

# Natural Resources and Other Legislation Amendment Bill 2019

## Explanatory Notes

### Short title

The short title of the Bill is the Natural Resources and Other Legislation Amendment Bill 2019.

### Policy objectives and the reasons for them

The policy objectives of the Bill are to improve administrative efficiency and ensure regulatory frameworks within the Natural Resources, Mines and Energy portfolio remain effective and responsive; enhance the water compliance frameworks; and implement measures to improve performance of the resources tenure management system. Specifically the Bill:

- amends the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* to reduce the regulatory burden and clarify the interpretation and application of these Acts.
- amends the *Aboriginal and Torres Strait Islander Land Holding Act 2013* to provide a more efficient process for the transmission of leases where the original lessee dies intestate (without a will) and to extend the statutory review period of the *Aboriginal and Torres Strait Islander Land Holding Act 2013* from five to ten years.
- removes the requirement to create and table an annual report on foreign ownership under the *Foreign Ownership of Land Register Act 1988*.
- amends the *Land Act 1994* to improve administrative efficiency and reduce the regulatory burden. The amendments provide an effective mechanism to facilitate the resolution of disputes between leaseholders and sublessees; ensure access to inaccessible State land; close roads; and transfer certain administrative approvals from the Minister to the chief executive.
- amends the *Land Title Act 1994*, corresponding provisions of the *Land Act 1994* and the *Land Title Regulation 2015* to facilitate operational improvements and streamline and clarify processes.
- clarifies administrative arrangements and disciplinary processes to improve the operation of the *Surveyors Act 2003*, *Surveyors Regulation 2014* and the *Surveyors Board of Queensland*.
- amends the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* to implement measures to continue to improve performance of the resources tenure management system and correct minor errors.

- amends the resource Acts to correct errors, clarify the application of provisions and improve the administration of the Acts.
- amends water legislation to improve operational efficiency, strengthen compliance and enforcement provisions; ensure consistency with local government infrastructure charging notices; facilitate balanced gender representation on category 2 water authority boards and modernise the selection and appointment process for directors; reduce regulatory burden; and clarify the application of a number of provisions applying to category 1 and category 2 water authority boards.
- amends the *Right to Information Act 2009* and the *Electricity Act 1994* to support the establishment of a new clean energy generation government owned corporation.

A more detailed explanation of the policy objectives is outlined below.

### **Aboriginal and Torres Strait Islander Land Acts amendments**

The Bill amends the *Aboriginal Land Act 1991* (Aboriginal Land Act) and the *Torres Strait Islander Land Act 1991* (Torres Strait Islander Land Act) to reduce government's legislative burden by replacing a subordinate legislation process with a ministerial declaration process. This will enable the Minister administering the Acts to make a declaration about land available for grant as inalienable freehold; the reservation of forest products and quarry materials to the state on those lands; and the management of certain lands that have been granted. The Bill also proposes that a public register of ministerial declarations be kept.

The Bill also amends the Aboriginal Land Act and Torres Strait Islander Land Act to clarify the interpretation and application of certain provisions in these Acts.

### **Land Holding Act amendments**

The *Aboriginal and Torres Strait Islander Land Holding Act 2013* (Land Holding Act) provides a framework to resolve outstanding lease entitlements and issues affecting granted leases.

The Land Holding Act does not have a process for transmitting granted leases where the lessee dies intestate and the lessee's estate is not being administered. The lease interest remains in the name of the deceased lessee until processes for administering the estate in accordance with succession law are completed. Where there is no will appointing an executor, the process is complex, usually involving an application to the Supreme Court. Currently, approximately 130 leases are held in the names of deceased lessee's who have died intestate and whose estates are not being administered.

The Bill will resolve the issue by providing for these leases to vest in entitled successors, who are beneficiaries determined under the provisions of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

The entitled successor to a deceased lessee may then be registered as lessee by means of a simple process.

The amendment will operate until 2022, in line with the Queensland Government's funding commitment to resolve outstanding lease and home ownership issues under the Land Holding Act. The amendments complement the government's commitment made in response to the *Reparations Taskforce Report: Reconciling Past Injustice* to resolve leases under the now repealed *Land Holding Act 1985*. The implementing agencies have developed a work program to resolve these outstanding lease issues affecting the granted leases by 2022.

