

# Gas Security Amendment Bill 2011

## Explanatory Notes

### Short Title of the Bill

The short title of the Bill is the *Gas Security Amendment Bill 2011* (the Bill).

### Objectives of the Bill

The objectives of this Bill are to:

- establish a gas Short Term Trading Market for the State to increase gas usage through greater market access and improved price competition and transparency (**Short Term Trading Market**);
- provide a legislative framework to implement a Prospective Gas Production Land Reserve policy, if supply constraints to domestic markets are identified (**Prospective Gas Production Land Reserve**);
- streamline administrative processes related to easements obtained for State Development Areas by the Coordinator-General (**Coordinator-General Pipeline Easements**);
- improve the administration of petroleum tenure legislation for making an application for a petroleum lease application and for transferring exploration authorities (**Petroleum Tenure Arrangements**);
- preserve the arrangements agreed to by the Queensland Government for the economic regulation of the Carpentaria Gas Pipeline (**Carpentaria Gas Pipeline - Regulatory Transition**);
- provide consistency across resources legislation regarding the frequency of lodgement of royalty returns (**Frequency of Lodgement - Petroleum Royalty Returns**); and
- clarify elements of the Queensland Government's Collingwood Park State Guarantee (**Collingwood Park State Guarantee**).

## **Policy rationale**

### **Short Term Trading Market**

It has been identified that investors and participants in the gas market could be provided better information about the availability of capacity on key transmission pipelines (such as the Roma to Brisbane Pipeline). Market participants have limited information regarding the nature and cost of potential constraints to infrastructure and availability of gas supply. Such factors present a risk to the security of gas supply and may result in sub-optimal investment in production and transmission capacity.

The introduction of a gas Short Term Trading Market is expected to increase gas usage through greater market access and improved price competition and transparency by day-ahead public price notifications. These outcomes aim to encourage better investment decisions and pricing efficiency to support further growth in the gas market, ultimately benefiting consumers by providing for a more efficient gas pricing regime.

### **Prospective Gas Production Land Reserve**

Queensland is seeing the emergence of a significant new liquefied natural gas export industry. The Queensland Government recognises the need to ensure that a booming export liquefied natural gas industry does not lead to a shortage of gas supply for large industrial users (e.g. fertiliser producers and mineral processors) and electricity generators in the domestic market.

To provide security to domestic markets it is proposed to implement a Prospective Gas Production Land Reserve policy. The policy proposes to impose conditions on a call for tender for an authority to prospect (exploration tenure) which would provide that gas produced from any subsequent production tenure can only be supplied to the Australian market.

To ensure the viability of the export market Prospective Gas Production Land Reserve policy would only be exercised if the Government's annual Gas Market Review process identified domestic supply constraints.

### **Coordinator-General Pipeline Easements**

In October 2009 the Callide Infrastructure Corridor was declared a State Development Area under the *State Development and Public Works Organisation Act 1971*. This provided for the co-location of pipelines to transport coal seam gas from the Callide range to the liquefied natural gas processing plants to be constructed at Gladstone's Curtis Island. To facilitate this State development initiative, the Coordinator-General

acquired easements over land within the Callide Infrastructure Corridor in order to licence coal seam gas-liquefied natural gas proponents to enter and construct their respective pipelines.

Separate to the Coordinator-General's acquisition of the easements is the responsibility of proponents to obtain a pipeline licence under Chapter 4, Part 2 of the *Petroleum and Gas (Production and Safety) Act 2004*. A requirement within Chapter 4 is that if a pipeline licence holder does not either own the land on which they intend to construct their pipeline or hold an appropriate easement over it, they must obtain written permission from 'the owner' prior to entry onto the land. The definition of 'the owner' under Schedule 2 of the *Petroleum and Gas (Production and Safety) Act 2004* does not include the holder of an easement.

In cases such as the Callide Infrastructure Corridor where there may be more than one owner of the land to be accessed, a reference to one owner is taken to be a reference to all owners. This has the potential to cause significant delays to the construction of the pipelines within the Callide Infrastructure Corridor as proponents would be required to seek permission to enter the land from multiple owners rather than the holder of the easements, the Coordinator-General. However, this process does not exclude the requirements of the pipeline licence holder to notify of their entry onto the land and compensate the landowner under the land access provisions of the *Petroleum and Gas (Production and Safety) Act 2004*.

### **Petroleum Tenure Arrangements**

The *Petroleum and Gas (Production and Safety) Act 2004* requires extensive information for the Minister to assess whether a petroleum lease application should be granted. Although information demonstrating a commercial resource and a plan for developing that resource is required for assessment, there is no specific provision in the *Petroleum and Gas (Production and Safety) Act 2004* that this information is to be lodged at the time of application.

This has led to a number of deficient applications being lodged. Currently there is no process for dealing with these deficient applications other than to proceed to assessment and request additional information. This creates a lengthy and inefficient process.

In addition, where the area of an application overlaps with other resource tenure (e.g. a coal exploration permit), the application must also be provided to the overlapping tenure holder. The intent is to allow the overlapping tenure holder to assess the impact of the proposed

development and to make submissions on that matter. The lodgement of a petroleum lease application provides the applicant with a first mover advantage because the first application must be decided before any subsequent application to develop the overlapping resource can be considered. If information about the petroleum resource and the development plan is not available it places the overlapping resource tenure holder at a disadvantage because they are unable to accurately determine the potential impact of the petroleum lease application on their own development plans.

An anomaly also exists in regard to transition a *Petroleum Act 1923* authority to prospect with an authority to prospect under the *Petroleum and Gas (Production and Safety) Act 2004*. Such an application has to be treated as a renewal application for an existing *Petroleum and Gas (Production and Safety) Act 2004* authority to prospect. This imposes unnecessary conditions on applicants as the legislation provides that an application for renewal of an authority to prospect may not be made more than 60 business days before the end of the term of the authority and imposes fees on the applicants.

