Land Access Ombudsman Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Land Access Ombudsman Bill 2017 (the Bill).

Policy objectives and the reasons for them

The primary objectives of the Bill are to:

1. establish an independent land access ombudsman with the jurisdiction to provide an independent service that applies to disputes relating to an alleged breach of a:
   a. conduct and compensation agreement (CCA) between an owner or occupier of private land and a resource authority holder; and
   b. make good agreement (MGA) between the owner of an impacted bore and a resource tenure holder;
2. save transitional provisions in the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 that would otherwise expire in September 2017 and, as a consequence, amend associated provisions.

Land Access Ombudsman

The policy objective is to establish a land access ombudsman with the aim of:

- providing the owners and occupiers of private land and the holders of a resource authority with an independent body to investigate and make recommendations to resolve a dispute of an alleged breach of a CCA or an MGA; and
- facilitating the resolution of disputes between the parties to a CCA or an MGA and foster or preserve the relationship between the parties.

In December 2015, the Queensland Government commissioned an independent review of the Gasfields Commission Queensland. The review was conducted by Mr Robert Scott, a retired member of the Land Court. The terms of reference for the review included a requirement to investigate whether an alternative model such as an independent Resources Ombudsman is needed to provide a mechanism for dispute resolution between resource companies and landholders.

Mr Scott's final report titled 'Independent Review of the Gasfields Commission Queensland' contained 18 recommendations and was released by the government on 1 December 2016.

In the review report, Mr Scott raised concerns that there is currently no avenue available to landholders or resource authority holders to discuss any complaints concerning an alleged breach of a CCA or an MGA once any dispute resolution provisions in the agreement have been exhausted, other than resorting to a court of competent jurisdiction or to arbitration.

Recommendation 10 of the review report recommended the establishment of an Office of the Petroleum and Gas Moderator, with the moderator available to mediate disputes between parties about alleged breaches of CCAs and MGAs. It was also

recommended that the moderator be provided with the ability to provide those parties with non-binding recommendations. Mr Scott did not recommend that the moderator be called an ombudsman, citing ombudsmen as having a different role and history.

The government provided in-principle support to the establishment of an independent body to assist parties with disputes related to alleged breaches of a CCA, but considered that an ombudsman was the best model to deliver the recommendation.

According to the Australian and New Zealand Ombudsman Association (ANZOA), there are six criteria that must be addressed to uphold the characteristics of an ombudsman. These criteria are independence, jurisdiction, powers, accessibility, procedural fairness and accountability. The ANZOA criteria have been used as a basis for establishing the proposed powers and functions of the land access ombudsman.

The proposed powers and functions also align with existing ombudsmen positions in Queensland which have been established to provide a pathway for dealing with unresolved complaints across various fields. Examples include the Energy and Water Ombudsman Queensland, the Health Ombudsman Queensland and the Queensland Training Ombudsman.

While the focus of Mr Scott's recommendation 10 was on the petroleum and gas industry, the government also determined that the land access ombudsman should be available to all landholders and resource authorities to which the CCA requirements apply. This will ensure that all parties to CCAs can access the services of the land access ombudsman.

The government's response to the review report initially did not include MGAs within the jurisdiction of the land access ombudsman. The government was of the view that the *Water Act 2000* already has sufficient dispute resolution measures in place for MGAs.

This view was subsequently revised after further consultation with stakeholders, and disputes about alleged breaches of MGAs are now proposed for inclusion within the land access ombudsman's jurisdiction. This provides a single point of contact to resolve a dispute about a breach of either a CCA or an MGA. It may also be a lower cost option than the statutory alternative dispute resolution process currently available for MGA disputes.

An additional policy objective is to provide the Land Court with jurisdiction to decide disputes between parties to a CCA regarding an alleged breach of contract. The benefit of extending the Land Court jurisdiction is that the Land Court has experience specific to CCAs. Further, providing the Land Court with this jurisdiction will simplify the dispute process by providing a single court with the jurisdiction to hear matters relating to a CCA. The Land Court already has jurisdiction to hear matters relating to a dispute over whether a party to a make good agreement has complied with the agreement under the *Water Act 2000*.

Saving transitional provisions
The policy objective of these amendments is to save existing provisions contained in the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 which expires on 27 September 2017.

Section 211 of the *Mineral and Energy Resources (Common Provisions) Act 2014* provided a head of power to make a transitional regulation about matters for which:

- it is necessary or convenient to assist in the transition to a simplified common framework for managing resource authorities in relation to the particular matters dealt with in the Act; and
- the Act does not make provision or enough provision.

Section 211 and any transitional regulation expire one year after the day of commencement.

The Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 contains provisions relating to the application of the land access framework which fill in gaps that exist in the transitional arrangements set out in the *Mineral and Energy Resources (Common Provisions) Act 2014*. These amendments ensured that the policy intention for the application of these transitional provisions was achieved.

The transitional regulation also contains provisions relating to the overlapping tenure framework for coal and coal seam gas tenures relating to where:

- land is released straight to a petroleum lease through a competitive tender process under the *Petroleum and Gas (Production and Safety) Act 2004*;
- there were overlapping production applications at commencement and the Minister had approved a coordination arrangement before commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014*; and
- overlapping coal and petroleum parties have referred a safety dispute concerning the making of a joint interaction management plan to arbitration under the *Mineral and Energy Resources (Common Provisions) Act 2014*, and the arbitration process has not concluded by 27 September 2017. In such a case, the previous safety and health regime under the pre-amended legislation would continue in place until a joint interaction management plan is made.

In addition to saving these transitional provisions, further amendments to the *Mineral and Energy Resources (Common Provisions) Act 2014* and the *Petroleum and Gas (Production and Safety) Act 2004* are required as a consequence of saving the provisions for releasing a petroleum lease through a competitive tender process.

Achievement of policy objectives

Land Access Ombudsman
To achieve its policy objective and deliver the government’s commitment, the Bill will set out the legislative framework to enable the establishment of an independent land access ombudsman by setting out the functions, powers and administrative arrangements of the Office of the Land Access Ombudsman.

Saving transitional provisions
The Bill will achieve the objective of saving provisions in the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 by directly amending the relevant sections in the *Mineral and Energy Resources (Common Provisions) Act 2014*, and adding additional transitional provisions in the *Coal Mining Safety and Health Act 1999*, the Mineral Resources Regulation 2013, and the *Petroleum and Gas (Production and Safety) Act 2004.*

The amendments related to the application of the land access framework in the *Mineral and Energy Resources (Common Provisions) Act 2014*:

- preserve existing consent given by a reserve owner to an exploration permit holder or a mineral development licence holder under the pre-amended *Mineral Resources Act 1989* and the conditions under which the consent was given;
- transition a notice of notifiable road use given under the pre-amended Resource Acts (meaning the *Mineral Resources Act 1989,* the *Petroleum and Gas (Production and Safety) Act 2014,* the *Petroleum Act 1923,* the *Geothermal Energy Act 2010* and the *Greenhouse Gas Storage Act 2009*);
- apply the restricted land requirements under the pre-amended *Mineral Resources Act 1989* and the *Geothermal Energy Act 2010* to:
  - resource authorities granted prior to the commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014*; and
  - resource authorities that were the subject of an application lodged prior to commencement and that remained undecided at commencement.
- apply the new restricted land framework to resource authorities under the *Petroleum and Gas (Production and Safety) Act 2004,* the *Petroleum Act 1923,* and the *Greenhouse Gas Storage Act 2009* only if both are applied for and granted after commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014.*

The amendments related to the overlapping tenure framework:

- clarify the obligations of resource authority holders under chapter 4 of the *Mineral and Energy Resources (Common Provisions) Act 2014* when land is released straight to a petroleum lease through a competitive tender process under the *Petroleum and Gas (Production and Safety) Act 2004*;
- clarify the obligations of competitive tender applicants for a petroleum lease under the *Petroleum and Gas (Production and Safety) Act 2004* as a consequence of the amendments above;
- clarify that, when there are two overlapping production tenure applications at commencement, and a coordination arrangement was approved by the Minister before commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014*, the overlapping resource authorities will continue to be administered under the old overlapping tenures framework; and
- extend the transitional period for arbitration of overlapping coal and petroleum safety disputes about the making of a joint interaction management plan by amending the *Petroleum and Gas (Production and Safety) Act 2004*, *Coal Mining Safety and Health Act 1999*, and the Mineral Resources Regulation 2013.

