustive list of reasonable grounds for retaining a seized thing for longer than 1 year after it was seized.

New clause 216B Amendment of pt 13, div 2, hdg (Appeals against chief inspector’s directives and review decisions)

New clause 216B amends the heading of Part 13, division 2 of the *Mining and Quarrying Safety and Health Act 1999* so that the decision of the chief inspector under section 146(3)(a) about ‘reasonable grounds’ is a decision that may be appealed. Currently the part only refers to appeals against review decisions or directives.

New clause 216C Amendment of s 223 (Who may appeal)

New clause 216C amends section 223 of the *Mining and Quarrying Safety and Health Act 1999* to enable an appeal against a decision of the chief inspector under section 146(3)(a) to retain a seized thing.

New clause 216D Amendment of s 224 (How to start appeal)

New clause 216D amends section 224 of the *Mining and Quarrying Safety and Health Act 1999* to provide for how to start an appeal against a decision under section 146(3)(a) to retain a seized thing. This amendment is consequential to the amendment made by new section 216A.

New clause 216E Amendment of s 226 (Hearing procedures)

New clause 216E amends section 226 (Hearing procedures) of the *Mining and Quarrying Safety and Health Act 1999* to omit the word review. This is a consequential amendment as there is now a decision of the chief inspector as well as review decisions of the chief inspector that may be appealed. The remaining reference to “decision” now covers a decision under section 146(3)(a) as well as review decisions of the chief inspector.

New clause 216F Amendment of s 228 (Powers of court on appeal)

New clause 216F amends section 228 (Powers of court on appeal) of the *Mining and Quarrying Safety and Health Act 1999* to omit the word review. This is a consequential amendment as there is now a decision of the chief inspector as well as review decisions of the chief inspector that may be appealed. The remaining reference to “decision” now covers a decision under section 146(3)(a) as well as review decisions of the chief inspector.

Mining and Quarrying Safety and Health Act 1999

After clause 217

Clause 68 inserts a new part 20 division 3 into the *Mining and Quarrying Safety and Health Act 1999* which provides for a transitional and validation provision. New section 280 confirms that the new section 146 applies to things seized before the commencement. If a thing was not returned to its owner within the time required under the old section 146, retention of those things is taken to have been as lawful as it would have been apart from the non-compliance with old section 146. The State is not liable to pay any compensation or incur any other liability, for the retention of the thing in contravention of old section 146. This applies for all purposes including a legal proceeding started before the commencement

Amendments to the Petroleum & Gas (Production and Safety) Act 2004, and Petroleum Act 1923

After clause 217

Clause 69 inserts a new division 3A into the Bill to amend the *Petroleum Act 1923.*

New Clause 217B Act amended

New clause 217B provides that this part amends the *Petroleum Act 1923*.

Amendment of s 2 (Definitions)

New clause 217C amends section 2 of the *Petroleum Act 1923* to change the term 'safety management plan' to 'safety management system'.

New Clause 217D Amendment of s 76R (Restriction)

New Clause 217D amends section 76R(1)(a) of the *Petroleum Act 1923* so that instead of agreeing to the safety management plan of the authority holder, the mining lease holder has to agree to the joint interaction management plan developed by the site senior executive and the authority holder.

New Clause 217E Amendment of s 76V (Content requirements for CSG statement)

New Clause 217E amends section 76V of the *Petroleum Act 1923* to change three references from 'safety management plan' to 'safety management system'. It also removes the reference in subsection (2) to section 388 of the *Petroleum & Gas (Production and Safety) Act 2004* and replaces it with section 705C, as the Bill deletes section 388 and replaces it with 705C.

New Clause 217F Amendment of s 76W (Applicant's obligations)

New Clause 217F amends section 76W of the *Petroleum Act 1923* to replace the references to 'safety management plan' with 'safety management system'.

New Clause 217G Amendment of s 77 (Submissions by coal or oil shale exploration tenement holder)

New Clause 217G amends section 77(3)(d) of the *Petroleum Act 1923* to replace the reference to 'safety management plan' with 'safety management system'.

New Clause 217H Amendment of s 77T (Requirements for making application)

New Clause 217H amends section 77T(2) of the *Petroleum Act 1923* to replace the reference to 'safety management plan' with 'safety management system'.

New Clause 217I Amendment of s 78CI (Statement about interests of overlapping tenure holder)

New Clause 217I amends section 78CI(b) of the *Petroleum Act 1923* to replace the reference to 'safety management plan' with 'safety management system', and replace the references to 'plans' in section 78CI(c) with 'plan or system'.

New Clause 217J Amendment of pt 6FA, div 4, sdvi 1, hdg

New Clause 217J changes the heading of Part 6FA, Division 4, Subdivision 1 of the *Petroleum Act 1923* from 'Safety management plans' to 'Safety management systems'.

New Clause 217K Amendment of s 78CK (Requirements for consultation with particular overlapping tenure holders)

New Clause 217K amends sub sections 78CK (4),(5)and (7) and (8) of the *Petroleum Act 1923* to replace the references to 'safety management plan' with 'safety management system'.