The Bill also extends the review period for the Land Holding Act from five years to ten years to provide a more appropriate timeframe for assessment of the operation and effectiveness of the Act. The extended timeframe will allow for the completion of the work program prior to assessing the Act's effectiveness.

### **Foreign Ownership of Land Register**

The Bill removes the requirement to create and table an annual report on foreign ownership of land under the *Foreign Ownership of Land Register Act 1988*. This requirement is unnecessary as the Commonwealth Government now publishes an annual report on foreign ownership of agricultural land.

### **Land legislation amendments**

The Bill amends the *Land Act 1994* (Land Act) to ensure the clear and effective application of the Act, improve administrative efficiency and reduce regulatory burden across a number of policy issues.

#### **Dispute resolution**

Lease land administered under the Land Act can be subleased. Currently, approximately 24,000 subleases have been issued over leased land.

Disputes between lessees and sublessees can arise and will vary in complexity and significance. Current options under the Land Act for resolving disputes between parties to a sublease include using an existing dispute resolution clause in the sublease or applying to the chief executive for referral to mediation. Other dispute resolution processes may be available under the *Retail Shop Leases Act 1994*, the *Residential Tenancies and Rooming Accommodation Act 2008* or adjudication by a court, depending on the subject of the sub-lease.

There are a number of limitations with these options. Not all existing subleases have dispute resolution provisions and where they do exist, they may not cover the matter under dispute or provide the mechanism for final resolution. Mediation can be costly and delays may occur with the appointment of a mediator and with the parties reaching agreement. Further complexities arise where there are a large number of sublessees involved in the dispute process.

A number of disputes between sublessors and sublessees highlighted the need for better dispute resolution arrangements in the Land Act. Legislative provisions are needed to provide for cost-effective options that can facilitate the resolution of

subleasing arrangements; avoid the State becoming a party to a private or commercial dispute; and provide for the resolution of a wide range of potential issues. The Bill introduces an improved dispute resolution framework under the Land Act that provides a process for parties to resolve disputes through mediation or arbitration. While parties to a dispute will still be able to take their dispute to court for resolution, they will otherwise be required to share information and if required participate in mediation proceedings to resolve the dispute. Parties to a dispute will also have the option of seeking binding arbitration.

### Access to areas of state land

Under the Land Act, the administering agency is responsible for undertaking a range of authorised activities on state land such as management and compliance activities. Managing some areas of state land can be problematic where the land does not have dedicated access or the dedicated access is difficult or unsafe to traverse. As of December 2018, there were approximately 50 parcels of unallocated state land identified as having problems with access.

Where it is not possible to directly access these parcels of state land, access via adjacent or adjoining parcels of land needs to be sought by negotiating voluntary access with the owner of the neighbouring or adjacent land. There have been occasions where it has not been possible for the administering agency to negotiate access into or across the adjacent land to carry out these authorised activities. The Bill introduces a new power of entry for authorised persons to traverse adjacent freehold, leasehold and trust land to access state land to carry out activities where entry cannot be negotiated in the first instance and there is no other reasonably practical route for entering the state land.

### Most appropriate tenure and use assessments

The Land Act requires unallocated land to be evaluated against the matters listed in s 16, to assess the land's most appropriate tenure and use. The matters listed in s 16 that must be considered include the object of the Land Act and State, regional and local planning strategies and policies. State commitments and undertakings in relation to the land is now included as a matter the chief executive must consider.

Section 16 previously provided for the commitments and undertakings for the Cape York agreement land to be taken into account. That requirement was subject to a 10-year sunset clause that expired in March 2015. With the extension of the Cape York Peninsula Tenure Resolution Program, and the recognition of other tenure resolution commitments or undertakings, the requirement for the commitments and undertakings for Cape York agreement land to be taken into account has been reinstated.

### Ministerial consent

The Land Act currently provides over 70 instances where the Minister's consent is required to complete or approve a land transaction, including the transfer of a tenure, approving improvements on a lease, consenting to the surrender of a lease and consenting to the registration of documents. To increase the administrative efficiency

of the Land Act, the Bill transfers decision-making responsibilities for some of these land transactions from the Minister to the chief executive administering the Land Act.