Alternative ways of achieving policy objectives

Land Access Ombudsman
Enabling legislation is required to give effect to the government's commitment to establish the Office of the Land Access Ombudsman, including the functions and powers of the land access ombudsman and its officers.

Saving transitional provisions
There are no alternative ways to save the transitional provisions in the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 other than by legislative amendment.

Estimated cost for government implementation

Land Access Ombudsman
The Queensland Government will incur an additional cost in the implementation and support of the independent body. The ongoing cost of the Office of the Land Access Ombudsman, which includes business processes, technology, communication and employment of staff, will be funded by government.

Any additional resources may be funded through the re-alignment of existing agency resources.

Saving transitional provisions
Implementation of the amendments to save the provisions in the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 are cost-neutral as the restricted land and overlapping tenure frameworks have already been implemented by the Department of Natural Resources and Mines.

Consistency with fundamental legislative principles

Land Access Ombudsman

Provides appropriate protection against self-incrimination, section 4(3)(f) Legislative Standards Act 1992
Clause 42 and Clause 43 allow the land access ombudsman to require parties to a referred dispute to provide documents or information, or answer questions asked by the ombudsman at a meeting required by the ombudsman.

Parties must comply with the requirement unless they have a reasonable excuse. It is a reasonable excuse for individuals (but not corporations) to refuse to comply with the requirement if doing so may tend to incriminate them or expose them to a penalty. This affords individuals the privilege against self-incrimination or exposure to a penalty and is in line with the common law privilege against self-incrimination.

Confers power to enter premises, section 4(3)(e) Legislative Standards Act 1992
Clause 44 to Clause 50 confer power on the land access ombudsman to enter land with the permission of the relevant landowner, land occupier or bore owner. In certain circumstances, the land access ombudsman is also required to obtain consent from the relevant resource authority holder.

These entry powers raise potential issues related to the fundamental legislative principle of having sufficient regard to the rights and liberties of individuals. However, they have been appropriately and narrowly tailored to meet the purposes of the Bill. Entry is limited to the land the subject of the dispute being investigated, and the powers exercisable upon entry are limited to actions for the purposes of the land access ombudsman's functions (of investigating and facilitating the resolution of disputes). Further, the land access ombudsman has not been conferred the power to take anything from the land.

Offence provisions
Clause 29, Clause 42, Clause 43 and Clause 60 establish new offences with penalties attached for noncompliance with the provision.

Clause 29 requires that a person must return their identity card to the land access ombudsman within 21 days of their ceasing to be an officer, unless the person has a reasonable excuse. The maximum penalty for failure to comply with this provision is 20 penalty units.

Clause 42 provides the land access ombudsman with power to require particular information. Parties must comply with the requirement to provide the information unless they have a reasonable excuse. The maximum penalty for failure to comply with this provision is 100 penalty units.

Clause 43 provides the land access ombudsman with power to require a party to attend a meeting and answer questions the ombudsman asks at the meeting. Parties must comply with the requirement to attend and answer questions unless they have a reasonable excuse. The maximum penalty for failure to comply with this provision is 100 penalty units.

Clause 60 provides that the land access ombudsman or a land access ombudsman's officer can not make or record, or disclose any personal or confidential information that they have obtained in the course of their position, unless the information is used in the performance of their functions, with consent, or as required by law. The maximum penalty for failure to comply with this provision is 100 penalty units.

These penalties, including their level, are considered appropriate as they are consistent with similar provisions in other legislation that establish ombudsmen in Queensland.

Retrospectivity of amendments to save provisions in the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016

Amendments to save provisions in the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 under part 8 of the Bill are legally retrospective because they deal with matters that may have occurred prior to amendment. However, they are not practically retrospective because the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 governs these same matters from 27 September 2016 to 27 September 2017.

Consultation

Land Access Ombudsman

The Department of Natural Resources and Mines has undertaken targeted consultation with key stakeholder groups regarding the establishment of the Office of the Land Access Ombudsman.

Stakeholders included representatives from the Queensland Farmers' Federation, AgForce, the Queensland Resources Council, the Australian Petroleum Production and Exploration Association, the Association of Mining and Exploration Companies, the Environmental Defender's Office, the Australian and New Zealand Ombudsman Association, Lock the Gate Alliance, the Queensland Law Society, the Land Court of Queensland, Gasfields Commission Queensland and the Local Government Association of Queensland.

External stakeholders were generally supportive of the intent of the Bill. The main issues raised by external stakeholders included the lack of statutory timeframes for the land access ombudsman's processes, defining the necessary qualifications for the land access ombudsman and support staff, extending the land access ombudsman's role to disputes arising during the negotiation stage, the inability of the land access ombudsman to make binding decisions, and the perceived overlap between the land access ombudsman's dispute resolution role and what is viewed as a regulatory oversight and compliance function.

Consultation was also undertaken with the Queensland Productivity Commission in relation to the regulatory impact assessment system. The Queensland Productivity Commission advised that no further regulatory assessment was required for amendments to establish the land access ombudsman.

Saving transitional provisions

Consultation was undertaken with stakeholders during the development of the provisions in the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016. There have not been any significant policy changes since consultation with stakeholders on the development of the transitional regulation.

Provisions relating to the overlapping tenure framework, including the overlapping safety framework, were consulted on with targeted stakeholders in May 2017. Stakeholders consulted were coal and coal seam gas companies via an Industry Reference Group organised by the Queensland Resources Council and the Australian Petroleum Production and Exploration Association. Stakeholders were generally supportive of the Bill and feedback was incorporated where necessary.

Consultation on the provisions relating to the overlapping tenure framework was also undertaken with the Queensland Productivity Commission in relation to the regulatory impact assessment system. The Queensland Productivity Commission advised no further regulatory assessment was required for the amendments. The remaining policy proposals relating to the land access and the overlapping safety framework are agency-assessed exclusions from the regulatory impact analysis system.

Consistency with legislation of other jurisdictions

Land Access Ombudsman
No other Australian jurisdiction has established an ombudsman to deal with disputes regarding their regulatory equivalents to CCAs and MGAs.

Saving transitional provisions
Most Australian jurisdictions have a consistent approach to restricted land (although in South Australia it is referred to as 'exempted land'). In New South Wales, Western Australia and South Australia, landholders have the right to either say no to resource activities occurring within prescribed distances of certain infrastructure or to provide their written consent to the resource authority holder and negotiate compensation. The amendments in this Bill related to restricted land do not change Queensland's consistency with other jurisdictions.

Within Australia, Queensland has the most advanced legislative framework for managing overlapping coal and coal seam gas tenures. There is no specific legislative framework for dealing with overlapping coal and coal seam gas tenures in New South Wales, which is closest to Queensland in terms of resource base for coal and coal seam gas.

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Short title

Clause 1 provides that the short title of the Act, when made, will be the *Land Access Ombudsman Act 2017*.

Commencement

Clause 2 provides that the following provisions will commence on 28 September 2017:
- part 8, divisions 2, 5 and 6; and
- part 8, division 4, other than section 75.

The remaining provisions commence on a day to be fixed by proclamation.

