The Mineral, Water and Other Legislation Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Mineral, Water and Other Legislation Amendment Bill (the Bill).

Policy objectives and the reasons for them

The primary policy objectives of the Bill are to:

- give effect to the Queensland Government's response to four recommendations of the *Independent Review of the Gasfields Commission Queensland and Associated Matters*;
- remove the automatic referral of compensation matters to the Land Court of Queensland under the *Mineral Resources Act 1989*;
- ensure the consideration of the water-related effects of climate change on water resources is explicit in the water planning framework;
- provide for the inclusion of cultural outcomes in water plans to support the protection of the cultural values of water resources for Aboriginal peoples and Torres Strait Islanders;
- provide a mechanism to allow for temporary access to unallocated water held in strategic water infrastructure reserves; and
- establish new powers for dealing with urgent water quality issues.

Streamlining and minor and miscellaneous amendments are also proposed to the *Mineral Resources Act 1989* and attendant regulation, the *Mineral and Energy Resources (Common Provisions) Act 2014* and attendant regulation, the *Coal Mining Safety and Health Act 1999,* the *Petroleum and Gas (Production and Safety) Act 2004*, the *Petroleum Act 1923*, the *Geothermal Energy Act 2010*, the *Greenhouse Gas Storage Act 2009* and the *Water Act 2000*. These amendments are designed to improve the operation of these Acts and Regulations.

Government response to Gasfields Commission Review

In December 2015, the Queensland Government commissioned an independent review of the Gasfields Commission Queensland. The Independent Review of the Gasfields Commission Queensland and Associated Matters (the review report) and the Queensland Government's response to the report were released on 1 December 2016.

The Bill proposes amendments to give effect to recommendations 4, 7, 8 and 9 from the review report which were supported in-principle by Government. These recommendations relate to the statutory negotiation process for the negotiation of a conduct and compensation agreement (CCA) and a make good agreement (MGA) under chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* and chapter 3 of the *Water Act 2000* respectively.

In short, the recommendations were:

- to remove the option of a conference with an authorised officer to satisfy the alternative dispute resolution (ADR) requirement prior to a party being able to make an application to the Land Court of Queensland (the Land Court) to determine a CCA;
- to provide that the President of the Queensland Law Society (or a similarly independent person) can decide on the ADR process to be undertaken and the ADR facilitator for CCAs and MGAs if the parties cannot agree on a process or facilitator;
- to introduce a distinct arbitration process for CCAs and MGAs as an alternative to making an application to the Land Court;
- to extend the resource authority holder's liability to pay the landholder's necessary and reasonable costs incurred in negotiating and preparing a CCA (currently legal, valuation and accounting costs) to include the cost of an agronomist;
- to provide that the resource authority holder is liable to pay a landholder's necessary and reasonable costs incurred in negotiating and preparing a CCA where the resource authority holder has abandoned negotiations; and
- to provide the Land Court jurisdiction to determine the liability for necessarily and reasonably incurred negotiation and preparation costs in preparing a CCA.

Further detail on these recommendations is available in the review report.

Referral of compensation matters to the Land Court

Under the *Mineral Resources Act 1989*, the Land Court is conferred jurisdiction to determine compensation for landowners with mining claims and mining leases over their properties, when the applicant and the landowner are unable to reach agreement. These matters comprised about twenty per cent of all matters referred to the Land Court in the 2014–15 and 2015–16 financial years.

The vast majority of these matters are automatically referred by the Department of Natural Resources and Mines (DNRM) (as required by the *Mineral Resources Act 1989*) if the parties do not reach agreement by the end of the statutory negotiation period. The policy objective of the amendments is to prevent compensation matters being automatically referred to the Land Court by DNRM.

Climate change considerations in water planning

The water planning framework under the *Water Act 2000* is an ideal mechanism to manage the effects of climate change on water resources. Climate variability and climate change already form part of the technical assessment process that supports

water planning, however it is not always explicitly clear how this science supports the water planning process. The Bill proposes to strengthen the climate change considerations in the water planning framework by making it an explicit requirement for the Minister to consider the effects of climate change when preparing a water plan or water use plan.

Cultural outcomes for Aboriginal peoples and Torres Strait Islanders in water planning

Aboriginal peoples and Torres Strait Islanders hold a wealth of traditional knowledge about water and water-dependent ecosystems, and also hold strong spiritual and cultural connections to water and the natural features they support. This knowledge and connection to water is of critical assistance to the water planning process. It helps to ensure that cultural values of water resources are clearly protected under water plans. The Bill proposes to enhance the water planning provisions of the *Water Act 2000* to better recognise the importance of water resources to Aboriginal peoples and Torres Strait Islanders. Amendments in the Bill will support the Minister in preparing water plans by providing for cultural outcomes to be specified separately from economic, social and environmental outcomes.

Temporary access to strategic water infrastructure reserves

Water plans under the *Water Act 2000* can establish strategic water infrastructure reserves of unallocated water. The water is reserved to facilitate the development of a future water infrastructure project, or for a water infrastructure purpose. In many cases, these reserves of unallocated water remain unutilised where a water infrastructure project is not being progressed, at least in the short-term. The Bill proposes a mechanism to allow temporary access to these reserves for other water users, until the reserve is required for its intended purpose. It is intended to provide security for future proponents of strategic water infrastructure projects, while providing an additional mechanism to temporarily increase opportunities to access water in the interim.

Urgent actions for dealing with water quality issues

While the *Water Act 2000* currently includes powers to restrict or prohibit access to contaminated water, there are no mechanisms to allow actions that may be inconsistent with water planning or operational rules to address urgent water quality issues. Unforeseen events, such as floods or cyclones, can have serious and widespread consequences and require actions outside the approved water planning rules and operational arrangements to mitigate or manage the situation. The Bill proposes new powers for the Minister and chief executive to give a direction requiring actions necessary to deal with urgent water quality issues.

Achievement of policy objectives

Government response to Gasfields Commission Review

Conduct and compensation agreement under the Mineral and Energy Resources (Common Provisions) Act 2014

The Bill achieves the above objectives by making amendments to the statutory negotiation process for a CCA in chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*

The statutory negotiation process provides a pathway to facilitate the negotiation of a CCA where the parties are unable to agree. Ultimately, the Land Court or an arbitrator (whichever applies) can determine a CCA if the statutory negotiation process is exhausted and the parties have not agreed to a CCA.

Under the process amended by the Bill, the notice of intention to negotiate continues to be the first stage in the statutory negotiation process. If the parties are unable to agree to a CCA within the notice of intention to negotiate stage, they may progress to an ADR process by issuing an ADR election notice. The ADR process will be for a non-determinative ADR type only – such as case appraisal, mediation or conciliation.

However, in accordance with recommendation 4 of the review report, the Bill makes changes that put a conference outside the new statutory negotiation process. This means that a conference run by an authorised officer will no longer be a pre-requisite for an application to the Land Court for a decision about the CCA. Parties will still be able to elect to attend a conference with an authorised office up until the issuing of an ADR election notice or an arbitration election notice (where the parties agree to go to arbitration instead of ADR). After one of these election notices is issued, any conference that is underway must cease and a new conference will not be able to be called.

Where parties cannot agree on the ADR type or facilitator, the party that has requested the ADR will then be required to apply to the Land Court or a prescribed ADR institute, which will then decide the ADR type and facilitator to be used by the parties to negotiate a resolution of the dispute. The resource authority holder will be responsible for the cost of the ADR practitioner. These amendments will implement recommendation 7 of the review report.

The Bill implements recommendation 8 of the review report by making changes to the *Mineral and Energy Resources (Common Provisions) Act 2014* that establish arbitration as a distinct option for dispute resolution. As the review report recommended, arbitration will be an alternative to applying to the Land Court for a determination, and both parties will have to agree to attend the arbitration.

To implement recommendation 9 of the review report, the Bill also makes amendments to ensure that the resource authority holder will be responsible for the professional fees necessarily and reasonably incurred in the negotiation and preparation of a CCA, including the costs for an agronomist. The negotiation and preparation costs are payable by the resource authority holder even if the negotiations of a CCA are abandoned. The Land Court will have the jurisdiction to determine whether the costs were necessarily and reasonably incurred in the event of a dispute, and make an order accordingly.

Make good agreements under the Water Act 2000

The Bill achieves the above objectives by making necessary changes to MGAs in the *Water Act 2000* to ensure consistency with the CCA amendments in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

In relation to the MGA amendments in the *Water Act 2000*, the key amendments include:

- excluding arbitration as a form of ADR;
- including arbitration as an alternative to the Land Court;
- the parties being made aware of the consequences of agreeing to arbitration, that is, they cannot make an application to the Land Court.

Like the CCA amendments, if the parties have not previously participated in an ADR about the dispute and before an arbitrator is appointed, the costs of arbitration will be shared equally by the parties unless the parties agree or the arbitrator decides otherwise.

Referral of compensation matters to the Land Court

The Bill makes amendments to chapter 3 and chapter 6 of the *Mineral Resources Act 1989* to change the way unresolved compensation matters for mining claims and mining leases are referred to the Land Court.

For the initial grant and renewal of a mining claim or mining lease, the amendments remove the chief executive's automatic referral to the Land Court if there is no compensation agreement after the statutory negotiation period. The applicant or landowner can refer the matter to the Land Court at any time for determination. If there is no agreement or Land Court referral after the negotiation period ends, the Minister may refuse to grant or renew the mining claim or mining lease.

For the renewal of a mining claim or mining lease, the amendments will now require the renewal applicant to notify the landowner of the application, and prescribes new guidance material that must be included with the notification. This new requirement for notification will provide a nine to fifteen month period for the landowner and miner to negotiate a new compensation agreement.

These amendments will be applied from the date of commencement, with current applications to be completed under the pre-amended *Mineral Resources Act 1989* provisions.

Climate change considerations in water planning

To achieve the objective to strengthen the climate change considerations in the water planning framework the Bill amends the *Water Act 2000* to explicitly require the Minister to consider:

- the water-related effects of climate change on water availability when preparing a water plan; and

- the water-related effects of climate change on water use practices and the risk to land or water resources arising from the use of water on land when preparing a water use plan.

These new considerations will better inform the development of a draft water plan or water use plan, helping to ensure water plan strategies are adaptive to the prevailing climate conditions. It is intended that including these considerations will provide additional transparency when considering climate change impacts through water planning and promote community awareness of the implications of climate change on water resources.

Cultural outcomes for Aboriginal peoples and Torres Strait Islanders in water planning

To achieve the objective to enhance the water planning framework to better recognise the importance of water resources to Aboriginal peoples and Torres Strait Islanders, the Bill amends the *Water Act 2000* to include cultural outcomes for Aboriginal peoples and Torres Strait Islanders as something that must be stated in a water plan. Cultural outcomes will be specified separately from economic, social and environmental outcomes. Cultural outcomes will be achieved mainly through the plan's environmental flow objectives, amongst other measures. The Bill expands the definition of environmental flow objectives to make it clear that these objectives protect environmental, cultural and social outcomes within the plan area. This aligns with the approach under the *Environmental Protection Act 1994*, which defines 'environment' to include ecosystem constituents, natural and physical resources, and social, economic, aesthetic and cultural conditions.

Specifying cultural outcomes in water plans is separate to the existing mechanisms in the *Water Act 2000* that provide for the take and interference with water for traditional activities or cultural purposes. Further, the amendments proposed by the Bill to specify cultural outcomes in water plans will not remove the ability for the plan to also consider economic opportunities for Aboriginal peoples and Torres Strait Islanders through the use of or access to water, such as through setting unallocated water reserves. Water plan provisions will continue to be tailored, on a catchment by catchment basis, to provide flexibility in providing water to support economic development opportunities for Aboriginal peoples and Torres Strait Islanders, informed by consultation.

Temporary access to strategic water infrastructure reserves

To achieve the objective to allow temporary access to water held in strategic water infrastructure reserves until the reserve is required for its intended purpose, the Bill introduces a new mechanism in the *Water Act 2000.* The new mechanism will allow water held in strategic water infrastructure reserves to be temporarily released as unallocated water, and granted temporarily through a water licence of up to three years, until the reserve is required for its intended purpose. Strategic water infrastructure reserves are defined to include strategic water infrastructure reserves identified under a water plan or strategic reserves identified under a water plan that are not set aside for Indigenous purposes.

The Bill specifies that the chief executive must have regard to a number of matters in deciding to temporarily release water held in a strategic water infrastructure reserve, such as the likelihood of water being required for its intended purpose in the short-term. Additional considerations are also specified for carrying out the temporary release process, which must be via the unallocated water process prescribed by the Water Regulation 2016, such as water allocation security objectives and environmental flow objectives under the relevant water plan and existing water markets. Importantly, a water licence granted as a result of a temporary release of unallocated water may only be granted for a period of up to three years, and may not be renewed, reinstated, relocated, amalgamated or subdivided.

Urgent actions for dealing with water quality issues

To achieve the objective to provide a mechanism to allow actions that may be inconsistent with water planning or operational rules to address urgent water quality issues the Bill introduces new powers to the Minister and chief executive to direct actions (or non-actions) to prevent or remedy a water quality issue. These powers may be utilised where the action (or non-action) may be inconsistent with a water planning instrument or operational rule. Under these powers, actions may be directed to the holder of a licence that authorises the operation of infrastructure (such as a resource operations licence or distribution operations licence) or another entity with an obligation under such a licence or a water planning instrument.

To ensure action under the new powers will only be exercised under appropriate and exceptional circumstances, the Minister or chief executive must be satisfied urgent action is required and have regard to a number of considerations, including potential impacts on critical water supplies, the water security of water entitlement holders and impacts on the environment. Appropriate circumstances may be, for example, a cyclone or intense rainfall event that may lead to the contamination of water in a dam or weir. In this circumstance, the power could be used to allow water to be passed through the weir during the event to allow more freshwater inflows to flush and replenish water storage supplies.

Alternative ways of achieving policy objectives

The policy objectives cannot be met except by legislative amendment to the *Mineral Resources Act 1989* and attendant regulation, the *Mineral and Energy Resources (Common Provisions) Act 2014* and attendant regulation, the *Coal Mining Safety and Health Act 1999,* the *Petroleum and Gas (Production and Safety) Act 2004*, the *Petroleum Act 1923*, the *Geothermal Energy Act 2010*, and the *Greenhouse Gas Storage Act 2009*.

The water planning framework is legislated under the *Water Act 2000*, so consequently there is no other alternative method of achieving the policy objectives without using the Bill as a vehicle.

Estimated cost for government implementation

No costs to government are currently envisaged for any of the proposed changes. However, if any operational costs do arise they will be met from existing agency budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Clause 158 of the Bill inserts sections 842 and 843 into the *Mineral Resources Act 1989* to clarify the application of sections 833 and 834 in that Act. Sections 833 and 834 are savings provisions inserted by the *Mineral and Energy Resources (Common Provisions) Act 2014* which were intended to ensure the Alternative State Provisions (refer to Schedule 1A of the *Mineral Resources Act 1989* as it was in force before the *Mineral and Energy Resources (Common Provisions) Act 2014* omitted the schedule) continued to apply to certain mining lease applications and mining tenements.

This clause raises a fundamental legislative principle issue as amending sections 833 and 834 to clarify their application constitutes a potential breach of the fundamental legislative principle *that legislation should not retrospectively take away a right or impose a liability.*

Whilst the intention of sections 833 and 834 was to apply to certain applications or tenements only, the drafting of these provisions was unclear. The amendments in this Bill clarify that sections 833 and 834 only apply, and are taken to have always applied, to applications and granted mining tenements that were covered by the former Schedule 1A of the *Mineral Resources Act 1989* as intended. This clarification will not impact on any other mining tenements as their application has been narrowly interpreted by the Department.

Whilst the intention of sections 833 and 834 was to apply to certain applications or tenements only, their drafting could be more broadly applied. The amendments in this Bill clarify that sections 833 and 834 only apply, and are taken to have always applied, to applications and granted mining tenements that were covered by the former Schedule 1A of the *Mineral Resources Act 1989* as intended. This clarification will not impact on any other mining tenements as their application has been narrowly interpreted by the Department.

For this reason, the potential breach of a fundamental legislative principle in Clause 158 is considered to be justified and appropriate.

The new powers to the Minister and chief executive with respect to dealing with urgent water quality incidents could potentially breach the following fundamental legislative principles: *Whether legislation has sufficient regards to the institution of Parliament; Whether legislation allows the delegation of legislative power only*

inappropriate cases and to appropriate person; Whether legislation has sufficient regard to rights and liberties of individuals; and Whether administrative power is subject to appropriate review.

Water quality issues may have serious and widespread consequences. Action under this new power would be in exceptional circumstances only. Prior to directing an action, the official (Minister or chief executive) would take into account a range of considerations, including any potential impacts on critical water supplies, the water security of water entitlement holders and the public interest, including public health and safety. For example, a cyclone or intense rainfall event can lead to the contamination of water in a dam or weir. In this circumstance, the power could be used to allow water to be passed through the weir during the event to allow more freshwater inflows to flush and replenish water storage supplies.

The new power will allow the Minister or chief executive to direct actions that are non-compliant or inconsistent with a water management protocol, distributions operations licence, resource operations licence or interim resource operations licence. A Minister's direction under this new provision can also be inconsistent with a water plan, which is subordinate legislation. While the ability to direct an action inconsistent with subordinate legislation could be perceived to have insufficient regard to the institution of Parliament, the power is necessary to facilitate urgent actions to ensure that water quality issues can be dealt with lawfully, appropriately and without significant delay. As a water plan is made by the Minister, it is considered the Minister is the appropriate entity to make such a direction. Both the Minister and chief executive powers to give directions are provided with respect to instruments prepared by the Minister or chief executive, as such they are considered the appropriate persons for the delegation of this power.

The exercise of the new power to direct urgent actions to prevent, minimise, mitigate or remedy a water quality issue could potentially infringe individual rights and liabilities. This is because actions required under a direction would be inconsistent with a distribution operations licence, resource operations licence, interim resource operations licence, water management protocol or water plan that the entity given the direction would otherwise be required to comply with or operate under. The Bill authorises the giving of such a direction only when circumstances warrant, with appropriate safeguards. The Bill provides that in making the direction the Minister or chief executive must consider whether there are any other mechanisms that could be used to direct or authorise the action to be undertaken within an appropriate timeframe. This helps to ensure that this power is only used as a last resort. Further, the Bill only allows the giving of a direction if the action, or prevention of action, is considered 'urgent'.

The new provisions do not expressly limit the relevant entities who may be issued a direction, in that the entity is not required to have caused or contributed to the water quality issue. Relevant entities that may be issued directions are typically the operators of water infrastructure, such as dams, which may be either impacted or used in a way to resolve the water quality issue. As such, they will often be the best or only entity that is in a position to take action to deal with the issue, which may otherwise have serious and widespread consequences.

There is no provision in the Bill for compensation to be paid to a relevant entity that is given a direction about a water quality issue. However, the Bill provides protection from civil liability to an entity complying with a direction under the new power for dealing with urgent water quality issues. It is necessary to ensure that entities complying with a water quality direction are not made liable for actions they are required to take, or not take, under the direction to which they are required to comply. This protection from liability is required to ensure that recipients of directions, most likely the operators of water infrastructure, are protected from liability in terms of potential inability to meet contractual arrangements they have in place with water entitlement holders within their water supply scheme.

The Bill does not provide for merit based review of a decision to give a direction under the new provisions. This is considered appropriate given the urgency associated with the direction. The Bill provides for a report to be prepared about the direction to outline the details of the water quality issue, the circumstances under which the urgent action was required and any actions carried out, or not carried out, as a result of the direction. This report will be made publically available to ensure transparency surrounding the need for, and outcomes of, the Minister or chief executive using the direction power.

Legislation should not confer immunity from proceeding or prosecution without adequate justification

New section 203E provides that a relevant entity, where taking action that is inconsistent with supply contract arrangements, is not liable for loss or damage caused as a result of actions taken, or not taken, in order to comply with a water quality direction where the entity was acting honestly and without negligence. A relevant entity that may be issued a water quality direction includes the operators of water supply schemes who may have supply and infrastructure contractual arrangements in place that complying with the direction may be inconsistent with. It is considered necessary and appropriate to provide protection from liability to relevant entities complying with directions, to ensure they are not exposed to liability for any resulting loss or damage. New section 203E limits the protection to actions done, or omissions made, honestly and without negligence. It is not intended that this section affect the liability of the relevant entity for negligence. The protection from liability provided by new section 203E is consistent with that provided under section 25X of the *Water Act 2000* for service providers complying with water supply emergency declarations.

Further, new section 203F provides protection to the State, Minister or chief executive from civil liability in the circumstance they fail to give a direction under the new powers for dealing with an urgent water quality issue. This protection from liability is justified by potential consequences of a water quality issue, which mean that urgent decisions and actions may need to be taken in order to manage the issue. Whether or not to give a direction involves the exercise of important administrative discretion, and different minds may, legitimately come to different conclusions about what actions should be taken, or not taken. Providing protection from liability associated with the decision about whether to issue, or not to issue, a direction ensures the discretion can be exercised without fear of being held liable for a failure to give a direction. This protection from liability is consistent with that provided under section 25W of the *Water Act 2000* for failure to make a water supply emergency declaration.

For these reasons, the potential breaches of fundamental legislative principles mentioned above are considered justified and appropriate.

Whether legislation has sufficient regard to Aboriginal tradition and Island custom

New section 45(2)(b) supports the regard the Act has for Aboriginal tradition and Island custom by requiring consideration of the interests of Aboriginal parties or Torres Strait Islanders through amendments to include cultural outcomes in water plans.

Consultation

On 5 July 2017, industry stakeholders were provided with a consultation draft of the Bill and a summary of amendments for feedback.

Stakeholders included the:

- Association of Mining and Exploration Companies (AMEC);
- Australian Petroleum Production and Exploration Association (APPEA);
- GasFields Commission Queensland (GFC);
- Queensland Resources Council (QRC);
- Queensland Farmers' Federation (QFF);
- AgForce Queensland (AgForce) ;
- Environmental Defenders Office (EDO);
- Lock the Gate Alliance (LTGA);
- World Wildlife Fund (WWF);
- Resolution Institute (RI);
- Local Government Association of Queensland (LGAQ);
- Queensland Law Society (QLS);
- North Queensland Miners Association (NQMA);
- Queensland Sapphire Miners Association (QSMA);
- Queensland Boulder Opal Association (QBOA); and
- Queensland Small Miners Council (QSMC).

Meetings to discuss the amendments in detail were held through July 2017 with all stakeholders except:

- AMEC;
- QFF;
- LTGA;
- LGAQ;
- RI;
- QBOA; and
- QSMC

Written submissions were received from:

- AgForce;
- APPEA;
- AMEC;

- GFC;
- QLS;
- QRC;
- NQMA; and
- QSMA.

DNRM's Water Engagement Forum was consulted on the proposals on 8 March, 2 June, 10 July and 2 August 2017 including receiving a consultation draft of the provisions for comment. Stakeholders of the Water Engagement Forum include:

- AgForce;
- AMEC;
- Australian Bankers' Association;
- APPEA;
- EDO;
- Great Barrier Reef Marine Park Authority;
- Irrigation Australia;
- LGAQ;
- Local Management Area (LMA);
- Support Services Pty Ltd, Natural Resource Management (NRM) Regions Queensland;
- Queensland Conservation Council;
- QFF;
- QRC;
- State Council of River Trusts;
- Queensland Seafood Industry Association;
- Seqwater;
- SunWater;
- The Wilderness Society; and
- WWF.

The following groups were also consulted on the proposed amendment to include cultural outcomes in water plans:

- Georgina Diamantina Aboriginal Group;
- The Northern Basin Aboriginal Nations;
- The Girringun Aboriginal Corporation; and
- Reef Catchments Traditional Owners Reference Group;
- Chuulangun Aboriginal Corporation;
- Northern Gulf Resource Management;
- Burnett Mary Regional Group – Bunya Peoples Aboriginal Corporation;
- Torres Strait Regional Authority; and
- Southern Gulf NRM.

Consultation with the Queensland Productivity Commission

All amendments were the subject of an assessment by the Office of Best Practice Regulation (OBPR) or departmental self-assessed exclusion. For amendments assessed by OBPR, the advice received was that no amendments required further regulatory assessment.

All amendments not sent to OBPR for assessment met exclusion criteria, meaning further regulatory assessment was not required.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. The amendments in the Bill do not impact on other jurisdictions or the Commonwealth, and are not affected by any national legislation or work plans through the Council of Australian Governments.

In many cases, amendments are specifically being made to address errors in drafting or interpretation that only arise in Queensland due to the content of the existing legislation.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the short title of the Act, when enacted, will be the *Mineral, Water and Other Legislation Act 2017*.

