Mines and Energy Legislation Amendment Bill 2009

Explanatory Notes

Introduction

Short Title of the Bill

The short title of the Bill is the *Mines and Energy Legislation Amendment Bill 2009* (the Bill).

Objectives of the Bill

The objective of the Bill is to amend the following Acts:

- *Coal Mining Safety and Health Act 1999*;
- *Electricity Act 1994*;
- *Electricity - National Scheme (Queensland) Act 1997*;
- *Explosives Act 1999*;
- *Gas Supply Act 2003*;
- *Mineral Resources Act 1989*;
- *Mining and Quarrying Safety and Health Act 1999*;
- *Petroleum Act 1923*; and
- *Petroleum and Gas (Production and Safety) Act 2004*.

The Bill:

- transfers responsibility for the economic regulation of the Mount Isa-Cloncurry electricity distribution network (Mount Isa Network) from the Queensland Competition Authority (QCA) to the Australian Energy Regulator (AER);
- supports the establishment of the Australian Energy Market Operator (AEMO) as the single energy market operator for both electricity and gas markets in eastern Australia;

- aligns the workplace health and safety provisions in mining and petroleum Acts to recent amendments in the *Workplace Health and Safety Act 1995*;
- implements some of the recommendations from the Ombudsman's 2008 report - 'The Regulation of Mine Safety in Queensland: A Review of the Queensland Mines Inspectorate'; and
- clarifies and improves the administration and operation of the petroleum regulatory framework.

Policy rationale

Mount Isa – Cloncurry Network

The Mount Isa Network, serving Mount Isa, Cloncurry and surrounding areas, is an electricity supply network that is isolated from the national electricity grid. Ergon Energy Corporation Limited (Ergon Energy) owns the Mount Isa Network as well as distribution networks that are part of the national grid. The national grid is the interconnected network that extends contiguously from Cairns to Adelaide.

Since 2001 the QCA has regulated both the Mount Isa Network and the national grid-connected distribution networks in Queensland in accordance with the National Electricity Rules (NER).

Under the Australian Energy Market Agreement (AEMA) responsibility for regulating Queensland's national grid-connected distribution networks will transfer from the QCA to the AER, commencing with the next regulatory period (1 July 2010 to 30 June 2015).

The AEMA is an intergovernmental agreement signed in 2004 (and amended in 2006) under which first Ministers of the Commonwealth and the States and Territories agreed to a range of reforms to the national energy markets including the economic regulation of the national electricity grid.

The Bill proposes amendments to transfer regulation of the Mount Isa Network to the AER at the same time as the national grid-connected networks to maintain consistency with the current arrangements. Separate regulation of the Mount Isa Network would be inefficient for both Ergon Energy and the regulators involved.

Furthermore, by ensuring common regulation with Ergon Energy's other distribution network assets, the Bill also simplifies future regulatory

arrangements should the Mount Isa Network ever become interconnected with the national grid.

The Bill is not intended to affect the operation of any parties in so far as the Mount Isa Network is concerned other than providing for the economic regulation of the distribution network. The Bill is intended to capture all parts of the Mount Isa Network which are considered currently under QCA's Mount Isa-Cloncurry distribution network pricing determination and all future extensions of the network. This excludes the 220 kilovolt (kV) supply network which is owned and operated by Ergon Energy and connected to the Mount Isa Network but is not regulated by the QCA. The 220kV supply network is the subject of separate Australian Competition and Consumer Commission authorisations. The 220kV supply network is used to supply designated mining customers in the Mount Isa region.

Australian Energy Market Operator

On 13 April 2007, the Council of Australian Governments (COAG) agreed to establish a single energy market operator for gas and electricity in order to strengthen the character of national energy market governance. This initiative is part of the Ministerial Council on Energy's (MCE) ongoing energy market reform program. The reforms have aimed to strengthen energy market governance, streamline regulatory arrangements and provide leadership in addressing the opportunities and challenges facing the energy sector.

COAG agreed AEMO will assume the functions of the National Electricity Market Management Company (NEMMCO), which operates the wholesale electricity exchange and retail market for the Queensland region of the National Electricity Market. AEMO will also assume the functions of various jurisdictional gas market operators, including Queensland's Gas Retail Market Operator.

Under this process the existing market operators will be absorbed by AEMO. In addition, it was agreed AEMO would adopt the following new functions: the National Transmission Planner for electricity; the gas market Bulletin Board operator; advisor to the National Gas Emergency Response Advisory Committee; and preparation of the proposed gas market Statement of Opportunities.

With regard to the transfer of the gas retail market operator functions, including the Queensland Gas Retail Market Operator (QGRMO), the MCE has agreed the entire framework will be established under a new national regime, replacing the various existing jurisdictional arrangements.

While jurisdiction-specific retail market rules will be maintained (at least initially), they will be applied as procedures under the national framework with the ability to form a common set of Retail Market Procedures (Retail Procedures) in the future. The Queensland Gas Market Retail Rules in Annexure A of the Queensland Gas Industry Code (the Queensland Code) will therefore be remade as the *Gas Retail Market Procedures (Queensland)* under the National Gas Law (NGL).

The consumer protection elements of the Queensland Code are to be retained within the Queensland regulatory framework.

Safety and Health - Workplace Health and Safety Enforcement Framework

In September 2007, the former Department of Employment and Industrial Relations commissioned an independent review into the current Workplace Health and Safety Enforcement Framework. The purpose of the review was to ensure the Framework remains relevant and that it continues to provide the necessary deterrence to breaches of Queensland's workplace health and safety and electrical safety laws.

As a result of the review, amendments to the *Workplace Health and Safety Act 1995* and the *Electrical Safety Act 2002* were enacted in November 2008. The amendments to those Acts relating to prosecutions and provision of advice are relevant for mining, petroleum and gas and explosives legislation. To ensure consistency across legislation relating to safety and health, corresponding amendments are proposed to Mines and Energy safety and health legislation.

Safety and Health - Ombudsman's report

In June 2008, the Ombudsman released a report entitled 'The Regulation of Mine Safety in Queensland: A review of the Queensland Mines Inspectorate'. The report contained 11 opinions and made 44 recommendations. Its main focus was to ensure the Inspectorate's compliance activity was supported by a robust administrative framework.

