Clean Energy Bill 2008

Explanatory Notes

Short Title of the Bill

The short title of the Bill is the *Clean Energy Bill 2008*.

Objectives of the Bill

The objectives of the Bill are to introduce new legislation for the Smart Energy Savings Program, one of the key elements of the Smart Energy Policy component of *Climate Smart* 2050, and to make amendments to the following Acts:

- Electricity Act 1994;
- *Mineral Resources Act 1989*;
- *Petroleum and Gas (Production and Safety) Act 2004*;
- *Petroleum Act 1923*;
- *Coal Mining Safety and Health Act 1999*; and
- *Mining and Quarrying Safety and Health Act 1999*.

The Bill amends the *Electricity Act 1994* to:

- increase the level of the 13% Gas Scheme target to 15 per cent in 2010 and progressively to 18 per cent by 2019, subject to proclamation;
- provide that suspension of an electricity retailer from the National Electricity Market is a specific ground for disciplinary action such as cancellation of the retailer's Queensland electricity retail authority;
- make provisions for a Feed-in Tariff that pays small consumers for the surplus energy they contribute to the electricity grid from a photovoltaic power system; and
- address minor administrative issues identified in earlier amendments for full retail competition.

The Bill amends the *Mineral Resources Act 1989, Petroleum and Gas (Production and Safety) Act 2004, Petroleum Act 1923, Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* to:

- clarify the tenures and safety arrangements for underground coal gasification;
- improve administrative law processes for the granting of mining tenure;
- provide improved business processes; and
- require persons with relevant knowledge about the location, time and circumstances (including numbers and names of witnesses) of a serious mining accident to provide that information to investigating officers.

Policy rationale

The proposed amendments can be grouped as follows:

Smart Energy Savings Program

Energy efficiency has been widely recognised as one of the lowest cost solutions to reducing energy costs and greenhouse gas emissions. This is particularly important to businesses with the planned introduction of a national emissions trading scheme which is predicted to increase energy costs significantly.

The Smart Energy Savings Program aims to improve the efficiency and management of the use of energy, and the conservation of energy by Queensland businesses with medium to large energy consumption.

The Smart Energy Savings Program will impose legislative requirements on medium to large business energy users in Queensland. Initially, businesses consuming between 100 terajoules (TJ) of energy (equivalent to around 27.8 gigawatt hours (GWh) of electricity) and 500 terajoules (approximately 139 gigawatt hours) per annum will be required to participate, although this threshold will be reduced, with smaller energy users captured in later stages. (one terajoule is equivalent to approximately 0.28 GWh of energy using an online energy conversion tool available at http://www.onlineconversion.com/energy.htm).

Participating businesses must undertake an energy audit and develop an energy savings plan which provides for measures to improve: (i) efficiency

of energy use; (ii) energy conservation; and (iii) management of energy use. The plan will be for a five year period.

Queensland's largest energy using businesses are already subject to the *Energy Efficiency Opportunities Act 2006* (Cwth), administered by the Commonwealth Department of Resources, Energy and Tourism. This Act also requires participating companies to search for opportunities to reduce energy consumption or use energy more efficiently.

Gas Scheme Annual Liability

The Queensland 13% Gas Scheme was implemented in 2005 through provisions in the *Electricity Act 1994* and the *Electricity Regulation 2006* and has driven the development of a robust gas market in Queensland. In May 2007, Cabinet agreed to an increase in the Gas Scheme annual liability.

The Bill amends the *Electricity Act 1994* to increase the mandatory annual liability under the Scheme to 15% in 2010 and creates a power to allow further increases up to 18% by 2019. The increase in the target is to be made on the condition that the Scheme will be transitioned into an emissions trading scheme soon after its commencement, expected in 2010. The Bill also contains a number of minor administrative amendments that will add clarity to the practical application of the Scheme.

Electricity Retailer Suspension

The Bill amends the *Electricity Act 1994* to provide that suspension of an electricity retailer from trading in the National Electricity Market (NEM) is a specific ground for disciplinary action such as cancellation of the retailer's Queensland retail authority.

Under the *Electricity Act 1994*, a retail authority may be cancelled if the retailer is found to be no longer suitable to hold the authority. This means that any action to cancel the Queensland authority of a retailer suspended from the NEM must rely on a general consideration of suitability.

It is considered that a retailer suspended from the NEM has already demonstrated its unsuitability to hold a retail authority in this State. Therefore the proposed amendment will establish a direct and specific link between a retailer's suspension from the NEM and grounds for cancellation of the retailer's Queensland authority. This will result in a clearer and less circuitous process for cancellation of the authority of a retailer suspended from the NEM and provide a stronger disincentive for retailers to use

'voluntary' suspension from the NEM as a means of limiting their liability exposure and, as a result, not meeting their obligations to their customers.

Refinement of 2006 full retail competition amendments

Since the commencement of full retail competition in the Queensland electricity market on 1 July 2007, minor issues requiring legislative change have been identified. The Bill also includes an additional minor amendment to the methodology for calculating the benchmark retail cost index (BRCI), which is used to determine the annual adjustment to notified (regulated) electricity prices.

Feed-in Tariff for solar power systems

The Bill amends the *Electricity Act 1994* to require 44 cents per kilowatt hour to be paid to small customers for electricity generated from photovoltaic power systems that is surplus to household needs and is fed into the electricity distribution grid. This scheme, called the Solar Bonus Scheme, is available to customers who have installed small photovoltaic systems to produce electricity and who use no more than 100 megawatt hours of electricity per year.

The financing of the 44 cents per kilowatt hour tariff is to be spread across all consumers connected to the electricity grid and will result in an increase of less than one dollar per customer per year.

The Solar Bonus Scheme is similar to South Australia's Feed-in Mechanism as described in the *Electricity (Feed-In Scheme-Solar Systems) Amendment Act 2008* (SA).

Underground coal gasification

The Bill amends the MRA and the P&G Act to clarify the tenure and safety arrangements for underground coal gasification (UCG), an emerging industry in Queensland. The process for UCG involves the combustion of coal underground in the coal seam and the capture of the resultant gas for processing into oil and related by-products. The tenure arrangements operate over both the MRA and the P&G Act; however, the jurisdiction of each Act is unclear. The Bill sets out the appropriate mining or petroleum tenures and the relevant safety and health requirements that apply to the various stages of exploration, testing and production for underground coal gasification.

Miscellaneous mining and petroleum related amendments

Amendments have been made to a number of operational arrangements under the MRA. These include simplified arrangements for the determination of the Department's mining districts, the inclusion of a power of delegation by the chief executive, clearer enunciation of decision criteria for the granting of mining tenure to address administrative law deficiencies, the ability to refuse deficient tenure applications prior to their assessment, and clarification of the access rights necessary to administer the abandoned mines policy.

The amendments also provide a simplified process for the creation of restricted areas. A restricted area is a legislative based administrative tool which is used, amongst other purposes, to prevent exploration and other mining activity in areas of current non-mining activity where the State is conducting mineralisation identification. The amendments streamline the creation and management of restricted areas and provide a simpler operational process.

A minor change to the definition of "distribution system" in the P&G Act provides the ability for further definition in regulation to clarify safety responsibilities at multi-tenanted premises, such as major shopping centres.

Mining and quarrying safety related amendments

The Bill amends the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* to provide that persons with relevant knowledge about the location, time and circumstances (including numbers and names of possible witnesses) of a serious mining accident must provide that information to investigating officers.

How objectives are achieved

Clean Energy Bill 2008

The Bill will authorise the creation of a new Act, the *Clean Energy Act 2008*, to facilitate the introduction of the Smart Energy Savings Program, one of the key elements of the Smart Energy Policy component of *Climate Smart 2050*. The amendments will impose a range of legislative requirements on medium to large business energy users in Queensland to identify measures to reduce energy consumption (energy conservation), use energy more efficiently (energy efficiency) and manage energy effectively and produce an Energy Savings Plan.