### Road closures

Hundreds of road closure applications are received each year. Most applications are for permanent road closures, which take considerable time and resources to administer. The Bill streamlines the road closure process to reduce processing delays, while maintaining the public notification requirements.

### Surrendering tenure fees

The Land Regulation 2009 prescribes application fees for the surrender of a Land Act tenure. The prescribed fee reflects the partial administrative costs of processing the surrender. In some cases the land holder does not submit an application to surrender and vacates the land without payment of rent or a surrender application fee. In these instances, the department must instigate debt recovery actions to collect the outstanding surrender fee.

The financial benefit to the State of collecting surrender fees is outweighed by the administrative costs incurred through the debt recovery process and processing the applications. To address this inefficiency, the Bill removes all application fees that apply to the surrender of tenure.

### Prescribed terms

A prescribed terms framework was introduced in the *Land and Other Legislation Amendment Act 2017* to provide greater transparency of the terms and conditions that apply to a derivative interest under the Land Act. The prescribed terms framework ensures that the state's interest and public benefit in the land is protected. The Bill amends the Land Act to clarify the extent and effect the prescribed terms framework will have on primary and derivative interests created under the Land Act.

### Land titling amendments

The amendments to the *Land Title Act 1994*, corresponding provisions of the Land Act and Land Title Regulation 2015 will facilitate operational improvements, streamline processes and clarify and align requirements in a number of minor ways.

### Land Valuation Act and Valuers Registration Act amendments

The Bill makes a number of amendments to the *Land Valuation Act 2010* to strengthen the policy objectives of Queensland's valuations framework. The application of some provisions of the *Land Valuation Act 2010* and the *Valuers Registration Act 1992* have also been clarified by the Bill while a number of redundant provisions have been removed or restricted to streamline operation of the Acts.

### **Surveyors Act and Surveyors Regulation amendments**

The *Surveyors Act 2003* (Surveyors Act) establishes the Surveyors Board of Queensland (the Surveyors Board) to register surveyors in Queensland and establish professional standards for the surveying profession. The Surveyors Board is empowered to monitor and enforce the professional obligations on surveyors to maintain the public's confidence in Queensland's surveying profession.

The following key administrative and disciplinary issues have hindered the effective operation of the Surveyors Board:

- Insufficient expertise and capacity of the Surveyors Board to deal with registration and compliance of mining surveyors.
- Unclear delegation powers for the Surveyors Board leading to it dealing with minor administrative functions (such as approving forms) that could be more effectively dealt with outside of its meetings.
- Unclear offences about who may conduct a cadastral survey and how the survey must be supervised which leads to difficulty for the Surveyors Board communicating and enforcing the professional obligations of surveyors in relation to cadastral surveys. Cadastral surveys define land boundaries and surveyors must understand their obligations about carrying out cadastral surveys.
- An inability to appoint an investigator with expertise other than surveying qualifications has hindered the Surveyors Board seeking advice about compliance with parts of the professional surveyor standards, e.g. the conduct of a surveying business.
- The burden of the cost of seeking information from registers and rolls held by the administering agency can be a hindrance to the Surveyors Board assessing competence, conducting investigations and carrying out compliance monitoring following disciplinary action.

The Bill addresses these issues by strengthening administrative and disciplinary processes in the Surveyors Act to improve the operation of the Surveyors Board and Surveyors Regulation 2014 (Surveyors Regulation).

### **Resource authorities and other miscellaneous resource Acts amendments**

This Bill delivers on the Government commitment to continue to implement measures to improve the performance of the resources tenure management system. The Bill supports the resource exploration sector by creating greater flexibility, reducing administrative burden and allowing more time for exploration prior to relinquishment of land. This is critical for the exploration industry, which drives the discovery of the minerals and energy resources that are vital to the development and delivery of important new technologies.

#### **Capped term**

Under the current framework, unlimited renewal of exploration permits, along with the ability to vary relinquishment requirements, has resulted in some exploration areas being held too long, delaying production and the associated benefits to the State. The

cap introduced in this Bill limits the total life of an exploration permit to 15 years, with a three year extension in exceptional events. This will encourage timely progression to development and production or otherwise to allow turnover of the land to other explorers.