While the majority of the recommendations will be implemented via administrative processes, eight will require legislative amendments. This Bill proposes amendments to implement four of the recommendations.

Petroleum regulatory framework

The Bill proposes administrative and operational amendments to the petroleum regulatory framework. The amendments support the policy objectives of this framework by streamlining administrative processes,

removing overly burdensome and repetitive requirements, and clarifying a number of statutory requirements.

How objectives are achieved

Mount Isa – Cloncurry Network

The transfer of economic regulation responsibility to the AER will be achieved by amendments to the *Electricity – National Scheme (Queensland) Act 1997* and the *Electricity Act 1994*.

Australian Energy Market Operator

AEMO is to be implemented largely through amendments to the National Electricity Law (NEL) and NGL and associated Rules. Amendments to the NEL and NGL were introduced to the South Australian Parliament in May 2009. Following MCE approval, South Australia is the lead legislature for national energy legislation, following MCE approval.

The amendments to the national scheme legislation will be adopted in Queensland through the *National Gas (Queensland) Act 2008* and the *Electricity – National Scheme (Queensland) Act 1997*. Minor consequential amendments will also be required to the *Electricity Act 1994* and *Gas Supply Act 2003*, including the transfer of the Queensland Gas Market Retail Rules to become procedures under the national framework.

Safety and Health - Workplace Health and Safety Enforcement Framework

The Bill proposes amendments to the *Coal Mining Safety and Health Act 1999, Explosives Act 1999, Mining and Quarrying Safety and Health Act 1999 and Petroleum and Gas (Production and Safety) Act 2004*. The proposed amendments will align the health and safety provisions in these Acts with recent amendments made to the *Workplace Health and Safety Act 1995* and the *Electrical Safety Act 2002* by providing:

- that prosecutions can commence within two years of a coronial inquest or inquiry; and
- immunity for chief inspectors and other officials giving information and advice, thus clarifying the legal position of these individuals when providing information and advice.

Safety and Health – Ombudsman's report

The Bill proposes to address four recommendations from the Ombudsman's report by:

i. providing protection for persons who report or make complaints about safety matters;

ii. creating the statutory position of Commissioner for Mine Safety and Health to prepare and deliver an annual performance report to the Minister on mine safety and health issues and report on mine safety and health issues as they arise;

iii. empowering the Executive Director, Safety and Health, Department of Employment, Economic Development and Innovation (the Department), to report directly to the Minister on mine safety issues; and

iv. transferring the statutory power to commence prosecutions under mining and petroleum safety and health legislation from the chief executive to the Commissioner for Mine Safety and Health.

This Bill proposes amendments to the *Coal Mining Safety and Health Act 1999* for a Commissioner for Mine Safety and Health to be appointed by Governor in Council and that the Commissioner may be a public service officer employed under the *Public Service Act 2008*.

In line with the Ombudsman's recommendations, the amendments creating the position also provide for the incumbent to be responsible for:

- chairing the Coal Mining Safety and Health Advisory Council and the Mining Safety and Health Advisory Council;
- advising the Minister on mine safety issues;
- reporting to Parliament on the performance of the Queensland Mines Inspectorate; and
- commencing prosecutions under mining safety and health legislation.

The Ombudsman's recommendations will be achieved through amendments to the *Coal Mining Safety and Health Act 1999*, *Explosives Act 1999*, *Mining and Quarrying Safety and Health Act 1999* and *Petroleum and Gas (Production and Safety) Act 2004*.

Petroleum regulatory framework

The Bill proposes to amend the *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004* to clarify and improve administration and operational provisions of the petroleum framework by streamlining administrative processes, removing onerous and repetitive

requirements, and clarifying certain requirements under the legislation. For example, there will be no requirement to submit an application form or fee for holders of petroleum tenure under the *Petroleum Act 1923* wishing to replace that tenure with a petroleum tenure under the *Petroleum and Gas (Production and Safety) Act 2004.*

Alternative method of achieving policy objectives

Legislative amendment is required to achieve the policy objectives so that existing legislative frameworks reflect the proposed changes to policy or clarify the intended policy.

In the case of the Mount Isa-Cloncurry amendments, there was an alternative legislative method for achieving the policy objectives. The alternative method would require an amendment to the NER. This approach is not considered appropriate as the amendments are Queensland-specific which are not appropriate to include in national instruments and fall outside the scope of the national instruments which deal solely with matters relating to the national grid.

Estimated cost for Government implementation

There are no additional administrative costs for the government in relation to this Bill.

With respect to the AEMO amendments, the Commonwealth Government committed $6.63 million from its 2008-09 budget to provide "seed funding" for the AEMO implementation. AEMO seed funding will be recovered from market participant fees over four years after the commencement of AEMO.

Consistency with Fundamental Legislative Principles

The Bill is consistent with Fundamental Legislative Principles with the exception of amendments to support the establishment of AEMO.

In order to create a national market, delegation to a body under uniform legislation is required. Whilst this approach allows no significant opportunity for scrutiny by the Queensland Parliament and no opportunity to propose amendments, it should be noted Queensland participates in COAG discussions which have recognised effective operation of an open and competitive national energy market will deliver benefits to households, small business and industry.

Queensland actively participates in the policy development of all applied laws in co-operation with the other states and territories and amendments to the national laws must be approved unanimously by the MCE prior to introduction. The process for introducing amendments to jurisdictionally based legislation upon amendments to the NEL and NGL is the continuation of a well established legislative scheme agreed by COAG.

The formation of AEMO is expected to provide long-term benefits to Queensland energy consumers through effective operation of a single energy market operator without infringing customer rights or protection measures. It is considered these benefits and the need for a national market outweigh any concerns regarding Fundamental Legislative Principles.

Further, the NEL and NGL amendments to implement AEMO will simplify the legislative burden as AEMO will operate across national energy markets, consistent with the NEL and NGL objectives.

Consultation

Mount Isa - Cloncurry Network

Key stakeholders of the electricity industry have reviewed the Bill and have indicated support for the proposed amendments.

Australian Energy Market Operator

Given the consequential nature of these amendments, consultation has primarily focussed on the proposed amendments to the NEL and NGL and the associated Rules.