### **Carpentaria Gas Pipeline - Regulatory Transition**

Section 3 of the *National Gas (Queensland) Regulation 2008* formalises a transitional exemption for the Carpentaria Gas Pipeline. The *National Gas (Queensland) Regulation 2008* was made to support Queensland's transition to a new national framework – the National Gas Law and provides that the Carpentaria Gas Pipeline be subject to 'light regulation' under the National Gas Law, with protection from the application of a full access arrangement until 30 April 2023. The *National Gas (Queensland) Regulation 2008* was developed as an interim measure and will expire on 30 June 2011. With its expiry the tariff and access arrangements relating to the Carpentaria Gas Pipeline that were intended to remain in place until 30 April 2023, will expire unless amendments are made.

The inclusion of this arrangement in a gas regulation was done as an interim to provide flexibility in anticipation of certification of the Queensland gas access regime under the *Competition and Consumer Act 2010* (Cth). The long-term intent was to uplift the arrangements into the *National Gas (Queensland) Act 2008* which applies the National Gas Law in Queensland.

The certification process has been delayed and the Queensland Government needs to take action to preserve the agreed transitional

arrangements for the Carpentaria Gas Pipeline as intended. Failing to take action to preserve the effect of section 3 of the *National Gas (Queensland) Regulation 2008* as it relates to the Carpentaria Gas Pipeline will result in early termination of the pricing arrangements agreed with the pipeline owners. This has the potential to threaten future investment in gas infrastructure.

### **Frequency of Lodgement - Petroleum Royalty Returns**

The *Mineral Resources Act 1989* and the *Geothermal Energy Act 2010* provide that the frequency of lodging royalty returns be prescribed in a regulation. For petroleum royalty returns, the corresponding provision for lodgement frequency is in the primary legislation.

### **Collingwood Park State Guarantee**

The Collingwood Park State Guarantee, set out in the *Mineral Resources Act 1989*, provides for the State to repair a property, or purchase a property in Collingwood Park that is considered uneconomical to repair, if it has been damaged by mine subsidence and the property existed as at 25 April 2008. The Guarantee was introduced on 5 November 2008 with the intent of reassuring residential land owners in Collingwood Park that if their home was damaged by mine subsidence, the Queensland Government would repair or purchase their home. Current provisions of the Guarantee do not specify the types of property that are covered by the Guarantee.

The State Guarantee also provides that the Queensland Government may purchase a property that it considers uneconomical to repair at 'market value'. The term 'market value' is not defined, and there is uncertainty as to what time period applies.

## **How objectives are achieved**

### **Short Term Trading Market**

Section 91BRA of the National Gas Law provides that the provisions which govern the operation of the Short Term Trading Market only apply to a jurisdiction if the *National Gas (Queensland) Act 2008* of that jurisdiction, or an instrument made under that Act, declares that they apply. The Bill amends section 7 of the *National Gas (Queensland) Act 2008* to apply the provisions of the National Gas Law which govern the operation of the Short Term Trading Market, to Queensland. These amendments are essential to establishing a gas Short Term Trading Market in Queensland.

The amendment will facilitate actions that will see a Brisbane hub established by the end of 2011.

### **Prospective Gas Production Land Reserve**

The Bill amends the *Petroleum and Gas (Production and Safety) Act 2004* to insert a new Part 2A, outlining provisions governing the establishment and operation of the Prospective Gas Production Land Reserve (known as the PGPLR) and enabling the conditioning of land released for supply to the Australian market only.

Amendments contained in the Bill will prohibit holders of petroleum tenure over Prospective Gas Production Land Reserve land (i.e. land subject to an Australian market supply condition), as well as entities who have been sold or otherwise supplied gas produced from Prospective Gas Production Land Reserve land, from selling or otherwise supplying gas produced from the land other than to the Australian market. Any sale contract or other supply arrangement for such gas must also include a provision to this effect. The penalties for breaching an Australian market supply condition are severe, with enforcement action ranging from monetary penalties; court-ordered injunctions preventing the sale or supply of gas outside of the Australian market; and cancellation or relinquishment of tenure.

The amendments take account of the changing circumstances in the Australian gas market, enabling tenure holders for Prospective Gas Production Land Reserve land and other entities that have purchased or been supplied gas produced from such land, to apply for Australian market supply conditions to be removed. Applicants must demonstrate either that sufficient gas will be produced in Queensland during a stated period to satisfy both domestic and export demand; or that they have taken all reasonable steps to sell or supply the gas to the Australian market, but have not been able to do so on commercially viable terms.

Tenure holders for Prospective Gas Production Land Reserve land and entities who purchase, or are otherwise supplied, gas from said land for further sale or supply will also be required to keep records of all sales and supply agreements and provide those records to the Government on request. A regulation-making power is provided to establish the type of records to be kept, as well as the period they are to be kept for and the manner in which they are kept. Regulations will also provide the circumstances in which an internal company auditor/chief financial officer should notify and/or report to the Minister or Chief Executive in relation to

a potential breach of an Australian market supply condition. Monitoring powers have been designed to place the onus on industry to ensure compliance, whilst minimising costs. They are not onerous in design, complementing existing financial reporting requirements under the *Corporations Act 2001 (Cth)*.

The Bill also contains a number of consequential amendments to existing provisions governing calls for tenders and provisions for Authorities to Prospect and Petroleum Leases to reflect that Australian market supply conditions may be imposed in line with the Prospective Gas Production Land Reserve policy.

### **Coordinator-General Pipeline Easements**

The Bill amends section 399 of the *Petroleum and Gas (Production and Safety) Act 2004* to make clear that, where the Coordinator-General has acquired land under the *State Development and Public Works Organisation Act 1971* for purposes that may include construction and operation of petroleum pipelines, the Coordinator-General is the only ‘owner’ that is required to grant permission for a pipeline licensee to enter the easement area.

### **Petroleum tenure arrangements**

Amendments in the Bill make it clear that an application for a petroleum lease production licence must include information to demonstrate a commercial resource exists and a plan for developing the resource. The amendments will also streamline administrative processes by setting out an industry based process how deficient applications are to be dealt with. This will improve the efficiency for processing properly made applications.