Amendments to Electricity Act 1994

The Bill will authorise amendments to this legislation to achieve the stated policy objectives.

Amendments to Mineral Resources Act 1989, Petroleum and Gas (Production and Safety) Act 2004 and the Petroleum Act 1923

The Bill will authorise amendments to mineral, and petroleum and gas legislation.

These amendments will ratify the policy objectives by clarifying the tenures and safety arrangements for underground coal gasification, improving administrative law processes for the granting of mining tenure, and providing improved administrative and operational business processes.

Amendments to Coal Mining Safety and Health Act 1999 and the Mining and Quarrying Safety and Health Act 1999

The Bill will authorise amendments to this legislation to require persons with relevant knowledge about the location, time and circumstances (including numbers and names of possible witnesses) of a serious mining accident to provide that information to investigating officers.

Alternative method of achieving policy objectives

There are no non-legislative methods by which the objects of the Bill can be achieved.

Estimated cost for Government implementation

In relation to the Smart Energy Savings Program, Government will incur administration costs associated with registering, auditing and reviewing companies for compliance purposes. In 2007, $2.5 million over five years was set aside for the administration of the Smart Energy Savings Program (this also includes administration of the Smart Energy Savings Fund).

Consistency with Fundamental Legislative Principles

The Bill was drafted with regard to fundamental legislative principles, as defined in the *Legislative Standards Act 1992*. Amendments which were particularly examined in that regard were the amendments to section 132 of the *Electricity Act 1994*, sections 11, 12, 141 and 391 of the MRA, and

sections 198 and 199 of the CMSHA and sections 195 and 196 of the MQSHA.

Regarding the Smart Energy Savings Program, clause 27 of the Bill requires executive officers of a corporation to ensure the corporation complies with the Act. Under the provision, if the corporation commits an offence, each executive officer of the corporation also commits an offence. Although the provision provides a number of defences, the provision effectively reverses the onus of proof. However, this provision was included to ensure that corporations will be more likely to view compliance with the Act as a serious requirement of their operations rather than merely dealing with it as an administrative process.

The amendment to section 132 of the *Electricity Act 1994* make suspension of an electricity retailer from the National Electricity Market a specific ground for disciplinary action such as cancellation of the retailer's Queensland retail authority. To prevent a possible breach of fundamental legislative principles, natural justice and the right for the retailer to be heard through a 'show cause' process will continue to apply to any proposal to cancel a retail authority on the additional ground proposed. Further, the retailer will be able to seek a review of any decision to cancel the authority (under section 214 of the *Electricity Act 1994*) and may appeal any review decision to the Supreme Court (under section 219 of that Act).

The amendments to sections 11 and 12 of the MRA regarding mining district boundaries and section 391 of the MRA regarding restrictions on grants may constitute a breach of the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament. Both these amendments propose an alternative to a regulation to deal with matters that are entirely administrative in nature. The use of a regulation was historically used as a mechanism to ensure public notice of the administrative procedure; however, access to print and net media now provide a more comprehensive and flexible means of local and international notification. The change from the use of a regulation to more publicly accessed and accepted means of publication of a notification is not seen as having insufficient regard to the institution of Parliament. Rather, the change is seeking a more efficient and simple mechanism to publicly notify administrative arrangements to a client base that is both local and international.

The amendments to section 198 of the CMSHA and section 195 of the MQSHA, and the insertion of section 198A in the CMSHA and section

195A in the MQSHA, impose an obligation on persons with relevant knowledge about the location, time, persons involved and the circumstances of a serious mining accident or incident to provide that information to investigating officers. Given the potential risk of self-incrimination, the amendments provide that a person directly involved in a mining accident or incident may refuse to provide information about the accident or incident to an investigator if the provision of the information may incriminate the person. Other persons will be protected in that the information they provide may not be used as primary evidence in any matter against them.

Consultation

Community

The Smart Energy Savings Program was announced publicly in the *Climate Smart 2050* document in June 2007. Consultation on *Climate Smart 2050* was undertaken following its release. Recent consultation has occurred with industry, energy retailers and distributors, and energy auditors on the development of the Bill.

Energy retailers and electricity customers' representative groups were consulted about the proposed electricity retailer suspension amendment.

The Energy Competition Committee undertook extensive consultation with industry and consumer and government stakeholders on the policy framework for full retail contestability.

A Queensland feed-in tariff for residential and other small energy users of solar power was publicly announced as a key component of *ClimateSmart 2050* on 3 June 2007. In developing the proposed amendments, the Department of Mines and Energy undertook further consultation with Origin Energy, AGL, Ergon Energy and Integral Energy. Limited consultation with community groups was undertaken in March 2008.

Concerning the petroleum and gas safety related amendments, consultation has occurred with the major distribution network operators.

Government

Representatives of the Department of the Premier and Cabinet, Queensland Treasury, the Department of Tourism, Regional Development and Industry, the Department of Natural Resources and Water, the Environmental Protection Agency (including the Office of Climate Change), the Department of Local Government, Sport and Recreation, the Department

of Employment and Industrial Relations, and the Department of Justice and Attorney-General were consulted in relation to the Bill.

An interdepartmental contact group involving the Departments of the Premier and Cabinet, Treasury, Environmental Protection Agency (including the Office of Climate Change), Infrastructure and Planning, Natural Resources and Water, Public Works, and Tourism, Regional Development and Industry, was also consulted.

Results of Consultation

All agencies consulted support the Bill.

The feed-in tariff initiative received substantial positive feedback and public support, and was strongly supported by solar power industry representatives, such as the Clean Energy Council.

Concerning the petroleum and gas safety related amendments, the major distribution network operators support the proposed change. On the underground coal gasification issue, the current respective tenure holders support clarification of the relevant safety legislative framework.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 is the citation for the short title of the Act - the *Clean Energy Act 2008*.

Commencement

Clause 2 provides that this Act commences on a day to be fixed by proclamation, except for part 11 (excluding sections 40, 41 and 48) and part 14 (excluding sections 108, 109 and 116).

Main object

Clause 3 provides that the main objective of the Act is to improve the energy use efficiency of particular businesses and encourage the implementation of cost effective energy efficiency practices by the businesses.

Part 2 Interpretation

Definitions

Clause 4 refers the reader to the Dictionary in schedule 2 for the definition of particular words used in the Act.

Who is the regulator

Clause 5 provides that the regulator is the chief executive. In this instance, it is the chief executive (Director-General) of the Department of Mines and Energy.

Meaning of participating business

Clause 6(1) defines a 'participating business' as a person who operates a business or other activity at a site that uses between 10 and 500 terajoules of energy in a financial year. Sites that consume an amount of energy above the upper thresholds are captured under the *Energy Efficiency Opportunities Act 2006* (Cwlth) and are excluded under this definition.

The requirements of the *Clean Energy Act 2008* apply to a particular site, rather than an entire corporate group.

Clause 6(2) provides that if there is more than one site that fits the description of a participating business set out in Clause 6(1), each of these sites will be considered a participating business under the *Clean Energy Act 2008.*

This means that a single commercial enterprise or corporate group may have several sites which are each participants in the Smart Energy Savings Program and subject to the requirement of the *Clean Energy Act 2008*.

Clause 6(3) exempts Government Owned Corporations except for Government Owned Electricity Generators from being classified as a 'participating business'.

The *Clean Energy Act 2008* excludes government entities as defined in section 5 of the *Government Owned Corporations Act 1993* (Qld) (GOC Act). This includes government companies, government departments, government owned corporations (established under the GOC Act or another statute), state instrumentalities (ie. established by the State under an instrument as defined in section 3 of the GOC Act), government agencies (e.g. Environmental Protection Agency) and government authorities (e.g. Queensland Competition Authority). This is because Government Entities are subject to an energy efficiency program being driven by the Department of Works.

Meaning of energy use threshold

Clause 7 defines energy threshold and the different levels of energy use thresholds. These thresholds specify the amount of energy that must be used by a participating business in a financial year to trigger participation in the Smart Energy Savings Program as set out in the *Clean Energy Bill 2008*.