### Streamlined relinquishment

Currently, the time between relinquishment intervals is considered too short, resulting in proponents routinely applying to vary their relinquishment obligations. Relinquishment requirements have been streamlined to increase the time before the first relinquishment due date and reduce the total area required to be relinquished before the expiry of the exploration authority. These amendments will optimise land turnover and reduce administrative burden, while supporting early exploration.

### Work programs

The option of an outcomes-based work program allows explorers to adjust their activities in response to exploration results without the need to seek approval from the department to vary their work program. This will result in administrative savings to industry and the department and allow explorers to focus on on-ground activities.

Currently all exploration authorities must comply with a prescribed activities-based work program. To adjust this work program in response to unexpected exploration results, the explorer needs to seek the department's approval to vary the work program. An outcomes-based work program includes the proposed outcomes, the strategy or strategies to pursue the outcomes, and the proposed data and information to be collected during the term. This allows the explorer to change the on-ground activities to accommodate the results as they become apparent.

Exploration authorities awarded through competitive processes, such as a tender process, will be conditioned with an activities-based work program for the initial term, to preserve the integrity of the competitive process.

The Bill makes a range of other improvements across the resource Acts to correct minor errors, address inconsistencies and update certain provisions.

### Water compliance and enforcement

The Independent audit of Queensland non-urban water measurement and compliance (2018), commissioned by the Minister for Natural Resources, Mines and Energy, together with the Murray-Darling Basin Authority Water Compliance Review identified opportunities to improve Queensland's rural water management. A number of recommendations were made, particularly in relation to information systems, governance and compliance.

To implement the government's response to the independent audit and Queensland's commitments under the Murray-Darling Basin Compliance Compact, the Bill removes ambiguity from the Water Act in relation to certain offences and strengthens compliance actions.

### **Distributor-retailer Infrastructure Charges Notices**

The Bill amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* to validate infrastructure charges notices issued by Distributor-retailers that contain minor procedural irregularities. This will ensure consistency with the local government infrastructure charging framework under the *Planning Act 2016*.

### **Water authority boards**

In 2015, the department advised category 2 water authority boards of the Queensland Government's Women on Boards initiative which established a gender equity target of 50 per cent representation of women on the boards of Queensland Government bodies by 2020. The initiative also requires that 50 per cent of all new board appointees be women by this date. However, in January 2019 there was still only approximately 10 per cent representation of women on category 2 water authority boards.

The Bill makes a number of amendments to the Water Act to modernise and clarify requirements for the selection and appointment of directors on water authority boards. This will facilitate greater gender equity on category 2 water authority boards and remove unnecessary administrative burden and ambiguity.

### **Other water related amendments**

The Bill makes a number of miscellaneous amendments to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, the *South East Queensland Water (Restructuring) Act 2007* and the *Water Supply (Safety and Reliability) Act 2008*. These amendments will improve operational efficiency, reduce regulatory burden and improve and clarify a range of existing operational provisions in relation to the SEQ bulk water supply authority, service providers, dam safety and the development of emergency action plans.

### **CleanCo**

CleanCo Queensland Limited (CleanCo) was established as a government-owned corporation (GOC) on 17 December 2018. CleanCo will commence trading in the National Electricity Market (NEM) when it is provided with a strategic portfolio of low and no emission electricity generation assets from Stanwell Corporation Limited (Stanwell) and CS Energy Limited (CS Energy).

The establishment of CleanCo as a new electricity generation GOC provides a structural solution to support increased competition in the wholesale electricity market and put downward pressure on wholesale electricity prices. CleanCo will operate to strategically deploy its generation assets into the NEM and facilitate dispatchable renewable energy generation.

The CleanCo related amendments to the *Right to Information Act 2009* made by the Bill will protect CleanCo's competitive interests within the NEM and aligns with existing protections in place for CS Energy and Stanwell.



The related amendments made by the Bill to the *Electricity Act 1994* will enable a regulation to be made to designate CleanCo as a 'State electricity entity'. This will ensure that CleanCo can be subject to Government directions under the *Electricity Act 1994*, as is currently the case for CS Energy and Stanwell. Importantly, the amendments also provide legislative protection for the entitlements of employees that transfer from CS Energy or Stanwell to CleanCo.