The amendments also require the Chief Executive to refund the fee for any application that is subject to a refusal. While previously there was no requirement to advise the applicant of the specific reasons for rejecting a deficient application, the amendments require the chief executive to provide the applicant with a notice that states the reason the application was rejected.

The Bill will also correct the technical deficiency in legislation dealing with the conversion of an authority to prospect that was issued under the *Petroleum Act 1923* to an authority to prospect under the *Petroleum and Gas (Production and Safety) Act 2004*. Amendments in the Bill will ensure that the limitation on the timing of an application for renewal does not apply to a replacement *Petroleum Act 1923* authority to prospect. Two

other requirements for a renewal application will also be excluded to reflect current administrative practice, being the requirement to use an approved form and the requirement to pay the applicable fees.

The amendments also provide that these changes are taken to have always had effect to holders of a transitioned *Petroleum Act 1923* authority to prospect. This is to ensure that these holders are not disadvantaged by the technical deficiency.

### **Carpentaria Gas Pipeline - Regulatory Transition**

Amendments to the *National Gas (Queensland) Act 2008* will preserve the current transitional arrangements for the Carpentaria Gas Pipeline, by relocating the relevant provisions currently contained in the *National Gas (Queensland) Regulation 2008*, into that Act. In addition, a specific expiry clause is included to end the arrangements on 30 April 2023.

### **Frequency of Lodgement - Petroleum Royalty Returns**

The *Petroleum and Gas (Production and Safety) Act 2004* will be amended to provide for the frequency of petroleum royalty returns to be prescribed in a regulation, as is the current practice across Queensland's mineral, geothermal and petroleum legislation. The *Petroleum and Gas (Production and Safety) Regulation 2004* is also amended to maintain the provision.

### **Collingwood Park State Guarantee**

To remove any ambiguity surrounding the application of the Queensland Government's Collingwood Park State Guarantee, the *Mineral Resources Act 1989* is amended to specify that the State Guarantee applies to land used for a residential, charitable or religious purpose. A further amendment is also included to define the 'market value' to be used for negotiations over purchase of a property.

## **Alternative method of achieving policy objectives**

### **Short Term Trading Market**

The option of developing a Queensland-specific Short Term Trading Market regulatory model was considered. This approach was rejected on the grounds that it would not be in keeping with Queensland's commitment under the Australian Energy Market Agreement to foster consistency and streamlining of the regulatory framework applying to energy markets; and would be at odds with the Government's aim to reduce the regulatory burden on businesses. The establishment of a Queensland-specific market



was also considered to be an inefficient option, as it would be time consuming and costly exercise, with Queensland stakeholders bearing the entire cost of implementation.

Adopting the national framework ensures costs are shared across jurisdictions, so that a major portion of the implementation cost will be shared by stakeholders in other participating states (i.e. South Australia and New South Wales).

### **Prospective Gas Production Land Reserve**

A direct percentage reservation policy (i.e. requiring a set percentage of gas produced in the state to be set aside for domestic use) was considered. However, this was deemed to be a sub-optimal course of action due its extreme inflexibility and the severe market distortions it would cause. The Prospective Gas Production Land Reserve approach was seen as a more flexible option that could take into account ongoing changes in Queensland's gas market.

### **Coordinator-General Pipeline Easements**

A number of alternative options were considered including relying on the Coordinator-General's licence issued to proponents as sufficient written permission to enter the Callide Infrastructure Corridor. This was rejected on the grounds that it did not provide sufficient certainty to proponents regarding access to the easement.

Requiring proponents to obtain temporary approval to access the easement from the Minister under Chapter 4, Part 5 of the *Petroleum and Gas (Production and Safety) Act 2004* was also considered. This option was rejected on the basis that such permission is only valid for nine months, after which it ends unless the proponent has acquired either ownership or an easement for the land, or written permission has been granted by the owner. This option was assessed as delaying resolution of the issue.

Requiring proponents to obtain the written permission of the freehold title owners was rejected due to the risk that if a landholder within the easement area refused permission to enter, there would be uncertainty given that the State's investment was approved under a separate approval process by the Coordinator General.

## **Carpentaria Gas Pipeline - Regulatory Transition**

Section 3 of the *National Gas (Regulation) 2008* could be remade to preserve the Carpentaria Gas Pipeline arrangements for a further three years until the issue of certification of Queensland's access regime is resolved. This would provide flexibility if any changes are required to achieve certification of Queensland's gas access regime. Based on consultation with the National Competition Council, the risk of changes being required is very low. This option would also not provide the desired level of regulatory certainty and if the certification process is further delayed, the expiry date may need to be further extended. Also, the provision for the Carpentaria Gas Pipeline is the only provision remaining in the *National Gas (Regulation) 2008* and needs to be in place until 2023, which is before the 10 year review requirement for subordinate legislation.

## **Estimated cost for Government implementation**

### **Short Term Trading Market**

Establishment of the Short Term Trading Market comes at no cost to the Government. The implementation project is funded by the Australian Energy Market Operator, who will recover costs via national Short Term Trading Market participant fees in accordance with the National Gas Rules.

### **Prospective Gas Production Land Reserve**

These amendments have been designed to minimise costs to both industry and Government. There will be some administrative costs to the Government in carrying out the monitoring and compliance activities necessary to enforce the Prospective Gas Production Land Reserve policy if it is activated. It is expected that these costs will be minimal and within current budget allocations. It is anticipated that the amendments would impose only minor costs on industry, as companies are already required to pay for external auditors under the *Corporations Act 2001 (Cth)*. Any extra information in relation to a producer's domestic gas sales obligations under the Prospective Gas Production Land Reserve policy would be a minor addition to the reporting obligations that exist under the Commonwealth Act.

### **Coordinator-General Pipeline Easements**

These amendments do not have any financial implications, the negotiations for the acquisition of easements between the Coordinator-General and landholders is a separate matter. The amendments do not impact on the

operation of the land access provisions provided under the *Petroleum and Gas (Production and Safety) Act 2004*. Any further compensation considered appropriate will also be subject to land access provisions.