Clause 2 provides that the provisions relating to the statutory negotiation process for conduct and compensation agreements (CCAs) and make good agreements (MGAs) will commence by proclamation.

In addition the following clauses relating to amendments for transfers of bores will also commence by proclamation:

- clauses 139, 185, 205 and 215; and
- clause 161 to the extent it inserts definitions *owner* and *transfer*.

The remaining provisions will commence on assent.

Part 2 Amendment of Coal Mining Safety and Health Act 1999

Act amended

Clause 3 provides for amendments to the *Coal Mining Safety and Health Act 1999.*

Amendment of s 41 (Obligations of coal mine operators)
Clause 4 amends section 41(3) to ensure that the definition of adjacent or overlapping petroleum authority is consistent with the terminology used for the new overlapping tenure safety framework when referring to authorities or tenures under the *Petroleum and Gas (Production and Safety) Act 2004* or the *Petroleum Act 1923*.

Amendment of s 64C (Application of div 3A)
Clause 5 amends section 64C to confirm that division 3A of the *Coal Mining Safety and Health Act 1999* applies when coal mining operations overlap with any of the following areas, which are each an overlapping area:

- the area of a petroleum authority under the *Petroleum and Gas (Production and Safety) Act 2004*; or
- the area of a petroleum lease, authority to prospect or water monitoring authority under the *Petroleum Act 1923;* or
- an area adjacent to any of these overlapping areas;
- or the area of a petroleum resources authority to which the Common Provisions Act, chapter 4 applies; and
- the coal mining operations physically affect, or may physically affect, the safety of persons or plant in the overlapping area.

The amendment makes the application of the division in the *Coal Mining Safety and Health Act 1999* requiring joint interaction management plans more consistent with

the application of the division requiring joint interaction management plans in the *Petroleum and Gas (Production and Safety) Act 2004.*

Insertion of new Part 20, Division 6

Clause 6 inserts new section 306 in new division 6 of the *Coal Mining Safety and Health Act 1999*.

Subsection (1) provides that section 306 of the *Coal Mining Safety and Health Act 1999* applies in relation to coal mining operations carried out in an overlapping area, if a petroleum authority relating to the overlapping area is an authority to prospect, or petroleum lease, or water monitoring authority under the *Petroleum Act 1923.*

Subsections (2) and (3) of section 306 provide that coal mining operations can continue under the overlapping safety plan, as if the overlapping safety plan is a joint interaction management plan, until a joint interaction management plan is made under section 64E of the *Coal Mining Safety and Health Act 1999*.

This transitional period is required because the site senior executive for the coal mine and the operator of each authorised activities operating plant may not yet have made a joint interaction management plan for the overlapping operations, due to a drafting error in the *Petroleum and Gas (Production and Safety) Act 2004.*

The drafting error is corrected in Clause 218 which confirms that the safety provisions in the *Petroleum and Gas (Production and Safety) Act 2004* apply not only to petroleum authorities under the *Petroleum and Gas (Production and Safety) Act 2004*, but also apply to petroleum tenures under the *Petroleum Act 1923.*

The overlapping safety plan applying to the coal mining operations means that part of the safety and health management system under the *Coal Mining Safety and Health Act 1999* that deals with the hazards and risks relating to carrying out activities in an overlapping area with petroleum and gas activities.

Subsection (4) requires that the site senior executive of the coal mine responsible for making a joint interaction management plan under section 64E must make reasonable attempts to consult with the operator of each authorised activities operating plant, within two months after the commencement of section 306; and if the site senior executive seeks to rely on section 64E(2), give the operator of each authorised activities operating plant a copy of the proposed plan, mentioned in section 64E(2), within two months after the commencement of section 306.

Subsection (5) sets out the meaning in section 306 of “overlapping safety plan”.

Amendment of sch 3 (Dictionary)

Clause 7 amends the definition of “overlapping area” in schedule 3 to refer to section 64C(1)(a) of the *Coal Mining Safety and Health Act 1999* and deletes the reference to section 104 of the Common Provisions Act. This is a consequential amendment to the amendment of section 64C of the *Coal Mining Safety and Health Act 1999.*

Part 3 Amendment of Geothermal Energy Act 2010

Act amended

Clause 8 provides that Part 3 of the Bill amends the *Geothermal Energy Act 2010*.

Amendment of s 201 (Right of entry to facilitate decommissioning)

Clause 9 amends section 201 of the *Geothermal Energy Act 2010*. This is a consequential amendment due to the omission of the 'land access' provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 312 (Application of pt 1)

Clause 10 amends section 312 to replace 'an election notice' with 'a conference election notice'. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 313 (Calling conference)

Clause 11 amends section 313(1) to replace 'an election notice' with 'a conference election notice' and to omit the words 'about negotiating a conduct and compensation agreement'. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 315 (What happens if a party does not attend)

Clause 12 amends section 315(1) to clarify that the section applies only to a conference under section 313(2) by replacing 'the conference' with 'a conference under section 313(2)'. It also amends the section to remove the note under section 315(2). This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 316 (Authorised officer's role)

Clause 13 amends section 316 to update section referencing. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 318 (Agreement made at conference)

Clause 14 removes subsection (2) from section 318. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Omission of s 354 (Replacement of instrument for geothermal tenure)

Clause 15 omits section 354 in the *Geothermal Energy Act 2010*. This section is being omitted because DNRM will no longer issue hard copies of instruments for geothermal authorities and these instruments will eventually be phased out.

Any details that are currently being recorded on hard copy instruments for geothermal authorities are also recorded on the electronic MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Amendment of sch 1 (Decisions subject to appeal)

Clause 16 omits the entry for section 354 'refusal to replace instrument for geothermal tenure' from schedule 1 'Decisions subject to appeal' of the *Geothermal Energy Act 2010*, as the Bill omits section 354 'Replacement of instrument for geothermal tenure'.

Amendment of sch 2 (Dictionary)

Clause 17 amends schedule 2 of the *Geothermal Energy Act 2010* to amend or insert various definitions.

Part 4 Amendment of Greenhouse Gas Storage Act 2009

Act amended

Clause 18 provides that the *Greenhouse Gas Storage Act 2009* is amended by the Bill in this part.

Amendment of s 137 (Minister's power to decide excluded land)

Clause 19 amends section 137 of the *Greenhouse Gas Storage Act 2009* to reflect that DNRM is no longer going to issue hard copies of instruments for greenhouse gas authorities and these instruments will eventually be phased out.

Any details currently being recorded on hard copy instruments for greenhouse gas authorities are also recorded on the electronic MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Amendment of s 238 (Key authorised activities)

Clause 20 amends section 238 of the *Greenhouse Gas Storage Act 2009*. This is a consequential amendment due to the omission of the 'land access' provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

The 'Note', item 1 in section 238 of the *Greenhouse Gas Storage Act 2009* references what was a division in this Act that related to 'Access to private land outside area of greenhouse gas authority'. This note will reference the equivalent chapter, part and division of the *Mineral and Energy Resources (Common Provisions) Act 2014*. The reference to 'part 12' of chapter 5 in the *Greenhouse Gas Storage Act 2009* will remain.

Amendment of s 268 (Right of entry to facilitate decommissioning for GHG permit)

Clause 21 amends section 268 of the *Greenhouse Gas Storage Act 2009*. This is a consequential amendment due to the omission of the 'land access' provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 328 (Operation of div 1)

Clause 22 amends section 328 of the *Greenhouse Gas Storage Act 2009*. This is a consequential amendment due to the omission of the 'land access' provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

A greenhouse gas authority holder must comply with the provisions of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*, when accessing land to carry out authorised activities under the greenhouse gas authority.

Amendment of s 335 (Authorisation to enter to facilitate compliance)

Clause 23 amends section 335 of the *Greenhouse Gas Storage Act 2009* to update cross-references due to the omission of the 'land access' provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Omission of s 375 (Replacement of instrument for GHG authority)

Clause 24 omits section 375 of the *Greenhouse Gas Storage Act 2009* to reflect that DNRM is no longer going to issue hard copies of instruments for greenhouse gas authorities and these instruments will eventually be phased out.

Amendment of s 377A (Application of pt 1A)

Clause 25 amends section 377A to replace 'an election notice' with 'a conference election notice'. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 377B (Calling conference)

Clause 26 amends section 377B(1) to replace 'an election notice' with 'a conference election notice' and to omit the words 'about negotiating a conduct and

compensation agreement'. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 377D (What happens if a party does not attend)

Clause 27 amends section 377D to clarify that the section applies only to a conference under section 377B(2) by replacing 'the conference' with 'a conference under section 377B(2)'. It also amends the section to remove the note under section 377D(2). This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 377E (Authorised officer's role)

Clause 28 amends section 377E to update section referencing. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 377G (Agreement made at conference)

Clause 29 removes subsection (2) from section 377G. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of sch 1 (Decisions subject to appeal)

Clause 30 omits the entry for section 375 from schedule 1 'Decisions subject to appeal' of the *Greenhouse Gas Storage Act 2009*, as the Bill omits section 375.

Amendment of sch 2 (Dictionary)

Clause 31 provides for the inclusion of 'conference election notice' as a definition made because of the amendments inserted by the Bill.

This clause also amends the definition of 'pipeline land'. This amendment reflects that 'pipeline land' will no longer be recorded in a hard copy instrument for a greenhouse gas tenure.

The wording 'instrument of tenure' is being retained in this definition as a greenhouse gas tenure, granted before the commencement of this clause, may have had 'pipeline land' described only in the hard copy instrument of tenure and nowhere else. While this is unlikely, it is being retained to ensure that 'pipeline land' for the greenhouse gas tenure is described somewhere. After the commencement of this clause, 'pipeline land' for granted greenhouse gas tenure will be recorded in the register.

Part 5 Amendment of Mineral and Energy Resources (Common Provisions) Act 2014

Act amended

Clause 32 provides that part 5 of the Bill amends the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 43 (Carrying out advanced activities on private land requires agreement)

Clause 33 amends section 43 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to permit a resource authority holder to enter private land to carry out an advanced activity if the resource authority holder is a party to an arbitration under part 7, division 2, subdivision 3A or an application has been made to the Land Court under section 96.

This clause also amends section 43 to clarify that the section does not limit the requirement under section 39 to of the *Mineral and Energy Resources (Common Provisions) Act 2014* to provide a valid entry notice about an entry for a purpose under section 38.

Amendment of s 44 (Deferral agreements)

Clause 34 amends section 44(2) of the *Mineral and Energy Resources (Common Provisions) Act 2014* to correct a typographical error.

Amendment of s 45 (Right to elect to opt out)

Clause 35 amends section 45(4)(c) of the *Mineral and Energy Resources (Common Provisions) Act 2014* to clarify that an opt-out agreement ends when it is terminated within the cooling-off period prescribed under section 45(3). An opt-out agreement will only end if it fits one of the criteria prescribed in section 45(4).

Amendment of s 70 (Consent required for entry on restricted land)

Clause 36 inserts a new subsection (5) that clarifies that section 70 does not apply for restricted land for a mining claim or mining lease under the *Mineral Resources Act 1989*. While restricted land for mining claims and mining leases is defined in the *Mineral and Energy Resources (Common Provisions) Act 2014*, the way that restricted land can be accessed under these tenures has always been governed by the *Mineral Resources Act 1989*.

Inserting this subsection in the *Mineral and Energy Resources (Common Provisions) Act 2014* is necessary due to the omission of sections 51(4) and 238(3) within the *Mineral Resources Act 1989*.

Replacement of s 81 (General liability to compensate)

Clause 37 amends the definition of 'compensatable effect' in section 81 of the *Mineral and Energy Resources (Common Provisions) Act 2014* by removing the necessarily and reasonably incurred accounting, legal, or valuation costs. This liability is now separately provided for in new section 91 which provides for the recovery of necessarily and reasonably incurred negotiation and preparation costs.

These costs have been removed from the definition of 'compensatable effect' to clarify that the resource authority holder is liable to pay these costs to the eligible claimant even where a CCA or deferral agreement is not reached between the parties.

Amendment of ch 3, pt 7, div 2, hdg (Provisions for conduct and compensation agreements)

Clause 38 amends the heading of chapter 3, part 7, division 2 to omit the words 'provisions for'.

Amendment of ch 3, pt 7, div 2, sdiv 1, hdg (Application of div 2)

Clause 39 amends the heading of chapter 3, part 7, division 2, subdivision 1 to replace the words 'of div 2' with 'of division'.

Amendment of ch 3, pt 7, div 2, sdiv 2, hdg (Conduct and compensation agreement)

Clause 40 amends the heading of chapter 3, part 7, division 2, subdivision 2 to clarify that this subdivision is for the making of a CCA.

Insertion of new ch 3, pt 7, div 2, sbdiv 2A

Clause 41 inserts new sections 83A and 83B into the *Mineral and Energy Resources (Common Provisions) Act 2014*.

New section 83A enables a party to request that the other party participate in a departmental conference conducted by an authorised officer for the purpose of negotiating a resolution of the dispute for a CCA. Parties can provide a conference election notice at any time prior to or during the minimum negotiation period under section 84. However, to ensure certainty of process, parties cannot provide a conference election notice if either party has given the other an ADR election notice or arbitration election notice.

New section 83B applies if a conference election notice is given. The conference must be conducted under the prescribed requirements. The authorised officer responsible for conducting the conference must take all reasonable steps to hold the conference within 20 business days of the notice being given. This timeframe may, if requested by the parties, be extended by the authorised officer because of stated reasonable or unforeseen circumstances.

Any conferences underway under section 83B will cease if an ADR election notice or arbitration notice is given about a matter the subject of the conference (as mentioned in s83A(3)(a)).

Nothing said by a person at the conference, including offers or admissions, is admissible in evidence in a proceeding without the person's consent.

These new sections provide that conferences with an authorised officer are outside of the statutory negotiation process and, in effect, remove these conferences as a criterion which enables a Land Court application to be made. This implements recommendation 4 of the Independent Review of the Gasfields Commission Queensland and Associated Matters.

Amendment of ch 3, pt 7, div 2, sdiv 3, hdg (Negotiation process)

Clause 42 omits the word 'process' in the heading of chapter 3, part 7, division 2, subdivision 3 and inserts the words 'and ADR' to clarify that this subdivision is for the negotiation and ADR of a CCA.

Amendment of s 85 (Negotiations)

Clause 43 amends section 85 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to remove a definition which is no longer necessary as a consequence of amendments made by the Bill.

Amendment of s 86 (No entry during minimum negotiation period)

Clause 44 amends the heading of section 86 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to clarify that the section relates to entry to land.

The clause also amends section 86(1) to replace the term 'relevant agreement' with 'CCA or deferral agreement'.

Replacement of ss 88–91

Clause 45 replaces sections 88 to 91 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Section 88 provides that if, at the end of the minimum negotiation period, the resource authority holder and eligible claimant have not entered into a CCA, then either party may give the other an ADR election notice requiring the other party to participate in an ADR process.

Parties can elect to undertake any ADR process except arbitration. It is intended that parties will select a non-binding ADR process. Examples of ADR types include case appraisal, conciliation, mediation or negotiation.

The ADR election notice must include all of the following information:

- details of the issues in dispute;

- the type of ADR being proposed (e.g. case appraisal, mediation or conciliation);
- the name of the proposed ADR facilitator to conduct the ADR process, who must be independent of both parties; and
- that the resource authority holder is liable for the costs of the ADR facilitator.

The ADR election notice must also include any information prescribed in a regulation.

When a party receives an ADR election notice, they must accept or refuse the type of ADR and the proposed ADR facilitator within 10 business days of receiving the notice.

If there is no acceptance within 10 business days, the party that issued the ADR election notice may then propose another ADR type and/or facilitator, or apply to the Land Court or a prescribed ADR institute for a decision about the ADR type and/or facilitator. Once a decision has been obtained by the party, they must notify the other party of it.

Despite the process set out in section 88, there is still opportunity for parties to negotiate their own arrangements outside of these legislative processes.

The *Civil Proceedings Act 2011*, part 6, division 5 applies to an ADR carried out by an ADR facilitator as if a reference to an ADR process included a reference to the ADR, and a reference to an ADR convenor included a reference to the ADR facilitator.

The ability for a party to apply to the Land Court or a prescribed ADR institute for a decision about the ADR type or facilitator implements recommendation 7 of the Independent Review of the Gasfields Commission Queensland and Associated Matters.

The replacement of section 88 has the effect of removing conferences run by an authorised officer from the statutory negotiation process which parties must go through before being permitted to make an application to the Land Court for a decision. This implements recommendation 4 of the Independent Review of the Gasfields Commission Queensland and Associated Matters.

Section 89 outlines how an ADR must be conducted.

The parties must use all reasonable endeavours to negotiate a resolution of the dispute within the ‘usual period’ of 30 business days from the appointment of the ADR facilitator. The parties may agree to extend the period because of stated reasonable or unforeseen circumstances. If so, the longer period will apply to the parties instead of the ‘usual period’.

Nothing said by a person at the ADR, including admissions or offers made, is admissible in evidence in a proceeding without the person’s consent.

The resource authority holder is liable for the costs of the ADR facilitator.

Section 90 applies if a party that has received an ADR election notice did not attend the ADR and the party that issued the ADR election notice did attend. The party that did not attend the ADR is liable to pay the attending party's reasonable costs of attending. This may include any travel and accommodation costs incurred by the attending party.

The attending party may apply to the Land Court for an order requiring the party that failed to attend pay the attending party's reasonable costs of attending. However, the Land Court may order the payment of costs only if satisfied there was not a reasonable excuse for non-attendance.

This section implements the Government's response to recommendation 9 of the Independent Review of the Gasfields Commission Queensland and Associated Matters.

Section 91 applies if an eligible claimant necessarily and reasonably incurs negotiation and preparation costs in entering or seeking to enter into a CCA or deferral agreement with a resource authority holder. The resource authority holder is liable to pay the eligible claimant's necessarily and reasonably incurred negotiation and preparation costs.

This section separates the resource authority holder's liability to pay an eligible claimant's necessarily and reasonably incurred negotiation and preparation costs from the compensation liability under section 81 of the *Mineral and Energy Resources (Common Provisions) Act 2014*. These costs are payable regardless of whether a CCA or deferral agreement is reached between the parties.

Negotiation and preparation costs are defined in Schedule 2 of the *Mineral and Energy Resources (Common Provisions) Act 2014*, as amended by Clause 64. They are defined to mean accounting costs, legal costs, valuation costs, or the costs of an agronomist.

The requirement for resource authority holders to pay an eligible claimant's necessarily and reasonably incurred accounting, legal and valuation costs has existed since the establishment of the land access framework in 2010.

The addition of the costs of an agronomist as a professional fee which a landholder may recover from the resource authority holder implements recommendation 9 of the Independent Review of the Gasfields Commission Queensland and Associated Matters.

This clause also inserts new subdivision 3A Arbitration. The relevant sections insert provisions that allow parties to a CCA negotiation to utilise arbitration to resolve their dispute, rather than making an application to the Land Court. Parties may only access arbitration by agreement. This implements recommendation 8 of the Independent Review of the Gasfields Commission Queensland and Associated Matters.

Section 91A enables a party to give an arbitration election notice to the other party requesting the other party participate in an arbitration about the dispute. This notice may only be given where:

- the resource authority holder has issued a negotiation notice and at the end of the minimum negotiation period the parties have not negotiated a deferral agreement or CCA; or
- a party has given an ADR election notice to another party and at the end of the period applying under section 89(2) or (4), the parties have not reached a CCA.

The arbitration election notice must state:

- details of the matters in dispute;
- the name of the arbitrator (who is independent of both parties) nominated to conduct the arbitration;
- that if a party accepts the request for arbitration, neither party can then make an application to the Land Court for a determination of the dispute;
- that the parties are liable to pay the costs of the arbitration as prescribed in section 91E;
- that the parties may only be legally represented in the circumstances outlined in section 91C; and
- any information prescribed in a regulation.

A party that receives an arbitration election notice is required to accept or refuse the request for arbitration within 10 business days of the notice being given.

If the arbitration request is accepted, the parties may, within 10 business days, jointly appoint the arbitrator that was proposed in the arbitration election notice.

If the parties do not jointly appoint the arbitrator, the party that initially issued the arbitration election notice must require a prescribed arbitration institute to appoint an arbitrator. The prescribed arbitration institute must appoint an arbitrator who is independent of both parties to conduct the arbitration.

This section also gives immunity to the prescribed arbitration institute from civil monetary liability when appointing an arbitrator.

Section 91A(8) defines the term ‘prescribed arbitration institute’ to mean an entity for appointing arbitrators that is prescribed in a regulation.

Section 91B provides the arbitrator with authority to decide the dispute by issuing an award. The arbitrator may only decide a matter to the extent it is not already agreed between the parties.

The arbitrator must issue the award within six months of being appointed as arbitrator.

Section 91C outlines the circumstances in which a party may be represented by a lawyer in the arbitration. A party can be represented by a lawyer if both parties agree to the party being represented, or the arbitrator permits the party to be represented.

This is consistent with the recommendations of the Independent Review of the Gasfields Commission Queensland and Associated Matters.

Section 91D provides that the *Commercial Arbitration Act 2013* applies to the arbitration to the extent it is not inconsistent with subdivision 3A of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Section 91E provides that where parties have not participated in an ADR process about the dispute before the arbitrator was appointed, the resource authority holder will be liable to pay the fees and expenses of the arbitrator.

If the parties have participated in an ADR process before the appointment of the arbitrator, the parties are liable to pay the fees and expenses of the arbitrator in equal shares (unless the parties agree, or the arbitrator decides, otherwise).

Regardless of where the obligation to pay the arbitrator's fees and expenses falls, the parties to an arbitration must bear their own costs for the arbitration unless the parties agree, or the arbitrator decides, otherwise. This includes their own costs of attendance, or representation, if any.

Section 91F provides that the arbitrator's decision is final and has the same effect as if the parties had entered into a binding and enforceable agreement to the same effect as the decision.

The decision cannot be appealed. However, the arbitrator's decision does not limit or otherwise affect a power of the Supreme Court to decide if the arbitrator's decision is affected by jurisdictional error.

Omission of ch 3, pt 7, div 4 (Changes not affecting compensation)

Clause 46 omits division 4 of chapter 3, part 7 as this provision has been relocated to sections 101A and 101B by Clause 53.

Amendment of ch 3, pt 7, div 5, hdg (Land Court jurisdiction for compensation and conduct)

Clause 47 omits the words 'for compensation and conduct' in the heading of chapter 3, part 7, division 5.

Replacement of ch 3, pt 7, div 5, sdiv 1, hdg (Negotiation process)

Clause 48 replaces the heading of chapter 3, part 7, division 5 with 'Subdivision 1 Conduct and compensation'.

Renumbering of ch 3, pt 7, div 5

Clause 49 renumbers the chapter 3, part 7, division 5, subdivision 1 to chapter 3, part 7, division 4.

Replacement of s 96 (Land Court may decide if negotiation process unsuccessful)

Clause 50 replaces section 96 of the *Mineral and Energy Resources (Common Provisions) Act 2014* and also inserts two new sections: 96A and 96B.

Section 96 provides the circumstances in which a party may apply to the Land Court for a decision about the dispute preventing the parties from reaching a CCA. These amendments remove participation in a conference convened by an authorised officer of the department as a requirement which enables a party to make an application to the Land Court.

Under the new sections, either party may apply to the Land Court if:
- one of the parties has issued an ADR election notice to the other party;
- after the period applicable to the negotiation under section 89(2) or (4) has ended, the parties have not entered into a CCA; and
- neither party has issued the other with an arbitration election notice, or a request for arbitration has been refused by one of the parties.

The Land Court may decide the liability or future liability only to the extent it is not already subject to a CCA between the parties.

Section 96A provides that the Land Court may, if it considers it desirable in the interests of justice, hear an application brought under section 96 at the same time as a compensation proceeding brought by the eligible claimant under the *Environmental Protection Act 1994*.

Section 96B allows for any party to a CCA or deferral agreement negotiation to apply to the Land Court for a declaration that all or part of the negotiation and preparation costs incurred by the eligible claimant are payable under section 91. In making a declaration about these costs, the Land Court will determine whether all or part of the costs incurred by the eligible claimant were necessarily and reasonably incurred.

Section 96B also allows for an eligible claimant to apply for an order requiring the resource authority holder pay the eligible claimant's necessarily and reasonably incurred negotiation and preparation costs.

A party may apply to the Land Court for a declaration or order even where a CCA or deferral agreement has not been reached. The Land Court must not make an order or declaration in relation to the costs of an agronomist unless the agronomist is appropriately qualified to perform the function for which the costs are incurred. Schedule 1 of the *Acts Interpretation Act 1954* defines the term 'appropriately qualified'.