## **Achievement of policy objectives**

### **Aboriginal and Torres Strait Islander Land Acts amendments**

The Bill achieves its objectives by:

- replacing the declaration made under a regulation with a ministerial declaration process for the following matters:
  - making land available for grant as inalienable freehold under the Aboriginal Land Act and the Torres Strait Islander Land Act;
  - reservation of forest products and quarry materials to the state on those lands; and
  - the management of certain lands that have been granted;
- requiring a public register of ministerial declarations be kept; and
- making minor and technical amendments to clarify the interpretation and application of the Aboriginal Land Act and Torres Strait Islander Land Act.

### **Land Holding Act amendments**

The Bill achieves its objectives by amending the Land Holding Act to:

- vest a lease in the entitled successor (as identified under the new provisions) where the lessee has died, or dies, intestate;
- extend the period for undertaking a review of the operation and effectiveness of the Act from 5 years to 10 years.

### **Foreign Ownership of Land Register**

The Bill achieves its objectives by amending the *Foreign Ownership of Land Register Act 1988* to remove the requirement for an annual report to be created and tabled in Parliament.

### **Land Act amendments**

The Bill achieves its objectives by:

- establishing a safety net dispute resolution framework that provides a process for disputing parties to resolve the dispute through provision of information, mediation or arbitration, including the ability to ask an independent body to nominate a mediator or arbiter when the parties cannot agree on one;
- establishing a power for authorised officers to enter or traverse adjacent freehold or leasehold land as a means of accessing difficult to access state land to undertake activities where the ordinary access route is inaccessible and consent to access the adjacent land is withheld;
- requiring most appropriate tenure and use evaluations to take into account commitments and undertakings for Cape York agreement land and State commitments and undertakings relating to the land;

- transferring certain administrative decision-making responsibilities from the Minister to the chief executive;
- simplifying processes for closing and re-opening roads, including clarifying the requirements for identifying interested parties to a proposed road closure and allowing proposed road closures, temporary road closures and re-openings to be advertised on the department's website, instead of in the Queensland Government Gazette;
- removing all application fees in the Land Regulation for surrendering tenure of a Land Act tenure; and
- amending the new prescribed terms framework to clarify the extent and operation of the provisions.

### **Land titling amendments**

The Bill achieves its objectives by amending the *Land Title Act 1994*, corresponding provisions of the Land Act and the Land Title Regulation 2015 to:

- broaden the application of high-density development easements;
- strengthen witnessing provisions and provide further guidance for witnesses;
- clarify the effect of priority notices and facilitate streamlined processes;
- clarify how supporting evidence should be provided for the transfer of land to a trustee; and
- replace the specified locations of offices with a more general provision regarding office locations and requirements for public notification on a departmental website.

### **Land Valuation Act and Valuers Registration Act amendments**

The Bill achieves its objectives by amending the *Land Valuation Act 2010* to:

- clarify what is a "bone fide sale" for the purpose of the Act;
- amend the definition of 'lot' in the Dictionary to include land in the area of a resource tenement;
- limit the ongoing effect of redundant savings provisions; and
- remove a discriminatory provision against telecommunication carriers to ensure consistency with the *Commonwealth Telecommunications Act 1997*.

The Bill achieves its other objectives by removing a redundant provision of the *Valuers Registration Act 1992*.

### **Surveyors Act and Surveyors Regulation amendments**

The Bill achieves its objectives by amending the Surveyors Act and Surveyors Regulation to:

- expand the Surveyors Board's membership and expertise by adding an additional position to be held by a mining surveyor;
- remove the costs of accessing information needed for monitoring and enforcement;

- clarify the delegation powers of the Surveyors Board;
- clarify the offences about who may conduct a cadastral survey and carry on a business providing surveying services; and
- clarify who may be appointed as an investigator.