## **Consistency with Fundamental Legislative Principles**

### **Prospective Gas Production Land Reserve**

Departmental consideration was given to whether the inclusion of the common provision into the *Petroleum and Gas (Production and Safety) Act 2004*, to provide that where a corporation has been convicted of an offence, then its Executive Officers are also taken to be guilty of an offence could be a reversal of the onus of proof.

However, section 814(4) *Petroleum and Gas (Production and Safety) Act 2004* provides adequate defences for Executive Officers, by allowing them to prove that either they exercised reasonable diligence to ensure their corporation complied with the relevant provision; or they were not in a position to influence the corporation's conduct in relation to the offence.

### **Petroleum Tenure Arrangements**

Section 910 of the *Petroleum and Gas (Production and Safety) Act 2004* is amended to apply amendments to the application processes to convert a authority to prospect held under the *Petroleum Act 1923* with a replacement tenure under the *Petroleum and Gas (Production and Safety) Act 2004* retrospectively (to 31 December 2004).

The amendment corrects an error in the original drafting to reflect the original intent and current administrative practice for applications for replacement tenure. The proposed retrospective effect is not considered to negatively impact on the rights and liberties of individuals but rather will actually provide benefits by ensuring applications processed under the incorrect provision are protected from any risk of being seen as invalid.

### **Collingwood Park State Guarantee**

Part 10AA of the *Mineral Resources Act 1989* gives a guarantee by the State in relation to particular land in Collingwood Park affected by subsidence.

Part of the State Guarantee is to purchase land at 'market value'. However, 'market value' is not defined, a new definition is inserted to make it clear that it is the 'market value' the land would have had, if the subsidence damage had not happened, at the time the chief executive formed the

opinion that it was not cost-effective for the State to repair the damage. As the department has given written offers of purchase in relation to current claims, no current claims will be affected by the changes. The effect of the amendments will however provide clarity for future negotiations in relation to claims.

The definition of ‘affected land’ is also amended to clarify that ‘affected land’ is land used only for a residential, charitable or religious purpose. This amendment which clarifies the original intent of the State Guarantee will not negatively impact on any claims submitted to date as there have been no existing claims in relation to land other than residential land.

Clause 6 inserts a transitional provision under section 783 to provide that section 381A is taken to have had effect on and from 5 November 2008 when part 10AA of the *Mineral Resources Act 1989* (which includes section 381A) commenced. The amendments are drafted on the basis that the State Guarantee was intended to apply to land that was in Collingwood Park at the time the State Guarantee was given, the boundaries of Collingwood Park have since changed.

## **Consultation**

### **Short Term Trading Market**

Relevant stakeholders, including major Brisbane gas users, pipeline operator APA Group, retailers and the Australian Energy Market Operator have been and will continue to be consulted throughout the Short Term Trading Market implementation project.

### **Prospective Gas Production Land Reserve**

Key stakeholders, including Liquefied Natural Gas proponents, major domestic gas users and industry peak bodies have been consulted extensively in preparing these amendments. A consultation paper released in August 2009 led to the decision to adopt the Prospective Gas Production Land Reserve policy to address the issue of security of domestic gas supply.

### **Coordinator-General Pipeline Easements**

Coal Seam Gas and Liquefied Natural Gas proponents and relevant Government agencies (including the Office of the Coordinator-General) have been consulted regarding the amendment. Community consultation regarding the Callide Infrastructure Corridor has been handled exclusively

by the Office of the Coordinator-General via the Coordinator-General's compulsory acquisition process.

### **Petroleum Tenure Arrangements**

The amendments to the petroleum tenure arrangements were contained within the draft *Mines and Petroleum Legislation Amendment Bill 2011* which was the subject of targeted industry consultation by the Department of Employment, Economic Development and Innovation in early 2011. No concerns were identified in relation to the amendments, which are administrative in nature and seek to clarify the original intent of the legislation.

### **Carpentaria Gas Pipeline - Regulatory Transition**

The owners of the Carpentaria Gas Pipeline and other members of the pipeline industry likely to be impacted by the amendment were consulted regarding the proposed amendment and raised no issues. The Queensland Resources Council and the Australian Petroleum Production and Exploration Association were also consulted and raised no concerns.

### **Frequency of Lodgement - Petroleum Royalty Returns**

The Queensland Resources Council and the Australian Petroleum Production and Exploration Association have been consulted and were forwarded a copy of the legislative and regulatory amendments as drafted, no concerns were raised.

### **Collingwood Park State Guarantee**

All government agencies were consulted regarding the Collingwood Park State Guarantee amendments and no expected impacts on the business, local government or general community sectors were identified.

## Notes on Provisions

### Part 1 Preliminary

#### Short Title

Clause 1 provides that the short title of the Act is the *Gas Security Amendment Act 2011*.

#### Commencement

Clause 2 provides the commencement details for the provisions in the Act, which will be on Royal Assent with the exception of the listed sections which will commence on a day to be fixed by proclamation or as stated in the Act.

### Part 2 Amendment of Mineral Resources Act 1989

#### Act amended

Clause 3 provides that part 2 amends the *Mineral Resources Act 1989*.

#### Amendment of s 381A (Definitions for pt 10AA)

Clause 4 amends section 381A to clarify that the definition of “affected land” means land that, on 5 November 2008 was used only for a residential, charitable or religious purpose and was part of the place given the name of Collingwood Park and entered in the Gazetteer of Place Names under the *Place Names Act 1994*. As was the original intent.

#### Amendment of s 381B (What is the *Collingwood Park State guarantee*)

Clause 5 inserts the definition of ‘market value’ within section 381B of the Act to clarify that ‘market value’, of affected land, means the market value

the land would have had, at the time the chief executive formed the opinion mentioned in subsection (1)(c)(ii), if the subsidence damage had not happened.

### **Insertion of new pt 19, div 14**

Clause 6 provides transitional arrangements for amendments contained in the Act.