Purpose of Act

Clause 3 states the purpose of this Act, when made, is to facilitate the timely resolution of disputes between parties to a conduct and compensation agreement or make good agreement.

How purpose is achieved

Clause 4 sets out that the main purpose of the Act will be achieved by appointing a land access ombudsman, establishing the Office of the Land Access Ombudsman and giving the ombudsman powers to investigate and facilitate the timely resolution of the disputes about conduct and compensation agreements or make good agreements.

Act binds all persons

Clause 5 provides that the Act binds all persons and the State. However, the clause also specifies that the State can not be prosecuted for any offence against this Act.

Division 2 Interpretation

Definitions

Clause 6 provides that the dictionary, contained in schedule 1 of this Act, defines certain words used in the Act.

What is a land access dispute

Clause 7 defines a land access dispute as being either a dispute between parties to a conduct and compensation agreement about an alleged breach of the agreement or a

dispute between parties to a make good agreement about an alleged breach of the agreement. The parties to these agreements include any successors or assigns.

What is a land access dispute referral

Clause 8 defines a land access dispute referral as a land access dispute referred to the land access ombudsman.

Part 2 Land access ombudsman and office of the land access ombudsman

Division 1 Land access ombudsman

Subdivision 1 Appointment

Land access ombudsman

Clause 9 establishes the land access ombudsman. The land access ombudsman is appointed by the Governor in Council.

Disqualification from appointment

Clause 10 declares the grounds that disqualify a person from becoming the land access ombudsman. These include conviction for an indictable offence, becoming insolvent under administration, or being guilty of misconduct of a type that could warrant dismissal from the public service.

Term of appointment

Clause 11 provides that the land access ombudsman holds office for a term of up to three years. Reappointment is possible if the term served by that person following reappointment does not exceed ten years.

Conditions of appointment

Clause 12 provides for the Governor in Council to specify the remuneration, allowances and entitlement to any leave of absence due to the land access ombudsman. The land access ombudsman is appointed under this Act and not under the *Public Service Act 2008*.

Restriction on outside employment

Clause 13 provides that the land access ombudsman must not hold any other office of profit or engage in any other remunerative employment or undertaking without the Minister’s prior approval.

Termination of appointment

Clause 14 sets out the circumstances in which the Governor in Council may terminate the land access ombudsman's appointment. These circumstances are a contravention of the restriction on outside employment or the inability of the land access ombudsman to perform their functions due to physical or mental incapacity.

Vacancy of office

Clause 15 provides the grounds under which the office of the land access ombudsman may become vacant; being completion of term, disqualification under Clause 10(1), resignation, or termination from office by the Governor in Council.

Subdivision 2 Functions and powers

Functions

Clause 16 sets out the functions of the land access ombudsman. The ombudsman's functions are:

- to investigate and facilitate the timely resolution of land access disputes;
- to refer or recommend to departments the investigation of possible offences under clauses 53, 54, and 55, or, possible breaches of resource authorities that relate to access to land;
- to identify and advise government entities about systemic issues arising from land access disputes;
- to promote public awareness of the ombudsman's functions outlined above; and
- other functions conferred on the ombudsman under this Act or another Act.

For the purpose of this clause, 'government entities' has the meaning given under section 24 of the *Public Service 2008*.

Obligations in performing functions

Clause 17 provides that, in performing its functions, the land access ombudsman must act independently and impartially.

What land access ombudsman can not deal with

Clause 18 sets out the matters about which the land access ombudsman can not accept a dispute referral.

The land access ombudsman can not investigate or continue to investigate any of the following matters:

- a conduct and compensation agreement or make good agreement that has not been entered into yet;
- a conduct and compensation agreement that is subject to the minimum negotiation period as prescribed in section 87 of the *Mineral and Energy Resources (Common Provisions) Act 2014;*
- a make good agreement the subject of a cooling-off period under section 423A of the *Water Act 2000*;
- the content of legislation or government policies;
- a decision made by Cabinet, a Minister or a chief executive;

- a matter that is or has been the subject of a proceeding or arbitration. This includes if during the investigation a party lodges an application with a court or commences an arbitration;
- a matter that is, or has been, the subject of an investigation by a department.

The purpose of placing these limitations on what the land access ombudsman can investigate, is to ensure that the ombudsman is available to parties only for the purpose for which it was established – that is, to facilitate to the timely resolution of current land access disputes.

Further, these limitations ensure the ombudsman can not be used as a form of 'appeal body' by which a party, dissatisfied with the outcome of a previous investigation or decision, may attempt to change the outcome of the previous process.

General powers

Clause 19 provides the general powers the land access ombudsman needs to perform its functions. The ombudsman has power to do all things necessary or convenient to be done in performing the ombudsman's functions.

Land access ombudsman not subject to direction

Clause 20 establishes the independence of the land access ombudsman by stipulating that the ombudsman is not subject to direction by anyone:

- about the way in which the ombudsman performs the functions;
- about prioritisation of the investigation for a dispute referral; or
- about any action taken by ombudsman taken under part 4.

This clause ensures the ombudsman's independence from direction. Independence from direction is an essential trait of ombudsmen, which are well-recognised and trusted bodies known for independent, accessible and impartial review and investigation.

Subdivision 3 Miscellaneous

Preservation of rights

Clause 21 provides that an officer of the public service who is appointed as the land access ombudsman will retain all rights accrued or accruing as an officer of the public service, and at the end of the person's term of office or resignation as the land access ombudsman, the person's service as the land access ombudsman is taken to be service of a like nature in the public service.

Acting land access ombudsman

Clause 22 allows the Minister to appoint an acting land access ombudsman during any vacancy or when the ombudsman is absent or unable to perform their duties. This appointment is limited to six months in any twelve month period. As with the land access ombudsman, an acting land access ombudsman is appointed under the provisions of the Land Access Ombudsman Act, not the *Public Service Act 2008*.

Division 2 Office of the Land Access Ombudsman

Office of the Land Access Ombudsman

Clause 23 establishes the Office of the Land Access Ombudsman which consists of the ombudsman and the officers of the land access ombudsman. The purpose of the office is to help the land access ombudsman perform the ombudsman's functions.

Control of office

Clause 24 provides that the land access ombudsman controls the Office of the Land Access Ombudsman. This is essential to ensure the independence of the ombudsman from direction or control.

Finances of office

Clause 25 establishes that the Office of the Land Access Ombudsman is a part of the administering department for the purpose of applying the *Financial Accountability Act 2009*.

Officers

Clause 26 provides that officers of the Office of the Land Access Ombudsman are to be appointed under the *Public Service Act 2008*. This means that the officers are part of the public service and retain all rights under the *Public Service Act 2008*.

Issue of identity card

Clause 27 provides for the issue of an identity card to each officer of the Office of the Land Access Ombudsman. The card is to identify the person as an officer, state an expiry date, and contain a recent photo and signature of the officer.

Production or display of identity card

Clause 28 sets out that when exercising a power in relation to another person in their presence, an officer of the Office of the Land Access Ombudsman must produce their identity card for inspection prior to exercising a power, or have it clearly visible when exercising the power. If it is not practicable to produce the identify card prior to the exercise of a power, the officer must produce the card for inspection at the first reasonable opportunity.

Return of identity card

Clause 29 provides for the return of a person's identity card within 21 days upon the end of a person's office as an officer of the Office of the Land Access Ombudsman.

Where an officer fails to return their identity card and does not have a reasonable excuse, a maximum penalty of 20 penalty units applies. The penalty, including its level, is considered appropriate as it is consistent with similar provisions in other legislation that establish ombudsmen in Queensland.

Officers not subject to outside direction

Clause 30 provides that officers of the Office of the Land Access Ombudsman are subject to direction only from within the land access ombudsman's office on the exercise of powers of investigation and the priority given to investigations. This provision is to ensure the independence of the land access ombudsman's office.