### **Resource authorities and other miscellaneous amendments**

The Bill achieves its objectives by amending the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* to:

- cap the overall life of a mineral and coal exploration permit to 15 years, generally comprising of an initial term of five years with two renewals. This overall life is subject to an extension of the final term by up to three years in exceptional events;
- streamline the relinquishment (reduction of area) requirements for exploration authorities;
- provide for outcomes-based work programs for exploration authorities in certain circumstances;
- limit the grounds to apply for a variation or special amendment of conditions of an exploration authority to within an exploration project or in exceptional events;
- allow exploration permit areas converted to mineral development licences or mining leases to count towards relinquishment requirements;
- provide the Minister with the power to request core samples where necessary;
- remove the area limit for potential commercial areas and petroleum leases;
- provide a framework for the amalgamation of potential commercial areas and petroleum leases;
- provide transitional arrangements and other tenure-related amendments to support the implementation of these objectives.

Other objectives of the Bill are met by making miscellaneous amendments across the resource Acts to:

- remove the definition of protected area from the *Mineral Resources Act 1989*, as the Nature Conservation Act 1992 prohibits certain resource activities from occurring on areas such as national parks, conservation parks and forest reserves;
- replace the term “rehabilitation” with “remediation” to distinguish between environmental rehabilitation obligations under the *Environmental Protection Act 1994* and the activities that can be undertaken by the government on legacy and abandoned mining sites;
- consolidate the definitions of ‘preliminary’ and ‘advanced’ activities in the *Mineral and Energy Resources (Common Provisions) Act 2014*;
- clarify when application fees may be refunded by the chief executive under the Mineral Resources Act 1989;
- clarify that the right to access land to carry out authorised activities, includes the right to carry out rehabilitation and/or environment management activities as required under any relevant environmental requirement under the *Environmental Protection Act 1994* on both private and public land;

- clarify that the Minister may refuse a mining claim or mining lease application under the Mineral Resources Act, if a compensation agreement has not been made or Land Court referral has not occurred by a certain date after the Land Court has remitted an objection back to the department without the Land Court making a recommendation or instruction to the Minister;
- correct cross-referencing, drafting and other minor technical errors.

The resource Acts are the:

- *Mineral Resources Act 1989*;
- *Petroleum and Gas (Production and Safety) Act 2004*;
- *Petroleum Act 1923*;
- *Greenhouse Gas Storage Act 2009*;
- *Geothermal Energy Act 2010*;
- *Land Access Ombudsman Act 2017*; and the
- *Mineral and Energy Resources (Common Provisions) Act 2014*.

### **Distributor-retailer Infrastructure Charges Notices**

The Bill achieves its objectives by amending the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* to:

- validate an infrastructure charges notice which does not include reasons;
- require that an infrastructure charge notice must state the date of the notice, review and appeal rights and include any other information required by a regulation.

### **Water compliance and enforcement**

The Bill achieves its objectives by amending the Water Act to:

- clarify that all persons who take water through a common meter are equally responsible and liable for ensuring that water taken through that meter meets their water entitlement, subject to a reasonable excuse exemption;
- improve the effectiveness of a compliance notice, by increasing the penalty to act as a stronger deterrent for non-compliance;
- clarify the application of offence provisions relating to taking water in excess of the volume or rate of take stated on the entitlement;
- allow the regulation to specify processes for ensuring faults with meters are identified and repaired;
- clarify the discretionary nature and process for the release of unallocated water by the chief executive;
- clarify the application of a number of provisions to ensure the appropriate and effective operation of the Act; and
- clarify the continued effect of a transitional provision relating to the term of a water licence.

### **Water authority boards**

The Bill achieves its objectives by amending the Water Act to:

- address the gender imbalance of representation on the board of category 2 water authority boards by modernising the selection and appointment process for a director;
- modernise governance arrangements for category 1 and category 2 water authority boards;
- clarify provisions for the term of office for directors; and
- remove ambiguity and unnecessary administrative burden on the department and community.

### **Other water related amendments**

The Bill achieves its objectives by amending the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, the *South East Queensland Water (Restructuring) Act 2007* and the *Water Supply (Safety and Reliability) Act 2008* to:

- require local governments to declare service areas for retail water and/or sewerage services in their local government area;
- clarify the exclusion of body corporates and community titles schemes from the requirement to register as service providers;
- remove the mandatory declaration requirement for a recycled water scheme that supplies or proposes to supply more than 5 megalitres of recycled water per day for use in electricity generation;
- enable a function or power to be appropriately sub-delegated by Seqwater to improve operational efficiency;
- ensure that Seqwater can be compensated if another Act requires the authority to perform a community service obligation;
- resolve technical and drafting issues with the emergency action plan provisions; and
- extend the ability for the Minister to declare a temporary full supply level beyond the current six-month limitation to 1 year, if appropriate consideration has been given to the potential impacts on SEQ water security and dam safety.