New section 783 is inserted into the Act to ensure consistency and continuity of the administration of sections 381A and 381B by providing that the amendments to these sections contained in the *Gas Security Amendment Act 2011* apply retrospectively and are taken to have had effect on and from 5 November 2008.

## **Part 3                      Amendment of National Gas (Queensland) Act 2008**

### **Act amended**

Clause 7 provides that part 3 amends the *National Gas (Queensland) Act 2008*.

### **Amendment of s 7 (Application in Queensland of National Gas Law)**

Clause 8 amends section 7 to insert a new subsection (1A), applying chapter 2, part 6, division 2A of the National Gas Law to Queensland. Division 2A contains the provisions governing the operation of the gas Short Term Trading Market and must be applied in order for the Short Term Trading Market to be established in Queensland.

### **Insertion of new s 15A**

Clause 9 inserts a new section 15A in the *National Gas (Queensland) Act 2008* that provides for continuation of a transitional exemption provided to the Carpentaria Gas Pipeline under section 3 of the *National Gas (Regulation) 2008*; and which is to apply until 30 April 2023.

Subsection (1) defines the Carpentaria Gas Pipeline by reference to the relevant pipeline licence number and its location.

Subsections (2) and (3) provide that the Carpentaria Gas Pipeline is to be taken to be a covered transmission pipeline under the gas access regime and subject to a light regulation determination until 30 April 2023. The Carpentaria Gas Pipeline can not be made subject to a full access arrangement until after that date.

Subsection (4) provides for the commencement date of the section.

## **Part 4                      Amendment of Petroleum and Gas (Production and Safety) Act 2004**

### **Act amended**

Clause 10 provides that provides that part 4 amends the *Petroleum and Gas (Production and Safety) Act 2004*.

### **Amendment of s 35 (Call for tenders)**

Clause 11 amends section 35 to insert a new subsection (2)(e)(v). Subsection (2)(e)(v) provides that, for a call for tenders over land to be released for exploration tenure (i.e. an authority to prospect), if any part of an area of land proposed to be released will be subject to an Australian market supply condition, the call for tenders must state that details as to the part of the land area to which the condition applies and the condition itself are available at a stated place.

### **Amendment of s 42 (Provisions of authority to prospect)**

Clause 12 amends section 42 to insert a new subsection (3A) to provide that the conditions of an authority to prospect may include the application of an Australian market supply condition to all or part of the tenure area.



### **Amendment of s 118 (Requirements for making ATP-related application)**

Clause 13 amends section 118 to state that an authority to prospect-related application for a petroleum lease must include information that satisfies the requirements that must be met in order for the Minister to grant the application. The amendment gives a clear power for the chief executive to refuse to receive applications that do not meet two explicit requirements. The first requirement is that the application must include the proposed development plan that is mentioned in subsection section 118(1)(f). The second requirement is for certification by an independent and appropriately qualified entity that the resources and reserves of petroleum in the area of the proposed petroleum lease meet the requirements of section 121(1)(b)(ii). The amendment further requires that, where the application is refused, the chief executive must refund the application fee and provide the applicant with a notice stating the reasons for rejection.

The clause does not oblige the chief executive to make an administrative decision on applications that were received before the section was amended.

### **Amendment of s 123 (Provisions of petroleum lease)**

Clause 14 amends section 123 to insert a new subsection (3A) to provide that the conditions of a petroleum lease may include the application of an Australian market supply condition to all or part of the tenure area.

### **Amendment of s 127 (Call for tenders)**

Clause 15 amends section 127 to insert a new subsection (2)(e)(v). Subsection (2)(e)(v) provides that, for a call for tenders for production tenure (i.e. a petroleum lease), if any part of an area of land proposed to be released will be subject to an Australian market supply condition, the call must state that details as to the part of the land area to which the condition applies and the condition itself are available at a stated place.

### **Insertion of new ch 2, pt 2A**

Clause 16 inserts a new chapter 2 part 2A, which contains the provisions governing the operation of the Prospective Gas Production Land Reserve.

New section 175A ‘Meaning of *Australian market supply condition*’ provides the definition of an *Australian market supply condition*, which

underpins the designation of Prospective Gas Production Land Reserve land. Such a condition requires gas produced from the land to be sold or supplied only to the Australian market. The definition also requires that any contract (or other arrangement) for the sale or supply of the gas must include a condition that further sale or supply of the gas may only be to the Australian market.

This definition is in keeping with the original policy intent, ensuring that gas produced from designated Prospective Gas Production Land Reserve land can only be supplied to the Australian market and that third parties who purchase gas from Prospective Gas Production Land Reserve land for on-sale or supply, can only do so within the Australian market.

Clause 16 inserts a new section 175B ‘Meaning of *Australian market*’. Sub-section (a) provides that the definition of *Australian market*, for the sale or supply of gas, only incorporates entities that will either consume the gas within Australia or sell or supply the gas for consumption within Australia. The use of the term ‘consume’ is critical to ensuring that entities which merely convert the gas into another form, such as liquefied natural gas export facilities, are not included in this definition.

Sub-section (b) provides that liquefied natural gas export facilities are expressly excluded from this definition, as their purpose is to facilitate the transportation of gas for consumption in overseas markets. This will prevent the sale of gas (intentionally or otherwise) produced from Prospective Gas Production Land Reserve land to such export facilities and reduce the potential for disputes as to whether a potential buyer is or is not part of the Australian market.

The term Australian market (rather than Queensland or Eastern Australian market) is used to avoid infringement of section 92 of the *Commonwealth Constitution*, which requires all trade within the Commonwealth to be free.

Clause 16 inserts a new section 175C ‘Supply of gas from Prospective Gas Production Land Reserve land’. Sub-section (1) provides that the holder of a petroleum tenure over Prospective Gas Production Land Reserve land must only sell or supply gas produced from that land to the Australian market and must include a condition in any sales contract (or other supply arrangement) that the gas may only be on-sold or supplied to the Australian market. This is in keeping with the purpose of the Prospective Gas Production Land Reserve policy in ensuring that gas produced from petroleum leases which are subject to an Australian market supply

condition is made available only to the Australian market; and that entities who purchase or are supplied such gas are made aware of the condition.