Amendment of s 97 (Orders Land Court may make)

Clause 51 amends section 97 of the *Mineral and Energy Resources (Common Provisions) Act 2014* as a consequence of the replacement of section 96, which removed prior attendance at a conference run by an authorised officer as a criterion that enables an application to the Land Court.

This clause also inserts a new subsection (3) as a consequence of the amendments made to section 96. The Land Court may have regard to the behaviour of the parties in the process leading to the application when making an order under section 97(2)(c).

Amendment of s 98 (Additional jurisdiction for compensation, conduct and related matters)

Clause 52 amends section 98 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to omit section 98(1)(b). The omission of subsection (1)(b) is necessary to ensure that parties follow the statutory negotiation process before going to the Land Court.

Insertion of new ch 3, pt 7, div 5

Clause 53 establishes a new chapter 3, part 7, division 5 and inserts three new sections as a consequence of the omission of section 95 of the *Mineral and Energy Resources (Common Provisions) Act 2014* by Clause 46.

Section 101A provides that each of the following agreements are binding on the parties to the agreement, as well as each of their successors and assigns:

- conduct and compensation agreement;
- opt-out agreement; and
- road compensation agreement.

Section 101B provides that where the Land Court makes a decision under division 4, the decision is binding on the parties to the proceeding, as well as each of their successors and assigns.

Section 101C clarifies that the decision of an arbitrator under division 2, subdivision 3A is binding on the parties to the arbitration, as well as each of their successors and assigns.

The dictionary has been amended to clarify that successors includes personal representatives.

Amendment of s 175 (Application of div 4)

Clause 54 omits the reference to “between resource authority holders” in section 175 and replaces it with “persons (each a party)”.

This amendment is in response to consultation with industry which identified a gap in access to arbitration for a safety dispute. The gap primarily impacts on tenures under the *Petroleum Act 1923.* This is due to the definition of “resource authority holder” in section 103 of the *Mineral and Energy Resources (Common Provisions) Act 2014* applying throughout chapter 4, part 6, division 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Deleting the reference to “between resource authority holders” in section 175 and replacing it with a more generic term ensures that access to arbitration of safety

disputes is not restricted to authorities or tenures within the definition of "resource authority holder" in chapter 4 part 6, division 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014* and includes tenures under the *Petroleum Act 1923.*

The procedure for arbitration of any disputes, including safety disputes (mentioned in section 175 (d) to (f)), is set out in chapter 4, part 6, division 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014.*

The new overlapping tenure safety framework for coal and petroleum commenced on 27 September 2016 and requires the site senior executive for the coal mine and petroleum operators to develop and maintain joint interaction management plans to safely manage their overlapping operations, either through agreement or arbitration. If a joint interaction management plan cannot be agreed, the safety dispute must go to arbitration. Safety provisions for the new overlapping tenure safety framework for coal and petroleum are in the *Coal Mining Safety and Health Act 1999* (sections 64C to I), Mineral Resources Regulation 2013 (sections 23 to 29), and *Petroleum and Gas (Production and Safety) Act 2004* (sections 705 to 705CB).

Amendment of s 176 (Definition for div 4)

Clause 55 replaces the heading of "Definition" with the plural "Definitions" and adds the definition of "party". This is a consequential amendment to the amendment of section 175 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 177 (Nomination of arbitrator)

Clause 56 is a consequential amendment to the amendment of section 175 of the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Amendment of s 179 (Expert appointed by arbitrator)

Clause 57 is a consequential amendment to the amendment of section 175 of the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Amendment of s 181 (Costs of arbitration)

Clause 58 is a consequential amendment to the amendment of section 175 of the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Amendment of s 182 (Effect of arbitrator's decision)

Clause 59 is a consequential amendment to the amendment of section 175 of the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Amendment of s 183 (Copy of award and reasons for award)

Clause 60 is a consequential amendment to the amendment of section 175 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of ch 7, hdg (Savings and transitional provisions)

Clause 61 clarifies that chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* relates to savings and transitional provisions for Act No. 47 of 2014.

Insertion of new ch 9

Clause 62 establishes two transitional provisions for the amendments made to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

New section 245 provides that the Act, as in force before the commencement of this section, will continue to apply to parties for the purpose of the conference or ADR and any subsequent Land Court proceeding if, before the commencement:

- a party gave another party an election notice (under the current section 88) calling upon the other party to agree to a conference or an ADR to negotiate a CCA; and
- the conference or ADR was not finished (under current section 89 or 90 respectively) before the commencement.

In this circumstance, if a CCA was not agreed, the conference or ADR will be able to be used as a prerequisite to make an application to the Land Court for a determination. However, the new arbitration provisions which, when commenced, will be inserted into chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* by this Bill do not apply.

New section 246 provides that if negotiation and preparation costs incurred by an eligible claimant under section 91(1) include the costs of an agronomist, the resource authority holder is only liable to pay those costs if they were incurred after the commencement of this section. Similarly, under section 96B, the Land Court may only make an order or a declaration in relation to the costs of the agronomist if the costs were incurred by the eligible claimant after the commencement of this section.

Amendment of sch 1, s 6 (Forests and quarry materials)

Clause 63 omits a superfluous drafting note that refers readers to the Queensland Government open data website.

Amendment of sch 2 (Dictionary)

Clause 64 amends schedule 2 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to amend or insert various definitions.

Part 6 Amendment of Mineral Resources Act 1989

Act amended

Clause 65 provides that the *Mineral Resources Act 1989* is amended by the Bill in this part.

Amendment of s 7B (What is an advanced activity)

Clause 66 corrects a typesetting error in an example. Previously the example had broken incorrectly over two dot points.

Replacement of s 24A (Content of prospecting permit)

Clause 67 amends section 24A of the *Mineral Resources Act 1989* as a result of DNRM phasing out hard copies of instruments for mining tenements.

Section 24A currently sets out what must be contained in a prospecting permit. It will now set out the information that must be recorded about a prospecting permit on the electronic MyMinesOnline resource authority register.

Any details that are currently recorded on hard copy instruments for mining tenements are also recorded on the electronic MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Amendment of s 29 (Term of prospecting permit)

Clause 68 amends section 29 of the *Mineral Resources Act 1989* as a result of DNRM phasing out hard copies of instruments for mining tenements. Section 29 currently provides for the term of the prospecting permit to be stated on the permit.

Any details that are currently recorded on hard copy instruments for mining tenements are also recorded on the electronic MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Amendment of s 32 (Notice of entry under parcel prospecting permit)

Clause 69 amends section 32 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copies of instruments for prospecting permits and these instruments will eventually be phased out.

This amendment provides that the chief executive's decision not to require the prospecting permit holder to give notice to the owner or occupier of the land will be recorded in the electronic MyMinesOnline resource authority register, rather than on the permit.

Omission of s 35 (Penalty for breach of conditions)

Clause 70 omits section 35 of the *Mineral Resources Act 1989* to remove the chief executive's ability to impose a penalty not exceeding five penalty units for contravention of the conditions of a prospecting permit or contravention of the Act.

As the maximum penalty is five penalty units, the penalty is of an insufficient nature to act as a deterrent to those carrying out activities under a prospecting permit. The penalty represented an ineffective regulatory burden and the Bill removes this penalty as a result.

Amendment of s 38 (Appeals about prospecting permits)

Clause 71 amends section 38 of the *Mineral Resources Act 1989* as a consequence of the omission of section 35 by Clause 70. This amendment omits the note in subsection 38(2)(e) and omits subsection 38(2)(f).

These amendments are required to remove the ability for the Land Court to hear an appeal regarding the imposition of a penalty under section 35. The ability to hear appeals regarding penalties is not within the intended jurisdiction of the Land Court and therefore the Bill, once enacted, will remove this jurisdiction.

Replacement of s 46 (Production of prospecting permit)

Clause 72 amends section 46 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copies of instruments for prospecting permits and these instruments will eventually be phased out.

The existing section 46 requires a prospecting permit holder to produce either the prospecting permit or a written authorisation on the demand of the land owner, agent of the land owner, or other person authorised to act on behalf of the Minister.

As hard copy instruments will no longer be issued, this amendment provides that upon demand from an owner of land (or an agent for the owner) a prospecting permit holder entering that owner's land must provide the owner (or agent) a copy of the prospecting permit, and that a 'copy of a prospecting permit' includes an extract of information about the prospecting permit, from the electronic MyMinesOnline resource authority register.

Amendment of s 47 (Staying on occupied land)

Clause 73 amends section 47 of the *Mineral Resources Act 1989* to reflect the that DNRM is no longer going to issue hard copies of instruments for prospecting permits and these are eventually being phased out.

This amendment therefore provides that if consent to stay on land, or consent and conditions to stay on land is given by the landowner (or occupier in certain circumstances), the consent or conditions are to be recorded in the electronic MyMinesOnline resource authority register.

Amendment of s 51 (Land for which mining claim not to be granted)

Clause 74 omits subsection 51(4). This subsection is no longer necessary due to the insertion of section 70(5) in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 72 (Referral to Land Court of application and obligations)

Clause 75 amends section 72 of the *Mineral Resources Act 1989* to replace the reference to an objections hearing starting, with a reference to the Land Court forwarding an instruction and/or recommendation to the Minister under section 78. Objections can be withdrawn at any time prior to a recommendation and/or instruction being forwarded to the Minister.

This change ensures that the Land Court may remit a matter to the chief executive under section 72 of the *Mineral Resources Act 1989* at any point before an instruction and/or recommendation about the objection has been forwarded to the Minister.

Amendment of s 81 (Conditions of mining claim)

A Land Court decision in December 2015 (*Byerwen Coal Pty Ltd v Colinta Holdings Pty Ltd & Anor*) raised concerns that the usage of “access land” for activities such as resource haulage was unlawful. Land registered for access is routinely authorised for mining claims in Queensland. Access land commonly connects a mining tenement with a public road.

The *Mineral Resources Act 1989* will be amended to clarify the allowed activities on land used as access to a mining claim.

Clause 76 amends section 81(1) of the *Mineral Resources Act 1989* by inserting a new subsection 81(1)(b). This subsection specifies the activities that a mining claim holder can undertake on access land outside the boundary of their mining claim.

These activities are the surface transport by road of anything reasonably necessary to allow the holder to carry out an authorised activity for the mining claim. Transport of minerals mined on a mining tenement held by the mining claim holder is also able to occur on the access land.

In order to enable this road transport, it may sometimes be necessary for mining claim holders to construct road transport infrastructure. This construction can occur to the extent it is required to transport items necessary to carry out authorised activities for the mining claim and to transport minerals as outlined above.

If activities outside of those allowed on access land are proposed, such as the running of powerlines and pipelines through or over the access land, then another approval will be required, such as a mining lease for transportation purposes.

In achieving the policy intent in relation to the construction of road transport infrastructure, it is important that sections 33 and 62 of the *Transport Infrastructure Act 1994* must be satisfied first.

Amendment of s 82 (Variation of conditions of mining claim)

Clause 77 amends section 82 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copies of instruments for mining claims and these instruments will eventually be phased out.

This amendment therefore provides that each variation to the conditions of a mining claim is to be recorded in the electronic MyMinesOnline resource authority register.

Amendment of s 85 (Compensation to be settled before grant or renewal of mining claim)

Clause 78 amends section 85 of the *Mineral Resources Act 1989* to remove the chief executive's automatic referral of unresolved compensation matters to the Land Court.

Amendment of section 85(1)(a) includes a reference to each interested party when referring to the applicant and each person who is the owner of the land which is the subject of the application, and of any surface access to that land.

The existing subsections 85(4) and (5) are omitted. Section 85(4) provided that if a compensation agreement was required to be stamped by the Office of State Revenue, it was not to be lodged with DNRM until it had been stamped. A compensation agreement itself is not generally a dutiable transaction under the *Duties Act 2001* and therefore does not need to be stamped. This subsection was causing confusion and lodgement of compensation agreements with the Office of State Revenue unnecessarily.

Where a compensation agreement is a dutiable transaction, the agreement will still be required to be lodged with the Office of State Revenue for a duties assessment regardless of the omission of section 85(4).

Section 85(5) is replaced with a new section 85(4), which allows either interested party to apply in writing to the Land Court to determine the amount of compensation payable. This subsection gives parties the power to go to the Land Court before grant or renewal of a mining claim. This change is needed due to the removal of the chief executive's referral of matters to the Land Court.

Amendment of s 85A (Referral to Land Court of issue of compensation if not settled within 3 months after term of claim ends)

Clause 79 amends section 85A to change the focus from compensation for renewal of a mining claim, to the initial grant of a mining claim. The changes that relate to compensation for renewal of a mining claim are at section 93.

Section 85 removed the chief executive's automatic referral of unresolved compensation matters for the grant of mining claims to the Land Court. Instead, section 85A provides that if compensation has not been agreed or referred to the Land Court in the timeframes provided by section 85A(1), the Minister may refuse to grant the mining claim.

These changes are reflected in the amended title of section 85A.

Omission of s 88 (Issue of certificate of grant for mining claim)

Clause 80 omits section 88 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copies of instruments for mining claims and these instruments will eventually be phased out.

Amendment of s 93 (Renewal of mining claim)

Clause 81 amends section 93 of the *Mineral Resources Act 1989* to include a new notification requirement. This provides that an applicant for the renewal of a mining claim must notify each landowner the subject of the mining claim or access to the mining claim of the renewal application having been made within five business days.

The notice must include:

- the renewal application and any documents or information prescribed by regulation; and
- The most recent compensation agreement or compensation determination the holder has with the landowner (if any).

This new requirement has been introduced to ensure landowners are aware a renewal application has been made to enable them to start considering compensation.

Previously unresolved compensation matters were automatically referred by DNRM to the Land Court three months after the term of the mining claim would end (if it were not for section 93A). Section 93A says a mining claim continues while a properly made renewal application is being considered.

Changes to this clause also give the Minister the power to refuse an application for the renewal of a mining claim, if compensation has not been determined within three months after the current term of the mining claim would have ended if it were not for section 93A and the application has not been referred to the Land Court. The Minister's consideration of whether to refuse an application to renew includes a right to natural justice for the applicant in section 93(11).

Omission of ss 103 and 104

Clause 82 omits sections 103 and 104 of the *Mineral Resources Act 1989* which relate to certificates of grant of mining claims to reflect that DNRM is no longer going to issue hard copies of instruments and these instruments will eventually be phased out.

Amendment of s 108 (Abandonment of application for mining claim)

Clause 83 amends section 108 of the *Mineral Resources Act 1989* to replace a reference to mining claim application certificate with the term 'mining claim notice'. This is a consequential amendment brought about because of amendments made in the *Mineral and Energy Resources (Common Provisions) Act 2014*, to replace sections 64 to 64C (inclusive) of the *Mineral Resources Act 1989*.

Amendment of s 125 (Variation of access to mining claim area)

Clause 84 updates cross-references within section 125(6) of the *Mineral Resources Act 1989* due to amendments being made to section 85.

This clause also omits section 125(11). This is because a compensation agreement itself is not generally a dutiable transaction under the *Duties Act 2001* and therefore does not need to be stamped by the Office of State Revenue for duty.

Where a compensation agreement is a dutiable transaction the agreement is required to be lodged with the Office of State Revenue for assessment of duty.

Amendment of s 136B (Application and operation of pt 3)

Clause 85 amends section 136B of the *Mineral Resources Act 1989.* This is a consequential amendment from Clause 86 which provides a new process for the grant of exploration permits for coal outside of the tender process.

Insertion of new ch 4, pt 3, div 5

Clause 86 inserts a new division that provides the process for applying for an exploration permit for coal other than by the competitive tender process.

This new division provides existing coal mining projects the ability to obtain additional land under an exploration permit that is necessary for the operation of the coal mining project. To ensure the integrity of the tender process for coal exploration permits is maintained, this division will only apply in limited circumstances. These limited circumstances are explained below.

Section 136O provides the definitions for this new division.

Section 136P defines for this division the terms 'coal mining project' and 'project land'.

A coal mining project is one or more coal interests (i.e. exploration permit for coal, a mineral development licence, a coal mining lease or an application for a coal mining lease) that is or includes a coal mining lease, or an application for a coal mining lease, if the authorised activities for the coal interests are or will be carried out as a single integrated operation.

The term project land refers to land in the area of any coal interests for the coal mining project.

Section 136Q stipulates that only an eligible person may apply for an exploration permit under this division, and the circumstances under which an application can be made. An application can only be made if the applicant holds a coal mining lease or application for a coal mining lease that is, or is included in, a coal mining project. The area of the application:

- must be contiguous to the coal mining project;
- must not be the subject of a coal interest or application for a coal exploration tenement (i.e. an exploration permit for coal or a mineral development licence);
- is not more than six sub-blocks in size; and
- is not the subject of a competitive tender for an exploration permit for coal.

In addition, an exploration permit for coal under this division must not have been previously granted for the coal mining project.

Section 136R stipulates the requirements for the application for an exploration permit for coal under this division. These requirements are set out in subsections (a) to (f).

The intention is that the six individual sub-blocks applied for do not have to have a common boundary to each other but must be contiguous to the coal mining project.

Section 136S provides that the Minister may grant the exploration permit for coal, with or without conditions, for all or part of the area applied for.

The Minister must not grant the exploration permit unless satisfied the prescribed criteria under section 137 are met.

Additionally, the Minister must not grant the exploration permit if all or part of the area of the proposed exploration permit is in a fossicking area, unless the application for the exploration permit was made but not decided before the area became a fossicking area.

This provision also provides that the Minister may refuse the application if the Minister considers that granting the exploration permit is not in the public interest.

The Minister may grant the exploration permit for coal under this division if the Minister is satisfied of each of the following:

- the applicant is the holder of, or the applicant for, a coal mining lease that is, or is included in, a coal mining project;
- the area of the exploration permit is contiguous to the project land for the coal mining project;
- the area of the exploration permit is not the subject of a coal interest or an application for a coal exploration tenement;
- the area of the exploration permit is not more than six sub-blocks;
- an exploration permit for coal has not previously been granted under this new division in relation to the coal mining project;
- the exploration permit is necessary for the operation of the coal mining project;
- the applicant has demonstrated the financial and technical capability of carrying out the activities proposed under the exploration permit; and

- the area of the exploration permit is not identified, or likely to be identified, as land to be released for tender for coal or other minerals.

Section 136S also provides that if the exploration permit is granted for only part of the area of the proposed exploration permit, the application is taken to be refused for the remainder of the area, and the Minister must give the applicant written notice of the reasons for the refusal. In addition, if the application is refused, the Minister may refund all or part of the application fee that accompanied the application.

Section 135T provides that the applicant for the exploration permit may withdraw the application for all or part of the area to which it relates at any time before the exploration permit is granted, and that the withdrawal takes effect when the notice is lodged with the chief executive. Also, if part of the application is withdrawn, the application must be amended to define the boundary of the area of the proposed exploration permit for which the application is to remain in force.

Should the application be withdrawn, the Minister may retain all or part of the application fee.

Replacement of s 137A (Content of exploration permit)

Clause 87 amends section 137A of the *Mineral Resources Act 1989* as a result of DNRM phasing out hard copies of instruments for mining tenements.

Section 137A currently sets out what must be contained in an exploration permit. It will now set out the information that must be recorded about an exploration permit on the electronic MyMinesOnline resource authority register.

Any details that are currently being recorded on hard copy instruments for mining tenements are also recorded on the electronic MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Amendment of s 141 (Conditions of exploration permit)

Clause 88 amends section 141 of the *Mineral Resources Act 1989* by omitting the existing section 141(1)(e) which conditions the exploration permit to provide certain reports, and replacing it with a new section that makes it a condition of the exploration permit for the holder to give the Minister all reports, returns, documents and statements required to be given to the Minister by regulation.

The amendment to section 141(1)(e) is complemented by the insertion of sections 178A-178C into the Act. These new sections create heads of power within the Act for the creation of regulations that require certain reports to be given to the Minister.

Amendment of s 141C (Application to vary conditions of existing permit)

Clause 89 amends section 141C of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copies of instruments for exploration permits and these instruments will eventually be phased out.

This amendment provides that the chief executive must record the details about any varied conditions applying to an existing exploration permit in the electronic MyMinesOnline resource authority register, rather than on the permit.

Omission of ss 149 and 150

Clause 90 omits sections 149 and 150 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for exploration permits and these instruments will eventually be phased out.

Sections 149 and 150 currently deal with the correction or replacement of an exploration permit and there will no longer be a need to correct or replace hard copy exploration permits once they are phased out. The relevant details will be provided in the electronic MyMinesOnline resource authority register.

Replacement of s 167 (Production of exploration permit)

Clause 91 amends section 167 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copies of instruments for exploration permits and these instruments will eventually be phased out.

The existing section 167 requires an exploration permit holder to produce either the exploration permit or a written authorisation on the demand of the land owner, agent of the land owner, or other person authorised to act on behalf of the Minister.

As hard copy instruments will no longer be issued, this amendment provides that upon demand from an owner of land (or an agent for the owner) an exploration permit holder entering that owner's land must provide the owner (or agent) a copy of the exploration permit, and that a 'copy of an exploration permit' includes an extract of information about the exploration permit, from the electronic MyMinesOnline resource authority register.

Insertion of new ss178A-178C

Clause 92 creates three new sections within the *Mineral Resources Act 1989*: 178A, 178B, and 178C. These sections refer to reports previously required under section 141(1)(e)(i)-(iii). These new sections create heads of power within the Act for the creation of regulations that require certain reports to be given to the Minister.

Section 178A provides that a regulation may require the holder of an exploration permit to give the Minister an activity report, and that the activity report must comply with the requirements and contain the information provided by regulation.

The activity report was previously named the annual report and required under section 141(1)(e)(i). The requirements for the activity report are the same as the current requirements for the annual report. The name change has been made so that DNRM has more flexibility in the future in changing the frequency of when reports are provided.

Section 178B provides that a regulation may require the holder of an exploration permit to give the Minister a partial relinquishment report, and that the partial relinquishment report must comply with the requirements and contain the information provided by regulation. This was previously a requirement of section 141(1)(e)(ii). The requirements for the partial relinquishment report have not changed.

Section 178C provides that a regulation may require the holder of an exploration permit to give the Minister a final report, and that the final report must comply with the requirements and contain the information provided by regulation. This was previously a requirement of section 141(1)(e)(iii). The requirements for the final report have not changed.

Replacement of s 186A (Content of mineral development licence)

Clause 93 amends section 186A of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copies of instruments for mining tenements and these instruments will eventually be phased out.

Section 186A currently sets out what must be contained in a mineral development licence. It will now set out the information that must be recorded about a mineral development licence on the electronic MyMinesOnline resource authority register.

Any details that are currently being recorded on hard copy instruments for mining tenements are also recorded on the electronic MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Amendment of s 194 (Conditions of mineral development licence)

A Land Court decision in December 2015 (*Byerwen Coal Pty Ltd v Colinta Holdings Pty Ltd & Anor*) raised concerns that the usage of “access land” for activities such as resource haulage was unlawful. Land registered for access is routinely authorised for mineral development licences in Queensland. Access land commonly connects a mining tenement with a public road.

The *Mineral Resources Act 1989* will be amended to clarify the allowed activities on land for access to a mineral development licence.

Clause 94 amends section 194(1) of the *Mineral Resources Act 1989* by inserting a new subsection. This subsection specifies the activities that a mineral development licence holder can undertake on access land outside the boundary of their mineral development licence. These activities are the surface transport by road of anything reasonably necessary to allow the holder to carry out an authorised activity for the mineral development licence. Transport of minerals mined on a mining tenement

held by the mineral development licence holder is also able to occur on the access land.

In order to enable this road transport, it may sometimes be necessary for mineral development licence holders to construct road transport infrastructure. This construction can occur to the extent it is necessary to carry out authorised activities for the mining claim and to transport minerals as outlined above.

If activities additional to those allowed on access land are proposed, such as the running of powerlines and pipelines through or over the access land, then another approval will be required, such as a mining lease for transportation purposes.

In achieving the policy intent in relation to construction of road transport infrastructure, it is important that sections 33 and 62 of the *Transport Infrastructure Act 1994* must be satisfied first.

This clause also amends section 194(1)(e) of the *Mineral Resources Act 1989* by omitting the existing section 194(1)(e) which conditions the mineral development licence to provide certain reports, and replacing it with a new section that that makes it a condition of the mineral development licence to give the Minister all reports, returns, documents and statements prescribed by regulation.

The amendment of 194(1)(e) is complemented by the insertion of sections 231AA-231AC into the Act. These new sections create heads of power within the Act for the creation of regulations that require certain reports required to be given to the Minister by regulation.

Amendment of s 194AAA (Additional conditions of mineral development licence relating to native title)

Clause 95 makes consequential amendments to section 194AAA to update cross-referencing to the renumbered section 194(1).