Level 1 threshold: 100 terajoules of energy or more, but less than 500 terajoules of energy

Level 2 threshold: 30 terajoules of energy or more, but less than 100 terajoules of energy

Level 3 threshold: 10 terajoules of energy or more, but less than 30 terajoules of energy

Part 3 Energy use information

Energy provider must give the regulator information about energy use

Clause 8(1) sets out the requirements for an energy provider to provide the regulator with the name and address of any customer that the provider has supplied with 10 or more terajoules, but less than 500 terajoules, of energy in a financial year. The provider must do this within two months of the end

of each financial year following commencement of the *Clean Energy Act 2008*.

Clause 8(2) allows the energy provider not to provide customer details to the regulator if it is unlawful.

Clause 8(3) defines an energy provider as either:

- the holder of a distribution authority (eg. Energex) or retail authority (eg. Origin Energy) under the *Electricity Act 1994;* or
- a special approval holder (eg. Country Energy) under the *Electricity Act 1994; or*
- a distributor or retailer under the *Gas Supply Act 2003;* or
- the holder of a transmission pipeline licence under the *Petroleum and Gas (Production and Safety) Act 2004*.

Obligation to record total energy consumption

Clauses 9(1) and (2) require participating businesses to give the regulator sufficient information to establish the total amount of energy used by the business in a financial year stated in the notice (called the baseline year). This is to be provided to the regulator within two months after the end of the baseline year, or two months after receiving the notice, whichever is later. This clause will only apply if the regulator gives a participating business a notice requiring the business to provide this information.

Clause 9(3) states that once the potential participants advise the regulator of their energy use in the previous financial year the regulator advises the potential participating businesses whether they will have to participate in the Smart Energy Savings Program.

There is a maximum penalty of 200 penalty units ($15,000) for failure to comply with Clause 9.

Part 4 Smart Energy Savings Register

Smart Energy Savings Register

Clause 10(1) provides that the regulator must keep a register, called the Smart Energy Savings Register, of each participating business in the Smart Energy Savings Program.

Clause 10(2) provides that a participating business may be registered if:

- the regulator has given the business a notice under clause 9(1); and
- the business has an energy use threshold that is –
    - in a financial year ending on or after 30 June 2010 (level 1 threshold); or
    - in a financial year ending on or after 30 June 2011 (level 2 threshold); or
    - in a financial year ending on or after 30 June 2015 (level 3 threshold).

Clause 10(3) states the minimum information that must be in the register. The register is to include the following information:

- the name of the participating business;
- the address of the principal place of business;
- if the business is a corporation—
    - the address of the corporation's registered office; and
    - the corporation's ACN;
- the energy use threshold of the business.

Although not a statutory requirement, the register may also include a contact person for each participating business.

Registration of a person as a participating business

Clause 11(1) provides that a participating business that meets the requirements of registration under 10(2) must apply to the regulator for registration. Businesses that have a 'reasonable excuse' can apply to the regulator and may not have to register.

The maximum penalty for failing to apply for registration is 100 penalty units ($7,500).

Clauses 11(2) and (3) provide that the application for registration must be made by the participating business within three months after the end of each baseline year. The application must be in writing and include the information set out in Clause 10(3). That is, the application must include the following:

- the name of the participating business;
- the address of the principal place of business;
- if the business is a corporation—
    - the address of the corporation's registered office; and
    - the corporation's ACN;
- the energy use threshold of the business.

Exemption from registration

Clauses 12(1) and (2) provide that a participating business which doesn't normally use the amount of energy specified in the energy use threshold in a financial year, can make an application to the regulator for an exemption from inclusion on the Smart Energy Savings Register. The application must be in writing and include:

- the total amount of energy used in the previous financial year;
- the total amount of energy expected to be used in the current financial year and each of the following two financial years; and
- the reason why an energy use threshold would not ordinarily be met in a financial year.

This information will establish why the business is unlikely to trigger participation in the Smart Energy Savings Program in future years and why the business has an anomalous energy use in the financial year.

Clause 12(3) states that the participating business must provide the application for exemption to the regulator within three months after the end of the baseline year (defined in Clause 9(1)). If the regulator refuses the application, the regulator must give the business an information notice for the decision.

Clause 12(4) provides that the regulator will exempt the person from registration if she or he is satisfied that the business does not ordinarily have an energy use threshold in a financial year.

If the regulator decides to refuse the application, clause 12(5) states that the regulator must give the business an information notice for the decision.

Deregistration

Clause 13(1) provides that a participating business must apply to the regulator to be removed from the Smart Energy Savings Register. This allows businesses that use energy outside the energy use threshold from having to participate in the Smart Energy Savings Program. An example is if the business divests of high energy using assets or ceases operations.

Clause 13(2) stipulates the content of the deregistration application. The application must be in writing and include:

- the total amount of energy used in the previous financial year;
- the total amount of energy expected to be used in the current financial year and each of the following two financial years; and
- the reason for seeking deregistration..

Clause 13(3) states that the participating business must be deregistered if the regulator is satisfied that it will not use the amount of energy specified in an energy use threshold in the following two financial years, or if the regulator is satisfied that the business is a business to which the *Energy Efficiency Opportunities Act 2006* (Cwlth) applies.

If the regulator refuses the application, Clause 13(4) stipulates that the regulator must give the person an information notice for the decision.

Change of information on register

Clause 14 provides that if there are any changes to the information provided by the participating business in clause 10(3) a participating business must give the regulator a written notice advising about changes to the information that is contained within the Smart Energy Savings Register. This notice must be provided within 14 days of the change(s). This will ensure the Smart Energy Savings Register is up to date. Failure to provide written notice of relevant changes will incur a penalty of 20 penalty units ($1,500).

Part 5 Energy use audit

Participating business must carry out energy use audit

Clause 15(1) stipulates that a registered participating business has 12 months to carry out an energy audit after the end of the baseline year.

Clause 15(2) sets out that unless changed by regulation the energy audit must be carried out to comply with at least a Level 2 Audit under the Australian/New Zealand Standard: Energy Audit AS/NZ 3598:2000.

Part 6 Energy Savings Plan

Participating business must give regulator energy savings plan

Clause 16(1) provides that a registered participating business must give the regulator an 'energy savings plan' within 12 months of the end of their baseline year. Failure to comply will incur a penalty of 200 penalty units which could result in a fine of up to $15,000.

Clause 16(2) provides for the plan to commence the day the plan is given to the regulator and finishes five years after the end of the baseline year (defined in clause 9(1)).

Clause 16(3) sets out that the energy savings plan is to: be in the approved form; must state whether the business has carried out an energy audit that meets the requirements of a level 2 energy audit under the Australian/New Zealand Standard: Energy Audit (AS/NZ 3598:2000) provided by Standards Australia; and must include the measure or measures that a business intends to implement which were identified through the energy audit. The measures must be measures to improve efficiency of energy use, measures to improve energy conservation and measures to improve management of energy use. The energy savings plan also must state how the business intends to implement the measure or measures and attach a copy of the energy audit that has been carried out.

Participating business may change energy savings plan

Clause 17(1) provides that a participating business may change its energy savings plan to the extent that it relates to section 16(3). That is, a participating business may update information in its energy savings plan about which the measure or measures it intends to implement and how these will be implemented.

Clause 17(2) states that the regulator needs to be notified, through a written notice, about the changes to the energy savings plan within 14 days of the change.

The maximum penalty for failure to change the energy savings plan in accordance with Clause 17 is 20 penalty units ($1,500).

Review of energy savings plan

Clause 18 provides that the participating business must give the regulator a report in the third financial year of the five year period stating how the energy savings plan has been implemented to that point by the participating business and stating the results of the implementation. It also defines the beginning of the five year cycle which the energy savings plan will be implemented.

The maximum penalty for failing to provide the regulator a report in accordance with Clause 18 is 100 penalty units ($7,500).