A maximum penalty of 1000 penalty units is prescribed for breach of this provision. This is consistent with existing penalties under the *Petroleum and Gas (Production and Safety) Act 2004* for serious non-safety and health-related offences and clearly reflects the intent that an Australian market supply condition should be complied with, if one is imposed on a tenure.

Sub-section (2) provides that subsection (1) does not apply to the tenure holder if the Australian market supply condition has been suspended in accordance with section 175G(1).

Sub-section (3) operates in the same manner as subsection (1), but with respect to entities that purchase or are otherwise supplied gas produced from Prospective Gas Production Land Reserve land. This provision is necessary to preserve the intent of the Prospective Gas Production Land Reserve policy by preventing third party on-selling outside of the Australian market.

A maximum penalty of 1000 penalty units is also prescribed for breach of this provision.

In recognition of the difficulties associated with determining where a particular quantity of gas was produced, references to the further sale or supply of gas by an entity under subsection (3) should be taken to mean a volume of gas equivalent to that purchased by or otherwise supplied to the entity from the Prospective Gas Production Land Reserve land.

Sub-section (4) operates in the same manner as sub-section (2), but with respect to entities that have purchased or are otherwise supplied gas produced from Prospective Gas Production Land Reserve land.

Subsection (5) provides that subsection (3)(a) applies, subject to the operation of section 175D.

Clause 16 inserts new section 175D 'Urgent exemption from application of s 175C(3)(a)'. Subsection (1) provides that an entity will obtain a temporary exemption from compliance with section 175C(3)(a) (which requires that entities supplied with gas from Prospective Gas Production Land Reserve land must not further supply the gas other than to the Australian market) in certain circumstances. The exemption may be granted if a consumer of gas has been supplied from Prospective Gas Production Land Reserve land and, as a result of a technical or operational

problem that prevents the gas from being consumed, must on-supply the gas outside the Australian market. However, the entity must have taken all reasonable steps to supply the gas to the Australian market and found that it is not commercially viable to do so; and they must give notice to the chief executive of the department regarding the supply arrangement and the reason for it within 5 days of commencing supply.

Subsection (2) provides that if an entity has satisfied the criteria outlined in subsection (1), section 175C(3)(a) will not apply for a period of 30 days after the technical or operational problem arises. If the technical or operational problem persists beyond this time, the entity must apply for an exemption from the Australian market supply condition under section 175E(2).

This section is designed to take account for market circumstances where a gas user, such as a gas-fired electricity generator, may find they are unable to use gas they have acquired from Prospective Gas Production Land Reserve land due to a technical or operational fault (for example, plant or machinery failure). Given that the majority of gas is supplied as “take or pay” contracts (i.e. a consumer must pay for the gas regardless of whether they use it or not), this provision ensures that gas users do not suffer commercial disadvantage due to technical or operational issues that may arise.

Clause 16 inserts new section 175E ‘Suspension of application of, or exemption from, Australian market supply condition’. Subsection (1) provides that the holder of tenure over Prospective Gas Production Land Reserve land may, in certain circumstances, apply to the Minister for a suspension of the Australian market supply condition for a stated period. The tenure holder may do this if market analysis indicates that sufficient gas may be produced in Queensland (from both existing and proposed petroleum tenures) during the stated period to satisfy both domestic and export demand; or if the holder has taken all reasonable steps to sell or supply the gas to the Australian market but has not been able to do so on commercially viable terms. As the Minister is responsible for granting the tenure, the decision as to whether a condition should be suspended should rest with them.

Subsection (2) operates in the same manner as subsection (1), but allows entities that have purchased or are otherwise supplied gas produced from Prospective Gas Production Land Reserve land to seek an exemption from an Australian market supply condition. Applications for an exemption under subsection (2) are made to the chief executive of the department

responsible for administering the *Petroleum and Gas (Production and Safety) Act 2004*, rather than to the Minister.

Clause 16 inserts new section 175F ‘Assessing commercial viability’. Sub-section (a) to (c) provide factors that the Minister or chief executive may have regard to in assessing commercial viability for an application made under section 175E. These include whether the rate of return on the money required to produce gas from Prospective Gas Production Land Reserve land and sell or supply it to the Australian market meets that considered acceptable by a reasonable petroleum producer or their lender; market conditions at the time the application is made, including market access, expected contract or supply arrangement duration, the likely price for the gas and certainty and timing of market opportunities; and in cases where commercial viability for the applicant is dependant on reaching agreement with another entity or using that entities facilities or technology, whether the applicant is able to do so on terms that the applicant considers to provide a reasonable rate of return.

In recognition of the fact that any number of factors may determine commercial viability, the list in this provision is considered to be non-exhaustive. The use of the term “may have regard” allows the Minister or chief executive to consider any or all of these factors, as well as any other issue that may assist in assessing commercial viability.

Clause 16 inserts new section 175G ‘Deciding application’. Subsection (1) provides that an application may be granted under 175E(1) only if the Minister is satisfied with the matters under section 175E(1)(a) or (b).

Subsection (2) operates in the same manner as subsection (1), but with respect to applications to the chief executive made by an entity under section 175E(2).

Subsection (3) provides that an applicant must be given an information notice if the Minister or chief executive refuses to grant an application under section 175E. This enables an applicant to seek an internal review of the decision pursuant to section 817 of the *Petroleum and Gas (Production and Safety) Act 2004* or appeal the decision pursuant to section 823 of *Petroleum and Gas (Production and Safety) Act 2004*, as appropriate.

Clause 16 inserts new section 175H ‘Requirement to keep and give records’. This section places the onus on industry to maintain records of sale and to provide these details to the chief executive if requested, while minimising cost. It ensures that industry is maintaining appropriate records and as the *Corporations Act 2001 (Cth)* compels public companies and

large proprietary companies to retain financial and directors' reports (and produce an annual report), it is not expected that the requirements of this provision would be unduly onerous on companies. Any extra information in relation to a proponent's domestic gas sales obligations under the policy would simply be an addition to the reporting obligations that exist under the *Corporations Act 2001 (Cth)*.