A consultation process on the proposed design of the national legislative framework for AEMO was undertaken by the MCE in August 2008. The MCE also released exposure drafts of amendments to the NEL and NGL in December 2008 and January 2009 (respectively). Public forums were held subsequent to the release of each draft and written submissions invited.

The QGRMO, with officers of the former Department of Mines and Energy, undertook targeted consultation with stakeholders in relation to the transfer of the Queensland Gas Market Retail Rules to the national framework. Comments made by industry in relation to the transfer of the Queensland Gas Market Retail Rules to the national framework were of a minor technical nature and have been addressed.

Safety and Health - Ombudsman's report

Consultation papers were sent to external stakeholders such as industry associations and representative organisations. Officers from the Department of Employment, Economic Development and Innovation have also met with key external stakeholders. All responses supported the proposals.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 establishes the short title of the Act as the *Mines and Energy Legislation Amendment Act 2009*.

Commencement

Clause 2 provides for the commencement of provisions.

Clause 2 (1) provides that sections 15, 25, and 26(1) commence on 1 July 2010 and relate to the economic regulation of the Mt Isa Network.

Clause 2 (2) provides that the remaining provisions of this Bill, other than Part 4, commence on a day to be fixed by proclamation.

Part 2 Amendment of Coal Mining Safety and Health Act 1999

Act amended in pt 2

Clause 3 provides that Part 2 amends the *Coal Mining Safety and Health Act 1999*.

Amendment of s 6 (Objects of Act)

Clause 4 amends the existing section 6 to include that one of the objects of the Act is 'to provide a way of monitoring the effectiveness and administration of provisions relating to safety and health, under this Act and other mining legislation'.

Amendment of s 7 (How objects are to be achieved)

Clause 5 amends the existing section 7 to insert a new subsection (1) which provides that the objects of the Act will be achieved by establishing the office of Commissioner for Mine Safety and Health.

Insertion of new Part 5A

Clause 6 inserts a new Part 5A after Part 5 to create the position of Commissioner for Mine Safety and Health. Part 5A consists of five new sections.

New section 73A provides that there is to be a Commissioner for Mine Safety and Health who will be appointed by the Governor in Council by gazette notice. The section also provides that the Commissioner is to be a public service officer employed under the *Public Service Act 2008* and that a person may hold the office of Commissioner in addition to another position under the *Public Service Act 2008*.

New section 73B lists the qualifications for a Commissioner. The qualifications are:

i. a science or engineering qualification relevant to the mining industry; and

ii. professional experience in mine safety.

Many regulatory and technical matters relating to mining safety and health are best understood by an engineer or scientist. These qualifications are necessary to ensure that individuals appointed as Commissioner have an appropriate understanding of mine safety matters and can address them with some authority.

New section 73C provides the functions of the Commissioner, which include the performance of functions provided for under the *Coal Mining Safety and Health Act 1999* or another Act. This referral provision (in conjunction with other acts) will allow the Commissioner to perform his or her required functions under the *Explosives Act 1999*, *Mining and*

Quarrying Safety and Health Act 1999 and *Petroleum and Gas (Production and Safety) Act 2004* without the creation of additional establishing provisions.

The functions of the Commissioner include:

i. advising the Minister on mine safety matters;

ii. fulfilling the roles of chairperson of the Coal Mining Safety and Health Advisory Council and the Mining Safety and Health Advisory Council;

iii. monitoring and reporting to the Minister and Parliament on the performance of the department in regulating mine safety; and

iv. performing other functions given to the Commissioner under the *Coal Mining Safety and Health Act 1999* or another Act.

New section 73D provides that the Commissioner has the powers necessary or convenient to carry out the functions under section 73C.

New section 73E requires the Commissioner to provide a report to the Minister on the performance of the department in regulating mine safety within four months after the end of each financial year. The Minister must table the report in Parliament within 14 sitting days after receiving it.

Amendment of s 77 (Annual report)

Clause 7 amends section 77(1) to require the Commissioner, as chairperson of the Coal Mining Safety and Health Advisory Council (the Council), to prepare an annual report on the Council's operations.

Amendment of s 78 (Membership of council)

Clause 8 amends section 78(2) to prescribe that the Commissioner for Mine Safety and Health is the chairperson of the Coal Mining Safety and Health Advisory Council.

Amendment of s 255 (Proceedings for offences)

Clause 9 amends section 255(5) to remove the power to commence prosecutions from the chief executive and provide it to the Commissioner. This amendment will implement a recommendation from the Ombudsman's report.

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

Clause 10 amends section 257 to provide that prosecutions must start within the latest of the periods prescribed in subsections (a), (b) and the new subsection (c). To eliminate duplication, the word 'within' is omitted from the beginning of subsections (a) and (b).

New subsection (c) provides that a proceeding, for an offence involving a breach of an obligation causing death, can be commenced within two years after the coroner makes a finding in relation to the death. This will allow an investigation to commence after coronial recommendation and is in line with recent amendments to other workplace health and safety legislation.

Insertion of new ss 275AA and 275AB

Clause 11 inserts new sections 275AA and 275AB to provide meaningful protection to anyone who raises concerns about safety matters. The intention is that these prosecutions will underpin a strong safety culture within the coal mining industries.

New section 275AA(1) makes it an offence for a person to cause or attempt or conspire to cause detriment to another person because or in the belief that the person has made a complaint regarding a safety issue or has raised it in any other way or has contacted or given help to an official in relation to a safety issue. The maximum penalty is 40 penalty units.

New section 275AA(2) to (5) provide that an attempt to cause detriment includes an attempt to introduce a person to cause a detriment and that this is unlawful ground of reprisal and a contravention of subsection 1.

New section 275AA(6) makes it clear that new section 254A does not limit or otherwise affect the operation of Part 5, Division 3 of the *Whistleblowers Protection Act 1994* (WPA).

New section 275AA(7) defines 'mine safety issue'.