Publication of energy savings plan implementation

Clause 19(1) provides that after the participating business has submitted their energy savings plan to the regulator they must also publish information about the measure or measures the business intends to undertake under the energy savings plan to improve energy efficiency, energy conservation and management of energy use.

The maximum penalty for failure to do this is 20 penalty units ($1,500).

Clause 19(2) provides that a participating business must publish information about the implementation, and the results of implementation, of the measure or measures mentioned in Clause 19(1) within 28 days of the start of the second and each subsequent financial years of the plan's five year period. That is, a participating business must publish an annual update each year of the five year period about implementing the energy savings plan and the results of that implementation.

The maximum penalty for failure to publish an annual update is 20 penalty units ($1,500).

Clause 19(3) provides that the information must be published in a way that is readily accessible to the public (for example by publishing the information on a website or in a copy of a local newspaper advertisement).

Clause 19(4) provides that the regulator must be notified, in writing, that the participating business has published the information. This notification must be provided within 28 days of publishing the information as required by clauses 19(1), (2) and (3). The participating business must also give the regulator proof of compliance (for example through providing the regulator a website address or copy of the newspaper advertisement).

Clause 19(5) defines a five year period of an energy savings plan as the period of five years starting from the end of the most recent baseline year to which the plan relates.

The maximum penalty for failure to do this is 20 penalty units ($1,500).

Part 7 Offences relating to documents and information

False or misleading information

Clause 20(1) establishes that a person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

The maximum penalty for non-compliance with clause 20(1) is 100 penalty units ($7,500).

Clause 20(2) provides that a complaint must be made stating that a statement was ‘false or misleading’ but need not specify which of the two applied to the circumstance.

These are standard conditions for false or misleading information.

False or misleading document

Clause 21(1) states that a person must not give to an authorised officer a document containing information the person knows is false or misleading in a material particular.

The maximum penalty for non-compliance with clause 21(1) is 100 penalty units ($7,500).

Clause 21(2) states however, that, if the person informs the authorised officer of how the document is false or misleading and gives the authorised officer all the information they have that is correct, then they will not contravene this section.

Clause 21(3) provides that a compliant must be made stating that a document was 'false or misleading' but need not specify which of the two applied to the circumstance.

Offence of improper disclosure of information

Clause 22(1) provides that a person who directly or indirectly discloses information obtained in the administration of this Act, commits an offence, unless the disclosure is made in connection with the administration of this Act or made with the consent or the person to whom the information relates or ordered by a court in relation to proceedings before it or made with other lawful excuse.

The maximum penalty for contravening this section is 100 penalty units ($7,500).

Clause 22(2) defines court to include a tribunal, authority or person having power to require the production of documents or the answering of questions.

Part 8 Evidence and legal proceedings

Division 1 Application

Application of part

Clause 23 establishes that this part applies to a legal proceeding under the *Clean Energy Act 2008*.

Division 2 Evidentiary aids

Appointments and authority

Clause 24 provides that it is not necessary to prove that the Minister, regulator or an authorised officer have been appointed or have authority, unless a party to proceedings, by reasonable notice, requires proof of it.

Signatures

Clause 25 provides that a signature purporting to be the signature of the Minister, the regulator or an authorised officer is evidence of the signature it purports to be. In effect, this means that it is not necessary to prove that a signature belongs to the Minister, regulator or an authorised officer.

Division 3 Offence proceedings

Summary proceedings for offences

Clause 26(1) provides that proceedings for an offence are to be taken in a summary way under the *Justices Act 1886*.

Clause 26(2) states that a proceeding for an offence must start within one year after the commission of the offence or within one year after the offence comes to the complainant's knowledge, but this must be within two years after the commission of the offence.

Executive officers must ensure corporation complies with Act

Clause 27(1) provides that the executive officer of a corporation must ensure the corporation complies with the *Clean Energy Act 2008*.

Clause 27(2) states that if a corporation commits an offence, each of the executive officers of that corporation is taken to have committed an offence (i.e. failing to ensure the corporation complied with the legislation).

The penalty units proposed for this offence will depend on the relevant offence (eg. clause 20 - False or misleading information) and the maximum financial penalty for each executive officer will be the maximum amount payable for such offence by an individual (ie. for clause 20 it is 100 penalty units or $7,500).

Clause 27(3) provides that evidence the corporation has been convicted of an offence against a provision is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

Clause 27(4) however states that the offence does not apply where an executive officer can demonstrate that she or he exercised reasonable diligence to ensure the corporation's compliance with or where an executive officer can demonstrate that she or he was not in a position to influence the conduct of the corporation in relation to the offence.

The relevant clauses are in a form routinely employed in many Queensland Bills and provide that where an offence was carried out by a person's representative, such activity is taken to be done by the person unless they can prove they could not, within reason, have prevented the offence. Further it must be shown that the offending representative was not acting of her or his own volition. This is a reversal of the onus of proof (ie. defences are provided, but must be proved by the defendant rather than the prosecution proving guilt), but has been included to ensure corporate responsibility and to ensure that the industry develops in an ethical and accountable manner. In other words, these clauses ensure that officers of corporations cannot hide behind the corporate veil.

Clause 27(5) defines executive officer of a corporation to mean any person by whatever name called and whether or not the person is a director of the corporation, who is concerned, or takes part in the management of the corporation.

Part 9 Appeal and review of decisions

Division 1 Internal review

Application for internal review

Clause 28 provides that a person may apply for an internal review of the decision of the regulator under this Act, where the person is given, or is entitled to be given, an information notice about a decision.

How to apply for internal review

Clause 29(1) provides the application must be made to the Minister in the approved form and supported by enough information for the Minister to make a decision on the application.

Clause 29(2) provides a time limit of 20 business days for the application to be made beginning from the day the person is given the information notice about the decision or, if this does not apply, then from the day the person otherwise becomes aware of the decision.

Review decision

Clause 30(1) provides that the Minister must review the original decision, make a decision and give notice of this to the applicant within 30 business days after receiving the application. The Minister may decide to confirm, amend or substitute the original decision.

Clause 30(2) provides that the reasons for the review decision made by the Minister must be included in the review notice, if that decision is not the one sought by the applicant.

Clause 30(3) provides that if the Minister does not provide reasons for the review decision, as stipulated in clause 30(1) the Minister is taken to have confirmed the original decision.

Division 2 Appeals

Who may appeal

Clause 31 provides that if a person applied for a review of a decision under clauses 28, 29 and 30 and is dissatisfied with the decision, the dissatisfied person may appeal to the Magistrates Court against the decision.

Starting an appeal

Clause 32(1) provides for how the dissatisfied person can start the appeal process by filing a notice of appeal with the Magistrates Court; giving a copy of the notice to the regulator; and complying with the rules of court applicable to the appeal.

Clause 32(2) provides that the notice of appeal must be filed within 28 days after the dissatisfied person receives notice of the decision appealed against.

Clause 32(3) provides that the court may extend the period for filing the notice of appeal at any time.

Clause 32(4) provides that the notice of appeal must fully state the grounds of appeal and the facts relied on by the dissatisfied person.

Stay of operation of decisions

Clause 33(1) provides that where a decision is being appealed against the Magistrates Court may stay the decision (ie. make an order to temporarily or permanently prevent the operation of the decision) pending the outcome of the appeal. This is done to secure the effectiveness of the appeal.

Clause 33(2) provides that this stay may be given on conditions the court considers appropriate and has effect for the period fixed by the court. The stay may be amended or revoked by the court.

Clause 33(3) provides that a period of stay may not extend past the time of when the court decides the appeal.

Clause 33(4) provides that the appeal affects the decision, or the carrying out of the decision, only if the decision is stayed.

Hearing procedures

Clause 34(1) provides that, in deciding the appeal, the Magistrates Court is not bound by the rules of evidence and is required to comply with natural justice.

Clause 34(2) provides that the appeal is by way of rehearing, unaffected by the decision appealed against.

These are standard provisions for hearing procedures in Queensland.