Subsection (1) provides that the requirement to keep and provide records under this section applies to both the holder of a petroleum lease Prospective Gas Production Land Reserve land who sells or otherwise supplies gas produced from it; and any other entity who sells or otherwise supplies gas produced from Prospective Gas Production Land Reserve land. Each of these parties is referred to as a *selling entity*.

Subsection (2) provides that a selling entity must keep records of each sale or supply of gas produced from Prospective Gas Production Land Reserve land. The type of records to be kept and the manner and period for which the records are to be kept will be prescribed under a regulation.

A maximum penalty of 500 penalty units is prescribed for a breach of this provision. This penalty is consistent with an existing maximum penalty under section 547 of the *Petroleum and Gas (Production and Safety) Act 2004* for petroleum tenure holders who fail to keep records and samples about authorised activities.

Sub-section (3) provides that if the chief executive of the Department responsible for administering the Act gives a selling entity a notice requesting a copy of records kept under subsection (2), the selling entity must comply with the request within the time period stated in the notice.

A maximum penalty of 500 penalty units is prescribed for a breach of this provision. This penalty is consistent with existing maximum penalties under section 548 of the *Petroleum and Gas (Production and Safety) Act 2004* for failure to lodge records and failure comply with a request by the chief executive.

This provision places the onus on industry to maintain records of sale and to provide these details to the Minister or chief executive if requested, while minimising cost. It ensures that industry is maintaining appropriate records and as the *Corporations Act 2001 (Cth)* compels public companies and large proprietary companies to retain financial and directors' reports (and produce an annual report), it is not expected that the requirements of this provision would be unduly onerous on companies. Any extra information in relation to a proponent's domestic gas sales obligations

under the policy would simply be an addition to the reporting obligations that exist under the *Corporations Act 2001 (Cth)*.

In accordance with section 814 of the *Petroleum and Gas (Production and Safety) Act 2004*, executive officers of a corporation are bound to ensure that their corporation complies with the requirements of section 175H. If a corporation commits an offence against subsection (2) or (3), each of its executive officers also commits an offence as faces the same maximum penalty. Defences available under section 814(4) will remain applicable for section 175H.

Clause 16 inserts new section 175I ‘Order to enforce compliance with s 175C’. Sub-section (1) provides the circumstances in which the District Court may make an order to enforce compliance with section 175C(1)(a) and 175C(3)(a). The District Court may make such an order if a petroleum tenure holder for Prospective Gas Production Land Reserve land or an entity who has purchased, or has otherwise been supplied with, gas produced from Prospective Gas Production Land Reserve land is found to be selling or supplying gas outside of the Australian market.

Sub-section (2) provides that the Court may choose to grant an injunction to prevent the tenure holder or entity from selling or otherwise supplying gas outside of the Australian market; and/or any other order the court considers appropriate.

Alternatively, subsection (3) provides that a court may choose not to make an order in relation to the tenure holder under this section if taking action under section 790(1)(b) or (c) of the *Petroleum and Gas (Production and Safety) Act 2004* would be a more appropriate way of dealing with the issue. Section 790(1)(b) enables a relevant official to relinquish part of their tenure area, while section 790(1)(c) enables the cancellation of the tenure, either immediately or on a stated day.

### **Amendment of s 306 (Content requirements of CSG statement)**

Clause 17 amends section 306 to change a reference to “the” coal or oil shale mining lease to be “a” coal or oil shale mining lease to correct a drafting error. The current wording infers that at the time the section is applied, a lease would already be in place, whereas the section in fact relates to the possible future development of coal or oil shale.

### **Amendment of s 399 (What is *pipeline land* for a pipeline licence)**

Clause 18 amends section 399 to insert new subsections (3) and (4). Subsection (3) provides that, if the Coordinator-General has acquired an easement over land for a purpose that includes providing for the construction of a petroleum pipeline, then the Coordinator-General is the only owner who is required to grant written permission under section 399(1)(b)(ii) for a pipeline licence holder to enter the land in order to construct and operate a petroleum pipeline.

This removes previous ambiguity as to which owner a pipeline licence holder must obtain written permission from under section 399(1)(b)(ii) prior to entering pipeline land, in circumstances where an easement has been acquired by the Coordinator-General. The new subsection prevents landholders affected by the easement acquisition from denying pipeline licensees from accessing the land.

Subsection (4) provides that, for section 399, *acquires* means the easement has been acquired by the Coordinator-General under the *State Development and Public Works Organisation Act 1971*.

### **Omission of s 592A (Definition for pt 2)**

Clause 19 omits section 592A which provides the definition of “quarter” as it relates to part 2.

### **Amendment of s 593 (Application of pt 2)**

Clause 20 amends section 593 by replacing the reference to “quarter” with “royalty return period”.

### **Amendment of s 594 (Obligation to lodge royalty return)**

Clause 21 amends section 594 by replacing the reference “quarter” with “royalty return period” and removes a note.

### **Amendment of s 599 (Annual royalty returns)**

Clause 22 amends section 599 by replacing references “royalty return period” with “annual return period” to clearly provide that producers are required to lodge a royalty return for a 12 month or annual period.



### **Amendment of s 842 (Substantial compliance with application requirements may be accepted)**

Clause 23 amends section 842 to insert a new sub-section (2) which provides that subsection (1) does not apply to an application the chief executive has refused to receive under section 118(2) where the power to reject an application is discretionary. This will clarify that once a decision has been made the applicant can not seek acceptance of the application on the basis of substantial compliance under section 842.

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

Clause 24 amends section 843(1) to provide that the chief executive (or if the decider is the chief inspector, the chief inspector) may request additional information in relation to an application. This will streamline the administrative processes by ensuring requests for additional information need not be approved by the Minister.