### **CleanCo**

The Bill will achieve its objectives by:

- exempting CleanCo from the *Right to Information Act 2009* except in relation to community service obligations;
- enabling a regulation to be made to designate CleanCo as a 'State electricity entity' under the *Electricity Act 1994*, subjecting it to:
  - the Ministerial direction power under the *Electricity Act 1994*;
  - the employment provisions under the Electricity Regulation 2006, which provides for various employment conditions and benefits for employees of State electricity entities; and
  - provisions of the Electricity Act which excludes the application of the *Judicial Review Act 1991*.

## **Alternative ways of achieving policy objectives**

The regulatory frameworks amended by the Bill are enshrined in legislation and may only be altered by amending legislation. There is no alternative way to achieve the identified policy objectives.

## **Estimated cost for government implementation**

### **Land Holding Act amendments**

The Queensland Government has committed funding for the resolution of outstanding lease entitlements and other matters under the Land Holding Act until 30 June 2022, in response to the *Reparations Taskforce Report: Reconciling Past Injustices*.

### **Foreign Ownership of Land Register**

There is no additional cost to government associated with the amendments to the *Foreign Ownership of Land Register Act 1988*.

### **Land Act surrendering tenure application fees**

Based on 2017 figures, the potential foregone future revenue from surrender application fees is estimated at approximately \$17 500 annually. In 2017, \$5 800 was collected from surrender of tenure applications, representing only a proportion of the total cost to government from administering and processing tenure surrenders. The costs to government to undertake debt recovery management for outstanding and overdue fees far outweighs the revenue from collected surrender application fees.

Removing the surrender application fee will balance some savings in debt recovery costs.

### **Land titling amendments**

The implementation of the amendments will occur within existing budget allocations.

### **Surveyors Act and Surveyors Regulation amendments**

The financial cost to the Surveyors Board to search and obtain documents from the land registers, valuation roll and survey and spatial databases and registers varies based on the number of complaints received and Surveyors Board-initiated reviews undertaken each year.

Thirteen compliance activities were investigated in 2017, which required register searches and obtaining copies of approximately 580 survey plans, the value of which is estimated at \$12 290. The cost of exempting the Surveyors Board from paying search fees will be absorbed within existing budget allocations. An estimated cost of under \$1000 per annum will also be absorbed to exempt the Surveyors Board from valuation roll search fees.

The value of ensuring the enforcement of professional standards in the surveying profession and flow-on effect of maintaining the accuracy of Queensland cadastre and survey data outweighs the value of the forgone revenue. The implementation of the amendments will occur within existing budget allocation of the department and the Surveyors Board. The Board will be responsible for updating support materials, work processes and systems to take into account the proposed changes.

### **Resource authorities and other miscellaneous resource Acts amendments**

The amendments to the resource Acts will require updates to the department's data bases used to manage and administer resources authorities. These changes will be implemented within existing budget allocations.

### **Water compliance and enforcement**

There are no additional costs to government associated with the water compliance and enforcement amendments. The changes enhance the existing framework to achieve better compliance and enforcement outcomes. The implementation costs to update departmental guidelines and work practices will occur within the existing budget allocations.

### **Distributor-retailer Infrastructure Charges Notices**

There are no additional costs to government for the amendments for Distributor-retailer Infrastructure charges notices. The notices are issued by Distributor-retailers and this framework already exists, so there are no cost implications.

### **Water authority boards**

There are no additional cost to government to implement amendments for water authority boards. The implementation costs to update departmental guidelines and work practices will occur within the existing budget allocations.

### **Other water related amendments**

There are no additional costs to government to implement the other water related amendments.

### **CleanCo**

There are no additional costs to government associated with the amendments to the *Right to Information Act 2009* and *Electricity Act 1994*.



## **Consistency with fundamental legislative principles**

The following potential breaches of the fundamental legislative principles (FLPs) were identified.