Amendment of s 194AC (Application to vary conditions of existing licence)

Clause 96 makes consequential amendments to section 194AC to update cross-referencing to the renumbered section 194(1).

This clause also amends section 194AC of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mineral development licences and these instruments will eventually be phased out.

This amendment therefore provides that each variation to the conditions of a mineral development licence is to be recorded in the electronic MyMinesOnline resource authority register.

Omission of ss 206 and 207

Clause 97 omits sections 206 and 207 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mineral development licences and these instruments will eventually be phased out.

Sections 206 and 207 currently deal with the correction or replacement of hard copy instruments and there will no longer be a need to correct or replace hard copy mineral development licences once they are phased out. The relevant details will be provided in the electronic MyMinesOnline resource authority register.

Amendment of s 208 (Adding other minerals to licence)

Clause 98 amends section 208 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mineral development licences and these instruments will eventually be phased out.

This amendment provides that if the Minister approves a mineral to be added to the mineral development licence, details about this approval are to be recorded in the electronic MyMinesOnline resource authority register.

Amendment of s 210 (Surrender of mineral development licence)

Clause 99 amends section 210 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mineral development licences and these instruments will eventually be phased out.

This amendment provides that if the Minister consents to the surrender of a part (but not all) of the area of a mineral development licence, details about the surrender are to be recorded in the electronic MyMinesOnline resource authority register.

Replacement of s 216 (Production of mineral development licence)

Clause 100 amends section 216 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copies of instruments for mineral development licences and these instruments will eventually be phased out.

The existing section 216 requires a mineral development licence holder to produce either the mineral development licence permit or a written authorisation on the demand of the land owner, agent of the land owner, or other person authorised to act on behalf of the Minister.

This amendment provides that upon demand from an owner of land (or an agent for the owner) a mineral development licence holder entering that owner's land must provide the owner (or agent) a copy of the mineral development licence. A 'copy of a mineral development licence' will include an extract of information about the mineral development licence from the electronic MyMinesOnline resource authority register.

Amendment of s 226AA (Application to add excluded land to existing licence)

Clause 101 makes consequential amendments to section 226AA to update cross-referencing to the renumbered section 194(1).

Insertion of new ss231AA-231AC

Clause 102 creates three new sections within the *Mineral Resources Act 1989*, 231AA, 231AB, and 231AC. These sections refer to reports previously required under section 194(1)(e)(i)-(iii). These new sections create heads of power within the Act for the creation of regulations that require certain reports to be given to the Minister.

Section 231AA provides that a regulation may require the holder of a mineral development licence to give the Minister an activity report, and that the activity report must comply with the requirements and contain the information provided by regulation.

The activity report was previously named the annual report and required under section 194(1)(e)(i). The requirements for what needs to be in the activity report are the same as the current requirements for the annual report. The name change has been made so that DNRM has more flexibility in the future in changing the frequency of when reports are provided.

Section 231AB provides that a regulation may require the holder of a mineral development licence to give the Minister a partial surrender report, and that the partial surrender report must comply with the requirements and contain the information provided by regulation. This was previously a requirement of section 194(1)(e)(ii). The requirements for the partial surrender report have not changed.

Section 231AC provides that a regulation may require the holder of a mineral development licence to give the Minister a final report, and that the final report must comply with the requirements and contain the information provided by regulation. This was previously a requirement of section 194(1)(e)(iii). The requirements for the final report have not changed.

Amendment of s 231E (Minister may grant or reject application for mineral development licence (186))

Clause 103 amends section 231E of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copies of instruments for mining tenements and these instruments will eventually be phased out.

The existing section 231E gives the Minister the power to grant or reject an application for a mineral development licence. The amendments do not change this power.

The section also requires that the licence must include certain information. The amendments change this requirement by requiring the Minister to record this information in the electronic MyMinesOnline resource authority register.

Amendment of s 231G (Conditions of mineral development licence)

A Land Court decision in December 2015 (*Byerwen Coal Pty Ltd v Colinta Holdings Pty Ltd & Anor*) raised concerns that the usage of "access land" for activities such as resource haulage was unlawful. Land registered for access is routinely authorised for mineral development licences in Queensland. Access land commonly connects a mining tenement with a public road.

The *Mineral Resources Act 1989* will be amended to clarify the allowed activities on land for access to an Aurukun mineral development licence.

Clause 104 amends section 231G of the *Mineral Resources Act 1989* by inserting a new subsection. This subsection specifies the activities that an Aurukun mineral development licence holder can undertake on access land outside the boundary of their mineral development licence.

These activities are the surface transport by road of anything reasonably necessary to allow the holder to carry out an authorised activity for the mineral development licence. Transport of minerals mined on a mining tenement held by the mineral development licence holder is also able to occur on the access land.

In order to enable this road transport, it may sometimes be necessary for Aurukun mineral development licence holders to construct road transport infrastructure. This construction can occur to the extent it is required to transport items necessary to carry out authorised activities for the mining claim and to transport minerals as outlined above.

If activities additional to those allowed on access land are proposed, such as the running of powerlines and pipelines through or over the access land, then another approval will be required, such as a mining lease for transportation purposes.

In achieving the policy intent in relation to constructing road transport infrastructure, it is important that sections 33 and 62 of the *Transport Infrastructure Act 1994* must be satisfied first.

Amendment of s 232 (Eligible person may apply for mining lease)

The *Mineral and Energy Resources (Common Provisions) Act 2014* amended section 232 of the *Mineral Resources Act 1989* by removing the requirement to hold a pre-requisite tenure to apply for a mining lease. This amendment was aimed at the north Queensland small scale alluvial sector and intended to reduce costs for this industry. However, the amendment removed the requirement to hold a pre-requisite tenure to apply for a mining lease for all commodity types under the *Mineral Resources Act 1989*.

Clause 105 amends section 232 of the *Mineral Resources Act 1989* to reinstate the requirement that an eligible person must first hold a pre-requisite tenure, or have the consent of the holder of the pre-requisite tenure, in order to apply for a coal mining lease. Pre-requisite tenures are either a prospecting permit, an exploration permit for coal or a mineral development licence.

Amendment of s 237 (Drilling and other activities on land not included in surface area)

Clause 106 amends section 237 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mining leases and these instruments will eventually be phased out.

This amendment provides that if the Minister approves drilling or other activities on land not included in the surface area covered under the mining lease, then details of the approval are to be recorded in the electronic MyMinesOnline resource authority register.

Amendment of s 238 (Mining lease over surface of restricted land)

Clause 107 omits the requirement that a relevant owner's consent to include the surface area of restricted land to a mining lease needs to be provided before the last objection day for the mining lease. Restricted land is areas of 200 metres around certain buildings or 50 metres around particular infrastructure. A relevant owner's consent will still need to be given in writing and lodged with DNRM in order to allow restricted land to be added to a mining lease, however the consent will now be able to be given at any time.

Currently, under section 238 of the *Mineral Resources Act 1989*, the inclusion of the surface area of restricted land in a mining lease requires the applicant to obtain the consent of the relevant owner before the last objection day.

This clause also omits section 238(3), which is a cross-reference to the *Mineral and Energy Resources (Common Provisions) Act 2014*. This cross-reference is no longer necessary due to the insertion of section 70(5) in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 265 (Referral of application and objections to the Land Court)

Clause 108 amends section 265 of the *Mineral Resources Act 1989* to replace the reference to an objections hearing starting with a reference to the Land Court forwarding a recommendation to the Minister under section 269. Objections can be withdrawn or struck out at any time prior to a recommendation being forwarded to the Minister.

This change ensures that the Land Court may remit a matter to the chief executive under section 265 of the *Mineral Resources Act 1989* at any point before a recommendation about the objection has been forwarded to the Minister.

Amendment of s 275 (Application for inclusion of surface of area of mining lease)

Clause 109 amends section 275 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mining leases and these instruments will eventually be phased out.

Section 275 currently provides that if an application for the grant of additional surface area is approved, the particulars of that approval were to be endorsed on the relevant instrument of mining lease.

This amendment provides that if an application for the addition of surface area is granted, details of this are to be recorded in the electronic MyMinesOnline resource authority register.

Insertion of new s 275A

Clause 110 creates a process to allow restricted land to be added to a granted mining lease.

Currently, under the *Mineral Resources Act 1989*, applicants who wish to add the surface area of restricted land into their mining lease are required to apply under section 275, which requires the application to proceed as if it were an application for a new mining lease under section 245.

The key difference between section 275A and the existing section 275 is that section 275A does not trigger the full mining lease application process. These existing provisions are appropriate for the grant of a new mining lease, but are unnecessary when applied to the addition of small surface areas of restricted land where the mining lease has otherwise already been granted.

Compensation must be negotiated prior to restricted land being added to a mining lease. The requirement to address native title or have a valid environmental authority will apply to applications to add restricted land to a mining lease (see Division 3 of the *Native Title Act 1993* and section 391A of the *Mineral Resources Act 1989* respectively).

Once the restricted land is added it becomes part of the mining lease and will be administered together with the rest of the mining lease.

Amendment of s 276 (General conditions of mining lease)

A Land Court decision in December 2015 (*Byerwen Coal Pty Ltd v Colinta Holdings Pty Ltd & Anor*) raised concerns that the usage of “access land” for activities such as resource haulage was unlawful. Land registered for access is routinely authorised for mining leases in Queensland. Access land commonly connects a mining tenement with a public road.

The *Mineral Resources Act 1989* will be amended to clarify the allowed activities on land for access to a mining lease.

Clause 111 amends section 276(1) of the *Mineral Resources Act 1989* by inserting a new subsection. This subsection specifies the activities that a mining lease holder can undertake on access land outside the boundary of their mining lease.

These activities are the surface transport by road of anything reasonably necessary to allow the holder to carry out an authorised activity for the mining lease. Transport of minerals mined on a mining tenement held by the mining lease holder is also able to occur on the access land.

In order to enable this road transport, it may sometimes be necessary for mining lease holders to construct road transport infrastructure. This construction can occur to the extent it is required to transport items necessary to carry out authorised activities for the mining lease and to transport minerals as outlined above.

If activities additional to those allowed on access land are proposed, such as the running of powerlines and pipelines through or over the access land, then another approval will be required, such as a mining lease for transportation purposes.

In achieving the policy intent in relation to constructing road transport infrastructure, it is important that sections 33 and 62 of the *Transport Infrastructure Act 1994* must be satisfied first.

Amendment of s 279 (Compensation to be settled before grant or renewal of mining lease)

Clause 112 makes changes to the operation of section 279 of the *Mineral Resources Act 1989*, including amending the title and application of the section to include compensation relating to the newly created section 275A.

This clause omits section 279(4) as it was in force immediately before the commencement of this amendment. A compensation agreement is not generally a dutiable transaction under the *Duties Act 2001* and therefore does not need to be stamped for duty by the Office of State Revenue. This subsection was causing confusion and lodgement of compensation agreements with the Office of State Revenue unnecessarily.

Where a compensation agreement is a dutiable transaction, the agreement will still be required to be lodged with the Office of State Revenue for assessment of duty.

This clause also removes the chief executive's automatic referral of unresolved compensation matters to the Land Court. The treatment of unresolved compensation matters will now be described in section 279A.

Amendment of s 279A (Referral to Land Court of issue of compensation if not settled within 3 months after term of lease ends)

Clause 113 amends section 279A to change the focus from compensation for renewal of a mining lease, to its initial grant. The changes that relate to compensation for renewal of a mining claim are at section 286A.

Section 279 removed the chief executive's automatic referral of unresolved compensation matters for the grant of mining leases to the Land Court. Instead, section 279A provides that if compensation has not been agreed or referred to the Land Court in the timeframes provided by section 279A(1), the Minister may refuse to grant the mining lease.

The title has also been updated to reflect the changes to this section.

Amendment of s 280 (Compensation for owner of land where surface area not included)

Clause 114 omits section 280(3) from the *Mineral Resources Act 1989*. The reason for this is that a compensation agreement is not generally a dutiable transaction under the *Duties Act 2001* and therefore does not need to be stamped by the Office of State Revenue for duty.

Where a compensation agreement is a dutiable transaction, the agreement will still be required to be lodged with the Office of State Revenue for assessment of duty.

Amendment of s 281 (Determination of compensation by Land Court)

Clause 115 amends section 281 to include a new subsection (1). This provides that at any time before an agreement is made, a person who could be a party to the agreement can still apply to the Land Court to determine the amount of compensation. This change is needed due to the removal of DNRM's referral of matters to the Land Court. This change also supports other changes made to sections 279, 279A and 275A.

Amendment of s 285 (Mining lease may be specified it is not renewable)

Clause 116 amends section 285 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mining leases and these instruments will eventually be phased out.

Section 285 currently requires the chief executive to record any condition of non-renewal on the instrument of the mining lease. This amendment provides that, if the Minister grants the renewal of a mining lease with a condition that the holder is not entitled to have the mining lease renewed or further renewed, then the chief executive must record the details of the condition in the electronic MyMinesOnline resource authority register.

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

Clause 117 amends section 286 of the *Mineral Resources Act 1989* to include a new notification requirement. This provides that an applicant for the renewal of a mining lease must notify each landowner the subject of the mining lease or access to the lease of the renewal application within five business days of it being made.

The notice must include:

- the renewal application and any documents or information prescribed by regulation. The notice does not need to include any aspects of the renewal application that state the applicant's financial and technical resources or any information that is commercial in confidence; and
- the most recent compensation agreement or compensation determination the holder has with the landowner (if any).

This new requirement has been introduced to ensure landowners are aware a renewal application has been made to enable them to start considering compensation.

Amendment of s 286A (Decision on application)

Clause 118 amends section 286A as a result of removing the chief executive's automatic referral of unresolved compensation matters to the Land Court.

Previously unresolved compensation matters were automatically referred by the chief executive to the Land Court three months after the term of the mining lease would end (if it were not for section 286C). Section 286C says a mining lease continues while a properly made renewal application is being considered.

Instead, changes to this clause give the Minister the power to refuse an application for the renewal of a mining lease, if compensation has not been determined within three months after the current term of the mining lease would have ended if it were not for section 286C and the application has not been referred to the Land Court. The Minister's consideration of whether to refuse an application to renew includes a right to natural justice for the applicant.

Omission of s 289 (Chief executive may issue instrument of mining lease)

Clause 119 amends section 289 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copies of instruments for mining tenements and these instruments will eventually be phased out.

Any details currently recorded on hard copy instruments for mining tenements are also recorded on the electronic MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Therefore, section 289 is being omitted because the chief executive will no longer be issuing an instrument of a mining lease.

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

Clause 120 amends section 294 of the *Mineral Resources Act 1989* as a result of DNRM phasing out hard copies of instruments for mining tenements.

Section 294 currently sets out that a variation of conditions for a mining lease must be recorded on the instrument of the lease by the chief executive.

This amendment provides that each variation to the conditions of a mining lease is to be recorded in the electronic MyMinesOnline resource authority register.

Amendment of s 295 (Variation of mining lease for accuracy etc.)

Clause 121 omits sections 295(4) and 295(5) of the *Mineral Resources Act 1989* as a result of DNRM phasing out hard copies of instruments for mining tenements.

Section 295 currently sets out the reasons that the Minister may have for varying a mining lease, and that the chief executive must endorse all variations on the instrument of lease once produced by the holder.

This amendment provides that the variations are instead to be recorded in the electronic MyMinesOnline resource authority register.

This clause also renumbers subsections to reflect the omission of subsections 295(4) and 295(5) as these were in force prior to this amendment commencing.

Omission of ss 296 and 297

Clause 122 omits sections 296 and 297 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mining leases and these instruments will eventually be phased out.

Sections 296 and 297 currently deal with the correction or replacement of an instrument of lease which will not be needed when they are phased out. The relevant details will be recorded in the electronic MyMinesOnline resource authority register.

Amendment of s 298 (Mining other minerals or use for other purposes)

Clause 123 amends section 298 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mining leases and these instruments will eventually be phased out.

This amendment provides that the particulars of the Minister's approval to mine other minerals will only need to be recorded in the electronic MyMinesOnline resource authority register rather than in the register and on the instrument of mining lease as is currently the case.

Amendment of s 299 (Consolidation of mining leases)

Clause 124 omits section 299(5) of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mining leases and these instruments will eventually be phased out.

Section 299 deals with the consolidation of mining leases and the cancellation of hard copy instruments of the leases that have been consolidated. Cancellation of hard copy instruments will not be needed once they are phased out.

Amendment of s 309 (Surrender of mining lease)

Clause 125 amends section 309 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mining leases and these instruments will eventually be phased out.

Section 309(7) requires the chief executive to endorse any details of a surrender of a mining lease or an area for a mining lease on the instrument of lease.

This amendment provides that if the Minister consents to the surrender of a part (but not all) of the area of a mining lease, details about the surrender are to be recorded in the electronic MyMinesOnline resource authority register.

Insertion of new ss 315–315B

There are currently no requirements prescribed under the *Mineral Resources Act 1989* for holders of mineral mining leases to provide reports to DNRM.

There are pre-existing requirements for reporting for coal mining lease holders and oil shale mining lease holders within the *Mineral Resources Act 1989*. The amendments move the requirements for these reports to the regulation. This will give DNRM more flexibility to tailor what information is required from which lease holders.

Clause 126 creates three new sections within the *Mineral Resources Act 1989*: 315, 315A, and 315B. Sections 315-315B create a head of power within the Act that will allow reporting requirements to be prescribed by regulation.

Section 315 provides that a regulation may require the holder of a mining lease to give the Minister an activity report, and that the activity report must comply with the requirements and contain the information provided by regulation.

The activity report was previously named the annual report and required under section 318CV. The requirements for the activity report are the same as the current requirements for the annual report. The name change has been made so that DNRM has more flexibility in the future in changing the frequency of when reports are provided.

Section 315A provides that a regulation may require the holder of a mining lease to give the Minister a relinquishment report, and that the relinquishment report must comply with the requirements and contain the information provided by regulation. This was previously a requirement of section 318CX. The requirements under regulation for the relinquishment report have not changed.

Section 315B provides that a regulation may require the holder of a mining lease to give the Minister a final report, and that the final report must comply with the requirements and contain the information provided by regulation. This was

previously a requirement of section 318CY. The requirements for the final report have not changed.

Amendment of s 317 (Variation of access to mining lease area)

Clause 127 omits section 317(11) from the *Mineral Resources Act 1989*. The reason for this is that a compensation agreement is not generally a dutiable transaction under the *Duties Act 2001* and therefore does not need to be stamped by the Office of State Revenue for stamp duty.

Where a compensation agreement is a dutiable transaction, the agreement will still be required to be lodged with the Office of State Revenue for assessment of duty.

Amendment of s 318AAH (General conditions of mining lease (276))

A Land Court decision in December 2015 (*Byerwen Coal Pty Ltd v Colinta Holdings Pty Ltd & Anor*) raised concerns that the usage of “access land” for activities such as resource haulage was unlawful. Land registered for access is routinely authorised for mining leases in Queensland. Access land commonly connects a mining tenement with a public road.

The *Mineral Resources Act 1989* will be amended to clarify the allowed activities on land for access to a mining lease.

Clause 128 amends section 318AAH(1) of the *Mineral Resources Act 1989* by inserting a new subsection. This subsection specifies the activities that an Aurukun mining lease holder can undertake on access land outside the boundary of their mining lease.

These activities are the surface transport by road of anything reasonably necessary to allow the holder to carry out an authorised activity for the mining lease. Transport of minerals mined on a mining tenement held by the mining lease holder is also able to occur on the access land.

In order to enable this road transport, it may sometimes be necessary for the Aurukun mining lease holder to construct road transport infrastructure. This construction can occur to the extent it is required to transport items necessary to carry out authorised activities for the mining lease and to transport minerals as outlined above.

If activities additional to those allowed on access land are proposed, such as the running of powerlines and pipelines through or over the access land, then another approval will be required, such as a mining lease for transportation purposes.

In achieving the policy intent in relation to constructing road transport infrastructure, it is important that sections 33 and 62 of the *Transport Infrastructure Act 1994* must be satisfied first.

Amendment of s 318BL (Additional criteria for deciding conditions or term)

Clause 129 corrects cross-referencing issues that have arisen as a consequence of amendments which renumber section 276.

Amendment of s 318BM (Power to determine relinquishment condition)

Clause 130 omits a note that cross references section 318CX, which is being removed. The clause also corrects cross-referencing issues that have arisen as a consequence of amendments that renumber section 276.

Amendment of s 318BU (Additional criteria for deciding conditions or term)

Clause 131 corrects cross-referencing issues that have arisen as a consequence of amendments which renumber section 276.

Amendment of s 318CG (Additional criteria for deciding conditions)

Clause 132 corrects cross-referencing issues that have arisen as a consequence of amendments which renumber section 276.

Omission of s 318CV (Obligation to lodge annual reports)

Clause 133 removes section 318CV from the *Mineral Resources Act 1989*. This section relates to the information and format of reports that coal mining lease and oil shale mining lease holders are required to submit. It has been replaced by section 315 of the Act and section 29A in the Mineral Resources Regulation 2013.

Omission of s 318CX (Relinquishment report)

Clause 134 removes section 318CX from the *Mineral Resources Act 1989*. This section relates to the information and format of reports that coal mining lease and oil shale mining lease holders are required to submit. It has been replaced by section 315A of the Act and section 29B in the Mineral Resources Regulation 2013.

Omission of s 318CY (Surrender report)

Clause 135 removes 318CY from the *Mineral Resources Act 1989.* This section relates to the information and format of reports that coal mining lease and oil shale mining lease holders are required to submit. It has been replaced by section 315B of the Act and section 29C in the Mineral Resources Regulation 2013.

Amendment of s 318ELBG (Additional criteria for deciding provisions of mining lease)

Clause 136 corrects cross-referencing issues that have arisen as a consequence of amendments which renumber section 276.

Amendment of s 334ZM (Provisions about compensation for owners of lots 65 and 66 on RP909055)

Clause 137 omits a note in section 334ZM. This is a consequential amendment.

Amendment of s 334ZZJ (Ownership of works constructed in connection with water monitoring bore)

Clause 138 amends section 334ZZJ of the *Mineral Resources Act 1989* about the ownership of works constructed in connection with a water monitoring bore that may be drilled by the holder of a mineral development licence or mining lease in the area of a 'prescribed holding' (as defined in this section).

The Bill inserts part 4 into chapter 12A of the *Mineral Resources Act 1989*. These provisions provide for the owner of the works constructed in connection with a water monitoring bore to effect a transfer of this to a landowner (on whose land the bore has been drilled), a holder of mineral development licence, mining lease or water monitoring authority, or the State.

As a consequence of this, ownership of the works constructed in connection with a water monitoring bore may be transferred to a landowner, the holder of a mineral development licence, mining lease or water monitoring authority, or the State.

This amendment recognises this and provides that the ownership of the works constructed in connection with a water monitoring bore will remain with the holder of the mineral development licence or mining lease, who drilled the bore in the area of a prescribed holding, unless a transfer is effected under chapter 12A, part 4 of the *Mineral Resources Act 1989*, being inserted by the Bill.

Insertion of new ch 12A, pt 4

Clause 139 inserts chapter 12A, part 4 into the *Mineral Resources Act 1989*. In summary, this part will provide for:

- the transfer of water monitoring bores in certain circumstances and to certain persons; and
- the obligation to decommission a water monitoring bore and who has responsibility for the bore after its decommissioning.

Division 1 Transfers of water monitoring bores

334ZZL Operation of this division

Clause 139 also inserts new section 334ZZL into the *Mineral Resources Act 1989*. This inserted section provides that inserted division 1 'Transfers of water monitoring bores' will apply in certain situations for the following in relation to a water monitoring bore constructed under the authority of the *Mineral Resources Act 1989*:

- the control of, and responsibility for, the bore; and
- the ownership of any works constructed in connection with the bore.

334ZZM Transfer only permitted under this division

Clause 139 also inserts section 334ZZM into the *Mineral Resources Act 1989*. This inserted section provides that a transfer of a water monitoring bore may only be effected if the transfer is allowed under chapter 12A, part 4 of the *Mineral Resources Act 1989* (as inserted by the Bill) and meets the requirements for a transfer under this part.

334ZZN Effect of transfer

Clause 139 also inserts section 334ZZN into the *Mineral Resources Act 1989*. This inserted section provides that if a transfer is effected under chapter 12A, part 4 of the *Mineral Resources Act 1989* (as inserted by the Bill) any obligation that the transferor had under the *Mineral Resources Act 1989* or another Act (for example, the *Water Act 2000*) relating to the bore ends.

However, if the transfer of the water monitoring bore is not made to the State, any obligations the transferor had under the *Environmental Protection Act 199*4, in relation to the bore, still remain with the transferor.