New section 275AB(1) provides that a reprisal is a tort, that is, a civil wrong, and makes it clear that anyone who takes a reprisal is liable in damage to anyone who suffers detriment as a result of that reprisal. This will be a significant protective mechanism for those who raise safety issues and mirrors the process set out in the WPA. New section 275AB(1) is needed because the WPA is not wide enough to cover all situations where people raise safety concerns in coal mining and because it is considered

essential that whistleblowers in the coal mining industry have a clear, unambiguous right to pursue civil action where they suffer as a result of a reprisal.

New section 275AB(2) makes it clear that the same remedies are available for the tort of reprisal as are available for other torts.

New section 275AB(3) provides that if a claim based on the tort of reprisal goes to trial, the matter must be decided by a judge sitting without a jury.

Amendment of s 276 (Protection from liability)

Clause 12(1) amends existing section 276(1) by inserting 'giving information or advice' as an example of 'an act done'. This is to provide reassurance to officials in the discharge of their duties that they will be protected from civil liability if there are any unintended consequences resulting from information or advice they provided.

Subclause (2) omits section 276(3), the definition of 'official'.

Amendment of sch 3 (Dictionary)

Clause 13 amends Schedule 3 Dictionary to insert the definition of 'official'. The definition replicates the definition omitted from section 276(3), with the addition of a reference to the commissioner.

Part 3 Amendment of Electricity Act 1994

Act amended in pt 3

Clause 14 provides that part 3 amends the *Electricity Act 1994*.

Omission of ch 4, pt 2, div 1 (Provisions for Mount Isa-Cloncurry supply network)

Clause 15 provides that Chapter 4, Part 2, Division 1 of the *Electricity Act 1994* containing existing provisions pertaining to the regulation of Mount Isa Network service pricing is omitted because the new amendments replace these provisions.

Amendment of s 130 (Governor in Council may authorise regulator to take over operation of relevant operations)

Clause 16 amends section 130(1)(a)(iii)(B) by replacing the reference to NEMMCO with reference to AEMO.

Amendment of s 135AJ (Who are the *baseline customers* of a power station)

Clause 17 amends section 135AJ(2)(b) by replacing the reference to NEMMCO with reference to AEMO.

Amendment of s 135D (Information notice about decision)

Clause 18 amends section 135D(2) by replacing the reference to NEMMCO with reference to AEMO.

Amendment of s 135DD (Adjustment for other customer transfers)

Clause 19 amends section 135DD(b) by replacing the reference to NEMMCO with reference to AEMO.

Amendment of s 135FR (Operation of sdiv 1)

Clause 20 amends section 135FR(2)(b) by replacing the references to NEMMCO with references to AEMO.

Amendment of s 135FS (Retailer)

Clause 21 amends section 135FS(2)(a) by replacing the references to NEMMCO with references to AEMO.

Amendment of s 135FT (Special approval holder)

Clause 22 amends section 135FT(3) by replacing the references to NEMMCO with references to AEMO.

Amendment of s 135FW (Wholesale purchaser from spot market)

Clause 23 amends section 135FW(a) by replacing the references to NEMMCO with references to AEMO.

Amendment of s 135JU (Obligation of State to indemnify particular information-givers)

Clause 24 amends section 135JU(3) by replacing the reference to NEMMCO with reference to AEMO.

Insertion of new ch 14, pt 9

Clause 25 inserts a new Part 9 (Transitional provisions for *Mines and Energy Legislation Amendment Act 2009*) in Chapter 14. New Part 9 will include new section 326.

Part 9 Transitional provision for Mines and Energy Legislation Amendment Act 2009

New section 326(1) is a transitional provision providing that the pricing regulation made by the QCA under the former Section 89B(2) (deleted by clause 15 above) for the Mount Isa Network will continue in force until the AER has made its pricing determination for the Mount Isa Network. This is to provide certainty in the unlikely event that the AER has not made a distribution determination for the network by 1 July 2010. This clause also has the effect of enabling the AER to make a determination for the Mount Isa Network at the same time as it makes its determination for the Ergon Energy owned networks that form part of the national grid to support a consistent regulatory approach across these networks.

New sub-section 326(2) provides that the pricing regulation made by the QCA for the Mount Isa Network is taken to be a jurisdictional pricing determination as defined in the NER under Clause 11.14.2. Alignment of these definitions allows chapter 6 and chapter 11 of the NER to operate for the regulation of the Mount Isa Network.

New sub-section 326(3) provides that the distribution services provided by means of the Mount Isa Network are taken to be distribution services as defined under the NER. The sub-section also provides that the Mount Isa Network is taken to be a distribution system under the NER. Alignment of these definitions also allows chapters 6 and 11 of the NER to operate for the regulation of the Mount Isa Network.

New sub-section 326(4) provides that the NER will apply with any necessary changes to give effect to the section.

New sub-section 326(5) provides definitions for ease of reference. The definition of the Mount Isa Network is transferred from Schedule 5 of the *Electricity Act 1994*. The relevant regulatory control period is given the meaning of the regulatory control period under the NER, commencing on 1 July 2010, which is the date when regulatory control of Queensland's national grid-connected distribution networks will transfer to the AER.

Amendment of sch 5 (Dictionary)

Clause 26 omits the definition of the Mount Isa-Cloncurry supply network from Schedule 5 as this is included in the new section 326.

Clause 26(2) also amends Schedule 5 to replace the definition of NEMMCO with the definition of AEMO and replaces the reference to NEMMCO with reference to AEMO.

Part 4 Amendment of Electricity – National Scheme (Queensland) Act 1997

Act amended in part 4

Clause 27 provides that part 4 amends the *Electricity – National Scheme (Queensland) Act 1997.*

Amendment of s 3 (Definitions)

Clause 28 inserts the definition of the AER attaching the meaning given in the National Electricity (Queensland) Law (which is the NEL as applied in

Queensland under the *Electricity – National Scheme (Queensland) Act 1997*).

Insertion of new pt 3

Clause 29 inserts a new part 3 after section 9 to impose the obligation on the AER to regulate the Mount Isa Network in accordance with chapters 6 and 11 of the NER. The new part 3 will include a new section 10.

Part 3 Mount Isa-Cloncurry supply network

Economic regulation of Mount Isa-Cloncurry supply network from 1 July 2010

New sub-section 10(1) provides that the AER is responsible for the economic regulation of the Mount Isa Network distribution services in accordance with chapters 6 and 11 of the NER, as if the supply network were part of the national grid. This is to ensure that the regulation applying to the Mount Isa Network is consistent with the regulation applying to Queensland's national grid-connected distribution networks and is undertaken by the same regulatory body.