Powers of court on appeal

Clauses 35(1)(a) and 35(1)(d) provides that the Magistrates Court in deciding an appeal, may confirm the decision or set aside the decision and return the matter to the regulator.

Clauses 35(1)(b) and 35(2) provides that the court may vary the appealed decision with any kind of decision the regulator may make.

Clauses 35(1)(c) and 35(3) provides that the court may set aside the decision and substitute it with another decision that is taken to be the decision of the regulator for the purposes of this Act, unless another chapter in this Act provides otherwise.

Clause 35(4) provides that the court may make an order for costs it considers appropriate.

Part 10 Miscellaneous

Delegations

Clause 36(1) provides that the Minister or the regulator may delegate his or her functions under this Act to an appropriately qualified person who is a public service employee of the Department of Mines and Energy.

Clause 36(2) defines appropriately qualified to include having the qualifications, experience or standing appropriate to exercise the power. Examples of standing include if a person is a public service employee of the department, the person's classification level in the department. Clause 36(2) also defines Functions to include powers.

Approval of forms

Clause 37 establishes that the regulator may approve forms used under this Act.

Regulation-making power

Clause 38(1) provides that the Governor in Council may make regulations under this Act.

Clause 38(2) states that, without limiting clause 38(1), a regulation may provide for a maximum penalty of 20 penalty units ($1,500) for a contravention of the regulation.

Part 11 Amendment of Coal Mining Safety and Health Act 1999

Act amended in pt 10

Clause 39 provides that Part 10 amends the *Coal Mining Safety and Health Act 1999*.

Amendment of s10 (Meaning of *on-site activities*)

Clause 40 adds another exclusion of on-site activities. Underground coal gasification activities authorised on mining leases or mineral development licences are excluded from the definition of on-site activities. They are also excluded where they take place on an exploration permit if the activities have been declared by the Chief Inspector as underground gasification activities. This ensures that the provisions of this Act will not apply to these activities.

Insertion of new s 52A

Clause 41 inserts a new section as a mechanism for the site senior executive to provide a notice advising that underground activities are taking place. The Chief Inspector with agreement of the Chief Inspector, Petroleum and Gas may then confirm by a declaration that the activities being undertaken on an exploration permit are underground activities and hence excluded from the definition of on-site activities.

Amendment of s 128 (Functions of inspectors and inspection officers)

Clause 42 clarifies the investigative functions of inspectors and inspection officers that they investigate serious accidents, incidents and a boarder category of defined matters at mines that affect the successful management of risk to persons.

Amendment of s 129D (Functions of authorised officers)

Clause 43 clarifies the powers of authorised officers in the same way as inspectors and inspection officers with respect to investigations to ensure appropriate investigation of serious accidents, incidents and a boarder category of defined matters at mines that affect the successful management of risk to persons.

Amendment of s 139 (General powers after entering coal mine or other places)

Clause 44 clarifies the powers of inspectors, inspection officers and authorised officers with respect to investigations after entering a mine.

Amendment of pt 11, div 1, hdg (Notification of accidents, incidents and inspections)

Clause 45 amends the heading.

Amendment of s 198 (Notice of accidents, incidents, deaths and diseases)

Clause 46 requires the site senior executive to notify immediately the inspector and the industry safety and health representative, of sufficient details of the accident, incident or death to allow the inspector or representative to begin an investigation. The specific initial information, called the "primary information", details the exact location, when the event occurred, details of the number and names of people directly involved, and a brief description of the event. The information must be provided unless the information is not available to the site senior executive at the time of notification.

Insertion of new s 198A

Clause 47 provides that an officer may require a person to provide certain information to the officer during an investigation into an accident, incident or death at a mine. The specific initial information, called the "primary information", details the exact location, when the event occurred, details of the number and names of people directly involved, and a brief description of the event. The person must comply with the requirement unless the person requested to provide the information is a person who was directly involved. In that case, it is a reasonable excuse for that person to refuse to provide the brief description on the ground it may incriminate them. In relation to all other information, and for any other person requested to provide any of the information, the person must supply the information. At the time of the request, the person will be warned of the offence for failure to respond. The person is protected, however, as any of the information required under the section can not be used as primary evidence against them in any criminal proceedings, other than fraud proceedings based on the information.

Amendment of sch 3 (Dictionary)

Clause 48 provides for new definitions including a definition of underground gasification activity. These specifically include exploration and related testing activities (such as all activities associated with trial burns of coal underground).

Part 12 Amendment of Electricity Act 1994

Act amended in pt 12

Clause 49 provides that Part 12 amends the *Electricity Act 1994*.

Amendment of s 20Q (Exemptions for Queensland Rail)

Clause 50 is applied to correct style.

Amendment of s 23 (Customers and their types)

Clause 51 amends section 23(6) to protect the existing right of large customers, whether or not they are supplied by a network that is part of the national grid, to choose which retailer they purchase their electricity from.

Insertion of new s 44A

Clause 52 amends the *Electricity Act 1994* to require a distribution entity to ensure that small customers can connect a qualifying photovoltaic generator to the supply network, subject to technical and economic practicalities. The distribution entity must then provide the Solar Bonus of 44 cents per kilowatt hour for electricity fed into the grid at times when the solar system generates more electricity than the household or business is using. Customers are rewarded whenever generation exceeds consumption during the day. Electricity distribution entities must also provide a report to the regulator every six months detailing the number of small customers who have connected a qualifying generator to the distribution entities' supply network, and also how much electricity has been supplied to the distribution authority's network in the previous six month period. The regulator must review the scheme's appropriateness after either 10 years, or when a total of 8,000 kilowatts of generation capacity has been installed, whichever comes first.

Insertion of new s 55DB

This clause details an additional condition regarding electricity produced by small photovoltaic electricity generators that a retail authority must allow for the provision of the 44 cent per kilowatt hour feed-in tariff be payable to small customers who operate a qualifying generator. This feed-in tariff scheme (known as the Solar Bonus Scheme) is to operate as follows:

Small customer consumption (kilowatt hours) = X

Generation from qualifying generator consumed in house (kilowatt hours) = Y

Generation from qualifying generator exported to the electricity grid (kilowatt hours) = Z

Bill = X less (Y * regulated standard residential tariff) less (Z * 44 cents)

Therefore, the small customer's bill will be reduced from a reduction in electricity imported to the customer's premises from the electricity grid, and by the amount of electricity exported from the customer's premises to the grid (charged at 44 cents per kilowatt hour). Generation from small qualifying generator exported to the electricity grid is to be calculated (i.e. measured on an electricity meter) on an instantaneous basis, so that all exports, no matter how large or small, can be totalled up at the end of a billing period for the purposes of allocating a value based on the rate of 44 cents per kilowatt hour.

Should the small customer still be in credit twelve months after the first billing period, the retail authority must pay the small customer an amount representing the amount of credit owed.

The regulator must review the scheme's appropriateness after either 10 years, or when a total of 8,000 kilowatts of generation capacity has been installed, whichever comes first.

Amendment of s 55G (Restriction on Ergon Energy and its subsidiaries

Clause 54 is amended as the penalty provision was inadvertently inserted after the wrong subsection of the provision in an amendment made in the *Revenue and Other Legislation Amendment Act 2007* (Act No.29 of 2007).

Insertion of new s 61B

Clause 55 applies to a special approval holder under a regulation, and that the special approval holder must comply with sections 44A and 55DB of the *Electricity Act 1994*.

Amendment of s 91C (Definitions for div 3)

Clause 56 inserts a reference to the definition of the term 'fixed principle', which is used in section 91C.

Amendment of s 91G (Total benchmark retail cost)

Clause 57 corrects an unintended error in the unit of measurement.

Amendment of s 92 (Cost of energy)

Clause 58 is a minor amendment to section 92(2)(a).

Amendment of s 95 (Fixing of future principles for benchmark retail cost element)

Clause 59 allows the pricing entity to, in deciding notified prices for the relevant tariff year, fix principles to apply for the NEM load and/or a benchmark retail cost element. The decision must state the tariff years for which the principles are to apply.