This links with inserted section 334ZZL of the *Mineral Resources Act 1989* in that when the transfer of a water monitoring bore is effected, the transferor transfers:
- the control of, and responsibility for, the bore; and
- the ownership of any works constructed in connection with the bore.

334ZZOTransfer of water monitoring bore to landowner

Clause 139 also inserts section 334ZZO into the *Mineral Resources Act 1989*, which provides for the transfer of a water monitoring bore, constructed under the authority of the *Mineral Resources Act 1989*, from the owner of the bore to the landowner on whose land the bore was constructed.

Inserted section 334ZZO also provides for how to apply for such a transfer and the matters that must be addressed when applying for such a transfer.

In applying for such a transfer the application must be made on the approved form and this must be accompanied by the fee prescribed under the Mineral Resources Regulation 2013.

The two key matters that must be addressed in the approved form are:
- that the relevant landowner to whom the water monitoring bore is being transferred, signs a consent to the transfer; and
- that the owner (transferor) of the bore declares that the bore has been constructed in compliance with section 334ZQ(3) of the *Mineral Resources Act 1989*.

The landowner's consent is required so that the landowner acknowledges that when the transfer of the water monitoring bore is effected, the landowner then (as per inserted section 334ZZL of the *Mineral Resources Act 1989*):

- is in control of, and has the responsibility for, the bore; and
- is the owner of any works constructed in connection with the bore.

The declaratory statement from the transferor ensures that the water monitoring bore was constructed by a water bore driller licenced under the *Water Act 2000*. The rationale for this is that the water bore driller has the competencies for drilling/constructing water monitoring bores because of the driller having to comply with the conditions for the driller's licence provided for in the *Water Act 2000* and its regulation.

It will also ensure that a water monitoring bore is drilled/constructed in a way that, among other things, protects the underground water reservoir from contamination and ensures the long term structural integrity of such a bore.

This section also provides a 'Note' referencing the *Water Act 2000*. This is because the transfer of a water monitoring bore to a landowner does not give the landowner the right to take water from the bore. The taking of water from such a bore usually requires an authorisation under the *Water Act 2000*.

334ZZP Transfer of water monitoring bore to the State

Clause 139 also inserts section 334ZZP into the *Mineral Resources Act 1989,* which provides for the transfer of a water monitoring bore, constructed under the authority of the *Mineral Resources Act 1989*, from the owner of the bore to the State.

One of the reasons the State may wish to be transferred a water monitoring bore is to assist the State in obtaining more data about groundwater impacts from resource activities (mining, coal seam gas production) without the expense of the State (and ultimately, to Queensland taxpayers) having to construct a water monitoring bore. It will also provide a saving in decommissioning costs to the person who is the owner of the bore.

In proposing the transfer of a water monitoring bore to the State, the owner of the bore must, no later than 60 business days before the bore must be decommissioned, give a notice in the approved form to the Minister administering the *Mineral Resources Act 1989*.

Section 334ZZS of the *Mineral Resources Act 1989*, being inserted by the Bill, provides that a water monitoring bore must be decommissioned before:

- the mineral development licence, mining lease or water monitoring authority under which the bore was constructed ends; or
- the land on which the bore is located is no longer in the area of the mineral development licence, mining lease or water monitoring authority under which the bore was constructed.

The notice in the approved form will likely require details about the water monitoring bore (for example, its location and the aquifer being monitored) and say that an offer is being made to transfer the bore to the State. The approved form will also require that the owner (transferor) of the bore declares that the bore has been constructed in compliance with section 334ZQ(3) of the *Mineral Resources Act 1989*.

This will confirm, like section 334ZZO of the *Mineral Resources Act 1989* (being inserted by the Bill) that the water monitoring bore was constructed by a water bore driller licenced under the *Water Act 2000*. This will ensure that, among other things, the underground water reservoir is protected from contamination and the long term structural integrity of such a bore endures.

If the Minister consents to the water monitoring bore being transferred to the State, the Minister will advise the owner of the bore, in writing, within 20 business days of receiving the notice on the approved form from the owner of the bore.

The notice given to the owner of the water monitoring bore, from the Minister, will detail when the transfer to the State is effected.

If the owner of the water monitoring bore does not receive a notice from the Minister within 20 business days of the Minister receiving the notice lodged on the approved form from the owner, the bore must be decommissioned as provided for in section 334ZZS of the *Mineral Resources Act 1989* (being inserted by the Bill).

It is anticipated that there would be few instances where the State would require a water monitoring bore to be transferred to it.

Consequently, the holder of a mineral development licence, mining lease or water monitoring authority under the *Mineral Resources Act 1989*, the area of which is over land where the water monitoring bore is located, may be afforded the first opportunity to be transferred the bore.

The holder of a mineral development licence, mining lease or water monitoring authority may not wish to be transferred the water monitoring bore. If this is the case, the landowner of the land on which a water monitoring bore is located may then be offered the transfer of the bore.

The landowner may not wish to be transferred the water monitoring bore, in which case the owner of the bore can then offer it to the State.

If no transfer of a water monitoring bore is effected pursuant to sections 334ZZO, 334ZZP or 334ZZQ of the *Mineral Resources Act 1989* (all being inserted by the Bill) then the owner of the bore must decommission the bore as per the obligation at section 334ZZS of the *Mineral Resources Act 1989*, being inserted by the Bill.

334ZZQ Transfer of water monitoring bore to holder of mineral development licence, mining lease or water monitoring authority

Clause 139 also inserts section 334ZZQ into the *Mineral Resources Act 1989*. This section provides for the transfer of a water monitoring bore, constructed under the authority of the *Mineral Resources Act 1989*, from the owner of the bore to the holder of a mineral development licence, mining lease or water monitoring authority under the *Mineral Resources Act 1989* not held by the owner of the bore, but the area of which also covers the location of the bore.

Inserted section 334ZZQ also provides for how to apply for such a transfer and the matters that must be addressed when applying for such a transfer.

In applying for such a transfer the application must be made on the approved form and this must be accompanied by the fee prescribed under the Mineral Resources Regulation 2013.

The two key matters that must be addressed in the approved form are:
- that the mineral development licence, mining lease or water monitoring authority, to whom the water monitoring bore is being transferred, signs a consent to the transfer; and
- that the owner (transferor) of the bore declares that the bore has been constructed in compliance with section 334ZQ(3) of the *Mineral Resources Act 1989*.

The mineral development licence, mining lease or water monitoring authority holder's consent is required so that the holder acknowledges that when the transfer of the water monitoring bore is effected, the holder then (as per inserted section 334ZZL of the *Mineral Resources Act 1989*):
- is in control of, and has the responsibility for, the bore; and
- is the owner of any works constructed in connection with the bore.

The declaratory statement from the transferor ensures that the water monitoring bore was constructed by a water bore driller licenced under the *Water Act 2000*. The rationale for this is that the water bore driller has the competencies for drilling/constructing water monitoring bores because of the driller having to comply with the conditions for the driller's licence provided for in the *Water Act 2000* and its regulation.

It will also will ensure that a water monitoring bore is drilled/constructed in a way that, among other things, protects the underground water reservoir from contamination and ensures the long term structural integrity of such a bore.

334ZZR Notice of transfer to Water Act regulator

Clause 139 also inserts section 334ZZR into the *Mineral Resources Act 1989*, which provides for the giving of a notice about any transfer effected pursuant to section 334ZZO or 334ZZQ of the *Mineral Resources Act 1989* (being inserted by the Bill).

This notice must be given to the chief executive of the department in which the *Water Act 2000* is administered.

Division 2 Decommissioning of water monitoring bores

334ZZS Obligation to decommission

Clause 139 also inserts division 2 'Decommissioning of water monitoring bores' and section 334ZZS into the *Mineral Resources Act 1989*. This section provides for when and how a water monitoring bore must be decommissioned.

Inserted section 334ZZS provides that a water monitoring bore must be decommissioned before:

- the mineral development licence, mining lease or water monitoring authority under which the bore was constructed ends; or
- the land on which the bore is located is no longer in the area of the mineral development licence, mining lease or water monitoring authority under which the bore was constructed.

With reference to the first dot point, this does not mean that one of the last actions, before the mineral development licence, mining lease or water monitoring authority ends, is to decommission the water monitoring bore.

For example, a mining lease may have been granted for a period of 30 years. A water monitoring bore constructed in the area of the lease may no longer be required for the purposes for which it was initially constructed after 15 years, and it may be decommissioned at that time. The mining lease holder does not need to wait until just before the expiry of the lease to decommission this water monitoring bore.

A water monitoring bore is not taken to be decommissioned under the *Mineral Resources Act 1989* unless it is decommissioned in compliance with section 334ZZS(2) of the *Mineral Resources Act 1989* (inserted by the Bill). This requires the water monitoring bore to:

- be plugged and abandoned in the way prescribed by the Mineral Resources Regulation 2013; and
- decommissioned in compliance with sections 816 and 817 of the *Water Act 2000*.

However, compliance with sections 816 and 817 of the *Water Act 2000* only applies to the extent is not inconsistent with the plugging and abandoning prescribed under the Mineral Resources Regulation 2013.

In addition to these two requirements a water monitoring bore is not taken to be decommissioned under the *Mineral Resources Act 1989* unless its owner also gives the chief executive a notice, in the approved form, about the decommissioning of the bore.

This clause also provides that if a water monitoring bore is transferred pursuant to chapter 12A, part 4, division 1 of the *Mineral Resources Act 1989* (inserted by the Bill) then the owner of the bore need not comply with this decommissioning requirement.

The only exception to this is where a water monitoring bore may be transferred from the owner of the bore to the holder (the transferee) of a mineral development licence, mining lease or water monitoring authority under the *Mineral Resources Act 1989* not held by the owner of the bore.

In such a circumstance, if the transferee does not then have a transfer of the water monitoring bore to the owner of the land on which the bore is located, or the State effected, the decommissioning provisions of this clause apply to the transferee as the owner of the bore.

334ZZT Right of entry to facilitate decommissioning

Clause 139 also inserts section 334ZZT into the *Mineral Resources Act 1989*. This inserted section authorises the entry of land in limited circumstances, to decommission a water monitoring bore, even if that land is no longer within the area of the mineral development licence, mining lease or water monitoring authority in which this bore was constructed.

It may be an offence against section 334ZZS of the *Mineral Resources Act 1989* (inserted by the Bill) if a water monitoring bore was not decommissioned when and how as provided by this section.

However, should the owner of the bore be required to enter land, that was previously within the area of a mineral development licence, mining lease or water monitoring authority, to decommission a water monitoring bore, this inserted section provides the owner a limited right to do so.

The owner of a water monitoring bore may enter land that is reasonably necessary to gain access to the land on which the bore is located. The owner may also enter land on which the water monitoring bore is located and carry out the decommissioning of the bore.

When entering any of this land, the *Mineral and Energy Resources (Common Provisions) Act 2014* chapter 3 (Land access), part 2 (Private land), part 3 (public land) and part 7 (Compensation and negotiated access) division 1 (Compensation relating to private and public land), division 2 (Provisions for conduct and compensation agreements) and division 5 (Land Court jurisdiction for compensation and conduct) other than subdivision 3 (Compensation for notifiable road use) all apply to the owner of the water monitoring bore. These apply as if the area of the mineral development licence, mining lease or water monitoring authority still covered the land on which the water monitoring bore is located.

Similarly, the decommissioning of a water monitoring bore, on land that is no longer within the area of the mineral development licence, mining lease or water monitoring authority in which this bore was constructed, may be carried out as if it was an authorised activity for a licence, lease or authority that still covered the land on which the bore is located.

As an application for a mining lease has a different progression of statutory requirements, to be complied with by the mining lease applicant before its grant (as compared to those of a mineral development licence or water monitoring authority), ordinarily, chapter 3, parts 2, 3 and 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* would not apply to a mining lease. The reason is that these requirements would have been addressed prior to the grant of the mining lease.

Entry to facilitate the decommissioning of a water monitoring bore, that was previously within the area of a mining lease, would not have been contemplated prior to its grant. Consequently, this clause provides that in applying the statutory

requirements of chapter 3, parts 2, 3 and 6 and part 7, divisions 1, 2 and 5 (other than subdivision 3) of the *Mineral and Energy Resources (Common Provisions) Act 2014* for such an entry, a reference to a mineral development licence in these provisions is also taken to be a reference to a mining lease, will apply. This is despite the fact that, ordinarily, these provisions would not apply to a mining lease.

334ZZU Responsibility for bore after decommissioning

Clause 139 also inserts section 334ZZU into the *Mineral Resources Act 1989*. This inserted section provides for who is responsible and when that person is responsible for a water monitoring bore once it has been decommissioned under section 334ZZS of the *Mineral Resources Act 1989* (inserted by the Bill).

If a water monitoring bore is decommissioned, and the land on which the bore is located remains in the area of a mineral development licence, mining lease or water monitoring authority, the owner of the bore remains responsible for it.

At the earlier of the following time (defined as the 'relevant time'), the decommissioned water monitoring bore is taken to be transferred to the State:

- when the mineral development licence, mining lease or water monitoring authority under which the bore was constructed ends; or
- when the land on which the bore is located is no longer in the area of the mineral development licence, mining lease, or water monitoring authority under which the bore was constructed. (An example of this may be where part of the area of a mineral development licence is surrendered, and the surrendered area contains the land where the water monitoring bore was constructed).

At the relevant time, the State is in control of, and has the responsibility for, the water monitoring bore and is the owner of any works constructed in connection with the bore. This is despite the bore being on or part of land owned by someone else or the sale or other disposal of the land.

Inserted section 334ZZU also provides that the State, after the relevant time, may transfer the water monitoring bore to:

- the owner of the land on which the decommissioned water monitoring bore is located, or
- a holder of a mineral development licence, mining lease or water monitoring authority the area of which includes the land on which the decommissioned water monitoring bore is located.

If such a transfer is effected the owner of the land or the holder of the mineral development licence, mining lease or water monitoring authority is in control of, and has the responsibility for, the decommissioned water monitoring bore and is the owner of any works constructed in connection with the bore.

Amendment of s 335F (Application of Part 2)

Clause 140 amends section 335F to replace 'an election notice' with 'a conference election notice'. This is a consequential amendment made as a result of changes to

the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 335G (Calling conference)

Clause 141 amends section 335G(1) to replace 'an election notice' with 'a conference election notice' and to omit the words 'about negotiating a conduct and compensation agreement'. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 335I (What happens if a party does not attend)

Clause 142 amends section 335I to clarify that the section applies only to a conference under section 335G(2) by replacing 'the conference' with 'a conference under section 335G(2)'. This clause also amends the section to remove the note under section 355I(2). This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 335J (Authorised officer's role)

Clause 143 amends section 335J to update section referencing. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 335L (Agreement made at conference)

Clause 144 removes subsection 2 from section 334L. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 342 (Powers of authorised officers)

Clause 145 amends section 342(1)(e) of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mining tenements and these instruments will eventually be phased out.

Section 342(1)(e) originally gave an authorised officer the power to require a person to produce a series of hard copy instruments as well as other materials. This amendment removes the power to require the production of hard copy instruments but retains the requirements for other materials.

Amendment of s 344A (Authorised person to carry out rehabilitation activities)

Clause 146 amends section 344A as a consequential amendment as a result of renumbering of section 93.

Amendment of s 345 (Compensation)

Clause 147 omits section 345(3) from the *Mineral Resources Act 1989*. The reason for this is that a compensation agreement itself is not generally a dutiable transaction under the *Duties Act 2001* and therefore does not need to be stamped by the Office of State Revenue for duty.

Where a compensation agreement is a dutiable transaction, the agreement will still be required to be lodged with the Office of State Revenue for assessment of duty.

Amendment of s 346 (Land Court's decision about compensation)

Clause 148 makes a consequential amendment to renumber section 346 as a result of the changes to section 345.

Insertion of new ch 13, pt 6

Clause 149 inserts a new chapter 13, part 6 into the *Mineral Resources Act 1989*, titled "Releasing required information".

Section 382 establishes that the holder of a mining tenement is taken to have authorised the chief executive to publish any required information for public use, or to provide the required information to any person for a fee, after the expiry of a confidentiality period to be prescribed by regulation. However, the confidentiality period does not apply if the information provided by the mining tenement holder is about an activity carried out in an area that is no longer in the area of the mining tenement. The authorisation is not affected by the ending of the tenement.

Required information means information about authorised activities carried out under the mining tenement that its holder has lodged under this Act.

Section 383 authorises the Minister to use the required information for any purposes reasonably related to the Act, or for the services of the State. The authorisation is not affected by the ending of the mining tenement.

These amendments set up a confidentiality and publication regime to allow DNRM to publicly release data and information supplied to it by companies under the reporting requirements of the *Mineral Resources Act 1989*.

Amendment of s 386O (Place or way for making applications, giving, filing, forwarding or lodging documents or making submissions)

Clause 150 corrects cross-referencing issues that have arisen as a consequence of amendments which renumber sections 194 and 318AAH.

Amendment of s 386Y (Person carrying out activity under s 386V contravening condition or this Act)

Clause 151 amends section 386Y of the *Mineral Resources Act 1989* to remove the ability for the chief executive to impose a penalty of not more than five penalty units for contravention of a condition or contravention of a provision of this Act committed whilst carrying out an activity under section 386V.

As the maximum penalty imposable under the section is five penalty units, the penalty is of an insufficient nature to act as a deterrent to those carrying out activities under a prospecting permit. Therefore, the penalty also represents an ineffective regulatory burden.

Further, the penalty imposed under this section is appealable to the Land Court. The ability to hear appeals regarding penalties is not within the intended jurisdiction of the Land Court and the Bill, once enacted, will remove this jurisdiction.

The ability for the chief executive to provide a notice to a person who has entered land under section 386V stating that the person is no longer authorised to carry out the activity on the land is not affected by this amendment. Where a person is given a notice under subsection (3), that person is no longer authorised to carry out the activity on the land.

Omission of s 389 (Duplicate permits, leases etc)

Clause 152 omits section 389 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mining tenements and these instruments will eventually be phased out.

Amendment of s 404B (Interference with particular things)

Clause 153 amends section 404B of the *Mineral Resources Act 1989* as a result of amendments to the *Mineral and Energy Resources (Common Provisions) Act 2014* to replace sections 64 to 64C (inclusive) and sections 252 to 252D (inclusive) of the *Mineral Resources Act 1989*.

The references to sections 64B(2)(b) or 252B(1)(b) of the *Mineral Resources Act 1989* are no longer relevant to section 404B(1)(b).

Amendment of s 413 (Evidentiary provision)

Clause 154 amends section 413 of the *Mineral Resources Act 1989* to reflect that DNRM is no longer going to issue hard copy instruments for mining tenements and these instruments will eventually be phased out.

Section 413(4)(a)(i) currently stipulates that an authority or copy of an authority is a stated document for the section. This clause removes this stipulation as hard copy instruments will no longer be issued.

Amendment of section 417 (Regulation-making power)

Clause 155 amends section 417 to remove the regulation making powers for sections 141(1)(e) and 194(1)(e). This removal is consequential to the amendment of these sections.

Amendment of s 833 (Act as in force on relevant day continues to apply for particular mining leases)

Clause 156 amends section 833 of the *Mineral Resources Act 1989* by inserting a new note referring to section 842 for the application of the provision.

Amendment of s 834 (Relevant provisions continue to apply for particular mining tenements)

Clause 157 amends section 834 of the *Mineral Resources Act 1989* by inserting a new note referring to section 843 for the application of the provision.

Insertion of new ch 15, pt 13

Clause 158 amends chapter 15 by inserting a new Part 13, and new sections 840, 841, 842 and 843 into the *Mineral Resources Act 1989*.

Section 840 applies to an application for the grant or renewal of a mining claim or mining lease if the application was made before the commencement and:

- immediately before the commencement the application had not been decided, and
- the compensation for the mining claim or mining lease had not been determined.

The Act immediately in force before the commencement continues to apply in relation to determining compensation for the grant or renewal of the mining claim or mining lease as if the Bill had not been enacted.

Section 841 establishes a transitional provision to deal with written consents for entry to a reserve given before the commencement of the amendments in Clause 160. This provision ensures that if a written consent has been given by the owner of a reserve, it continues its effect as if the Bill had not been enacted.

This clause also inserts sections 843 and 844 into the *Mineral Resources Act 1989.*

These new sections seek to clarify the effect of existing savings provisions in sections 833 and 834. These sections were intended to relate to specific mining tenements covered by Schedule 1A of the *Mineral Resources Act 1989* as it was in force before it was omitted by the *Mineral and Energy Resources (Common Provisions) Act 2014.*

Schedule 1A contained what were called ‘Alternative State Provisions’ (ASPs). The ASPs replaced the right-to-negotiate provisions of the *Native Title Act 1993* (Cwlth). The ASPs were native title processes for progressing applications for exploration and mining tenements lodged between 18 September 2000 and 31 March 2003

inclusive. The ASPs also applied to mining tenement applications made prior to 18 September 2000, but only where the application had been notified for commencement under the ASPs.

Schedule 1A was repealed because there were fewer than five mining lease applications that remained subject to these provisions, and no future applications would be able to rely on the ASPs.

Sections 842 and 843 of the *Mineral Resources Act 1989* clarify that sections 833 and 834 will only apply to mining lease applications and mining tenements to which the ASP provisions of Schedule 1A would have or had applied, as was originally intended.

Sections 842 and 843 also provide that sections 833 and 834 have only ever applied to tenements covered by Schedule 1A as it was in force before the *Mineral and Energy Resources (Common Provisions) Act 2014* omitted the schedule.

Amendment of sch 1, s 1 (Notice of entry to owner or occupier)

Clause 159 amends schedule 1, section 1(3) of the *Mineral Resources Act 1989* that defines the period of time that must elapse between a person delivering an entry notice under schedule 1, section 1(1), and that person entering the land under section 386V.

The section currently prescribes a notice period of five business days. The Bill amends the Act to extend this period to ten business days. The notice period will now be consistent with the entry notice periods for private land in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Replacement of sch 1, s 4 (Consent of owner of reserve)

Clause 160 amends schedule 1, section 4 of the *Mineral Resources Act 1989*. This section only allows a person to access a reserve for section 386V purposes if the reserve owner gives consent. This power was erroneously included in the *Mineral Resources Act 1989*.

The Bill removes the consent right. Instead, new section 4(1) declares that a person may only enter the surface of a reserve under section 386V if they have provided an entry notice, and if they are in compliance with any conditions that the owner of the reserve places upon them.

Section 4(2) places boundaries around the conditioning power, requiring that any condition must be a reasonable and relevant condition about entry to the reserve, or about the carrying out of an activity under section 386V.

Amendment of sch 2 (Dictionary)

Clause 161 omits definitions that are no longer used in the *Mineral Resources Act 1989*. It also provides for definitions made because of the amendments inserted by the Bill.

Part 7 Amendment of Mineral Resources Regulation 2013

Regulation amended

Clause 162 provides for amendments to the Mineral Resources Regulation 2013.

Amendment of s 8 (Conditions – Act, s 81)
Clause 163 corrects cross-referencing issues that have arisen as a consequence of amendments which renumber section 81.

Amendment of s 12 (Conditions – Act, s 194)
Clause 164 corrects cross-referencing issues that have arisen as a consequence of amendments which renumber section 194.

Amendment of s 13 (Annual reports—Act, ss 141 and 194)

Clause 165 amends section 13 of the *Mineral Resources Regulation 2013* by changing references from annual reports to activity reports, and by inserting provisions that requires exploration permit holders and mineral development licence holders to provide an activity report by a given date. This detail was previously in the Act. This clause has the same effect as the provisions that were removed from sections 141(1)(e) and 194(1)(e) of the *Mineral Resources Act 1989*.

The net impact of this change is to move the prescription surrounding annual reports (now called activity reports) into the *Mineral Resources Regulation 2013* to create a more flexible and responsive reporting framework. No substantive changes to the detail required by the activity report has been made.

Consequential renumbering has also occurred.

Amendment of s 14 (Expenditure statement for annual report)

Clause 166 amends section 14 of the *Mineral Resources Regulation 2013* by changing references from annual reports to activity reports.

Amendment of s 15 (First annual report – Act, ss 141 and 194)

Clause 167 amends section 15 of the *Mineral Resources Regulation 2013* by changing references from annual reports to activity reports. The clause also corrects section cross-references within section 15 that have changed due to other amendments.

Amendment of s 16 (Partial surrender reports and partial relinquishment reports—Act, ss 141 and 194)

Clause 168 amends section 16 of the Mineral Resources Regulation 2013 to insert provisions that require exploration permit holders and mineral development licence

holders to provide partial relinquishment reports and partial surrender reports by a given date. These amendments have the same effect as the provisions that were removed from sections 141(1)(e) and 194(1)(e) of the *Mineral Resources Act 1989*.