Alternative staffing arrangements

Clause 31 provides that the land access ombudsman may arrange for staff to be made available to the ombudsman from other government entities if required. This arrangement will need to be negotiated with the chief executive of the government entity.

These officers will remain employees of the originating agency but will be considered officers of the Office of the Land Access Ombudsman for the period their services are made available.

Part 3 Referral and investigation of land access disputes

Division 1 Referral of land access disputes

Land access dispute may be referred

Clause 32 provides that a land access dispute may only be referred to the land access ombudsman by a party to a conduct and compensation agreement or a make good agreement. Unless the party is a person with an impaired capacity under the *Guardianship and Administration Act 2000,* a land access dispute can not be referred by a third party.

A land access dispute may only be referred if the party has made a reasonable attempt to resolve the dispute with the other party. An example of a reasonable attempt would be attempts, made in good faith and at reasonable times, to establish contact with the other party for the purpose of discussing the issue the subject of the dispute.

How land access dispute may be referred

Clause 33 provides that a party to a land access dispute may refer the dispute to the land access ombudsman orally, or in the approved form. It also provides that the ombudsman may refuse to investigate or continue an investigation until a referral made orally is remade in a form approved under Clause 64.

The ombudsman may assist a party to make a land access dispute referral where the party asks for assistance from the ombudsman.

Protection from liability for referring land access dispute

Clause 34 provides that where a conduct and compensation agreement or make good agreement includes a dispute resolution process other than that provided under this Act, a party to that agreement who refers a dispute to the land access ombudsman does not incur a civil liability if they have breached the dispute resolution condition.

This ensures that parties are able to access the land access ombudsman's no-cost dispute resolution services without complying with any dispute resolution clauses and risking civil liability for breach of their agreement.

Preliminary inquiry

Clause 35 empowers the land access ombudsman to make reasonably necessary inquiries to determine whether a land access dispute referral should be accepted, and requires parties to the land access dispute to give the ombudsman reasonable help in the conduct of any preliminary inquiry.

Acceptance or refusal of referral

Clause 36 outlines the responses that the land access ombudsman may make to a land access dispute referral, outlines the grounds under which the ombudsman must refuse the referral, and provides guidance for the ombudsman in determining when it may refuse the referral.

After receiving a land access dispute referral, the ombudsman may accept the land access dispute referral, refuse to accept the land access dispute referral, or give a direction under Clause 37 that the party make a reasonable attempt to resolve the dispute with the other party.

This clause provides that the land access ombudsman must refuse to accept the land access dispute referral if it pertains to a matter the ombudsman can not investigate (as prescribed in Clause 18(1)).

The ombudsman must also refuse to accept a land access dispute referral if satisfied that the referring party has not complied with Clause 32(2), which requires a referring party to first have made a reasonable attempt to resolve their dispute with the other party prior to referring the dispute.

The ombudsman may be satisfied that a party has made a reasonable attempt to resolve their dispute even if they have not used or attempted to use the dispute resolution clauses of their agreement (or, in the case of a make good agreement, the statutory dispute resolution process of chapter 3, part 5, division 4 of the *Water Act 2000*).

The ombudsman is not precluded from being satisfied that a party has made a reasonable attempt to resolve their dispute before accepting the referral because the party has not used, or attempted to use, any dispute resolution clause available in their agreement (or, in the case of a make good agreement, the statutory dispute resolution process of chapter 3, part 5, division 4 of the *Water Act 2000*).

The ombudsman must also refuse to accept the land access dispute referral if satisfied:

- that the referral is frivolous or vexatious or has not been made in good faith;
- the subject matter of the referral is trivial;
- that in the circumstances, the investigation of the matter the subject of the land access dispute is unnecessary or unjustifiable; or
- the party making the referral has not given the ombudsman reasonable help when the ombudsman was conducting preliminary inquiries into whether a land access dispute should be accepted.

Parties are obligated to provide the ombudsman with reasonable help when the ombudsman is conducting an inquiry into whether a land access dispute referral should be accepted under Clause 35.

Direction to make reasonable attempt to resolve

Clause 37 provides the land access ombudsman with the discretion to direct a party that has referred their land access dispute to the ombudsman to make a reasonable attempt to resolve their dispute if the ombudsman is reasonably satisfied that the party has not already made this attempt. If satisfied that the party has complied with the direction, the ombudsman may accept the referral.

Actions by land access ombudsman after refusal

Clause 38 describes the process the land access ombudsman must follow after refusing to accept, or refusing to continue to investigate, a land access dispute referral. This includes giving the referring party notice of the decision and referring a matter arising from the dispute to a regulator where appropriate.

Withdrawal of land access dispute referral

Clause 39 provides the process for a referring party to withdraw its land access dispute referral.

When withdrawing the referred dispute, the party is required to comply with any requirements outlined in a procedural guideline under Clause 65. Where a party has withdrawn their referral, the ombudsman is required to notify the other party that the referral has been withdrawn.

Division 2 Investigation of land access dispute referrals

Subdivision 1 General

Notice of investigation

Clause 40 outlines the notification requirements the land access ombudsman is required to comply with if the ombudsman decides to accept a land access dispute referral, and the requirements for an investigation notice.

Investigation procedure

Clause 41 provides that the land access ombudsman may regulate the procedure for an investigation in the way the ombudsman considers appropriate, unless the Act provides otherwise.

Where practicable, the procedure used to resolve disputes must use a non-binding or non-determinative alternative dispute resolution process. The alternative dispute resolution process may be of any type, including case appraisal, conciliation or mediation.

When carrying out the investigation, the land access ombudsman:

- is not bound by the rules of evidence, but must comply with natural justice;
- may hold meetings and conduct interviews for the investigation;
- may make inquiries the ombudsman considers to be appropriate including consulting with an entity with relevant technical expertise about the land access dispute referral and requesting information from government entities relevant to a land access dispute referral;
- may advise each party about the merits of their position in relation to the land access dispute referral;
- may provide a party with information about entities that provide advice, treatment or care, if the ombudsman considers a party would benefit from health advice, treatment or care; and
- must act in a way that is fair, reasonable, just and timely and maintains confidentiality.

Nothing said by a person to the land access ombudsman or an officer of the Office of the Land Access Ombudsman in an alternative dispute resolution process during an investigation is admissible in evidence in a proceeding without the person's consent. This will ensure that parties are able to undertake full and frank discussions to resolve the dispute without risk of anything that has been said later being adduced as evidence in a proceeding (for example, where the parties fail to come to an agreement in the ombudsman's alternative dispute resolution process and later take their dispute to the Land Court for a determination).

Subdivision 2 Powers to require information or attendance

Power to require particular information

Clause 42 confers powers on the land access ombudsman to require from a party to a referred dispute stated documents or information. The ombudsman's power to require documents under this clause extends only to documents or information that are pertinent to the investigation of the land access dispute referral.

The ombudsman makes the request for the documents or information by providing a written notice to the party. The written notice may be included in an investigation notice given to the party under Clause 40.

Parties are required to comply with this requirement unless they have a reasonable excuse. A maximum penalty of 100 penalty units applies where a party fails to provide a document or information without a reasonable excuse. The penalty, including its level, is considered appropriate as it is consistent with similar provisions in other legislation that establish ombudsmen in Queensland.

It is a reasonable excuse to fail to comply with the requirement where the document or information is not in the party's possession or control, or where the party has taken all reasonable steps to obtain the documents or information from another person, but that person has refused to provide it. It is also a reasonable excuse for an individual to fail to comply where providing the documents or information would tend to incriminate them or expose them to a penalty.