New sub-section 10(2)(a) provides that distribution services provided by means of the Mount Isa Network are taken to be distribution services for the purpose of applying the NER, chapters 6 and 11.

New sub-section 10(2)(b) provides that the Mount Isa Network is taken to be a distribution system for the purposes of applying the NER.

Alignment of these definitions allows chapter 6 and chapter 11 of the NER to operate for the regulation of the Mount Isa Network.

New sub-section 10(3) provides that chapters 6 and 11 of the NER apply with any necessary changes to give effect to section 10.

New sub-section 10(4) provides definitions for Mount Isa-Cloncurry supply network, National Electricity Rules, national grid and relevant regulatory control period. The definition of the Mount Isa Network is imported from the *Electricity Act 1994*. The relevant regulatory control period is given the meaning of the regulatory control period under the

NER, commencing on 1 July 2010, which is the date when regulatory control of Queensland's national grid-connected distribution networks will transfer to the AER.

Law to be construed not to exceed legislative power of the Legislature

New section 11 applies Clause 2 of Schedule 2 of the *National Electricity (Queensland) Law* to the operation of the *Electricity - National Scheme (Queensland) Act 1997* and the *National Electricity (Queensland) Regulations* as if it formed part of the National Electricity (Queensland) Law.

Clause 2 of Schedule 2 in the applied law is part of the miscellaneous provisions relating to interpretation and is titled "Law to be construed not to exceed legislative power of Legislature". It clarifies that the Law is not to exceed the functions or powers of the jurisdiction in which it applies (in this instance Queensland), nor in particular for this Act, the functions or powers of the AER.

Part 5 Amendment of Explosives Act 1999

Act amended in part 5

Clause 30 provides that part 5 amends the *Explosives Act 1999*.

Replacement of s 118 (Proceeding for offence)

Clause 31 replaces existing section 118 with a new section. New section 118(1) provides that a proceeding for an offence against the *Explosives Act 1999* can only be commenced following a complaint by the commissioner.

New section 118(2) provides that prosecutions must start within the latest of the periods prescribed in subsections (a), (b) and (c).

New subsection (c) provides that a proceeding, for an offence involving a breach of an obligation causing death, can be commenced within two years after the coroner makes a finding in relation to the death. This will allow an investigation to commence after coronial recommendation.

Insertion of new ss 126A and 126B

Clause 32 inserts new sections 126A and 126B to provide meaningful protection to anyone who raises concerns about safety matters. The intention is that these prosecutions will underpin a strong safety culture within the explosives industries.

New section 126A(1) makes it an offence for a person to cause or attempt or conspire to cause detriment to another person because or in the belief that the person has made a complaint regarding a safety issue or has raised it in any other way or has contacted or given help to an official in relation to a safety issue. The maximum penalty is 40 penalty units.

New section 126A(2) to (5) provide that an attempt to cause detriment includes an attempt to introduce a person to cause a detriment and that this is unlawful ground of reprisal and a contravention of subsection 1.

New section 126A(6) makes it clear that new section 126A does not limit or otherwise affect the operation of Part 5, Division 3 of the *Whistleblowers Protection Act 1994* (WPA).

New section 126A(7) defines 'mine safety issue'.

New section 126B(1) provides that a reprisal is a tort, that is, a civil wrong, and makes it clear that anyone who takes a reprisal is liable in damage to anyone who suffers detriment as a result of that reprisal. This will be a significant protective mechanism for those who raise safety issues and mirrors the process set out in the WPA. New section 126B(1) is needed because the WPA is not wide enough to cover all situations where people raise safety concerns in explosives industries and because it is considered essential that whistleblowers in the explosives industry have a clear, unambiguous right to pursue civil action where they suffer as a result of a reprisal.

New section 126B(2) makes it clear that the same remedies are available for the tort of reprisal as are available for other torts.

New section 126B(3) provides that if a claim based on the tort of reprisal goes to trial, the matter must be decided by a judge sitting without a jury.

Amendment of s 127 (Protection from liability)

Clause 33(1) amends section 127(1) by inserting 'giving information or advice' as an example of 'an act done'. This is to provide reassurance to officials in the discharge of their duties that they will be protected from

civil liability if there are any unintended consequences resulting from information or advice they provided.

Subclause (2) omits section 127(3), the definition of 'official'.

Amendment of sch 2 (Dictionary)

Clause 34 amends the Schedule 2 Dictionary to insert definitions for 'commissioner for mine safety and health' and 'official'. 'Commissioner' is defined as the Commissioner for Mine Safety and Health established under the *Coal Mining Safety and Health Act 1999*. The definition of 'official' replicates the definition omitted from section 127(3) with the addition of a reference to the commissioner.

Part 6 Amendment of Gas Supply Act 2003

Act amended in pt 6

Clause 35 provides that part 6 of the *Mines and Energy Legislation Amendment Act 2009* amends the *Gas Supply Act 2003*.

Amendment of s 3 (Main purposes of Act)

Clause 36(1) amends section 3(2)(a) by replacing 'markets' with 'services'. This term is no longer relevant once responsibility for operation of Queensland's retail gas market moves to AEMO under the National Gas Law, and the remaining scope of the Act is to regulate retail and distribution services.

Clause 36(2) omits section 3(2)(b). This provision for the appointment of the Gas Retail Market Operator is no longer relevant once responsibility for operation of Queensland's retail gas market moves to AEMO under the National Gas Law.

Clause 36(3) renumbers section 3(2)(c), following omission of section 3(2)(b).

Amendment of s 57 (Conditions for amendment, cancellation or suspension)

Clause 37 amends section 57(2)(b) to provide that a material breach of the relevant retail market procedures under the National Gas Law will be grounds for the Regulator to amend, cancel or suspend a distribution authority.

This essentially continues the current arrangements where failure by a distribution authority holder to comply with the Queensland Gas Market Retail Rules is grounds for amendment, cancellation or suspension.