Amendment of s 120ZM (Compliance with particular requirements under Fair Trading Act 1989, s 61 for door-to-door contracts)

Clause 60 is applied to correct style.

Amendment of s 132 (Grounds for disciplinary action)

Clause 61 includes a new paragraph (f) in subsection (1) to provide that, for a retail entity, suspension of the entity from trading under the National Electricity Rules is a ground for taking disciplinary action against that entity, which includes cancellation of the entity's retail authority.

Amendment of ch 5A, hdg (13% gas scheme)

Clause 62 amends the heading.

Amendment of s 135AK (Other definitions for ch 5A)

Clause 63 allows for reference to an annual Gas Electricity Certificate (GEC).

Amendment of s 135CM (Annual QUFs)

Clause 64 amends section 135CM (2) to reflect that a power station may have multiple Queensland Usage Factors.

Amendment of s 135CP (Power stations connected to national grid within same transmission zone)

Clause 65 amends section 135CP to set an annual Queensland Usage Factor which relates to any portion of electricity set out under these supply arrangements.

Amendment of s 135D (Information notice about decision)

Clause 66 amends section 135D to reflect that this section does not apply if the customer is NEMMCO.

Insertion of new s 135ELA

Clause 67 inserts a new section which sets out the definition for a prescribed percentage.

Amendment of s 135EP (Liability)

Clause 68:

(1) is applied to correct style.

(2) is applied as a consequence of varying the percentage liability over time.

(3) is applied to correct style.

Amendment of s 135EQ (How and when liability must be met)

Clause 69:

(1) allows for reference to an annual GEC.

(2) is required as a consequence of inserting section 135ELA (prescribed percentage).

Amendment of s 135ET (How and when liability must be met)

Clause 70:

(1) is required as a consequence of inserting section 135ELA (prescribed percentage).

(2) allows for reference to an annual GEC.

Amendment of s 135F (Amount of civil penalty)

Clause 71 allows for reference to an annual GEC.

Amendment of s 135FO (Credit to future 13% liability for over surrender)

Clause 72 allows for reference to an annual GEC.

Amendment of sch 1 (Appeals against administrative decisions)

Clause 73 is applied to correct style.

Amendment of sch 5 (Dictionary)

Clause 74 amends the Dictionary in schedule 5 of the *Electricity Act 1994* by:

(1) omitting 'approved industry code' as the referenced section was omitted in 2006 Act No. 60;

(2) replacing '13% liability' with 'annual GEC liability' and inserting a new definition for 'prescribed percentage' to support the amendments to the 13% Gas Scheme; and

(3) inserting new definitions for 'billing period', 'qualifying generator' and 'small photovoltaic generator' to support the amendments relating to the Feed-in Tariff for solar power systems.

Part 13 Amendment of Mineral Resources Act 1989

Act amended in pt 13

Clause 75 provides that Part 13 amends the *Mineral Resources Act 1989*.

Amendment of s 6 (Meaning of *mineral*)

Clause 76 amends the definition of mineral to more clearly provide for its application in respect of underground coal gasification.

One form of the process for underground coal gasification involves the combustion of coal underground in the coal seam and the capture of the resultant gas for processing into oil and its related by-products. In another form it involves the mining of coal and processing to gas on the surface. This amendment relates to the former.

The products of underground coal gasification are currently defined as a mineral in section 6(2)(f) of the *Mineral Resources Act 1989* as *'a product that may be extracted or produced by an underground gasification process for coal or oil shale and another product that may result from the carrying out of the process'* and commonly termed the 'mineral f' because of the section's reference (section 6(2)(**f**)).

This definition is anomalous to the other minerals listed under section 6, in that the product itself cannot be actively explored for, as it is a mixture of artificial alteration products and not a naturally occurring mineral. Exploration may only be carried out for the feedstock mineral (coal or oil shale). The only way mineral 6(2)(f) may be realised is through combustion of the identified oil shale or coal resource.

Consequently, the holder of an exploration permit, either for all minerals other than coal (oil shale), or for coal, cannot explore for "a product that may be extracted or produced by an underground gasification process for coal or oil shale and another product that may result from the carrying out of the process", ie the products of an industrial process. The presence of coal or oil shale must first be established before either trial testing or commercial production occurs and before the "mineral 6(2)(f)" can be extracted, as a holder cannot explore for this mineral.

The amendment to the definition of "mineral" in section 6 is the initial step in the legislating the policy position on underground coal gasification that;

(a) To explore for the feedstock to produce in-situ gasification products, a proponent must be the holder of an exploration permit for coal in the case of coal or an exploration permit for minerals in the case of oil shale, under the provisions of the *Mineral Resources Act 1989.* This is necessary because the presence of coal or oil shale must first be established before either trial burning or commercial production occurs and before the 'mineral f' can be extracted; a person cannot explore for the products of an industrial process.

(b) When the explorer requires a 'holding tenure' in order to secure an identified resource of the feedstock mineral, a mineral

development licence is the appropriate form of tenure using either an exploration permit for coal or an exploration permit for minerals as the pre-requisite tenure. Field testing of underground coal gasification, sometimes referred to as a 'trial burn' (as distinct from full scale production), must be done under a mineral development licence and will not be approved under an exploration permit for coal or exploration permit for minerals.

(c) After grant of a mineral development licence, if the holder proposes to undertake underground coal gasification trial burns, the holder must apply to add the 'mineral f' to the mineral development licence (as provided for in section 208 of the *Mineral Resources Act 1989*). At this stage, justification for adding the 'mineral f' will be relatively straightforward since the existence of the necessary feedstock mineral will have already been confirmed to the appropriate level of confidence by the Department as part of its technical assessment of the application for the mineral development licence.

(d) A proponent intending to use underground coal gasification technology will not be permitted to proceed directly from an exploration permit to full scale production under a mining lease but must conduct a trial burn under a mineral development licence to determine the suitability of the feedstock mineral, demonstrate that the trial burn can be properly controlled, and carry out adequate environmental and technical studies.

Replacement of ss 11 and 12

Sections 11 and 12 of the MRA provide for mining districts, their creation and how their boundaries might be determined.

While the basis of district boundaries has traditionally been that of local governments and has not changed in many years, the amalgamation of those bodies has demonstrated that the new boundaries will not be suitable for the Department of Mines and Energy (the Department) in its administration of the *Mineral Resources Act 1989*. That link is to be severed and departmental administrative and operational necessity will drive the location of district boundaries.

The current provisions also require a regulation to constitute the districts. Rather than clutter the role of the Governor in Council and the Parliament with departmental administrative matters, it will fall to the Chief Executive

as the Department's accountable officer to determine the location, boundaries and name of districts. To ensure appropriate notification is given to the public of district location, boundaries and district names, it is proposed that there would be publication of appropriate information in a suitable medium, for example the Department's website, together with information being available at departmental offices.

Amendment of s 13 (Definitions)

Clause 78 amends the section heading.

Amendment of s 24 (Grant of prospecting permit)

Clause 79 omits a number of subsections and renumbers section 24 because of the insertion of a new section 24 A - Content of a prospecting permit.

Insertion of new s 24A

Clause 80 inserts a new section to clarify the information to be included in a prospecting permit. This separates the content requirements of a prospecting permit and the "decision making" powers to determine an application for a prospecting permit.

Amendment of s 93D (Renewal of claim must be in name of last recorded assignee)

Clause 81 corrects an inadvertent reference to the Minister in what is a function of a mining registrar.

Amendment of s 127 (Land subject to exploration permit)

Clause 82 amends section 127 to recognise that there are circumstances where applications are received for non-contiguous sub-blocks, for example, an applicant's sub-blocks are scattered kilometres apart or in a joint venture arrangement and the joint venturer's sub-blocks are not adjacent to the other joint venturers; however, to maximise exploration resource use by both companies an application is made for the work program to operate under a single arrangement.

The amendment will ensure the Minister has sufficient and relevant information available to him to make an informed decision whether or not

to grant such an application. It is incumbent on the applicant to provide justification in the proposal to the Minister.