The net impact of this change is to move the prescription for when these reports must be given from the Act into the *Mineral Resources Regulation 2013* to create a more flexible and responsive reporting framework. No substantive reporting changes have been made.

Amendment of s 17 (Final reports—Act, ss 141 and 194)

Clause 169 amends section 17 of the Mineral Resources Regulation 2013 to insert provisions that requires exploration permit holders and mineral development licence holders to provide a final report by a given date. This amendment has the same effect as the provisions that were removed from sections 141(1)(e) and 194(1)(e) of the *Mineral Resources Act 1989*.

The net impact of this change is to move the prescription for when final reports must be given from the Act into the *Mineral Resources Regulation 2013* to create a more flexible and responsive reporting framework. No substantive reporting changes have been made. The clause also corrects cross references within section 17 that have changed due to other amendments.

Amendment of s 18 (Giving reports—Act, ss 141 and 194)
Clause 170 amends section 18 of the Mineral Resources Regulation 2013 to correct a cross reference that has changed as a consequence of other amendments.

Amendment of s 22 (Conditions—Act, s 276)
Clause 171 amends section 22 of the Mineral Resources Regulation 2013 to correct a cross reference that has changed as a consequence of other amendments.

Insertion of ch 2, pt 4, div 5 (Reports for coal or oil shale mining leases)

Clause 172 inserts a new chapter 2, part 4, division 5 with three sections: 29A, 29B, and 29C, into the Mineral Resource Regulation 2013. These sections relocate the detail of the pre-existing sections 318CV, 318CX and 318CY from the Act into the Regulation.

Section 29A provides when an annual report must be delivered for a coal or oil shale mining lease, and specifies what that report must contain. This detail was previously contained in section 318CV of the *Mineral Resources Act 1989*.

Section 29B provides when a relinquishment report must be delivered for a coal or oil shale mining lease, to whom the report must be provided, and specifies what that report must contain. This detail was previously contained in section 318CX of the *Mineral Resources Act 1989.*

Section 29C provides when a surrender report must be delivered for a coal or oil shale mining lease, and specifies what that report must contain. This detail was previously contained in section 318CY of the *Mineral Resources Act 1989*.

Omission of s 92 (Application for duplicate authorising document)

Clause 173 omits section 92 of the Mineral Resources Regulation 2013 to reflect that DNRM is no longer going to issue hard copy instruments for mining tenements and these instruments will eventually be phased out.

Insertion of ch 4, pt 11

Clause 174 inserts a new section 112 in the Mineral Resources Regulation 2013, to provide a transitional period for the making of a joint interaction management plan. Subsection (1) provides the transitional period will apply if coal mining operations under a coal mining lease are carried out in an area overlapping a petroleum lease under the *Petroleum Act 1923.*

Subsections (2) and (3) of section 112 provide that coal mining operations can continue under the pre-amended regulation, as if the plan made under the pre-amended regulation sections 25 or 26 is a joint interaction management plan. This transitional period applies until a joint interaction management plan is made under section 25 of the Mineral Resources Regulation 2013.

The transitional period is required because the site senior executive for the coal mine and the operator of each authorised activities operating plant may not yet have made a joint interaction management plan for the overlapping operations, due to a drafting error in the *Petroleum and Gas (Production and Safety) Act 2004.*

The drafting error is corrected by Clause 218. This clause confirms that the safety provisions in the *Petroleum and Gas (Production and Safety) Act 2004* apply not only to petroleum authorities under the *Petroleum and Gas (Production and Safety) Act 2004*, but also apply to petroleum tenures under the *Petroleum Act 1923.*

Subsection (4) requires that the holder of the coal mining lease responsible for making a joint interaction management plan under section 25 must make reasonable attempts to consult with the operator of each authorised activities operating plant, within two months after the commencement of section 112. If the holder seeks to rely on section 25(2), the coal mining lease holder must give the operator of each authorised activities operating plant a copy of the proposed plan, mentioned in section 25(2), within two months after the commencement of section 112.

Subsection (5) sets out the meaning in section 112 of “pre-amended regulation”.

Amendment of sch 5 (Fees)

Clause 175 omits part 8 of schedule 5. This change is being made because DNRM is no longer going to issue hard copy instruments for mining tenements and these instruments will eventually be phased out.

Part 8 Amendment of Petroleum Act 1923

Act amended

Clause 176 provides that the *Petroleum Act 192*3 is amended by the Bill in this part.

Amendment of s 2 (Definitions)

Clause 177 omits current definitions used in the *Petroleum Act 1923* for '1923 Act petroleum tenure' 'original notional sub-blocks' and 'water observation bore' and inserts updated or more correct definitions for these.

This clause also inserts the definition 'conference election notice' because of various amendments made by the Bill.

The definition of '1923 Act petroleum tenure' is being amended so that a water monitoring authority granted under the *Petroleum Act 1923* may, with an authority to prospect or a petroleum lease, be generally referred to as a '1923 Act petroleum tenure' in certain parts or divisions, or a section of the *Petroleum Act 1923* as detailed.

The definition of 'water observation bore' is being amended so that it also reflects the terminology used (that is 'water monitoring bore') for it in the *Water Act 2000*.

Amendment of s 18A (Minister's power to decide excluded land for authority to prospect)

Clause 178 amends section 18A of the *Petroleum Act 1923* because the section makes references to hard copy instruments and DNRM will cease to issue hard copies of instruments for authorities to prospect and these instruments will eventually be phased out.

Any details that are currently being recorded on hard copy instruments for authorities to prospect are also recorded on the electronic MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Section 18A currently gives the Minister the power to decide excluded land for an authority to prospect, however this power relies upon the area of the authority stated within the instrument. The amendments in this clause replace instruments with the electronic MyMinesOnline resource authority register.

Finally, this clause also makes a minor clarification to subsection 3 to ensure that excluded land may be in 'any of' the sub-blocks stated, rather than in 'the' sub blocks stated.

Amendment of s 40B (Minister's power to decide excluded land for lease)

Clause 179 amends section 40B of the *Petroleum Act 1923* because the section makes reference to hard copy instruments and DNRM will cease to issue hard copies of instruments for petroleum leases and these instruments will eventually be phased out.

Any details that are currently being recorded on hard copy instruments for petroleum leases are also recorded on the MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Currently section 40B gives the Minister the power to decide excluded land for a petroleum lease, however this power relies upon the area of the lease stated within the hard copy instrument. The amendments in this clause replace instruments with the electronic MyMinesOnline resource authority register.

This clause also makes a minor clarification to ensure that excluded land may be in 'any of' the sub-blocks stated, rather than in 'the' sub blocks stated.

Amendment of s 44 (Form etc. of lease)

Clause 180 amends section 44 of the *Petroleum Act 1923* because the section makes references to hard copy instruments and DNRM will cease to issue hard copies of instruments for petroleum leases and these instruments will eventually be phased out.

Any details that are currently being recorded on hard copy instruments for petroleum leases are also recorded on the MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Section 44 currently requires that petroleum leases be in the form prescribed, which is interpreted as a hard copy instrument. The amendment in this clause removes this reference.

Amendment of s 47 (Reservations, conditions and covenants of lease)

Clause 181 amends section 47 of the *Petroleum Act 1923* because the section makes references to hard copy instruments and DNRM will cease to issue hard copies of instruments for petroleum leases and these instruments will eventually be phased out.

Any details that are currently being recorded on hard copy instruments for petroleum leases are also recorded on the MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Section 47 currently set out the reservations, conditions, and covenants which each petroleum lease must contain. An amendment in this clause removes the reference to 'must contain' as it is interpreted as refereeing to a hard copy instrument and inserts wording which instead clarifies that these reservations, conditions and covenants apply generally in relation to a petroleum lease.

Section 47 also currently sets out when an applicant and the applicant's assigns are deemed to have entered into, accepted and are bound by the covenants, reservations and conditions of a lease. In doing so, the section makes direct reference to the execution of an instrument of lease. An amendment in this clause removes this reference.

Amendment of s 65 (Reservations in favour of State)

Clause 182 amends section 65 of the *Petroleum Act 1923* to reflect that DNRM is no longer going to issue hard copy instruments for an authority to prospect or lease and these instruments will eventually be phased out.

Amendment of s 75C (Authorisation to enter to facilitate compliance with s 74X or this division)

Clause 183 amends section 75C of the *Petroleum Act 1923* to update cross-references due to the omission of the 'land access' provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 75Q (Transfer of water observation bore or water supply bore to landowner)

Clause 184 provides for an amendment to the 'Note' in section 75Q(1). This is being amended to reflect the correct references to the *Water Act 2000*.

The *Water Act 2000* is being referenced because the transfer of a water observation bore or water supply bore to a landowner, does not give the landowner the right to take water from the bore. The taking of water from such a bore usually requires an authorisation under the *Water Act 2000*.

Insertion of new Section 75QA (Transfer of water observation bore to State)

Clause 185 provides for the transfer of a water observation bore, constructed under the authority of the *Petroleum Act 1923*, from a 1923 Act petroleum tenure holder to the State.

The definition of '1923 Act petroleum tenure' in section 2 of the *Petroleum Act 1923*, is being amended by the Bill. Consequently, a '1923 Act petroleum tenure' under inserted section 75QA will mean an authority to prospect, lease or water monitoring authority under the *Petroleum Act 1923*.

One of the reasons the State may wish to be transferred a water observation bore is to assist the State in obtaining more data about groundwater impacts from resource

activities (mining, coal seam gas production) without the expense of the State (and ultimately, to Queensland taxpayers) having to construct a water observation bore. It will also provide a saving in decommissioning costs to the 1923 Act petroleum tenure holder.

In proposing the transfer of a water observation bore to the State, the 1923 Act petroleum tenure holder must, no later than 60 business days before the bore must be decommissioned, give a notice in the approved form to the chief executive administering the *Petroleum Act 1923*.

Section 75U of the *Petroleum Act 1923* provides that a water observation bore must be decommissioned before:

- the authority to prospect, lease or water monitoring authority ends; or
- the land on which the bore is located is no longer in the area of the authority to prospect, lease or water monitoring authority under which the bore was constructed.

The notice in the approved form will likely require details about the water observation bore (for example, its location and the aquifer being monitored) and say that an offer is being made to transfer the bore to the State. The approved form will also require that the 1923 Act petroleum tenure holder declares that the bore has been constructed in compliance with section 75K of the *Petroleum Act 1923*.

This will confirm, like section 75Q of the *Petroleum Act 1923*, that the water observation bore was constructed by:

- a water bore driller licenced under the *Water Act 2000*; or
- a 1923 Act petroleum tenure holder or water monitoring authority holder in compliance with the requirements for drilling a water observation bore prescribed under a regulation.

This will ensure that, among other things, the underground water reservoir is protected from contamination and the long term structural integrity of such a bore endures.

If the chief executive consents to the water observation bore being transferred to the State, the chief executive will advise the 1923 Act petroleum tenure holder, in writing, within 20 business days of receiving the notice on the approved form from the 1923 Act petroleum tenure holder.

The notice given to the 1923 Act petroleum tenure holder will detail when the transfer to the State is effected.

If the 1923 Act petroleum tenure holder does not receive a notice from the chief executive within 20 business days of the chief executive receiving the notice lodged on the approved form from the 1923 Act petroleum tenure holder, the water observation bore must be decommissioned as provided for in section 75U of the *Petroleum Act 1923*.

It is anticipated that there would be few instances where the State would require a water observation bore to be transferred to it.

Consequently, the holder of another 1923 Act petroleum tenure (including a water monitoring authority under this Act), a 2004 Act petroleum tenure holder or a water monitoring authority holder under the 2004 Act, the area of which is over land where the water observation bore is located, may be afforded the first opportunity to be transferred the bore.

The holder of another 1923 Act petroleum tenure (including a water monitoring authority under this Act), a 2004 Act petroleum tenure holder or a water monitoring authority holder under the 2004 Act may not wish to be transferred the water observation bore. If this is the case, the landowner of the land on which a water observation bore is located may then be offered the transfer of the bore.

The landowner may not wish to be transferred the water observation bore, in which case the owner of the bore can then offer it to the State.

If no transfer of a water observation bore is effected pursuant to sections 75Q or 75S of the *Petroleum Act 1923*, or section 75QA of the *Petroleum Act 1923* (being inserted by the Bill) then the 1923 Act petroleum tenure holder must decommission the bore as per the obligation at section 75U of the *Petroleum Act 1923*.

Amendment of s 75U (Obligation to decommission)

Clause 186 provides a clarification that the chief executive of the department in which the *Petroleum Act 1923* is administered, is to be given the notice about the decommissioning of a well, water observation bore or water supply bore. The notice must be given in the approved form. This clause also amends section 75U(4)(c) so that it is written in the current drafting style for the statute book.

Amendment of s 75V (Right of entry to facilitate decommissioning)

Clause 187 amends section 75V of the *Petroleum Act 1923* to update cross-references due to the omission of the ‘land access’ provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 75WD (Operation of sdiv 2)

Clause 188 amends section 75WD of the *Petroleum Act 1923* to update cross-references due to the omission of the ‘land access’ provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 103A (Application of pt 6R)

Clause 189 amends section 103A to replace 'an election notice' with 'a conference election notice'. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 103B (Calling conference)

Clause 190 amends section 103B(1) to replace 'an election notice' with 'a conference election notice' and to omit the words 'about negotiating a conduct and compensation agreement'. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 103D (What happens if a party does not attend)

Clause 191 amends section 103D to clarify that the section applies only a conference under section 103B(2) by replacing 'the conference' with 'a conference under section 103B(2)'. This clause also amends the section to remove the note under section 103D(2). This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 103E (Authorised officer's role)

Clause 192 amends section 103E to update section referencing. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 103G (Agreement made at conference)

Clause 193 removes subsection (2) from section 103G. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Omission of s 126 (Replacement of instrument for tenure)

Clause 194 omits section 126 of the *Petroleum Act 1923* because DNRM is no longer going to issue hard copies of instruments for 1923 Act petroleum tenure or water monitoring authorities and these are eventually being phased out.

Amendment of Schedule (Decisions subject to appeal)

Clause 195 provides for the omission from the schedule 'Decisions subject to appeal' to the *Petroleum Act 1923*, of the entry for section 126. This is because section 126 is being omitted by the Bill.

Part 9 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Act amended

Clause 196 provides that the *Petroleum and Gas (Production and Safety) Act 2004* is amended by the Bill in this part.

Amendment of s 17 (What is a *petroleum facility*)

Clause 197 omits section 17(2) from the *Petroleum and Gas (Production and Safety) Act 2004*.

Currently, the definition of 'petroleum facility' in section 17 of the *Petroleum and Gas (Production and Safety) Act 2004* does not include facilities for the distillation, processing, refining, storage or transport of petroleum authorised under a petroleum lease or pipeline licence under the *Petroleum and Gas (Production and Safety) Act 2004*, or a petroleum tenure under the *Petroleum Act 1923*. Facilities constructed and operated under the *Amoco Australia Pty. Limited Agreement Act 1961* and *Ampol Refineries Limited Agreement Act 1964* are also not included as petroleum facilities.

This definition means that owners of facilities listed above cannot apply for a petroleum facility licence under section 443.

By omitting section 17(2), the amendments clarify that a petroleum facility is a facility for the distillation, processing, refining, storage or transport of petroleum, other than a distribution pipeline, regardless of whether it is on a pipeline licence or petroleum lease etc.

Amendment of s 32 (Exploration and testing)

Clause 198 amends section 32 of the *Petroleum and Gas (Production and Safety) Act 2004*. This is a consequential amendment brought about because of amendments to this Act relating to production and storage testing for a petroleum well. These amendments were given effect when section 603 of the *Mineral and Energy Resources (Common Provisions) Act 2014* commenced. The reference in section 32(3) of the *Petroleum and Gas (Production and Safety) Act 2004* is being amended to reference the correct provisions of the *Petroleum and Gas (Production and Safety) Act 2004*, brought about by the amendment made by *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 99 (Minister's power to decide excluded land)

Clause 199 amends section 99 of the *Petroleum and Gas (Production and Safety) Act 2004* because the section makes references to hard copy instruments and DNRM will cease to issue hard copies of instruments for authorities to prospect and these instruments will eventually be phased out.

Any details that are currently being recorded on hard copy instruments for authorities to prospect are also recorded on the MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Currently section 99 gives the Minister the power to decide excluded land for an authority to prospect, however this power relies upon the area of the authority stated within the hard copy instrument. The amendments in this clause replace instruments with the electronic MyMinesOnline resource authority register.

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

Clause 200 amends section 109 of the *Petroleum and Gas (Production and Safety) Act 2004*. This is a consequential amendment brought about because of amendments to this Act relating to production and storage testing for a petroleum well. These amendments were given effect when section 613 of the *Mineral and Energy Resources (Common Provisions) Act 2014* commenced. The reference in section 109(1)(b) of the *Petroleum and Gas (Production and Safety) Act 2004* is being amended to reference the correct provisions of the *Petroleum and Gas (Production and Safety) Act 2004*, brought about by the amendment made by *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 112 (Incidental activities)

Clause 201 amends section 112 of the *Petroleum and Gas (Production and Safety) Act 2004*. This is a consequential amendment brought about because of amendments to this Act relating to production and storage testing for a petroleum well. These amendments were given effect when section 613 of the *Mineral and Energy Resources (Common Provisions) Act 2014* commenced. The reference in section 112(1)(b), example 3 of the *Petroleum and Gas (Production and Safety) Act 2004* is being amended to reference the correct provisions of the *Petroleum and Gas (Production and Safety) Act 2004*, brought about by the amendment made by *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 169 (Minister's power to decide excluded land)

Clause 202 amends section 169 of the *Petroleum and Gas (Production and Safety) Act 2004* because the section makes references to hard copy instruments and DNRM will cease to issue hard copies of instruments for petroleum leases and these instruments will eventually be phased out.

Any details that are currently being recorded on hard copy instruments for petroleum leases are also recorded on the MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Currently section 169 gives the Minister the power to decide excluded land for a petroleum lease, however this power relies upon the area of the lease stated within the hard copy instrument. The amendments in this clause replace instruments with the electronic MyMinesOnline resource authority register.

Amendment of s 185 (Underground water rights—general)

Clause 203 amends section 185 of the *Petroleum and Gas (Production and Safety) Act 2004*. This is a consequential amendment brought about because of amendments to this Act relating to underground water rights. These amendments were given effect when section 14 of the *Water Reform and Other Legislation Amendment Act 2014* commenced on 6 December 2016. The reference in section 185(4) of the *Petroleum and Gas (Production and Safety) Act 2004*, to another subsection of section 185 of this Act, is being amended to reference the correct subsection.

Amendment of s 288 (Transfer of water injection bore, water observation bore or water supply bore to landowner)

Clause 204 provides for an amendment to the 'Note' in section 288. This is being amended to reflect the correct references to the *Water Act 2000*.

The *Water Act 2000* is being referenced because the transfer of a water injection bore, water observation bore or water supply bore to a landowner does not give the landowner the right to take water from the bore. The taking of water from such a bore usually requires an authorisation under the *Water Act 2000*.

Insertion of new s 288A (Transfer of water observation bore to State)

Clause 205 provides for the transfer of a water observation bore, constructed under the authority of the *Petroleum and Gas (Production and Safety) Act 2004*, from a petroleum tenure or water monitoring authority holder to the State.

One of the reasons the State may wish to be transferred a water observation bore is to assist the State in obtaining more data about groundwater impacts from resource activities (mining, coal seam gas production) without the expense of the State (and ultimately, to Queensland taxpayers) having to construct a water observation bore. It will also provide a saving in decommissioning costs to the petroleum tenure or water monitoring authority holder.

In proposing the transfer of a water observation bore to the State, the petroleum tenure or water monitoring authority holder must, no later than 60 business days before the bore must be decommissioned, give a notice in the approved form to the Minister administering the *Petroleum and Gas (Production and Safety) Act 2004*.

Section 292 of the *Petroleum and Gas (Production and Safety) Act 2004* provides that a water observation bore must be decommissioned before:

- the authority to prospect, petroleum lease or water monitoring authority ends; or
- the land on which the bore is located is no longer in the area of the authority to prospect, petroleum lease or water monitoring authority under which the bore was constructed.

The notice in the approved form will likely require details about the water observation bore (for example, its location and the aquifer being monitored) and say that an offer is being made to transfer the bore to the State. The approved form will also require that the petroleum tenure or water monitoring authority holder declares that the bore has been constructed in compliance with section 282 of the *Petroleum and Gas (Production and Safety) Act 2004*.

This will confirm, like section 288 of the *Petroleum and Gas (Production and Safety) Act 2004*, that the water observation bore was constructed by:

- a water bore driller licenced under the *Water Act 2000*; or
- a petroleum tenure holder or water monitoring authority holder in compliance with the requirements for drilling a water observation bore prescribed under a regulation.

This will ensure that, among other things, the underground water reservoir is protected from contamination and the long term structural integrity of such a bore endures.

If the Minister consents to the water observation bore being transferred to the State, the Minister will advise the petroleum tenure or water monitoring authority holder, in writing, within 20 business days of receiving the notice on the approved form from the petroleum tenure or water monitoring authority holder.

The notice given to the petroleum tenure or water monitoring authority holder, from the Minister, will detail when the transfer to the State is effected.

If the petroleum tenure or water monitoring authority holder does not receive a notice from the Minister within 20 business days of the Minister receiving the notice lodged on the approved form from the petroleum tenure or water monitoring authority holder, the bore must be decommissioned as provided for in section 292 of the *Petroleum and Gas (Production and Safety) Act 2004*.

It is anticipated that there would be few instances where the State would require a water observation bore to be transferred to it.

Consequently, the holder of another petroleum tenure or water monitoring authority, the area of which is over land where the water observation bore is located, may be afforded the first opportunity to be transferred the bore.

The holder of another petroleum tenure or water monitoring authority may not wish to be transferred the water observation bore. If this is the case, the landowner of the land on which a water observation bore is located may then be offered the transfer of the bore.

The landowner may not wish to be transferred the water observation bore, in which case the owner of the bore can then offer it to the State.

If no transfer of a water observation bore is effected pursuant to sections 288 or 290 of the *Petroleum and Gas (Production and Safety) Act 2004*, or section 288A of the *Petroleum and Gas (Production and Safety) Act 2004* (being inserted by the Bill) then the petroleum tenure or water monitoring holder must decommission the bore as per the obligation at section 292 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 292 (Obligation to decommission)

Clause 206 provides a clarification that the chief executive of the department in which the *Petroleum and Gas (Production and Safety) Act 2004* is administered, is to be given the notice about the decommissioning of a petroleum well, water injection bore, water observation bore or water supply bore. The notice must be given in the approved form. This clause also amends section 292(4)(c) to update the drafting style.

Amendment of s 293 (Right of entry to facilitate decommissioning)

Clause 207 amends section 293 of the *Petroleum and Gas (Production and Safety) Act 2004.* This clarifies that the references made in section 293(3) are all references to chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 393 (Operation of div 1)

Clause 208 amends the 'Note' in section 393 of the *Petroleum and Gas (Production and Safety) Act 2004*. This is a consequential amendment due to the omission of the 'land access' provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of Section 399 (What is pipeline land for a pipeline licence)

Clause 209 amends section 399 of the *Petroleum and Gas (Production and Safety) Act 2004* to update cross-references due to the omission of the 'land access' provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

The omission of the land access provisions also transposed the definition of 'waiver of entry notice' from the *Petroleum and Gas (Production and Safety) Act 2004* to the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Therefore, the reference in section 399(2)(b) to a 'waiver of entry notice' is clarified so that this term adopts the meaning provided for it in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of ch 4, pt 3 (Petroleum facility licences)

Clause 210 amends chapter 4, part 3 to omit the existing note and replace it with a new note. The new note refers to section 803 for any restrictions on constructing or operating a petroleum facility.

Amendment of s 439 (what is *petroleum facility land* for a petroleum facility licence)

Clause 211 amends section 439 of the *Petroleum and Gas (Production and Safety) Act 2004*. This is a consequential amendment because of the omission of the 'land access' provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

The omission of the land access provisions also resulted in the definition of 'waiver of entry notice' being transposed from the *Petroleum and Gas (Production and Safety) Act 2004* to the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Therefore, the reference in section 439(2)(b) of the *Petroleum and Gas (Production and Safety) Act 2004*, to a 'waiver of entry notice' is clarified so that this term adopts the meaning provided for it in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Insertion of new ch 4, pt 3, div 1A

Clause 212 inserts a new chapter 4, part 3, to the *Petroleum and Gas (Production and Safety) Act 2004*. The new section 442A defines the circumstances under which a petroleum facility licence is not required. The circumstances defined in the new section were previously specified under section 17(2).