Amendment of s 181 (Conditions for amendment, cancellation or suspension)

Clause 38 amends section 181(2)(b) to provide that a material breach of the relevant retail market procedures under the National Gas Law will be grounds for the Regulator to amend, cancel or suspend a retail authority.

This essentially continues the current arrangements where failure by a retail authority holder to comply with the Queensland Gas Market Retail Rules is grounds for amendment, cancellation or suspension.

Amendment of s 204 (Standard retail contract for particular small customers)

Clause 39 amends section 204(3)(b) by omitting 'an industry code' and inserting 'the gas retail market procedures'.

This is because the Queensland Gas Market Retail Rules, which includes the relevant provisions regarding the registered retailer for the metering installation for the premises, will transfer to the national framework as Retail Procedures.

Amendment of s 207 (Ending of standard retail contract)

Clause 40 amends section 207(1)(b) by omitting 'an industry code' and inserting 'the gas retail market procedures.'

This is because the Queensland Gas Market Retail Rules, which includes the relevant provisions regarding the registered retailer for the metering installation for the premises, will transfer to the national framework as Retail Procedures.

Amendment of s 248 (Regulation may provide for scheme)

Clause 41 amends section 248(b) by replacing the Gas Retail Market Operator with AEMO. Once AEMO commences operations, it will assume the current functions of the Gas Retail Market Operator.

Amendment of s 254 (Minister's power to give directions while declaration in force)

Clause 42 replaces existing section 254(1)(c) with a new section 254(1)(c) by replacing the Gas Retail Market Operator with AEMO. Once AEMO commences operations, it will assume the current functions of the Gas Retail Market Operator.

Omission of ch 4A (Gas retail market operator)

Clause 43 omits Chapter 4A. This chapter is omitted on the basis that responsibility for the operation of the Queensland retail gas market is being transferred to AEMO under the National Gas Law.

The provisions of Chapter 4A, Part 2 relating to the advisory committees to support the Gas Retail Market Operator are also to be omitted on the basis that the committees' role relates to the Queensland Gas Market Retail Rules only (and not the remainder of the Queensland Code).

Section 257G is omitted on the basis of insertion of section 289A (refer to clause 45 below), which imposes a restriction on a person other than AEMO providing gas retail market services.

Amendment of s 270B (Specific matters for which code may provide)

Clause 44 omits section 270B(e) to (g). These provisions are omitted on the basis that they will come under the national framework and will no longer be addressed in the Queensland Code.

Queensland will continue to regulate the consumer protection elements detailed in the Queensland Code [see section 270B(a) to (d) of the *Gas Supply Act 2003*].

Insertion of new s 289A

Due to the omission of Chapter 4A (specifically section 257G), clause 45 inserts a new section 289A that only AEMO can provide gas retail market services in Queensland. The new section 289A(2) provides a definition of 'gas retail market services'.

An equivalent provision for electricity already appears in the NEL itself (section 11). The *National Gas (Australian Energy Market Operator) Amendment Bill 2009* (introduced to the South Australian Parliament to amend the NGL) does not include a clause of this type, and therefore a provision is required for the Queensland jurisdictional amendments.

Amendment of s 315 (Protection from civil liability for particular persons)

Clause 46(1) omits section 315(1)(e) to (g). This is on the basis that AEMO's protections from liability will be under the National Gas Law.

Clause 46(2) provides for consequential renumbering following the deletion of section 315(e) to (g).

Omission of s 321A (Delegation by QCA)

Clause 47 omits section 321A on the basis that provisions of the industry code will no longer address gas retail market services and the QCA will therefore have no role in that regard. A similar power for the AER to delegate functions to AEMO is not proposed for the national regime.

Amendment of s 323 (Regulation-making power)

Clause 48 amends section 323 to allow for the making of regulations for matters the National Gas (Queensland) Law (the National Gas Law as applied in Queensland by the *National Gas (Queensland) Act 2008*) provides may be prescribed under the jurisdictional gas legislation. Jurisdictional gas legislation excludes the national scheme laws and regulations, which is the reason why the *Gas Supply Regulation 2007* is being used.

At this stage this provision is only intended to allow for a Regulation to exempt the Roma and Dalby Regional Councils from the requirement to register under the new registration requirements in the national laws. This retains the current arrangements in Queensland.

Replacement of ch 7 hdg (Transitional provisions for Electricity and Other Legislation Amendment Act 2006)

Clause 49 amends Chapter 7 to provide a general heading and a Part 1 heading. This is because a new Part 2 has been inserted (see clause 51).

Amendment of s 324 (Definitions for ch 7)

Clause 50(1) amends section 324 to reflect that it is now a part of Part 1 of Chapter 7.

Insertion of new ch 7, pt 2

Clause 51 inserts a new Part 2 for Chapter 7 dealing with transitional provisions for the *Mines and Energy Legislation Amendment Bill 2009*, in particular a new section 334 to give continued protection from civil liability to the Queensland Gas Retail Market Operator, its directors and employees for acts done, or omissions made honestly and without negligence, while they were in that role.

Amendment of sch 2 (Dictionary)

Clause 52 amends Schedule 2 to remove definitions that are no longer required because the Queensland Gas Retail Market Operator framework will move to the National Gas Law. Clause 52 also replaces references to 'an industry code' with the 'gas retail market procedures' as matters relating to metering will now be contained in the national framework.

The following new definitions are inserted to reflect the new arrangements under the National Gas Law:

- AEMO
- National Gas Law
- Gas Retail Market Procedures

The Gas Pipelines Access Law definition is also deleted, as the law was repealed and replaced by the National Gas Law in 2008. Clause 52 also amends various definitions relating to access arrangements, reflecting that the National Gas Law has replaced the Gas Pipelines Access Law.

Part 7 Amendment of Mineral Resources Act 1989

Act amended in pt 7

Clause 53 provides that Part 7 amends the *Mineral and Resources Act 1989*.

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

Clause 54 corrects section 248.

Amendment of s 249 (Later applicant must obtain consent or views of earlier applicant if same land affected)

Clause 55 corrects section 249.

Amendment of s 269 (Land Court's recommendation on hearing)

Clause 56 amends a grammatical error in section 269(4)(c).

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

Clause 57 amends section 286(1) to provide that an application to the Minister for renewal of the mining lease needs to be lodged with the Mining Registrar.