This has been identified as a potential fundamental legislative principles issue, concerning the exclusion of the privilege against self-incrimination. This clause expressly affords individuals the privilege against self-incrimination or exposure to a penalty and is

in line with the common law privilege against self-incrimination, which applies only to individuals. This provision does not apply to corporations as they are not afforded this privilege under common law.

A party is not obligated to disclose a document or information when required by the ombudsman under this clause if the document or information is protected by legal professional privilege, or it is a communication of an admission made by a party before the land access referral was made in the course of negotiations to attempt to settle the land access dispute between the parties.

Power to require attendance

Clause 43 confers powers on the land access ombudsman to require a party to attend a meeting and answer any questions the land access ombudsman asks which are pertinent to the investigation of the land access dispute referral.

Parties are required to comply with this requirement unless they have a reasonable excuse. A maximum penalty of 100 penalty units applies where a party fails to comply with the requirement and does not have a reasonable excuse. The penalty, including its level, is considered appropriate as it is consistent with similar provisions in other legislation that establish ombudsmen in Queensland.

It is a reasonable excuse for a party who is an individual to fail to answer a question if doing so may tend to incriminate them or expose them to a penalty. This has been identified as a potential fundamental legislative principles issue, concerning the exclusion of the privilege against self-incrimination. This clause expressly affords individuals the privilege against self-incrimination or exposure to a penalty and is in line with the common law privilege against self-incrimination, which applies only to individuals. This provision does not apply to corporations as they are not afforded this privilege under common law.

Parties may, at their own cost, be represented by another person at a meeting if the land access ombudsman gives permission. The ombudsman must not unreasonably withhold that permission.

Subdivision 3 Power to enter

Definitions for subdivision

Clause 44 outlines the definitions that apply to Subdivision 3.

Power to enter dispute land

Clause 45 provides that if the land access ombudsman has accepted the land access dispute referral about a conduct and compensation agreement or make good agreement and wishes to enter the land subject to the agreement (the dispute land) for the investigation, the ombudsman may only do this with the consent of prescribed persons.

If the ombudsman wishes to enter dispute land when investigating a dispute about a conduct and compensation agreement, the ombudsman may enter the dispute land when the ombudsman has obtained the consent of:

- the party to the land access dispute who is the owner or occupier of the dispute land;

- any owner of the dispute land who is not a party to the land access dispute;
- any occupier of the dispute land who is not a party to the land access dispute;
- a resource authority holder if on the dispute land there is:
  - a coal mine with a safety and health management system in place;
  - a mine with a safety and health management system in place;
  - an operating plant with a safety management system in place.

If the ombudsman wishes to enter dispute land when investigating a dispute about a make good agreement, the ombudsman may enter the dispute land when the ombudsman has obtained the consent of:

- the party to the land access dispute who is the bore owner;
- any owner of the dispute land who is not a party to the land access dispute;
- any occupier of the of the dispute land who is not a party to the land access dispute.

When obtaining any of the relevant abovementioned consents, the ombudsman must comply with Clause 48.

The land access ombudsman's power of entry is subject to any conditions placed on the consent by the relevant party (or parties) and the power ceases if the consent is withdrawn.

A fundamental legislative principle issue related to these entry provisions has been identified. However, the entry powers have been appropriately tailored to meet the purposes of the Act. The entry provisions have been narrowed to entry by consent only, and entry is limited to the land the subject of the dispute being investigated by the ombudsman.

The powers exercisable upon entry are limited to actions for the purposes of the land access ombudsman's functions (of investigating and facilitating the resolution of land access disputes).

Application of ss 47—49

Clause 46 clarifies that clauses 47, 48 and 49 apply to the land access ombudsman if the ombudsman intends to ask a person for consent to enter the land subject to the agreement.

Incidental entry to ask for access

Clause 47 provides that for the purpose of obtaining consent, the land access ombudsman may:

- enter land around premises on the dispute land to an extent that is reasonable to make contact; or
- enter part of the land the ombudsman reasonably believes the public may ordinarily enter when they wish to contact an occupier of the dispute land.

Matters land access ombudsman must tell person

Clause 48 provides that before requesting consent for entry to the land subject to the conduct and compensation agreement or make good agreement, the land access

ombudsman must give a reasonable explanation to the owner, occupier, bore owner or resource authority holder:

- about the purpose of the entry, including the powers intended to be exercised;
- that the person does not have to consent to the entry; and
- consent may be given subject to conditions and may be withdrawn at any time.

Consent by acknowledgement

Clause 49 provides that the land access ombudsman may ask a party to sign an acknowledgement of consent regarding the land access ombudsman's proposed entry to land. If requested, the acknowledgement must contain particular information, including the purpose of the entry, the powers to be exercised and any conditions attached to the consent.

The ombudsman must give a copy of the acknowledgement to the party immediately after the party signs it.

Where an issue arises in a proceeding about whether a party consented to the ombudsman's entry, and an acknowledgement which complies with the requirements prescribed in this clause is not produced in evidence, then the onus of proof is on the person relying on the lawfulness of the entry to prove consent had been obtained.

General powers of land access ombudsman after entering dispute land

Clause 50 provides that once the land access ombudsman has entered dispute land, the ombudsman may do anything reasonably necessary on the dispute land for the purposes of the function under Clause 16(a).

The ombudsman's entry will be subject to any conditions attached to the consent. Additionally, the ombudsman may not take a thing, or a sample of a thing, from the dispute land.

Part 4 Actions by land access ombudsman

Notice about outcome of investigation

Clause 51 provides for the process following the land access ombudsman's investigation. Once the investigation has been finalised, the ombudsman must give the parties to the dispute referral a written notice.

If the dispute referral was resolved between the parties of the conduct and compensation agreement or make good agreement as a result of the land access ombudsman's investigation, the written notice must include details of the resolution of the dispute.

If the land access dispute referral is not resolved as a result of the investigation, the written notice must include:

- advice about the merits of the parties' positions in the land access dispute referral and the reasons for the advice; and
- recommendations about how the land access dispute referral could be resolved and the reasons for the recommendations.

The advice of the land access ombudsman about the merits of the parties' positions is intended to relate to the detail of the land access dispute and should not include any communications of an admission made by a party, before the land access dispute referral was made or in the course of negotiations to resolve the land access dispute.

The written notice only provides information or advice to the parties; it is not binding.

If a party to a conduct and compensation agreement or make good agreement has provided the land access ombudsman confidential information for a land access dispute referral, the written notice must state that the ombudsman has relied on confidential information given by a party to the dispute, without disclosing what that document or information is.

Before issuing a notice under subclause (2), the ombudsman first must give the parties a draft notice and invite them to make a submission, either orally or in writing, about the notice within the stated reasonable period. The ombudsman must have regard to any submission before issuing the notice.

This clause does not apply if an investigation has been:

- discontinued under Clause 18(2);
- the land access dispute referral has been withdrawn; or
- the dispute has been resolved between the parties other than by way of the investigation by the land access ombudsman.

Evidentiary provision

Clause 52 provides that a notice given by the land access ombudsman under Clause 51 is admissible in a court or arbitration proceeding about the land access dispute as evidence of the matters in the notice. The notice is not binding on the Land Court or arbitrator.

Recommendation about Resource Act offence or resource authority breach

Clause 53 allows the land access ombudsman the discretion to notify a chief executive of the administering department where the ombudsman reasonably suspects a resource authority holder or resource tenure holder has:

- committed, is committing or is likely to commit an offence against a Resource Act; or
- breached, is breaching or is likely to breach a condition of a resource authority that relates to land access.

If the ombudsman proposes to give a notice to the chief executive about the possible authority breach or offence, the ombudsman must allow an opportunity for the resource authority holder or resource tenure holder to make a submission to the ombudsman. The ombudsman may set a period within which the submission must be received. When finalising the notice to give to the chief executive, the ombudsman must have regard to any of the submissions made.