Amendment of s 443 (Who may apply)

Clause 213 omits section 443(3) from the *Petroleum and Gas (Production and Safety) Act 2004*, which previously included the definition for a proposed petroleum facility. This definition is no longer required following the deletion of section 17(2).

Amendment of s 543 (Requirement of petroleum tenure holder to report outcome of testing)

Clause 214 amends section 543 of the *Petroleum and Gas (Production and Safety) Act 2004*. This consequential amendment is required because of amendments relating to production and storage testing for a petroleum well. These amendments were given effect when sections 603 and 613 of the *Mineral and Energy Resources (Common Provisions) Act 2014* commenced. The reference in sections 543(1)(a) and 543(1)(b) of the *Petroleum and Gas (Production and Safety) Act 2004* is being amended to reference the correct provisions of the *Petroleum and Gas (Production and Safety) Act 2004*, brought about by the amendment made by *Mineral and Energy Resources (Common Provisions) Act 2014*.

Omission of ss 552A and 552B

Clause 215 omits sections 552A and 552B of the *Petroleum and Gas (Production and Safety) Act 2004.* These sections required a petroleum lease holder under the *Petroleum and Gas (Production and Safety) Act 2004* to lodge an annual

infrastructure report and described the detail of what needed to be contained in this report.

The annual infrastructure report has essentially the same content requirements as the annual safety report, required to be lodged pursuant to section 689 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 561 (Authorisation to enter to facilitate compliance with s 555 or this division)

Clause 216 amends section 561 of the *Petroleum and Gas (Production and Safety) Act 2004*. This is a consequential amendment due to the omission of the 'land access' provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 591A (Exemption for production testing)

Clause 217 amends section 591A of the *Petroleum and Gas (Production and Safety) Act 2004*. This is a consequential amendment because of amendments to this Act relating to production and storage testing for a petroleum well. These amendments were given effect when sections 603 and 613 of the *Mineral and Energy Resources (Common Provisions) Act 2014* commenced. The reference in sections 591A(1)(a) and 591A(3)(a) of the *Petroleum and Gas (Production and Safety) Act 2004* is being amended to reference the correct provisions of the *Petroleum and Gas (Production and Safety) Act 2004*, brought about by the amendment made by *Mineral and Energy Resources (Common Provisions) Act 2014*.

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

Clause 218 inserts the definition of 'petroleum authority' in section 670, which defines operating plant. Petroleum authority means (a) a petroleum authority under section 18(2); or (b) an authority to prospect, petroleum lease, or water monitoring authority under the *Petroleum Act 1923.*

Section 670 of the *Petroleum and Gas (Production and Safety) Act 2004* is a key definition setting out what is operating plant and the types of operating plant subject to safety requirements such as safety management systems. In some subsections of section 670 there are references to petroleum authorities.

Since 2004, safety regulation of operating plant has occurred on the basis that safety requirements and safety provisions in the *Petroleum and Gas (Production and Safety) Act 2004)* apply equally and equitably to petroleum operations under all petroleum authorities or tenures. This is regardless of whether the authorities or tenures are under the *Petroleum and Gas (Production and Safety) Act 2004* or the *Petroleum Act 1923.*

Consultation with industry revealed a drafting error in the *Petroleum and Gas (Production and Safety) Act 2004* that arguably means petroleum tenure holders under the *Petroleum Act 1923* may not be subject to the same safety regulation as tenure holders under the *Petroleum and Gas (Production and Safety) Act 2004.* This

includes in relation to the making of joint interaction management plans for operations that overlap coal mining operations.

The drafting error is that the definition of "petroleum authority" defined in section 18 of the *Petroleum and Gas (Production and Safety) Act 2004* should have been broader for the safety provisions, so that it was clear the safety chapters in the *Petroleum and Gas (Production and Safety) Act 2004* also apply to the safety of operations under authorities or tenures under the *Petroleum Act 1923.*

The amendment to section 670 corrects this error and confirms the original intent that the safety provisions of the *Petroleum and Gas (Production and Safety) Act 2004* apply equally to the regulation of safety across all petroleum authorities or tenures, regardless of whether they are under the *Petroleum and Gas (Production and Safety) Act 2004* or *Petroleum Act 1923*.

Amendment of s 734B (Application of pt 1AA)

Clause 219 amends section 734B to replace 'an election notice' with 'a conference election notice'. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 734C (Calling conference)

Clause 220 amends section 734C to replace 'an election notice' with 'a conference election notice' and to omit the words 'about negotiating a conduct and compensation agreement'. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 734E (What happens if a party does not attend)

Clause 221 amends section 734E(1) to clarify that the section applies only to a conference under section 734C(2) by replacing 'the conference' with 'a conference under section 734C(2)'. This clause also amends the section to remove the note under section 734E(2). This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 734F (Authorised officer's role)

Clause 222 amends section 734F of the *Petroleum and Gas (Production and Safety) Act 2004* to update cross-referencing. This is a consequential amendment due to the omission of the 'land access' provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 734H (Agreement made at conference)

Clause 223 removes subsection (2) from section 734H. This is a consequential amendment made as a result of changes to the statutory negotiation process in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 803 (Restriction on petroleum facility construction or operation)

Clause 224 amends section 803 in the *Petroleum and Gas (Production and Safety) Act 2004* in relation to restrictions on constructing or operating a petroleum facility. Section 803 is an offence provision and states when a person must not construct or operate a petroleum facility.

The amendment to section 803 expands when it is not an offence to construct or operate a petroleum facility by taking account of the insertion of section 442A.

Amendment of s 844 (Amending applications)

Clause 225 omits a reference to section 389 from the definition of *relevant person* in section 844 of the *Petroleum and Gas (Production and Safety) Act 2004.*

This change is needed because section 389 was previously omitted by the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Amendment of s 848 (Power to correct or amend)

Clause 226 amends section 848 of the *Petroleum and Gas (Production and Safety) Act 2004* because the section makes references to hard copy instruments and DNRM will cease to issue hard copies of instruments for all authorities under this Act and these instruments will eventually be phased out.

Any details that are currently being recorded on hard copy instruments for all authorities under this are also recorded on the MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Currently section 848 makes reference to the issuing of a hard copy authority. This clause amends the section such that:

- the reference to the issuing of a hard copy authority is omitted
- for any corrections or amendments to take effect, they must be recorded in the electronic MyMinesOnline resource authority register and a notice must be given to the authority holder

Omission of s 849 (Replacement of instrument for authority)

Clause 227 omits section 849 of the of the *Petroleum and Gas (Production and Safety) Act 2004)* because the section makes reference to hard copy instruments

and DNRM will cease to issue hard copies of instruments for all authorities under this Act and these instruments will eventually be phased out.

Any details that are currently being recorded on hard copy instruments for all authorities under this Act are also recorded on the electronic MyMinesOnline resource authority register. As such, there is no longer a need for hard copy instruments to be kept, maintained or replaced.

Currently this section provides that an authority holder whose hard copy instrument has been lost, stolen or destroyed may apply in writing to have the instrument replaced. This clause omits entire section 849 to achieve the above objective.

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

Clause 228 amends section 910 of the *Petroleum and Gas (Production and Safety) Act 2004*. This is a consequential amendment due to the omission of the 'land access' provisions from this Act and the commencement of chapter 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014* .

Insertion of new ch 15, pt 21

Clause 229 inserts part 21, sections 993, 994 and 995, into chapter 15 of the *Petroleum and Gas (Production and Safety) Act 2004*.

This clause inserts a new section 993 in the *Petroleum and Gas (Production and Safety) Act 2004* to provide a transitional period for the making of a joint interaction management plan, if a petroleum tenure or authority relating to the operating plant to which chapter 9, part 4, division 5, subdivision 1 applies under section 705 is an authority to prospect, petroleum lease, or water monitoring authority under the *Petroleum Act 1923.*

The transitional period enables petroleum operations to continue under the principal hazard management plan applying in relation to an operating plant until a joint interaction management plan is made. The transitional period is required because the site senior executive for the coal mine and the operator of each authorised activities operating plant may not yet have made a joint interaction management plan for the overlapping operations, due to a drafting error in the *Petroleum and Gas (Production and Safety) Act 2004.* The drafting error is corrected in Clause 218, which confirms that the safety provisions in the *Petroleum and Gas (Production and Safety) Act 2004* apply not only to petroleum authorities under the *Petroleum and Gas (Production and Safety) Act 2004*, but also apply to petroleum tenures and authorities under the *Petroleum Act 1923.*

Subsection (1) provides that section 993 of the *Petroleum and Gas (Production and Safety) Act 2004* applies in relation to an operating plant, area or activity mentioned in section 670(6) if a petroleum authority relating to the operating plant is an authority to prospect, or petroleum lease or water monitoring authority, under the *Petroleum Act 1923.*

Subsections (2) and (3) of section 993 provide that petroleum operations can continue under the principal hazard management plan, as if the principal hazard management plan is a joint interaction management plan, until a joint interaction management plan is made under section 705B of the *Petroleum and Gas (Production and Safety) Act 2004* in relation to the operating plant, area or activity. The principal hazard management plan applying in relation to an operating plant, means the part of the safety management system that deals with hazards and risks relating to carrying out activities in an overlapping area.

Subsection (4) requires that the operator of an authorised activities operating plant responsible for making a joint interaction management plan under section 705B must make reasonable attempts to consult with the site senior executive, within two months after the commencement of section 993.

If the operator seeks to rely on section 705B(2), the operator must give the site senior executive a copy of the proposed plan, mentioned in section 705B(2), within two months after the commencement of section 993.

Subsection (5) sets out the meaning in section 993 of “principal hazard management plan”.

This clause also inserts section 994 that removes a condition to give an infrastructure report for a petroleum lease. This is a consequential amendment to the changes being made to streamline petroleum reporting.

A condition of a granted or renewed petroleum lease under the *Petroleum and Gas Production and Safety Act 2004*, stated on a hard copy instrument issued for the lease or recorded on the electronic MyMinesOnline resource authority register, may include a requirement to lodge a report about infrastructure for the lease. The condition may also require that this be lodged with the chief executive of the department administering the *Petroleum and Gas Production and Safety Act 2004* at certain times and for certain periods.

Due to the omission of sections 552A and 552B of the *Petroleum and Gas Production and Safety Act 2004*, a report about infrastructure for a petroleum lease is no longer required to be lodged. Consequently, any condition of a granted or renewed petroleum lease, that included a requirement to lodge a report of this type, will no longer apply.

Although this clause provides that this reporting condition no longer applies to a petroleum lease, this does not abrogate the lease holder’s obligations to comply with all the reporting requirements detailed in the *Petroleum and Gas (Production and Safety Act 2004* and any related subordinate legislation for this Act.

This clause also inserts section 995, which is a transitional provision in relation to calculating the exemption from petroleum royalty, given for certain types of production testing in relation to particular petroleum wells.

Amendment of sch 1 (Reviews and appeals)

Clause 230 omits from schedule 1, tables 1 and 2 'Reviews and appeal' to the *Petroleum and Gas (Production and Safety) Act 2004*, of the entries for section 849. This is because section 849 is being omitted by the Bill.

Amendment of sch 2 (Dictionary)

Clause 231 omits the definition of 'compensation application' as this is no longer used in the *Petroleum and Gas (Production and Safety) Act 2004*.

This clause also amends the definition of 'original notional sub-blocks' to reflect that DNRM is no longer going to issue hard copy instruments for petroleum authorities and these instruments will eventually be phased out.

Part 10 Amendment of Water Act 2000

Act amended

Clause 232 states that part 10 amends the *Water Act 2000*.

Insertion of new ch 2, pt 2, div 2, sdiv 1, hdg

Clause 233 creates a new subdivision heading 'Matters for regulation' in chapter 2, part 2, division 2, to reflect the insertion of a new subdivision 3 by the Bill, which provides for the temporary release of water from strategic water infrastructure reserves.

Amendment of s 39 (Matters for regulation)

Clause 234 makes a consequential amendment to reflect the commencement of the *Planning Act 2016* to replace the *Sustainable Planning Act 2009*. Development referred to as self-assessable under the previous *Sustainable Planning Act 2009* is now referred to as accepted development under the *Planning Act 2016*, and this clause updates this terminology in the *Water Act 2000*.

Insertion of new ch 2, pt 2, div 2, sdiv 2, hdg

Clause 235 creates a new subdivision heading 'Release of unallocated water—volume stated in water plan or prescribed by regulation' in chapter 2, part 2, division 2, to reflect the insertion of a new subdivision 3 by the Bill which provides for the temporary release of water from strategic water infrastructure reserves.

Amendment of s 40 (Chief executive may release unallocated water)

Clause 236 amends section 40 of the *Water Act 2000* to provide that for releasing unallocated water held as a general unallocated water reserve in a water plan, the process prescribed by regulation applies regardless of whether an alternative

process is stated in the relevant water plan. This is intended to ensure flexibility for the chief executive in determining the most appropriate process to follow for the release of general reserve water, which typically can be released for any purpose. It will also ensure that prescriptive, restrictive processes for the release of general reserve water stated in historical water plans (i.e. those made prior to the state-wide process prescribed by regulation) do not create an impediment for the chief executive releasing this water in the future. Importantly, the amendment is only intended to relate to the process for releasing the water, it does not prevent an existing or future water plan form stating limitations, conditions or matters to be considered relating to the release of unallocated water.

This clause also recognises the inclusion by the Bill of a process for the chief executive to temporarily release unallocated water from a strategic water infrastructure reserve. It makes it clear that a temporary release of unallocated water from a strategic water infrastructure reserve under the new provisions must be via the process prescribed by regulation, whether the relevant water plan states an alternative process or not.

Insertion of ch 2, pt 2, div 2, sdiv 3

Clause 237 inserts a new subdivision 3 ‘Temporary release of water from strategic water infrastructure reserve’ in chapter 2, part 2, division 2 of the *Water Act 2000* to allow the chief executive to temporarily release water from a strategic water infrastructure reserve.

40A Chief executive may temporarily release water from reserve

New section 40A provides a new head of power to the chief executive to temporarily release water from a strategic water infrastructure reserve for a purpose other than what is specified in a relevant water planning instrument. A strategic water infrastructure reserve is defined to include unallocated water held as strategic water infrastructure reserve, or strategic reserve that is not set aside for Indigenous purposes, under a water plan. These types of unallocated water reserves are often established for the purpose of a possible future water infrastructure project, such as a new dam or weir. This new power will allow the temporary release of water held in these reserves while for example water infrastructure projects are not seeking to access the water in the short term. It is intended to provide an additional option for temporarily increasing access to water where there is demand, while also providing security to future water infrastructure project proponents ensuring water held in the strategic water infrastructure reserve will be available for the project if and when required.

For temporarily releasing unallocated water under this new section the chief executive must use the process prescribed by regulation, however the release process must only make the water available under a ‘temporary’ water licence. Importantly, water licences granted as a result of a temporary release process can only be granted for up to three years and cannot be renewed, reinstated, relocated, amalgamated or subdivided. This ensures that the water returns to the unallocated water reserve after the water licence ends, protecting the reserve for a future water infrastructure project or permanent release for a purpose for which it is intended

under a water planning instrument. The note in this section is included to make it clear that section 40(2) is referring to the general process for releasing unallocated water prescribed under section 39(b) of the *Water Act 2000*.

This section also makes it clear that any provisions of a water planning instrument relating to the release of water from the strategic water infrastructure reserve do not apply to the release. This is included to make it clear that any provisions in a water planning instrument that specify conditions, limitations or purposes or otherwise relating to the strategic infrastructure reserve do not apply in relation to a temporary release under this subdivision.

40B Deciding whether to release water from reserve and considerations for the release

New Section 40B provides for what the chief executive must consider in making a decision to temporarily release water from a strategic water infrastructure reserve, and also considerations for the release process.

In deciding to temporarily release water from a strategic water infrastructure reserve, the chief executive must have regard to the volume of water that can be released without the proposed infrastructure being constructed. This consideration is included in acknowledgment that, when setting the unallocated water reserve in the water plan, modelling undertaken may have been based on a scenario with proposed infrastructure having been constructed. If this is the case, the chief executive will need to ensure the volume of water temporarily released is appropriate without additional infrastructure being in place. Further, before making a temporary release of strategic reserve water, the chief executive must consider whether the water is likely to be released for its intended purpose in the short term (i.e. that a proponent may require access to the strategic reserve for a water infrastructure project within the next three years). This consideration is intended to ensure the chief executive has regard to any proposals that may wish to seek water from the reserve permanently in the near future, so as to ensure that a temporarily release of the water wouldn’t affect access to the reserve for its intended purpose. The chief executive must also consider alternatives for access to water, for example, whether there is unallocated water held as general reserve in the area that could be released permanently.

In undertaking the release process, the chief executive must consider a number of matters including the outcomes and objectives of the relevant water plan, water supply schemes, other water users and existing water markets. It is important that the chief executive consider potential impacts on existing water markets in order to ensure any temporary release of additional water avoid influencing existing market opportunities, for example, the value of a seasonal water assignment if available in the area.

This new section also requires the chief executive to consult with the resource operations licence holder if the proposed release relates to a water supply scheme area. The resource operations licence holder processes seasonal water assignments within the water supply schemes that they manage. Therefore, the chief executive needs to consult with the resource operations licence holder to ensure that there is a

genuine demand for additional water within the catchment that cannot be met by existing water supplies.

40C When water returns to reserve

New section 40C provides that on the expiry, surrender, cancellation or repeal of a water licence temporarily granted as a result of a temporary release of water from a strategic water infrastructure reserve, the water returns to the strategic water infrastructure reserve. This ensures water in the reserve is protected for proponents that may seek permanent release of water from the reserve for a purpose for which it is intended under a water planning instrument in the future.

Amendment of s 43 (Contents of a water plan)

Clause 238 amends section 43 of the *Water Act 2000*, which provides the contents of a water plan, to provide for the inclusion of cultural outcomes in water plans to support the protection of the cultural values of water resources to Aboriginal peoples and Torres Strait Islanders. This amendment provides for water plans to specify of cultural outcomes distinct from other 'social' 'economic' and 'environmental' outcomes that are stated in water plans. Cultural outcomes are defined by the Bill to mean a beneficial consequence to an Aboriginal party or Torres Strait Islander party relating to aquifers, drainage basins, catchments, subcatchments or watercourses.

This amendment recognises Aboriginal Peoples' and Torres Strait Islanders' close cultural connection with the land and water, which we all now share. It also recognises the important role water resources play in supporting health and wellbeing in Aboriginal Peoples' and Torres Strait Islander communities.

This amendment is intended to improve consultation outcomes, by facilitating more respectful and holistic consideration of both the economic and non-economic aspirations of Aboriginal Peoples' and Torres Strait Islander from water planning and allocation.

This clause also amends section 43 to clarify that a water plan can no longer state a process for the release of unallocated water held as general reserve under the plan. However the water plan may continue to provide limitations, conditions or matters to be considered for the release. This recognises the amendment to section 40 of the *Water Act 2000* by the Bill which provides that the release of unallocated water held as general reserve must be via the process prescribed by regulation.

Amendment of s 45 (Making draft water plan)

Clause 239 amends section 45 of the *Water Act 2000* to include additional considerations for the Minister in making a draft water plan. In addition to the existing matters the Minister must consider, the Bill requires the Minister to consider the water-related effects of climate change on water availability and the interests of Aboriginal parties or Torres Strait Islander parties in relation to the water resources for the plan area.

The amendment provides for these additional considerations to ensure climate change is explicit in the water planning process. It also provides for more direct consideration of the values and uses of water resources to Aboriginal peoples and Torres Strait Islanders.

Amendment of s 60 (Making draft water use plan)

Clause 240 amends section 60 of the *Water Act 2000* to include an additional consideration for the Minister when preparing a draft water use plan. The Minister must now also consider the water-related effects of climate change on water use practices and the risk to land or water resources arising from the use of water on land.

Amendment of s 72 (Draft water entitlement notice)

Clause 241 amends section 72 of the *Water Act 2000* to require a copy of a draft water entitlement notice that provides for the conversion of water licences to water allocations be provided to any owner of land to which the water licences attached.

The proposed amendment will ensure that, in circumstances where the holder of a water licence that is proposed to be converted to a water allocation is the lessee of land (relevant person), the owner of land (affected person) are both made aware of the proposed conversion. This will ensure that there is an opportunity for the relevant person and affected person to make arrangements to change the holder of the water licence prior to its conversion if appropriate. Where this occurs, the relevant person would become an affected person and be able to make a submission on the water entitlement notice.

Amendment of s 93 (General authorisations to take water)

Clause 242 amends section 93 of the *Water Act 2000* to reinstate the ability for a water plan to alter or limit the authorisation to take overland flow water that is contaminated agricultural run-off. Section 101 of the *Water Act 2000* allows a water plan to alter or limit the authority to take overland flow water for any purpose. This provision is used to set rules in water plans for the taking of overland flow water. However, section 93 of the *Water Act 2000* currently provides that the take of overland flow water that is contaminated agricultural run-off is a general authorisation that may not be limited by a water planning instrument.

This general authorisation was introduced on the basis that the take of contaminated agricultural run-off presents a low risk to the water resource and the availability of water for other water users. It is now acknowledged that there may be circumstances where it would be beneficial to place limitations on the take of contaminated agricultural run-off to ensure the take continues represents a low risk into the future. This amendment will ensure, where appropriate, plans can introduce a limitation. It is not intended that an alteration or limitation in a water plan prevent the take of contaminated agricultural run-off in a way that would prevent a person from complying with obligations under the *Environmental Protection Act 1994*. This is made clear by the amendment to section 101 of the *Water Act 2000* by the Bill.

Amendment of s 101 (Authorisation that may be altered or limited by water planning instrument)

Clause 243 amends section 101 of the *Water Act 2000* to make it clear that a water plan cannot alter or limit the right to take overland flow water that is contaminated agricultural run-off in a way that would prevent a person from complying with obligations under the *Environmental Protection Act 1994*. A person may need to capture contaminated agricultural run-off to satisfy the requirements of an environmental authority or in order to not cause environmental harm under the *Environmental Protection Act 1994*. Reinstating the ability for a water plan to alter or limit the taking of contaminated agricultural run-off is not intended to affect a person's ability to comply with these obligations.

Amendment of s 121 (Who may apply for dealing with water licence)

Clause 244 amends section 121 of the *Water Act 2000,* who may apply for a dealing with a water licence, to make it clear that:

- a dealing to relocate a licence can only be made where section 126 applies to the licence, that is a regulation, water plan or water management protocol provides rules for the relocation; and
- that an application for a dealing to transfer a water licence only relates to the a transfer to an owner of land to which the water licence attaches, or to a prescribed entity.

The current section 121 of the *Water Act 2000* states that the licensee of a water licence may apply for one or more dealings with a water licence. Relocating a water licence is considered a dealing, however an application for a dealing to relocate is not intended to be accepted anywhere in the State. Rules that allow for relocation in particular areas are provided by regulation, water plan or water management protocol under section 126 of the *Water Act 2000*. Outside of these areas a licensee may still be able to apply for multiple dealings that would have a similar outcome as relocation, however the application would be assessed as an application for a new water licence, rather than through the simple process for assessing a relocation dealing application prescribed by regulation. This amendment is intended to make this clear.

It is necessary to clarify that an application for a dealing to transfer a water licence only relates to transfer to an owner of land to which the water licence attaches or a prescribed entity. The current provision is ambiguous and could be interpreted to suggest that a water licence could be transferred to any owner of land (i.e. including those to which the licence does not attach). This was not the intent.

Amendment of s 123 (Application to amend water licence to add or remove land)

Clause 245 amends section 123 of the *Water Act 2000* to remove reference to 'purchase on payment of a fee' in relation to inspection of an application to amend a water licence to add or remove land. This section is currently inconsistent with other similar provisions in the Act about the inspection of applications and other draft documents, and there is no prescribed fee.

Replacement of s 126 (Application to relocate water licence etc.)

Clause 246 replaces section 126 of the *Water Act 2000* to clarify what is meant by the relocation of a water licence, making it clear that relocation only relates to where a water plan, water management protocol or regulation provide rules for relocation for the purpose of this section of the *Water Act 2000*. Relocation of a water licence can refer to amendment of the licence to change the attached land and/or the location from which water may be taken.

As part of the same water licence dealing, the relocation can include one or more of the following, where consistent with the rules: transfer to a new holder, amalgamation with a water licence held by the new holder, change to the purpose for which water may be taken under the licence. Where an application for a dealing to relocate a water licence can be made, the application must be made, assessed and decided under the process prescribed by regulation.

Amendment of s 130 (When dealing must be assessed as if it were a new water licence)

Clause 247 amends section 130 of the *Water Act 2000*, which provides for when a water licence dealing application is to be dealt with as if it were an application for a new water licence, to clarify a number of matters.