New Clause 217L Amendment of s 78CL (Application of 2004 Act provisions for resolving disputes about reasonableness of proposed provision)

New Clause 217L amends section 78CL(1) of the *Petroleum Act 1923* to replace the references to 'safety management plan' with 'safety management system'. It also amends 78CL(2) to remove reference to section 387 of the *Petroleum & Gas (Production and Safety) Act 2004,* as this section has been removed, and inserts the dispute resolution process from the deleted section 387 for overlapping tenures to which 78CL applies.

New Clause 217M Amendment of s 177 (Obligation of lessee to give access to MDL holder)

New Clause 217M amends section 177 of the *Petroleum Act 1923* to replace the reference to 'safety management plan' with 'safety management system'.

New Clause 217N Amendment of schedule (Decisions subject to appeal)

New Clause 217N amends the Schedule to the Act to insert a decision under section 78CL about whether proposed provision for safety management system is reasonable as a decision subject to appeal. This amendment is consequential to the amendment to section 78CL(2) to reflect that section 387 has been omitted from the *Petroleum & Gas (Production and Safety) Act 2004.* The dispute resolution process from deleted section 387 will be inserted for overlapping tenures with geothermal or greenhouse gas to which 78CL applies.

Petroleum & Gas (Production and Safety) Act 2004

After clause 230

Clause 70 inserts a new clause 230A into the Act which amends section 732 of the Act (Increase in maximum penalties in circumstances of aggravation). The new clause amends section 732(1) of the Petroleum & Gas (Production and Safety) Act 2004 so that the section applies to all of Chapter 9 and not just parts 2, 4 and 6. This will allow proceedings for offences against all provisions of Chapter 9 to be heard in the same court system, rather than being split between the mainstream and industrial magistrates court.

After clause 231

Clause 71 inserts a new section 213A which replaces section 772 (Return of seized things) in the *Petroleum and Gas (Production and Safety) Act 2004* with new section 772.

The section applies if a seized thing has some intrinsic value and is not forfeited. The new section 772 enables the owner of a seized thing to apply to the chief inspector, for its return if it has not been returned within 1 year after it was seized. The new section 772 provides a non-exhaustive list of reasonable grounds for retaining a seized thing for longer than 1 year after it was seized.

Amendment of clause 233 (Amendment of s 837 (Offences under Act are summary))

Clause 72 amends clause 233 of the Bill (Offences under the Act are summary) to refer to chapter 10 as well as chapters 7, 8 and 9, as chapter 10 also contains some safety related offences. Clause 233 will be amended to include chapter 10 to correct this numbering error.

Clause 234 (Insertion of new ch 15, pt 19)

Clause 73 Amends clause 234 of the Bill. “Provision” is omitted and replaced with “and validation provisions”.

Clause 234 (Insertion of new ch 15, pt 19)

Clause 74 amends clause 234 of the Bill to insert a new section 991 into the Act that provides a transitional and validation provision. Section 991 confirms that the new section 772 applies to things seized before the commencement. If a thing was not returned to its owner within the time required under the old section 772, retention of those things is taken to have been as lawful as it would have been apart from the non-compliance with old section 772. The State is not liable to pay any compensation or incur any other liability, for the retention of the thing in contravention of old section 772. This applies for all purposes including a legal proceeding started before the commencement.

Clause 235 (Amendment of sch 1 (Reviews and appeals

Clause 75 amends clause 235 of the Bill to amends schedule 1 of the Act setting out reviews and appeals to replace the current reference to section 772(1)(c) with a reference to section 772(3)(a) Decision to retain a seized thing.

Schedule 1 (Minor or consequential amendments of particular legislation)

Clause 76 amends clause 254, Schedule 1 (Minor or consequential amendments of particular legislation), to make a consequential change to the Survey and Mapping Infrastructure Act 2003. Currently the Survey and Mapping Infrastructure Act 2003 makes reference to the downstream limit of a watercourse prescribed under the Water Regulation 2002. As the Bill proposes that downstream limits of watercourses be identified on the watercourse identification map rather than by regulation, this change simply updates the reference to a downstream limit identified on the map.

Schedule 1 (Minor or consequential amendments of particular legislation)

Clause 77 amends clause 254, Schedule 1 (Minor or consequential amendments of particular legislation), to correct a minor typographical error.

Schedule 1 (Minor or consequential amendments of particular legislation)

Clause 78 amends clause 254, Schedule 1 (Minor or consequential amendments of particular legislation), to make a consequential change to the Sustainable Planning Regulation 2009.

Schedule 2 (Amendment of Water Resource Plans)

Clause 79 amends schedule 2 (Amendment of Water Resource Plans), amendment of Water Resource (Burnett Basin) Plan 2014, to include a new amendment to replace section 41 of the Plan. New section 41 will limit the taking of water for stock and domestic purposes, under section 20A(5) of the Act, to existing works in water supply schemes within the plan area. Outside of water supple scheme areas within the plan areas there is not limitation on the taking of water for stock or domestic purposes. The definition of existing stock and domestic works ensures that works in existence and used for taking stock and domestic water upon the commencement may continue to take water for stock and domestic purposes in the water supple schemes. New works for the taking of stock and domestic water after the commencement will require a water entitlement where the land is not adjacent to the watercourse.

Long title

Clause 80 amends the long title of the Bill to add the *Explosives Act 1999*, *Petroleum Act 1923, South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* and the *Sustainable Planning Act 2009* into the long title.

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