Amendment of s 133 (Application for exploration permit)

Clause 83 separates the "decision making" power - 'acceptable to the Minister' from the requirements for making an application for an exploration permit. Those "decision making" powers are now contained in the new section 133A.

The amendments also allow the Minister to be satisfied that the program of work can be undertaken on an area where the sub-blocks applied for in an application for an exploration permit do not have one side in common. It is now incumbent on the applicant to provide justification for the proposal to the Minister when making the application. The Minister's decision is made under section 137.

The amendment also allows the Minister to consider and approve an application for an area of land greater than the area prescribed under a regulation. However, it is now incumbent on the applicant to provide significant justification for seeking the additional area. The justification must be included when the application is lodged. The Minister's decision is made under section 137.

Insertion of new s 133A

Clause 84 recognises that there may be occasions where the information contained in an application is inadequate to allow appropriate consideration and for a determination to be made. The amendment gives discretion to the Minister to request further information. The information is to be provided within a reasonable timeframe as determined by the Minister. Where the applicant fails to provide the information required or does not provide the information within the allocated timeframe, the application may be rejected.

Omission of s 136 (Upon rejection of application, application fee or part may be retained)

Clause 85 omits section 136. The content of the section has been split between sections 137 and 137A.

Amendment of s 137 (Grant of exploration permit)

Clause 86 allows the Minister to grant an exploration permit if the applicant is an eligible person, the requirements of the legislation in relation to the application have been satisfied, the Minister considers the application is made bona fide for the purposes of the legislation, and the applicant complies with any requirement as to the lodgement of a security deposit as determined by the Minister.

In determining whether to grant an application, the Minister must determine the appropriateness of the proposed programs of work in relation to the area applied for. The program of work must be approved before the Minister decides to grant the application for an exploration permit.

The Minister may grant the application for an exploration permit with or without conditions.

The Minister can reject an application for a permit if the applicant is considered to have previously contravened any provision of the legislation or any other legislation relating to mining irrespective that that person may not have been prosecuted for an offence. If the applicant is a company and a person is in a position in that company to control or influence substantially that company and he has previously been in contravention of this legislation or another Act relating to mining, the Minister may reject that application.

Where there is more than one application in an area of land and one of the applications has been granted, any remaining applications over the subject land will be rejected. Where only part of the area is within the subject land, the Minister will only reject that part.

This clause also provides that the Minister has the discretion to retain all or part of an application fee if the application for an exploration permit is rejected.

Insertion of new s 137A

Clause 87 inserts a new section to clarify the information to be included in an exploration permit. This separates the content requirements of an exploration permit and the "decision making" powers to determine an application for an exploration permit.

Amendment of s 141 (Conditions of exploration permit)

Clause 88 amends section 141(1)(f) to clarify the timeframes for the requirement of reporting of an exploration permit. In addition to the prescribed reporting requirements, the Minister has the discretion to request any further reports or request any materials to be obtained.

Amendment of s 147 (Application for renewal of exploration permit)

Clause 89 provides the requirements for making an application for renewal of the term of an exploration permit.

The application for renewal of the term must be accompanied by a program of work to be carried out under the proposed term. The program of work must include details of the human, technical and financial resources committed for each year. The applicant must also include a statement of their financial and technical resources available for carrying out the exploration work of the subject exploration permit.

Insertion of new s 147AA

Clause 90 provides the Minister with the power to request further information.

Where the Minister is not satisfied with the information contained in the application, the Minister may request further information within an allocated timeframe to allow for the assessment and determination of the application. If the applicant fails to provide the information required or does not provide the information within the allocated timeframe, the application is will be rejected.

Amendment of s 181 (Obligations and entitlement under mineral development licence)

Clause 91 omits a redundant section. 'Building' is already defined in the Dictionary.

Amendment of s 186 (Minister may grant or reject application for mineral development licence)

Clause 92 renumbers section 186 because of the insertion of subsection (6) into new section 186A - Content of a mineral development licence.

Insertion of new s 186A

Clause 93 inserts a new clause to clarify the information to be included in a mineral development licence. This is to separate the content requirements of a mineral development licence and the "decision making" powers to determine an application for a mineral development licence.

Amendment of s 208 (Adding other minerals to licence)

Clause 94 relates to the clarification of tenure arrangements for underground coal gasification.

The application of underground coal seam gasification technology in Queensland geology, and in the mining industry in the State in general, is significantly untested. To ensure its application is capable of properly and reasonably being applied, a public interest test is to be applied where a person seeks to include the mineral "f" in a mineral development licence.

Apart from the public interest test, there are other consequences for the holders of exploration permits and mineral development licences who are seeking to exploit this technology.

The holder of an exploration permit will not be permitted to proceed directly from the exploration permit to full scale production under a mining lease using underground coal gasification technology, but must conduct a trial burn under an mineral development licence to determine the suitability of the feedstock mineral, demonstrate that the trial burn can be properly controlled, and carry out adequate environmental and technical studies. All of this must be in the public interest.

Similarly, if an exploration permit holder holds a mineral development licence and also proposes to undertake underground coal gasification trial burns as part of the exploration process, the holder must apply to add the 'mineral f' to the mineral development licence (as provided for in section 208 of the *Mineral Resources Act 1989*). Without that inclusion no further proving of the suitability for underground coal gasification can occur.

Amendment of s 232 (Land subject to mining lease)

Clause 95 also relates to the tenure processes for underground coal gasification.

To proceed to any production using underground coal gasification technology, in all instances it will be necessary to hold a mineral

development licence that also includes the mineral "f" before obtaining a mining lease.

For example, where the holder of a mineral development licence has conducted a trial burn on the mineral development licence and the mineral development licence is a concurrent tenure with an exploration permit held by the same person, the person must apply for and be granted a mineral development licence over that concurrent exploration permit and must also apply to include the mineral "f" in that mineral development licence to enable that person to further apply for a mining lease to produce using underground coal seam technology.

Amendment of s 286 (Application for renewal of mining lease)

Clause 96 provides the requirements for making an application for renewal of the term of a mining lease.

The application for renewal of the lease term must be accompanied by a mining program to be carried out under the proposed term. The program must include details of the technical and financial resources committed for the mining lease. The applicant must also include a statement of their financial and technical resources available for carrying out the mining operation, including whether the operations are appropriate land use for the area and that the size and shape are appropriate.

Insertion of new s 286AA

Clause 97 provides that where the Mining Registrar is not satisfied with the information contained in the application, the Mining Registrar may request further information within an allocated timeframe to allow for the assessment and determination of the application. Where the applicant fails to provide the information required or does not provide the information within the allocated timeframe the application is taken not to have been made and the mining lease will lapse.

Amendment of s 318BK (Application of sdiv 8)

Clause 98 corrects an incorrect reference.

Amendment of new s 342 (Powers of mining registrars and others)

Clause 99 corrects which person gives the authorisation for this section.

Insertion of new s 344

Clause 100 provides that officers of the Department of Mines and Energy, and contractors engaged by the Department of Mines and Energy, may be required to enter land, not covered by mining tenements, to repair or rehabilitate abandoned mine sites on the land. As the *Mineral Resources Act 1989* does not specifically recognise the concept of "abandoned mines", this section establishes the concept, creates a right of entry by departmental officers and Departmental engaged contractors to determine the appropriate action to deal with abandoned mines, to conduct those activities, and to give appropriate notice including in emergency situations.

Amendment of s 391 (Restriction on grants etc.)

Clause 101 provides that the Minister, rather than the Governor in Council, may approve any of the matters detailed in section 391.

The matters in section 391 are administrative in nature and as they arise on a case by case basis are more appropriately dealt with in that way rather than by regulation.

One of those arrangements to be affected by this amendment is the creation of restricted areas. The term 'restricted areas' arises from regulations made under sections 20 to 23 and schedule 3 of the *Mineral Resources Regulation 2003*.