Amendment of s 290 (Rental payable on mining lease)

Clause 58 amends section 290 to correct an error to a section reference.

Amendment of s 294 (Variation of conditions of mining lease)

Clause 59 corrects a grammatical error.

Amendment of s 695 (Applying div 4 for renewal)

Clause 60 corrects a reference to another section of the Act.

Part 8 Amendment of Mining and Quarrying Safety and Health Act 1999

Act amended in pt 8

Clause 61 provides that Part 8 amends the *Mining and Quarrying Safety and Health Act 1999*.

Amendment of s 68 (Annual report)

Clause 62 amends section 68(1) to require the Commissioner for Mine Safety and Health, as chairperson of the Mining Safety and Health Advisory Council (the Council), to prepare an annual report on the Council's operations for the year within four months of the end of each financial year.

Amendment of s 69 (Membership of council)

Clause 63 amends section 69(2) to prescribe that the Commissioner for Mine Safety and Health is the chairperson of the Mining Safety and Health Advisory Council.

Amendment of s 234 (Proceedings for offences)

Clause 64 amends section 234(5) to remove the power to commence proceedings for an offence under the Act from the chief executive and provide it to the commissioner. This amendment will implement a recommendation from the Ombudsman's report.

Amendment of s 235 (Recommendation to prosecute)

Clause 65(1) amends existing section 235(1) to allow inspectors, district workers' representatives or site senior executives to recommend the prosecution of an offence under the Act to the commissioner. This amendment removes the chief executive as the point of contact.

Clause 65(2) amends section 235(2) to ensure that the amended section 235(1) does not limit the commissioner's power to prosecute.

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

Clause 66 amends section 236 to provide that prosecutions must start within the latest of the periods prescribed in subsections (a), (b) and the new subsection (c). To eliminate duplication, the word 'within' is omitted from the beginning of subsections (a) and (b).

A new subsection (c) is also inserted to provide that a proceeding for an offence involving a breach of an obligation causing death can be commenced within two years after the coroner makes a finding in relation to the death. This will allow a proceeding to commence after coronial recommendation.

Insertion of new of new s254A and 254B

Clause 67 inserts new sections 254A and 254B to provide meaningful protection to anyone who raises concerns about safety matters. The intention is that these prosecutions will underpin a strong safety culture within the mining and quarrying industries.

New section 254A(1) makes it an offence for a person to cause or attempt or conspire to cause detriment to another person because or in the belief that the person has made a complaint regarding a safety issue or has raised it in any other way or has contacted or given help to an official in relation to a safety issue. The maximum penalty is 40 penalty units.

New section 254A(2) to (5) provide that an attempt to cause detriment includes an attempt to introduce a person to cause a detriment and that this is unlawful ground of reprisal and a contravention of subsection 1.

New section 254A(6) makes it clear that new section 254A does not limit or otherwise affect the operation of Part 5, Division 3 of the *Whistleblowers Protection Act 1994* (WPA).

New section 254A(7) defines 'mine safety issue'.

Clause 67 also inserts new section 254B. New section 254B(1) provides that a reprisal is a tort, that is, a civil wrong and makes it clear that anyone who takes a reprisal is liable in damage to anyone who suffers detriment as a result of that reprisal. This will be a significant protective mechanism for those who raise safety issues and mirrors the process set out in the WPA. New section 254B(1) is needed because the WPA is not wide enough to cover all situations where people raise safety concerns in mines and quarries and because it is considered essential that whistleblowers in the

mining and quarrying industry have a clear, unambiguous right to pursue civil action where they suffer as a result of a reprisal.

New section 254B(2) makes it clear that the same remedies are available for the tort of reprisal as are available for other torts.

New section 254B(3) provides that if a claim based on the tort of reprisal goes to trial, the matter must be decided by a judge sitting without a jury.

Amendment of s 256 (Protection from liability)

Clause 68(1) amends section 256(1) by inserting 'giving information or advice' as an example of 'an act done'. This is to provide reassurance to officials in the discharge of their duties that they will be protected from civil liability if there are any unintended consequences resulting from information or advice they provided.

Subclause (2) omits section 256(3), the definition of 'official'.

Amendment of sch 2 (Dictionary)

Clause 69 amends Schedule 2 Dictionary to insert definitions for 'commissioner' and 'official'. 'Commissioner' is defined as the Commissioner for Mine Safety and Health established under the *Coal Mining Safety and Health Act 1999*. The definition for 'official' replicates the definition omitted from section 256(3) with the addition of a reference to the commissioner.

Part 9 Amendment of Petroleum Act 1923

Act amended

Clause 70 provides that Part 9 amends the *Petroleum Act 1923*.

Amendment of s 121 (Additional information may be required about application)

Clause 71 amends section 121 to provide the Minister with the additional power to have information, required to be submitted with an application,

independently verified where it is considered appropriate. Applicants are required to demonstrate financial and technical capability to undertake exploration and production before a tenure is granted. Having that information tested independently prior to the granting of rights over the State's resources is reasonable to test the information's veracity and assist the State in conducting its due diligence process to grant a tenure.

It is intended the qualifications for those who might provide the independent advice must be appropriate for the task. For example, the advice on financial advice might be given by a company auditor whose qualifications are acceptable under the *Corporations Act 2001 (Cwlth).* Technical capability might require a mining or petroleum engineer with a number of years of current practice in the mining or petroleum industry.

Inclusion of this provision will also provide further consistency of process with other Acts such as the *Greenhouse Gas Storage Act 2009*.

Part 10 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Act amended in pt 10

Clause 72 provides that Part 10 amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 35 (Call for tenders)

Clause 73 replaces the existing section 35(2)(d) with a new subsection (2)(d) to provide that the place for lodgement of tenders will be notified in the call for tenders referred to in section 35(1). Currently notification of the place to lodge tenders is given at the time the tender is called and is also repeated in the prescribed tender application form. The current notification given in section 37 includes a multitude of options. The intention is for the place of notification to be confined to the one instance.

Amendment of s 37 (Requirements for making tender)

Clause 74 replaces the existing section 37(b) with a new subsection (b). This amendment is a consequence of the amendment made in clause 126. The amendment links the advised place for lodgement back to the notification in the call for tenders.