Firstly, it clarifies that a proposed dealing which would increase the rate at which water may be taken is to be assessed as a new licence, regardless of how ‘rate’ is specified on the licence.

It also clarifies that a proposed dealing that would change the location of take is to be assessed as a new licence. This however does not apply to an application for a dealing to relocate a water licence, as dealings for relocation are dealt with in accordance with section 126 of the *Water Act 2000* and made, assessed and decided under the process prescribed by regulation. Applications for a dealing to relocate a water licence can only be made where a regulation, water plan or water management protocol provides for the relocation.

Amendment of s 131 (Recording other dealings)

Clause 248 amends section 131 of the *Water Act 2000* to make it clear how the chief executive should deal with a water licence dealing application that is recorded under section 131 if there is a change in land ownership after the application is made and the applicant ceases to be an owner of land to which the application relates. In this circumstance, where the chief executive has not yet decided the application at the time the applicant ceases to be the owner of land, if the dealing is recorded the chief executive must issue the resulting water licence(s) to the registered owner of land. This is consistent with how an application for a new water licence, or water licence dealing application to which section 130 of the *Water Act 2000* applies, is dealt with under section 114 of the *Water Act 2000* should the applicant cease to be an owner of land to which the application relates.

Insertion of new s 131A (Effect of disposal of part of land relating to particular dealing with water licence)

Clause 249 inserts new section 131A which provides that if an applicant disposes of part of the land to which a water licence dealing application relates before the chief executive makes a decision on the application, the application lapses on the day the disposal of land occurs. This is consistent with the effect of disposal of part of land to which an application for a new water licence, or water licence dealing application to which section 130 of the *Water Act 2000* applies, under section 115 of the *Water Act 2000*.

Insertion of new s 137A (Additional information may be required)

Clause 250 inserts new section 137A of the *Water Act 2000*, which reinstates the ability for the chief executive to request the applicant for a water permit to provide further information about the application. The chief executive may also require any information given in relation to the application to be verified by statutory declaration.

Amendment of s 179 (Content of a resource operations licence or distribution operations licence)

Clause 251 amends section 179 of the *Water Act 2000* to provide that a resource operations licence may include a condition to require the holder collect and publish the sale price of each seasonal water assignment of a water allocation managed under the licence. This amendment is intended to improve market information for seasonal water assignments (i.e. temporary trades) of water under water allocations.

This clause also makes it clear that environmental management rules can be included as conditions of a resource operations licence. This reflects section 1260 of the *Water Act 2000* which provided, that on commencement of the *Water Reform and Other Legislation Amendment Act 2014,* the environmental management rules for a water supply scheme that were provisions of a resource operations plan were transitioned to be included on the resource operations licence for the scheme.

Amendment of s 183 (Chief executive must amend a resource operations licence or distribution operations licence for consistency with water plan)

Clause 252 amends section 183 of the *Water Act 2000* to allow the holder of a resource operations licence or distribution operations licence that is proposed to be amended to change or include environmental management rules to ask the chief executive to refer the proposed change to the referral panel. Prior to the commencement of the *Water Reform and Other Legislation Amendment Act 2014* environmental management rules related to water supply schemes were included in resource operations plans, and could be considered by a referral panel. This amendment continues this arrangement about environmental management rules now that these rules are included on a resource operations licence. New section 184A provides the procedure for a request by the resource operations licence to refer a proposed change related to environmental management rules to the referral panel.

Amendment of s 184 (Holder may apply to amend resource operations licence or distribution operations licence)

Clause 253 amends section 184 of the *Water Act 2000* to allow the holder of a resource operations licence, who proposes a change to the environmental management rules, to ask the chief executive to refer the proposed change to the referral panel after the chief executive has refused to approve the changes. Prior to the commencement of the *Water Reform and Other Legislation Amendment Act 2014* environmental management rules related to water supply schemes were included in resource operations plans, and could be considered by a referral panel. This amendment continues this arrangement where there is a dispute between the chief executive and resource operations licence holder about refusal to approve a change to the licence relevant to environmental management rules, now that these rules are included on a resource operations licence. New section 184A provides the procedure for a request by the resource operations licence to refer a proposed change related to environmental management rules to the referral panel.

Insertion of new s 184A

Clause 254 inserts new section 184A of the *Water Act 2000.* New section 184A provides the procedure if a request is made by a resource operations licence holder to refer a proposed change to a resource operations licence that relates to environmental management rules to the referral panel.

If a resource operations licence holder makes such a request, the chief executive must refer the matters to a referral panel together with sufficient information to enable the referral panel to make a recommendation. In considering the proposed environmental management rules, or change to environmental management rules, the referral panel is required to have regard to whether it is:

- Consistent with the water plan outcomes and measures;
- Achieves objectives stated in the water plan, including for example the water allocation security objectives and the environmental flow objectives; and
- Is developed with adequate consultation with persons who would be affected.

The panel must review the matters and make recommendations to the chief executive within 30 business days after receiving the collated information.

In deciding whether to amend the resource operations licence, or approve the amendment to the licence, the chief executive must consider the referral panel's recommendations.

Insertion of new ch 2, pt 3, div 5A

Clause 255 inserts new chapter 2, part 3, division 5A 'Minister or chief executive may give direction to take action about water quality issue' into the *Water Act 2000* to establish new powers for the Minister or chief executive to deal with urgent water quality issues.

203A Application of division

New section 203A provides a power for the official (Minister or chief executive) to give directions about actions to be taken to prevent, minimise, mitigate or remedy a water quality issue, or potential water quality issue. The new power allows actions to be undertaken, for the purpose of dealing with an urgent water quality issue. The power may direct an action that may be non-compliant or inconsistent with a water plan, water management protocol, resource operations licence, distribution operations licence or interim resource operations licence.

This section allows such a direction to be made in the circumstances there is a water quality issue, or potential water quality issue, and urgent action, or prevention of action, is required to prevent, minimise, mitigate or remedy the issue. A water quality issue refers to a situation where poor water quality: affects the ability for water to be used for its intended purpose; causes damage to infrastructure or affect its ability to function as intended; is harmful to the health of humans or the environment.

203B Direction to take action or direction not to take action

New section 203B provides for the official (Minister or chief executive) to give a direction to the holder of a resource operations licence, interim resource operations licence or distribution operations licence, or entity that has an obligation under a water management protocol or water plan, to take urgent action (or non-action) to deal with a water quality issue, or potential issue. Actions directed by the Minister or chief executive under this section may be inconsistent with a water management protocol, resource operations licence, interim resource operations licence or distribution operations licence. In addition, actions directed by the Minister may be inconsistent with a water plan.

The direction is to be given via notice, which would specify the action to be taken or not taken and a reasonable timeframe for the action. The notice is also required to state that complying with the direction may be inconsistent with instruments the person receiving the direction would otherwise be required to comply, however the direction prevails over these instruments. This is to ensure the person is aware that they are required to act in the way directed, despite what their obligations may otherwise be under the instruments. The matters stated in the direction notice prevail over any inconsistency with the water planning instrument. In deciding what a reasonable timeframe is to undertake the action, the official should consult with the relevant entity to understand any operational constraints that should be taken into consideration.

203C Deciding whether to give direction and deciding content of direction

New section 203C provides the matters that the official must have regard to in deciding whether to give a direction and the content of the direction.

In deciding to direct an action, the official (Minister or chief executive) must consider any potential impacts on: water critical water supplies (including for example, impacts on any town water supplies or the critical needs of a power station); water

security for water entitlement holders; the environment, including the Great Barrier Reef; and the public interest (including public health).

203D Direction must be complied with

New section 203D creates a new offence for failure to comply with a direction given by the Minister or chief executive about a water quality issue under this new division. The person receiving the direction must comply with the direction unless they have a reasonable excuse. Failure to comply attracts an offence of 1,665 penalty units.

203E Protection of relevant entity

New section 203E provides that where the relevant entity is given a direction that may be inconsistent with its supply contract arrangements, the relevant entity is not liable for loss or damage caused in undertaking the action (or non-action) directed, providing that in complying with the direction they are not negligent. For example: this applies in the case where a direction to release water or not to release water has an effect on the water available for distribution in accordance with agreements with the water entitlement holder. This protection from liability is consistent with that provided under section 25X of the *Water Act 2000* for service providers complying with water supply emergency declarations.

203F Protection of State and official from liability

New section 203F provides protection to the State, Minister or chief executive from civil liability in the circumstance they fail to give a direction under the new powers for dealing with an urgent water quality issue. This protection from liability is consistent with that provided under section 25W of the *Water Act 2000* for failure to make a water supply emergency declaration

203G Report by official

New section 203G requires the official to publish a report detailing the water quality issue, why urgent action or prevention of action was necessary, and the outcome of the action taken or not taken as a result of the direction. In preparing the report the official may request the entity to provide information.

Amendment of s 241 (Referral panels)

Clause 256 amends section 241 of the *Water Act 2000* to allow the chief executive to establish a referral panel to provide advice in relation to matters about environmental management rules in a resource operations licence.

Amendment of s 425 (application of div 4)

Clause 257 provides for a definition of both the resource tenure holder and the owner of a water bore as being “each a party”, for the purposes of disputes about entering into make good agreements.

Replacement of s 426 (Parties may seek conference or independent ADR)

Clause 258 replaces section 426. The new provision enables a party to request that the other party participate in either a departmental conference conducted by an authorised officer, or an alternative dispute resolution process, for the purpose of negotiating a resolution of a dispute regarding a make good agreement.

The conference election notice must state all of the following information:
- details of the issues in dispute; and
- the contact details of the party giving the conference election notice.

The ADR election notice must include all of the following information:
- details of the issues in dispute;
- the type of ADR being proposed (e.g. case appraisal, mediation or conciliation);
- the name of the proposed ADR facilitator, who must be independent of both parties to the ADR process;
- that the resource authority holder is liable for the costs of the ADR facilitator.

Parties can elect to undertake any ADR process except arbitration. It is intended that parties will select a non-binding ADR process. Examples of ADR types parties may elect to undertake include case appraisal, conciliation, mediation or negotiation.

The conference election notice and the ADR election notice must also include any information prescribed in a regulation.

When a party receives an ADR election notice, they must accept or refuse the type of ADR and the proposed ADR facilitator within 10 business days of the notice being issued.

Where a party refuses to accept the nominated ADR type and/or facilitator within 10 business days, or fails to respond to the notice, the party that issued the ADR election notice may then propose another ADR type and/or facilitator, or apply to a prescribed ADR institute or the Land Court for a decision about the ADR type or facilitator. Once a decision has been obtained by the party, they must notify the other party of the decision.

It is intended that neither a prescribed ADR institute, nor the Land Court, are held liable for any act or omission arising from the application of this provision, unless there is evidence of any misconduct.

The resource tenure holder is liable for the costs of the ADR facilitator.

The *Civil Proceedings Act 2011*, part 6, division 5 applies to an ADR carried out by an ADR facilitator as if a reference to an ADR process included a reference to the ADR, and a reference to an ADR convenor included a reference to the ADR facilitator.

The ability for a party to apply to a prescribed ADR institute for a decision about the ADR type or facilitator implements recommendation 7 of the Independent Review of the Gasfields Commission Queensland and Associated Matters.

Amendment of s 427 (Duration of conference or ADR)

Clause 259 provides for the duration of the conference and alternative dispute resolution processes. The parties must use all reasonable endeavours to negotiate a resolution of the dispute within the usual period of 30 business days. The usual period may be extended by agreement between the parties.

Amendment of s 428 (Calling conference)

Clause 260 amends section 428 to account for the new conference election notice.

Insertion of new ch 3, pt 5, div 4, sdiv 3A (Arbitration)

Clause 261 enables a party to a dispute about a make good agreement, at the conclusion of the alternative dispute resolution process, to give an arbitration election notice to the other party seeking that party's agreement to go to arbitration. It is intended that this provision only applies to disputes about entering into make good agreements, rather than disputes about existing make good agreements.

The option of parties agreeing to enter arbitration to reach a make good agreement, rather than making an application to the Land Court for a determination, implements recommendation 8 of the Independent Review of the Gasfields Commission Queensland and Associated Matters.

New s433A (Parties may request arbitration)

New section 433A provides that either party may issue an arbitration election notice, and that a party given an arbitration election notice may accept or refuse the request for arbitration. An arbitration election notice must state:

- details of the dispute
- the name of an arbitrator, or the name of a prescribed arbitration institute proposed to appoint an arbitrator;
- that where a request for arbitration is accepted, parties are subsequently prevented from making an application to the Land Court for a decision about the dispute;
- that the costs of the arbitration are to be shared by the parties in accordance with section 433E; and
- that the parties are able to be legally represented in accordance with section 433C.

The arbitration election notice must also include any information prescribed in a regulation.

A party that receives an arbitration election notice is required to accept or refuse the request for arbitration within 10 business days.

If the arbitration election notice is accepted, and the party requesting arbitration nominated an arbitrator, the parties may either jointly appoint the arbitrator proposed, or another arbitrator, within 10 days. If this does not happen, the party giving the notice must require a prescribed arbitration institute to appoint an arbitrator. It is intended that a prescribed ADR institute is not held liable for any act or omission arising from the application of this provision, unless there is evidence of misconduct.

New s433B (Arbitrator's functions)

New section 433B provides for the following functions of the arbitrator:

- the arbitrator has the authority to decide the dispute by the issuance of an award;
- the arbitrator's decision should relate to a make good agreement not yet entered into, and does not extend to matters in dispute between parties regarding an existing make good agreement; and
- the arbitrator must decide the matters in dispute within 6 months of the appointment of the arbitrator.

New s433C (Legal representation)

New section 433C provides that the parties are able to be legally represented only if both parties agree, or otherwise with the consent of the arbitrator.

New s433D (Application of the Commercial Arbitration Act 2013)

New section 433D provides that the provisions of the *Commercial Arbitration Act 2013* (Qld) apply to the arbitration unless the provisions are inconsistent with the arbitration provisions contained within chapter 3, part 5, division 4, subdivision 3A of the *Water Act 2000*.

New s433E (Costs of arbitration)

New section 433E provides that, where the parties have not previously participated in ADR process about the dispute, the resource tenure holder is liable to pay the costs of the arbitrator. Where the parties have previously participated in an ADR process about the dispute, the costs of the arbitrator are to be shared between the parties. The costs of the arbitration are otherwise to be shared by the parties, except where the parties agree, or the arbitrator decides otherwise.

New s433F (Effect of arbitrator's decision)

It is intended that the arbitrator's decision is binding on the parties. New section 433F provides that the arbitrator's decision is final, and that where arbitration is chosen by the parties, both parties are subsequently prevented from making an application to the Land Court for a decision about the dispute. However, the arbitrator's decision does not limit or otherwise affect a power of the Supreme Court to decide a decision of the arbitrator is affected by jurisdictional error.

Amendment of s 434 (Deciding dispute through Land Court after unsuccessful conference or ADR)

Clause 262 provides an exclusion for the option of making an application to the Land Court for a decision about the dispute where the parties have previously agreed to go to arbitration. It also provides for the separate notices of election for the conference and ADR processes.

Insertion of new ch 3, pt 5, div 4, sdiv 5 hdg

Clause 263 provides a new heading for the decisions binding on successors and assigns.

Insertion of new s 437A

Clause 264 provides that where an arbitrator makes a decision under subdivision 3A, the decision is binding on the parties to the proceeding, as well as each of their successors and assigns.

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

Clause 265 provides for an additional reference to a section of the *Mineral Resources Act 198*9 made in the 'Notes' under sections 808(1)(a) and 808(2)(a).

This clause also corrects a minor drafting error to change the name of the *Petroleum and Gas (Production and Safety) Act 2004* so that it aligns with the definition for it (being 'Petroleum and Gas Act') in schedule 4 Dictionary to the *Water Act 2000*.

Amendment of s 816 (Unauthorised water bore activities)

Clause 266 amends section 816 of the *Water Act 2000* to provide that it is not an offence to remove, replace, alter or repair the casing of a subartesian bore if the activity is less than 1.2 metres below the surface of the ground without a water bore drillers licence. This will allow basic repairs near the surface to be carried out by water bore owners without the need to employ a licenced driller.

Note: Section 816 of the *Water Act 2000* prohibits an individual who is not a licensed water bore driller from working on a bore's casing, liner or screen. It should be noted that these elements are installed at the construction stage of the bore and are integral to its structural integrity. No such restrictions apply to water delivery pipes, pumps, drive shafts, windmill rods or other components installed after bore construction has been completed.

This clause also updates an incorrect reference to chapter 2, part 10.

Amendment of s 983J (Production of licence to authorised officer)

Clause 267 amends section 983J of the *Water Act 2000* to ensure that it is not a requirement to produce a water bore drillers licence to an authorised officer for

inspection in relation an activity that involves removing, replacing, altering or repair of the casing of a subartesian bore at depths less than 1.2 metres below the surface of the ground. This reflects the amendment by the Bill that removes the offence for an individual carrying out these basic repairs without holding a water bore drillers licence.

Amendment of s 986 (Particular reductions in allocation's value)

Clause 268 amends section 986 of the *Water Act 2000* to clarify that a water allocation holder is entitled to be paid reasonable compensation for a reduction in allocation value during the life of the life of the relevant water plan, regardless of whether the Minister decides to extend the plan beyond 10 years. This amendment continues protections for water allocation holders by ensuring the compensation provision continues to align with the life of a water plan, following the introduction of the ability for the Minister to extend the expiry of the water plans beyond 10 years through the *Land, Water and Other Legislation Amendment Act 2013*.

Insertion of new s 1006A (Underground water may be declared to be overland flow water)

Clause 269 inserts new section 1006A of the *Water Act 2000*. New section 1006A provides that a regulation or water plan may declare particular underground water to be overland flow water. Where such a declaration is in place, the underground water the subject of the declaration is no longer considered underground water for the purpose of the Act and is regulated as overland flow water. This is similar to existing section 1006 of the *Water Act 2000* which allows for underground water to be declared as water in a watercourse. These provisions ensure that where different sources of water are highly connected they are able to be managed as the same water resource through the same water management rules.

Amendment of s 1250I (Application for dealings)

Clause 270 amends section 1250I of the *Water Act 2000* to make it clear who can apply for a transfer of an associated water licence. Section 1250I currently provides that for a dealing to transfer an associated water licence, section 121 can be read as though a reference to a person who may apply for a water licence under section 107 were a reference to a person who may apply for an associated water licence under section 1250D. The Bill amends section 121 to remove reference to section 107 so this clause makes a consequential amendment to retain the link to section 1250D.

Amendment of s 1250S (Associated water licence taken to be water licence for particular provisions)

Clause 271 amends section 1250S of the *Water Act 2000* to ensure that an associated water licence is taken to be a water licence for the purpose of section 1009 of the *Water Act 2000*. Section 1009, Public inspection and purchase of documents, provides for the types of documents that must be kept and made available for public inspection and purchase, which includes a water licence.

Amendment of s 1259 (Stated provisions of a resource operations plan are taken to be, or are included in, or to be read and construed with, other documents)

Clause 272 amends section 1259 of the *Water Act 2000,* which provides the arrangements for transitioning resource operations plans to water planning instruments to implement the *Water Reform and Other Legislation Amendment Act 2014*. The amendment makes it clear that if an amendment to a water plan to which the consultation provisions apply is to be progressed at the same time as an amendment to a water plan to implement the transition of provisions from a resource operations plan to a water plan, then the consultation process can be limited to the amendments to which the consultation provisions apply only. This ensures there is no requirement to invite or consider submissions in relation to provisions that are substantially the same as the provisions that are transitioning from the resource operations plan.

Insertion of new s 1259A (Reference in particular plans to unamended Act provision that has a corresponding provision)

Clause 273 inserts new section 1259A into the transitional provisions for the *Water Reform and Other Legislation Amendment Act 2014* to remove any doubt that a reference to a provision of the *Water Act 2000* in a water plan or resource operations plan made under chapter 2 of the *Water Act 2000* prior to the commencement of the *Water Reform and Other Legislation Amendment Act 2014* is taken to be a reference to the equivalent provision of the amended Act unless otherwise provided. This is intended to apply until such time as these water planning instruments are updated to refer to the correct section. In particular, this is intended to make it clear for the purpose of the new section 126 of the *Water Act 2000* that if a water plan or resource operations plan refers to previous section 223 in relation to the relocation (or transfer to other land) of a water licence, it is taken to be a reference to new section 126 of the *Water Act 2000*.

Renumbering of ch 9, pt 10, s 1283 (Existing development applications)

Clause 274 renumbers section 1283 (Existing development applications) to correct that there are two section 1283's in the *Water Act 2000*.

Insertion of new ch 9, pt 11 (Transitional provisions for Mineral, Water and Other Legislation Amendment Act 2017)

Clause 275 inserts new part 11, of chapter 9, to provide transitional provisions for amendments to the *Water Act 2000* made by the Bill.

1285 Unfinished process provided by water plan for release of particular unallocated water

New section 1285 provides the transitional arrangements for completing a process for the release of unallocated water held in general reserve in a water plan that may have commenced, but not been completed, prior to the commencement of the Bill. This reflects the amendment by the Bill for the state-wide process for release of

unallocated water prescribed by regulation to apply for the release of any unallocated water held as general reserve under a water plan, regardless of whether an alternative process is stated in a water plan. It allows for the process to continue under the water plan as though the amendment had not been made by the Bill.

1286 Amending water plan to remove process for release of particular unallocated water

New section 1286 provides a transitional arrangement to allow a water plans to be amended, without the requirement for consultation, to remove a process for the release of unallocated water held in general reserve. This reflects the amendment by the Bill for the state-wide process for release of unallocated water prescribed by regulation to apply for the release of any unallocated water held as general reserve under a water plan, regardless of whether an alternative process is stated in a water plan.

1287 Application of particular matters Minister must consider in making draft water plan

New section 1287 provides transitional arrangements to reflect the addition by the Bill of matters the Minister must consider in making a draft water plan. This section makes it clear that these new considerations only apply to a draft water plan the Minister begins to prepare after commencement of the Bill.

1288 Amendment of existing distribution operations licence or resource operations licence by agreement

New section 1288 provides a transitional arrangement to allow a resource operations licence or distribution operations licence to be amended to include a condition requiring the holder to collect and publish the sale price for each seasonal water assignment of a water allocation managed under the licence. The amendment must be by agreement between the chief executive and the licence holder.

1289 References to SEQ Water

New section 1298 provides a transitional arrangement for the update to the definition of SEQ Water to put beyond doubt that SEQ Water is now Seqwater.

1290 Election notice

New section 1290 provides that the Act, as in force before the commencement of this section, will continue to apply to parties for the purpose of the ADR or conference and any subsequent Land Court proceeding if, before the commencement:

- a party gave another party an election notice (under the pre-amended section 426) calling upon the party to agree to a conference or an ADR to negotiate a MGA; and
- the conference or ADR was not finished (under pre-amended section 427) before the commencement.

The new arbitration provisions which, when enacted, will be inserted into chapter 3 of the *Water Act 2000* by this Bill do not apply in relation to the issues subject to an ADR conducted under the pre-amended section 426.

Amendment of sch 4 (Dictionary)

Clause 276 provides for the amendment of schedule 4 (Dictionary) of the *Water Act 2000* to include new, or amend existing definitions. Most are self-explanatory, however further explanation is provided for some changes:

New definition for ***cultural outcome*** (a beneficial consequence to an Aboriginal party or Torres Strait Islander party relating to aquifers, drainage basins, catchments, sub catchments or watercourses) is provided to allow for inclusion in a water plan.

A new definition for ***environment*** is provided which links to the definition under the *Environmental Protection Act 1994*. The inclusion of this definition supports the inclusion of cultural outcomes in water plans and makes it clear that an environmental flow objective can support all aspects of environment.

The definition of ***lake*** is amended to clarify that a lake for the purposes of the *Water Act 2000* does not include a drainage feature or a lake within which the high spring tide ordinarily flows and reflows. This does not change the intended application of the definition, however clarifies a potential overlap in definitions following the introduction of the watercourse identification map.

The definition of ***seasonal water assignment*** is amended to allow a seasonal water assignment for a water allocation to be for either a water year or other period prescribed in a water management protocol. This is intended to provide opportunities for multiple seasonal water assignments within a year, for example, based on flow events, where provided for under the water planning framework.

This clause also omits the definition of ***election notice***, and inserts the new definitions of “ADR election notice”, “arbitration election notice” and “conference election notice” in its place.

Schedule 1 Minor Amendments of Water Act 2000

Schedule 1 of the Bill makes minor amendments to the *Water Act 2000* to correct incorrect cross referencing and update terminology to reflect amendments made through the *Water Reform and Other Legislation Amendment Act 2014*.