After having regard to any submission from the resource authority holder or resource tenure holder, the ombudsman may give a notice to the chief executive (natural resources and mines) recommending the investigation of the possible offence or authority breach, and the notice must include details of the possible offence or authority breach.

The notice may disclose information to the chief executive (natural resources and mines) relevant to the possible offence or possible authority breach. It may also include a copy of the notice given to the parties about the dispute in Clause 51.

Recommendation about offence against Water Act 2000

Clause 54 provides the land access ombudsman the discretion to notify a chief executive of the administering department where the ombudsman reasonably suspects a resource tenure holder or resource tenure holder (that is a party to the investigated make good agreement) has committed, is committing, or is likely to commit an offence against Chapter 3 of the *Water Act 2000*.

If the ombudsman proposes to give a notice to the chief executive about the possible offence, the ombudsman must allow an opportunity for the resource authority holder or resource tenure holder to make a submission to the ombudsman. The ombudsman may set a period within which the submission must be received. When finalising the notice to give to the chief executive, the ombudsman must have regard to any of the submissions made.

After having regard to any submission from the resource authority holder or resource tenure holder, the ombudsman may give a notice to the chief executive (water) recommending the investigation of the possible offence, and the notice must include details of the possible offence.

The notice may disclose information to the chief executive (water) relevant to the possible offence. It may also include a copy of the notice given to the parties about the dispute in Clause 51.

Recommendation about offence against Environmental Protection Act 1994

Clause 55 provides the land access ombudsman the discretion to notify a chief executive of the administering department where the ombudsman reasonably suspects a resource authority holder or resource tenure holder has committed, is committing, or is likely to commit, an offence against the *Environmental Protection Act 1994*.

If the ombudsman proposes to give a notice to the chief executive about the possible offence, the ombudsman must allow an opportunity for the resource authority holder or resource tenure holder to make a submission to the ombudsman. The ombudsman may set a period within which the submission must be received. When finalising the notice to give to the chief executive, the ombudsman must have regard to any of the submissions made.

After having regard to any submission from the resource authority holder or resource tenure holder, the ombudsman may give a notice to the chief executive (environment protection) recommending the investigation of the possible offence, and the notice must include details of the possible offence.

The notice may disclose information to the chief executive (environment protection) relevant to the possible offence. It may also include a copy of the notice given to the parties about the dispute in Clause 51.

Advice to government agencies about systemic issues

Clause 56 provides that the land access ombudsman may advise the chief executive of any government department or any government entity about systemic issues arising from land access dispute referrals.

The advice must be in writing and may include the land access ombudsman's opinion or advice about the systemic issue. However, the ombudsman's advice can not include information the ombudsman is satisfied is confidential and the disclosure of which might be detrimental to the party's commercial interests.

Part 5 Dealing with documents or information under this Act

Document in land access ombudsman's custody

Clause 57 permits the land access ombudsman to keep documents provided to it for a reasonable period of time in order to carry out an investigation, and to take extracts from to make copies of documents. The ombudsman must also allow inspection of the documents by anyone who would ordinarily have the right to inspect it. For example, the landholder or resource authority holder who has produced the document would have the right to inspect it.

Protection from liability for giving agreement to land access ombudsman

Clause 58 provides for protection from civil liability for giving a copy of a conduct and compensation agreement or a copy of a make good agreement to the land access ombudsman where required under Clause 42 or due to the party's own initiative, where the agreement contains a confidentiality condition. This protection is considered appropriate to enable parties to provide agreements to the land access ombudsman so the land access dispute can be investigated.

Confidentiality requests

Clause 59 sets out that the land access ombudsman can decide whether a belief by a party is justified that a document or information to be made available to the land access ombudsman is confidential or that the disclosure of the information to the land access ombudsman might be to the detriment of the party's commercial activities. Information, whether it is determined by the land access ombudsman to be confidential or not, can only be disclosed in accordance with Clause 60.

Secrecy

Clause 60 provides that a person who is or has been the land access ombudsman, or an officer of the Office of the Land Access Ombudsman, and has obtained information due to the person's functions under this Act that is confidential and not publicly available, must not make a record of the information, directly or indirectly disclose the information or use the information to benefit any person. These restrictions do not apply if the record is made or information disclosed in the performance of the person's functions under this Act, with the consent of the person to whom the information relates, or as required by law.

A maximum penalty of 100 penalty units applies for contravention of the requirement to maintain secrecy. The penalty, including its level, is considered appropriate as it is consistent with similar provisions in other legislation that establish ombudsmen in Queensland.

Part 6 Miscellaneous provisions

Delegation

Clause 61 permits the land access ombudsman to delegate functions or powers to an appropriately qualified land access ombudsman officer. The land access ombudsman must not delegate the giving of advice, recommendations or reasons about a land access dispute referral under Clause 51(6)(b).

Protection from liability

Clause 62 provides that any civil liability for an honest and non-negligent act or omission purportedly made by the land access ombudsman or one of its officers attaches instead to the State.

Annual report

Clause 63 sets out the land access ombudsman's annual reporting responsibilities. The ombudsman must prepare an annual report about the operations of the Office of the Land Access Ombudsman.

The report must include a description of:

- land access dispute referrals made;
- land access dispute referrals that the land access ombudsman has decided not to investigate or continue to investigate under Clause 36;
- land access dispute referrals the ombudsman has investigated;
- notices provided under Clause 51;
- notices given to a chief executive under Clause 53, Clause 54 or Clause 55;
- details of other functions performed by the ombudsman or officers during the year.

The annual report must not be prepared in a way that discloses the identity of parties to land access disputes. The report must be published on the ombudsman's website as soon as practicable after the report is given to the Minister.

Approved forms

Clause 64 provides that the land access ombudsman may approve forms for use under the Act.

Procedural guidelines

Clause 65 provides that the land access ombudsman may make procedural guidelines about practices and procedures for land access dispute referrals and investigations under the Act, provided they are not inconsistent with the Act.

This may include a procedural guideline outlining the expected timeframes for timely resolution of referred land access dispute or what would constitute a reasonable attempt to resolve a land access dispute for clause 32(2).

Regulation-making power

Clause 66 provides that the Governor in Council may make regulations under the Act.

Part 7 Transitional provision

Pre-commencement agreements may be referred and dealt with

Clause 67 sets out that a land access dispute may be referred and dealt with under the Act even if the conduct and compensation agreement or make good agreement was made or the land access dispute occurred prior to the commencement of the Act.

However, the ombudsman may not accept any land access dispute referral to which Clause 18 would apply.

Part 8 Amendment of Legislation

Division 1 Amendment of this Act

Act amended

Clause 68 specifies that Division 1 of the Act amends this Act.

Amendment of long title

Clause 69 provides for the amendment of the long title by omitting from ‘, and to amend’.

Division 2 Amendment of Coal Mining Safety and Health Act 1999

Act amended

Clause 70 provides for amendments to the *Coal Mining Safety and Health Act 1999*.

Insertion of new s303A

Clause 71 inserts a new section 303A in the *Coal Mining Safety and Health Act 1999* to extend the transitional period for the making of a joint interaction management plan, beyond the transitional period provided in section 11 of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016. Additional time to make a joint interaction management plan may be required if there has been a dispute about the making of the joint interaction management plan and arbitration of the dispute is still ongoing.

Subsection (1) provides that section 303A of the *Coal Mining Safety and Health Act 1999* applies if, on 27 September 2017 a joint interaction management plan is still to be made under section 64E of the *Coal Mining Safety and Health Act 1999* for coal mining operations mentioned in section 303(2) of the *Coal Mining Safety and Health Act 1999*, or carried out in an overlapping area under a mining lease (coal) if an activity for an authority to prospect (CSG) is also carried out in the overlapping area. The reason a joint interaction management plan has not been made under section 64E is that arbitration of a dispute about the plan has been applied for under section 64E(3) or (4).