Amendment of s 109 (Exploration, production and storage activities)

Clause 75 amends section 109(1)(b)(iii) to remove an anomaly that has existed because of the inadvertent omission of the term "prescribed storage gas''. The policy intent is to ensure there is a power to allow the testing of natural underground reservoirs for the temporary storage of petroleum as well as a prescribed storage gas.

Amendment of s 110 (Petroleum pipeline and water pipeline construction and operation)

Clause 76 amends section 110(2)(b) to simplify administrative procedures. Currently, section 110 requires a leaseholder who has contiguous leases and has a number of gathering pipelines within and between those leases to have multiple petroleum pipeline permits for those pipelines. It is intended that leaseholders have the ability to construct and operate pipelines over contiguous leases without the requirement for a pipeline licence for each pipeline. Where the leases are the subject of a coordination arrangement, the pipelines can be used in common by both the lessee and by parties to the coordination arrangement.

Amendment of s 121 (Requirements for grant)

Clause 77 amends section 121 to remove an anomaly that has existed because of the inadvertent omission of the term "prescribed storage gas'. The policy intent is to ensure there is a power to allow the testing of natural underground reservoirs for the temporary storage of petroleum as well as a prescribed storage gas.

Amendment of s 228 (Prohibition on actions preventing access)

Clause 78 amends section 228(1) to remove an anomaly that has existed because of the inadvertent omission of the term "prescribed storage gas''.

The policy intent is to ensure there is a power to allow the testing of natural underground reservoirs for the temporary storage of petroleum as well as a prescribed storage gas.

Amendment of s 401 (Construction and operation of pipeline)

Clause 79 amends section 401(2) to correct an incorrect reference. The reference should be to the whole of subsection (1).

Insertion of new ch 9, pt 4A

'Part 4A Other safety offences

Clause 80 inserts new sections 708C and 708B to provide meaningful protection to anyone who raises concerns about safety matters. The intention is that these prosecutions will underpin a strong safety culture within the petroleum and gas industries.

New section 708C(1) makes it an offence for a person to cause or attempt or conspire to cause detriment to another person because or in the belief that the person has made a complaint regarding a safety issue or has raised it in any other way or has contacted or given help to an official in relation to a safety issue. The maximum penalty is 40 penalty units.

New section 708C(2) to (5) provide that an attempt to cause detriment includes an attempt to introduce a person to cause a detriment and that this is unlawful ground of reprisal and a contravention of subsection 1.

New section 708C(6) makes it clear that new section 254A does not limit or otherwise affect the operation of Part 5, Division 3 of the *Whistleblowers Protection Act 1994* (WPA).

New section 708C(7) defines 'mine safety issue'.

New section 708D(1) provides that a reprisal is a tort, that is, a civil wrong, and makes it clear that anyone who takes a reprisal is liable in damage to anyone who suffers detriment as a result of that reprisal. This will be a significant protective mechanism for those who raise safety issues and mirrors the process set out in the WPA. New section 708D(1) is needed because the WPA is not wide enough to cover all situations where people

raise safety concerns in petroleum an gas and because it is considered essential that whistleblowers in the petroleum and gas industry have a clear, unambiguous right to pursue civil action where they suffer as a result of a reprisal.

New section 708D(2) makes it clear that the same remedies are available for the tort of reprisal as are available for other torts.

New section 708D(3) provides that if a claim based on the tort of reprisal goes to trial, the matter must be decided by a judge sitting without a jury.

Amendment of s 800 (Restriction on petroleum tenure activities)

Clause 81 amends section 800(3)(b) to remove an anomaly that has existed because of the inadvertent omission of the term "prescribed storage gas''. The policy intent is to ensure there is a power to allow the testing of natural underground reservoirs for the temporary storage of petroleum as well as a prescribed storage gas.

Amendment of s 837 (Offences under Act are summary)

Clause 82(1) amends section 837(2)(b) to allow proceedings for an offence under chapter 9, part 2, 4 or 6 of the Act to be commenced only by a complaint by the commissioner.

Clause 82(2) amends section 837(4) to provide that a proceeding, for an offence involving a breach of an obligation causing death, can be commenced within two years after the coroner makes a finding in relation to the death. This will allow an investigation to commence after coronial recommendation and is in line with recent amendments to other workplace health and safety legislation.

Amendment of s 843 (Additional information may be required about application)

Clause 83 amends section 843 to provide the Minister with the additional power to have information, required to be submitted with an application, independently verified where it is considered appropriate. Applicants are required to demonstrate financial and technical capability to undertake exploration and production before a tenure is granted. Having that information tested independently prior to the granting of rights over the

State's resources is very reasonable to test the information's veracity and assist the State in conducting its due diligence process to grant a tenure.

It is intended the qualifications for those who might provide the independent advice must be appropriate for the task. For example the advice on financial advice might be given by a company auditor whose qualifications are acceptable under the *Corporations Act 2001 (Cwlth).* Technical capability might require a mining or petroleum engineer with a number of years of current practice in the mining or petroleum industry.

Inclusion of this provision will also provide further consistency of process with other Acts such as the *Greenhouse Gas Storage Act 2009*.

Amendment of s 856 (Protection from liability for particular persons)

Clause 84 amends section 856(1) by inserting 'giving information or advice' as an example of 'an act done'. This is to provide reassurance to officials in the discharge of their duties that they will be protected from civil liability if there are any unintended consequences resulting from information or advice they provided.

Amendment of s 910 (Renewal application provisions apply for making and deciding grant application)

Clause 85 amends section 910 to ensure there is no form or fee applicable for a request for a replacement of a *Petroleum Act 1923* tenure by a *Petroleum and Gas (Production and Safety) Act 2004* tenure. The policy intent of this section is to simplify the process for 1923 Act holders to replace their 1923 Act tenure with tenure administered under the 2004 Act.

Amendment of sch 2 (Dictionary)

Clause 861) amends Schedule 2 Dictionary to define commissioner as the Commissioner for Mine Safety and Health established under the *Coal Mining Safety and Health Act 1999*.

Clause 86(2) amends the definition of 'official' to include the commissioner.