One purpose of restricted areas is as a tool to support the State's marketing and release of acreage areas of land for future exploration and development in a competitive environment. These land releases are aimed at the national and international markets. The imposition of a restricted area acts to prevent speculative activity over the land that may be aimed solely at generating windfall compensation to a speculator or stymieing exploration by perceived competitors.

The use of a regulation has simply been the mechanism to publish the operational information of a restricted area. To properly reflect the real administrative process and to allow efficient business processes, the making of a regulation by the Governor in Council will change to an approval by the Minister supported by appropriate notification in various

media (e.g. internet). For example, if international exposure is required, internet or international journals and papers notification would be used rather than a local newspaper advertisement r the government gazette.

Such a legislative arrangement is not new. A similar arrangement is already used in Victoria and has statutory support in the *Mineral Resources (Sustainable Development) Act 1990* (Victoria) (section 7).

As a statutory safety net, the proposed amendment also provides that the Minister, before approving any of the matters detailed, must consider 'the public interest'.

Replacement of s 398 (Delegation by Minister)

Clause 102 has been amended to provide the Chief Executive with the power to delegate certain powers and functions of the Act to appropriate departmental officers.

Amendment of s 411 (Indemnity against liability)

Clause 103 includes an indemnity provision in respect of the activity of departmental officers and contractors engaged in the abandoned mine program. The provision is similar terms to the indemnity provisions in the *Mineral Resources Act 1989* but is applicable only to the abandoned mine program.

Amendment of s 420 (Exclusion of certain agreed acts from pts 13 to 17)

Clause 104 corrects an error in the heading.

Insertion of new pt 19, div 10

Clause 105 inserts a new Part 19, Division 10 which provides a transitional provision.

Amendment of schedule (Dictionary)

Clause 106 amends the dictionary in the Schedule to include 'mineral (f)'.

Part 14 Amendment of Mining and Quarrying Safety and Health Act 1999

Act amended in pt 14

Clause 107 provides that Part 14 amends the *Mining and Quarrying Safety and Health Act 1999*.

Amendment of s 10 (Meaning of *operations*)

Clause 108 adds another exclusion of operations. Underground gasification activities authorised on mining leases or mineral development licences are excluded from the definition of operations. They are also excluded where they take place on an exploration permit if the activities have been declared by the Chief Inspector as underground gasification activities. This ensures that the provisions of this Act will not apply to these operations.

Insertion of new s 47A

Clause 109 inserts a new section as a mechanism for the site senior executive to provide a notice advising that underground gasification activities are taking place. The Chief Inspector with agreement of the Chief Inspector, Petroleum and Gas may then confirm by a declaration that the activities being undertaken on an exploration permit are underground gasification activities and hence excluded from the definition of operations.

Amendment of s 125 (Functions of inspectors and inspection officers)

Clause 110 clarifies the investigative functions of inspectors and inspection officers that they investigate serious accidents, incidents and a boarder category defined matters at mines that affect the successful management of risk to persons.

Amendment of s 126D (Functions of authorised officers)

Clause 111 clarifies the powers of authorised officers in the same way as inspectors and inspection officers with respect to investigations to ensure

appropriate investigation of serious accidents, incidents and a boarder category of defined matters at mines that affect the successful management of risk to persons.

Amendment of s 136 (General powers after entering mine or other places)

Clause 112 clarifies the powers of inspectors, inspection officers and authorised officers with respect to investigations after entering a mine.

Amendment of pt 11, div 1, hdg (Notification of accidents, incidents and inspections)

Clause 113 amends the division heading.

Amendment of s 195 (Notice of accidents, incidents, deaths and diseases)

Clause 114 requires the site senior executive to notify immediately the inspector and the industry safety and health representative, of sufficient details of the accident, incident or death to allow the inspector or representative to begin an investigation. The specific initial information, called the "primary information", details the exact location, when the event occurred, details of the number and names of people directly involved, and a brief description of the event. The information must be provided unless the information is not available to the site senior executive at the time of notification.

Insertion of new s 195A

Clause 115 provides that an officer may require a person to provide certain information to the officer during an investigation into an accident, incident or death at a mine. The specific initial information, called the "primary information", details the exact location, when the event occurred, details of the number and names of people directly involved, and a brief description of the event. The person must comply with the requirement unless the person requested to provide the information is a person who was directly involved. In that case, it is a reasonable excuse for that person to refuse to provide the brief description on the ground it may incriminate them. In relation to all other information, and for any other person requested to provide any of the information, the person must supply the information. At

the time of the request, the person will be warned of the offence for failure to respond. The person is protected, however, as any of the information required under the section can not be used as primary evidence against them in any criminal proceedings, other than fraud proceedings based on the information.

Amendment of sch 2 (Dictionary)

Clause 116 provides for new definitions including a definition of underground gasification activities. These specifically include exploration and related testing activities (such as all activities associated with trial burns of coal underground).

Part 15 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Act amended in pt 15

Clause 117 provides that Part 15 and the schedule amend the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 10 (Meaning of *petroleum*)

Clause 118 amends section 10 to provide consistency of application for underground coal gasification between this Act and the *Mineral Resources Act 1989*. To achieve this, a reference to the "mineral "f" has been included.

Amendment of s 12 (What is a *prescribed storage gas*)

Clause 119 omits "carbon dioxide" as one of the definitions of a "prescribed storage gas". "Carbon dioxide" is not used as a prescribed storage gas in Queensland and the original intention was to allow for carbon capture and storage (CCS) to occur under a petroleum lease. However, a complete CCS regime is being developed that will consider all of the issues surrounding this fledgling industry. CCS activities are concerned with the permanent storage of CO_2 and section 140(d) of the

Petroleum and Gas (Production and Safety) Act 2004 suggests that any stored gases will be retrieved at a later time. The omission of "carbon dioxide" as one of the definitions of a "prescribed storage gas" will remove any uncertainty.

Amendment of s 256 (Lodging report)

Clause 120 aligns this section of the *Petroleum and Gas (Production and Safety) Act 2004* with the current drafting practices for Queensland legislation.

Amendment of s 331 (Application of div 2)

Clause 121 aligns section 331 and section 304 of the *Petroleum and Gas (Production and Safety) Act 2004*. Currently, these sections provide for who may make an application for a petroleum lease under Chapter 3, Part 2, Division 2. Given that these two sections are in the same Chapter and Part, they should be consistent. Therefore, section 331 has been amended to reflect section 304, as the Part and Division containing section 331 relate to applications for petroleum leases, made with or with the consent of, the exploration tenement holder over the coincidental area of a coal or oil shale exploration tenement of that holder.

Providing for this amendment will allow the exploration tenement holder to make the petroleum lease application, and not just the authority to prospect holder (which is what the current section 331 provides).

Amendment of s 670 (What is an *operating plant*)

Clause 122 omits pipelines not yet under a petroleum authority and therefore not yet operational as it was not intended to include the construction of a pipeline under the definition of an operating plant. The section adds places where underground gasification activities are carried out as operating plant to clarify beyond doubt that these activities are operating plant.

Insertion of new s 815

Clause 123 reinserts this section as the timing of a previous amendment failed to remove the previous sunset clause.

Amendment of sch 2 (Dictionary)

Clause 124 amends the definition of a distribution system to exclude that part of the system at prescribed multi tenanted premises. A multi tenanted premises is a single property where gas is supplied to multiple consumers such as at shopping centres/strata titled apartments. It is intended that a detailed description of where a system finishes at a multi-tenanted premises will be made in regulation. A new definition for underground gasification activities is included. This specifically includes exploration and related testing activities (such as all activities associated with trial burns of coal underground).

Part 16 Amendment of other Acts

Acts amended in schedule 1

Clause 125 provides that schedule 1 amends the Acts mentioned in the schedule.

Schedule 1 Minor amendments

Schedule 1 makes a number of minor and consequential amendments to the *Electricity Act 1994,* the *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004*.

Schedule 2 Dictionary

Schedule 2 sets out the definitions of particular words used in the Act.