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

Clause 25 amends section 910 to exclude sections 81(2), 82(1)(a) and (j) and 83 from the provisions of chapter 2, part 1, division 5 that apply to the conversion of a *Petroleum Act 1923* authority to prospect to an authority to prospect under the *Petroleum and Gas (Production and Safety) Act 2004*.

Section 908 of the *Petroleum and Gas (Production and Safety) Act 2004* enables the holder of a *Petroleum Act 1923* authority to prospect to apply to convert the tenure to an authority to prospect under the 2004 Act with no restriction on the timing of this. Section 910 of the *Petroleum and Gas (Production and Safety) Act 2004* provides that an application for a replacement authority to prospect is to be treated as a renewal application for an existing *Petroleum and Gas (Production and Safety) Act 2004* authority to prospect. Section 81(2)(a) provides that an application for renewal of an authority to prospect may not be made more than 60 business days before the end of the term of the authority. This might cast doubt on those cases where a decision to replace a *Petroleum Act 1923* authority to prospect was made more than 60 days before the end of its term.

This amendment will facilitate the transfer to a *Petroleum and Gas (Production and Safety) Act 2004* authority to prospect by not imposing any significant restrictions on doing so and reflect current administrative

practice by ensuring that section 81(2), section 82(1)(a), section 82(1)(j) and section 83 do not apply to a converted *Petroleum Act 1923* authority to prospect.

### **Insertion of new ch 15, pt 11**

Clause 26 inserts new part 11 to provide transitional arrangements for the *Gas Security Amendment Act 2011*.

New section 952 provides that in part 11 **amending Act** is taken to mean the *Gas Security Amendment Act 2011*.

New section 953 provides that section 118, as amended by the Bill applies only to applications made after the commencement of the section.

New section 954 provides that the amendments to Section 910(1)(a)(i), as amended by the Bill, is taken to have had effect from 31 December 2004. This will ensure that no *Petroleum Act 1923* tenure holders are disadvantaged by the previous errors in the legislation and that no doubt can be cast on the validity of those decisions.

New section 955 provides that amendment of the *Petroleum and Gas (Production and Safety) Regulation 2004* under the Bill does not affect the power of the Governor in Council to make further amendments to or repeal the *Petroleum and Gas (Production and Safety) Regulation 2004*.

### **Amendment of sch 1 (Reviews and appeals)**

Clause 27 amends schedule 1 to the *Petroleum and Gas (Production and Safety) Act 2004* to insert two new matters that will be subject to review or appeal. Subsection (1) inserts a decision made under section 175G(3) to refuse to grant an application for exemption into schedule 1, table 1. This will enable an entity who has applied for an exemption from an Australian market supply condition under section 175E(2) to seek a review of the chief executive's decision to refuse the application pursuant to section 817 of the *Petroleum and Gas (Production and Safety) Act 2004*. In accordance with section 817(2)(a) of the *Petroleum and Gas (Production and Safety) Act 2004*, the review application is to be made to the Minister.

Subsection (2) inserts a decision made under section 175G(3) to refuse to grant an application for suspension into schedule 1, table 2. This will enable a tenure holder who has applied for a suspension of an Australian market supply condition under section 175E(1) to appeal the Minister's decision to refuse the application pursuant to section 823 of the *Petroleum*

and Gas (Production and Safety) Act 2004. As with other Ministerial decisions concerning state land and interests, the appeal body in this instance is designated to be the Land Court.

### **Amendment of sch 2 (Dictionary)**

Clause 28 amends schedule 2 to the *Petroleum and Gas (Production and Safety) Act 2004* to insert a number of new definitions.

The Schedule 2 definition of **quarter** is removed as a result of amendments contained in this Bill and is replaced with a definition for a **annual return period** as prescribed in section 599, and a **royalty return period**, which is a period prescribed under a regulation, for which a royalty return must be lodged.

The definition of *Coordinator-General* can be found under Schedule 2 of the *State Development and Public Works Organisation Act 1971*. The Coordinator-General is the corporation originally constituted under section 8A of the *State Development and Public Works Organisation Act 1938*, now preserved, continued in existence and constituted under section 8 of the 1971 Act.

*Australian market* and *Australian market supply condition* refer back to definitions provided sections 175B and 175A, respectively.

A definition for **PGPLR** is inserted to confirm that the acronym stands for Prospective Gas Production Land Reserve. Similarly, a definition for **PGPLR land** is inserted to clarify that this term refers to the area of a petroleum tenure to which an Australian market supply condition has been applied.

## **Part 5                      Amendment of Petroleum and Gas (Production and Safety) Regulation 2004**

### **Regulation amended**

Clause 29 provides that part 5 amends the *Petroleum and Gas (Production and Safety) Regulation 2004*.

### **Amendment of s134A (Purpose of safety and health fees)**

Clause 30 replaces references to the period of which safety and health fees relate under section 134A from “quarter” to “quarterly period” to reflect a terminology change as a result of the Bill.

### **Amendment of s 139 (Requirement to lodge safety and health fee return)**

Clause 31 replaces reference from “quarter” in section 139 to “quarterly period” to reflect a terminology change as a result of amendments in this Bill.

### **Insertion of new s 146A**

Clause 32 inserts new section 146A to prescribe that the definition of “royalty return period” used throughout the *Petroleum and Gas (Production and Safety) Act 2004* refers to a quarterly period.

### **Amendment of s 147 (Petroleum royalty)**

Clause 33 replaces references within section 147 to “quarterly period” with “royalty return period”.

### **Amendment of s 148 (Working out wellhead value of petroleum)**

Clause 34 replaces references within section 148 to “quarterly period” with “royalty return period”.

### **Amendment of s 148A (Definition for sdiv 2)**

Clause 35 replaces a reference within section 148A to “quarterly period” with “royalty return period”.

### **Amendment of s 149 (Information to be contained in royalty return)**

Clause 36 replaces references within section 149 to “quarterly period” with “royalty return period”.

### **Amendment of sch 9 (Fees)**

Clause 37 updates a section reference in schedule 9 related to authority to prospect-related application fees for a petroleum lease from “section 118(e)” to “section 118(g)”.

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