Subsections (2) and (3) of section 303A 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*. 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.

Division 3 Amendment of the Integrity Act 2009

Act amended

Clause 72 provides for amendments to the *Integrity Act 2009.*

Amendment of sch 1 (Statutory office holders for section 72C)

Clause 73 amends schedule 1 of the *Integrity Act 2009* by including the Land Access Ombudsman as a statutory office holder for the purposes of section 72C of that Act.

Division 4 Amendment of Mineral and Energy Resources (Common Provisions) Act 2014

Act amended

Clause 74 provides for amendments to the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Insertion of new s 99A

Clause 75 provides jurisdiction to the Land Court to hear matters related to an alleged breach of a conduct and compensation agreement. Parties may apply for an order in the

Land Court in relation to the alleged breach. Prior to the commencement of this clause, these matters were heard in the court of competent jurisdiction (typically the District or Supreme Court). By providing this jurisdiction to the Land Court, it will now be able to deal with disputes throughout the lifecycle of a conduct and compensation agreement (including its negotiation).

Insertion of new s 148A

Clause 76 inserts a new section 148A into chapter 4, part 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*, which saves section 6D of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 and additionally modifies certain requirements under the overlapping tenure framework. The amendments ensure a coal party can establish sole occupancy when there is a petroleum lease competitive tender process under the *Petroleum and Gas (Production and Safety) Act 2004*.

In a competitive tender process for a petroleum lease under the *Petroleum and Gas (Production and Safety) Act 2004*, each tenderer is considered an applicant. There is ambiguity about whether each tenderer would then be required to comply with the petroleum production notice and information exchange requirements under the overlapping tenure framework in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Section 6D of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 addressed this ambiguity by clarifying the intent that the requirement to give a petroleum production notice and to exchange information is limited to only the appointed preferred tenderer when a petroleum lease is applied for through a tender process.

The new section 148A ensures that the modifications to the petroleum production notice and information exchange requirements contained in section 6D of the Mineral and Energy (Common Provisions) Transitional Regulation 2016 will continue to apply to ongoing and future petroleum lease competitive tender processes after section 6D's expiry on 27 September 2017. This will mean that a preferred tender will be required to provide a petroleum production notice to an overlapped coal resource authority within 10 business days after being appointed as preferred tenderer. In addition, all overlapping resource authority holders will be required to commence information exchange within 20 business days after the petroleum production notice is given.

To ensure that a coal party can establish sole occupancy in the overlapping area, the new section 148A provides further modifications to ensure a mining lease (coal) applicant can comply with the requirement to give an advance notice within 30 business days of receiving the petroleum production notice. A proposed joint development plan must accompany the advance notice.

The mining lease (coal) applicant is intended to be responsible for ensuring that an agreed joint development plan is in place within the statutory timeframes. The preferred tenderer for the petroleum lease is not required to provide a proposed joint development plan with the petroleum production notice.

For this scenario, any mining commencement date for any identified initial mining area in a proposed joint development plan must be at least 11 years after the date on which the mining lease (coal) application is lodged. However, parties are able to change the mining

commencement date for an initial mining area through mutual agreement, the establishment of exceptional circumstances, or the giving of an acceleration notice.

The new section 148A also clarifies that any information provided by either overlapping party is subject to the confidentiality provisions under section 156 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

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

Clause 77 amends the heading of chapter 7 of the *Mineral and Energy Resources (Common Provisions) Act 2014* to clarify the chapter relates to saving and transitional provisions made under Act No. 47 of 2014.

Insertion of new s 223A

Clause 78 migrates section 5 of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 to the *Mineral and Energy Resources (Common Provisions) Act 2014.* This provision is required to be enshrined in the primary legislation prior to the expiration of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 in September 2017.

Clause 78 which inserts section 223A provides that consent given by a reserve owner under the pre-amended *Mineral Resources Act 1989* to the holder of an exploration permit or a mineral development licence is taken to be an entry notice under the harmonised public land access framework in the *Mineral and Energy Resources (Common Provisions) Act 2014* and that any conditions under which the consent was given continue to be conditions of entry. This provision is virtually identical to section 5 of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016.

Insertion of new s 224A

Clause 79 migrates section 6 of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 to the *Mineral and Energy Resources (Common Provisions) Act 2014.* This provision is required to be enshrined in the primary legislation prior to the expiration of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 in September 2017.

Clause 79 which inserts section 224A transitions the following:

- a notice of a notifiable road use given under a pre-amended Resource Act by a resource authority holder;
- a written consent given under a pre-amended Resource Act by a public road authority to a resource authority holder; and
- an application to the Land Court made by either a resource authority holder or the public road authority under a pre-amended Resource Act to decide compensation liability.

A pre-amended Resource Act means any of the following that was in force prior to the commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014*: the *Mineral Resources Act 1989*; *Petroleum and Gas (Production and Safety) Act 2004; Petroleum Act 1923;Geothermal Energy Act 2010*; or *Greenhouse Gas Storage Act 2009.* This provision is virtually identical to section 6 of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016.

Insertion of new ss 228D-228F

Clause 80 migrates sections 6A to 6C of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 to the *Mineral and Energy Resources (Common Provisions) Act 2014.* These provisions are required to be enshrined in the primary legislation prior to the expiration of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 in September 2017.

Section 228D provides that the pre-amended restricted land requirements will apply to a prospecting permit, an exploration permit, or a mineral development licence where an application was made before the *Mineral and Energy Resources (Common Provisions) Act 2014* commenced, but was undecided at commencement. Section 228B of the *Mineral and Energy Resources (Common Provisions) Act 2014* remains unchanged and will continue to apply where a prospecting permit, exploration permit or mineral development licence was granted prior to commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014.* This provision is identical to the section 6A of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016.

Section 228E which provides that the pre-amended restricted land requirements will apply to geothermal tenures where an application was made before the *Mineral and Energy Resources (Common Provisions) Act 2014* commencement, but was undecided at commencement. Section 228C of the *Mineral and Energy Resources (Common Provisions) Act 2014* remains unchanged and will continue to apply where a geothermal tenure was granted prior to the commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014.* This provision is virtually identical to the section 6B of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016.

Section 228F which provides that the new restricted land entry provisions do not apply to a mining claim and mining lease under the *Mineral Resources Act 1989,* any resource authority type under the *Greenhouse Gas Storage Act 2009,* any resource authority type under the *Petroleum and Gas (Production and Safety) Act 2004;* or a lease under the *Petroleum Act 1923,* that was applied for before commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014,* whether granted before or after commencement. This provision is virtually identical to the section 6C of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016.

When considering applications for mining claim and mining leases section 228F of the *Mineral and Energy Resources (Common Provisions) Act 2014* should be read in conjunction with sections 828 and 829 of the *Mineral Resources Act 1989.* Sections 828 and 829 of the *Mineral Resources Act 1989* are transitional provisions which preserve the pre-amended application process (of which identification of restricted land is a component) where a mining claim or mining lease application has been lodged prior to the commencement and reached their respective certificate or notice stage (i.e. Mining Claim Application Certificate or Certificate of Application respectively).

These transitional provisions which have been migrated from the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 will operate in tandem with the existing transitional provisions within the *Mineral and Energy Resources (Common Provisions) Act 2014* to ensure the original policy intent which was that the new restricted land framework should only apply to resource authorities applied for and granted after commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014* is achieved.

Amendment of s 241A (Application for ML (coal) and application for PL both undecided before commencement)

Clause 81 amends section 241A of the *Mineral and Energy Resources (Common Provisions) Act 2014* to save sections 7 and 8 of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016, which expire on 27 September 2017.

Section 241A is a transitional provision for the new overlapping tenure framework for coal and coal seam gas. The intent of the section is to provide that where there is a mining lease (coal) application overlapping a petroleum lease application and a coordination arrangement was approved by the Minister before commencement of the section, then the overlapping resource authorities will continue to be administered under the old regime for overlapping tenures. This would ensure that commencement of the new overlapping framework does not re-open advanced negotiations between parties by expressly keeping these overlapping relationships under the old regime.

However, if there is no approved coordination arrangement, then section 241A of the *Mineral and Energy Resources (Common Provisions) Act 2014* provides that overlapping resource authorities will instead be administered under the new framework. This includes meeting mandatory obligations such as the giving of an advance notice and negotiating for a joint development plan.

Section 7 of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 made minor clarifications to the obligations of resource authority holders if they were transitioned into or opted-in to the new overlapping framework. Previously, both parties were required to provide an advance notice and petroleum production notice respectively, and were dually responsible for ensuring there was an agreed joint development plan in place within the statutory timeframes. This was an unnecessary regulatory burden for overlapping parties.

Clause 81(2) ensures these clarifications continue to have effect by amending section 241A(5) of the *Mineral and Energy Resources (Common Provisions) Act 2014*. Section 241A(5), as amended, now provides that only a mining lease (coal) holder captured under section 241A is required to provide an advance notice and commence the negotiation process for a joint development plan.

Section 8 of the Mineral and Energy Resources (Common Provisions) Transitional Regulation addresses concerns raised about whether section 241A of the *Mineral and Energy Resources (Common Provisions) Act 2014* operates as intended. This was achieved by clarifying that, where there is a mining lease (coal) application overlapping a petroleum lease application and a coordination arrangement is approved by the Minister under section 236(1) of the *Petroleum and Gas (Production and Safety) Act 2004* before the commencement of the *Mineral and Energy Resources (Common Provisions) Act 2014*, then the tenures will continue to be administered under the old regime for overlapping tenures. This is regardless of whether the Minister's approval has taken effect under the *Petroleum and Gas (Production and Safety) Act 2004*.

Clause 81(1) and (3) propose amendments to ensure that section 241A continues to operate as intended after the expiry of section 8 of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016. This is achieved by clarifying what is considered a coordination arrangement for the purposes of section 241A(3)(a).

Replacement of ch 8 (Repeal of Coal and Oil Shale Mine Workers' Superannuation Act 1989)

Clause 82 replaces chapter 8 of the *Mineral and Energy Resources (Common Provisions) Act 2014*. Chapter 8 previously provided for the repeal of the *Coal and Oil Shale Mine Workers' Superannuation Act 1989*, which is no longer required since the Act has been repealed.

The new chapter 8 of the *Mineral and Energy Resources (Common Provisions) Act 2014* now clarifies the application of transitional provisions in the Act. The Bill contains several amendments relating to saving transitional provisions from the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 into the relevant legislation, to ensure they continue to have effect after the regulation's expiry on 27 September 2017.

However, some of the amendments in the Bill are more expansive than what was provided for in the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016.

To remove doubt as to the application of provisions, the new section 244 of the *Mineral and Energy Resources (Common Provisions) Act 2014* provides that any amendments inserted by the Bill prevail over the provisions in the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016 if there are any inconsistencies between the two.

Division 5 Amendment of the Mineral Resources Regulation 2013

Regulation amended

Clause 83 provides for amendments to the Mineral Resources Regulation 2013.

Amendment of ch 4, pt 10, hdg (Transitional provision for Water Reform and Other Legislation Amendment Act 2014)

Clause 84 amends the heading for chapter 4, part 10 of the Mineral Resources Regulation 2013 to reflect the new section 111A inserted by the Bill.

Insertion of new s 111A

Clause 85 inserts a new section 111A in the Mineral Resources Regulation 2013 to extend the transitional period for the making of a joint interaction management plan, beyond the transitional period provided in section 10 of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016. Additional time to make a joint interaction management plan may be required if there has been a dispute about the making of the joint interaction management plan and arbitration of the dispute is still ongoing.

Subsection (1) provides that section 111A of the Mineral Resources Regulation 2013 applies if, on 27 September 2017 a joint interaction management plan is still to be made under section 25 of the Mineral Resources Regulation 2013 for coal mining operations mentioned in section 111(1) of the Mineral Resources Regulation 2013. The reason a

joint interaction management plan has not been made under section 25 is that the arbitration of a dispute about the plan has been applied for under section 25(3) or (4).

Subsections (2) and (3) of section 111A provide that coal mining operations can continue under the plan mentioned in section 111(2), as if the plan is a joint interaction management plan, until a joint interaction management plan is made under section 25 of the Mineral Resources Regulation 2013.

Division 6 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Act amended

Clause 86 provides for amendments to the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 844 (Amending applications)

Clause 87 amends section 844 of the *Petroleum and Gas (Production and Safety) Act 2004* as a consequence to amendments to the *Mineral and Energy Resources (Common Provisions) Act 2014* under Clause 76 of the Bill.

Section 844(2)(a) of the *Petroleum and Gas (Production and Safety) Act 2004* prohibits an appointed preferred tenderer for a petroleum lease competitive tender process from amending their development plan. However, sections 132 and 145 of the *Mineral and Energy Resources (Common Provisions) Act 2014* require that a petroleum lease holder (in this case the appointed preferred tenderer) must ensure a joint development plan is consistent to the greatest practicable extent with any development plan under the *Petroleum and Gas (Production and Safety) Act 2004*. This resulted in an inconsistency between the two Acts.

To ensure a preferred tenderer for a petroleum lease competitive tender can comply with both Acts, the amendment proposed under Clause 87 provides that section 844(2)(a) of the *Petroleum and Gas (Production and Safety) Act 2004* does not apply if the preferred tenderer is required to amend a development plan as a result of coming to an agreed joint development plan.

Insertion of new s 990A

Clause 88 inserts a new section 990A in the *Petroleum and Gas (Production and Safety) Act 2004* to extend the transitional period for the making of a joint interaction management plan, beyond the transitional period provided in section 9 of the Mineral and Energy Resources (Common Provisions) Transitional Regulation 2016. Additional time to make a joint interaction management plan may be required if there has been a dispute about the making of the joint interaction management plan and arbitration of the dispute is still ongoing.

Subsection (1) provides that section 990A of the *Petroleum and Gas (Production and Safety) Act 2004* applies if, on 27 September 2017 a joint interaction management plan is still to be made under section 705B of the *Petroleum and Gas (Production and Safety) Act 2004* for an operating plant, area or activity mentioned in section 990(1) of the

Petroleum and Gas (Production and Safety) Act 2004. The reason a joint interaction management plan has not been made under section 705B is that arbitration of a dispute about the plan has been applied for under section 705B(3) or (4).

Subsections (2) and (3) of section 990A provide that petroleum and gas activities 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*. The principal hazard management plan applying to an operating plant, area or activity means if a principal hazard management plan was made under section 705A of the pre-amended *Petroleum and Gas (Production and Safety) Act 2004* that principal hazard management plan, otherwise, the part of the safety management system under the *Petroleum and Gas (Production and Safety) Act 2004* applying to an operating plant, area or activity that deals with the hazards and risks relating to carrying out activities in an overlapping area with coal mining operations.

Division 7 Amendment of Public Service Act 2008

Act amended

Clause 89 provides for amendments to the *Public Service Act 2008*.

Amendment of sch 1 (Public service offices and their heads)

Clause 90 amends schedule 1 of the *Public Service Act 2008* by including the Office of the Land Access Ombudsman as a public service office.

Schedule 1 Dictionary

This schedule comprises the dictionary, and defines particular words used in the Act.

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