### **Aboriginal and Torres Strait Islander Land Acts amendments**

A potential breach of the FLP giving sufficient regard to the institution of Parliament was identified in replacing the regulation making process with a ministerial declaration process for certain matters under the Aboriginal Land Act. Similar amendments are proposed for the Torres Strait Islander Land Act. The current regulation making process gives the Legislative Assembly oversight of the Ministerial decision and the opportunity to disallow the implementing regulation. The proposed declaration process is not subject to this level of Parliamentary oversight.

Safeguards are in place to mitigate any impacts from this potential FLP breach. The ministerial declaration process is subject to judicial review, which protects the interests of any potentially impacted person. Land may only be made transferable land after the requirements of section 16 of the Land Act, have been met. Section 16 of the Land Act requires the department's chief executive to evaluate the land to assess its most appropriate tenure and use. This evaluation must take account of the objects of the Land Act, which include a consultation process. The outcomes of this evaluation process will be taken into consideration by the chief executive.

The rights and liberties of individuals are also considered through compensation where declared forest products and quarry materials are reserved to the State. The Aboriginal Land Act and the Torres Strait Islander Land Act require the trustee of the land to be reasonably compensated when these reservations occur. The compensation is agreed between the State and the trustee or determined by the Land Court, where agreement is not reached.

The Aboriginal Land Act and the Torres Strait Islander Land Act set out extensive compliance requirements for land trusts. Some land trusts may struggle to meet all of these requirements, resulting in the failure to comply and potentially impacting on their access to financial and other resourcing opportunities. Setting minimum compliance requirements are the essential expectations and lessens the compliance burden to support these land trusts.

### **Land legislation amendments – dispute resolution**

A potential breach of the FLP that legislation should not confer immunity from proceeding without adequate justification (section 4(3)(h) *Legislative Standards Act 1992*) was identified in regard to the granting of an immunity to a prescribed dispute resolution entity (PDRE) in their nomination of appropriate qualified mediators and arbitrators.

New section 339E provides that a PDRE does not incur civil liability in appointing a mediator (section 339I) or an arbitrator (section 339O) unless the act or omission is done or made in bad faith or through negligence.

The breach poses a relatively low risk as the new dispute resolution framework has been established as a safety net dispute resolution process. For example, the new framework will only apply in the following circumstances:

- if there is a dispute about a sublease in relation to its terms, including any amounts payable under the sublease, or the conduct of a party that affects (or may affect) the rights or obligations of another party under the sublease;
- if no other Act establishes a dispute resolution process that can deal with the particular dispute; and
- if the sublease does not already include a dispute resolution process that can be used to resolve the dispute.

The application of the new dispute resolution framework will therefore potentially limit the number of disputes that will seek resolution under the framework. Furthermore, it is good commercial practice to include a robust dispute resolution clause in the terms of a sublease.

A possible scenario involves a party to a dispute that is dissatisfied with the outcome potentially challenging the decision on the basis that the PDRE was negligent in the appointment of a mediator or arbitrator. This is considered a low risk for the following reasons:

- in the case of mediation, a dissatisfied party is not required to agree to a mediated outcome and retains a right to take legal action in relation to the dispute under new section 339M(c);
- in the case of arbitration, arbitration can only proceed if all parties agree to go to arbitration; and
- if a party was to bring a proceeding alleging negligence by the PDRE without proper evidentiary and/or legal basis, that party would ordinarily be exposed to costs orders against them.

In addition, new section 339N provides that the *Commercial Arbitration Act 2013* applies to the extent it is not inconsistent with new subdivision 4 (Arbitration). Section 39(1) of the *Commercial Arbitration Act 2013* provides that an arbitrator is not liable for anything done or omitted to be done in good faith in that capacity; and section 39(2) provides that an entity that appoints/fails to appoint a person as arbitrator is not liable in relation to the appointment, refusal or failure if done in good faith. For these provisions, an arbitrator includes an arbitrator acting as a mediator or other non-arbitral intermediary under section 27D of the *Commercial Arbitration Act 2013*. The *Commercial Arbitration Act 2013* provisions are part of a uniform national model law.

Chapter 4 (Overlapping coal and petroleum resource authorities) of the *Mineral and Energy Resources (Common Provisions) Act 2014* have similar dispute resolution provisions. This Act has the Queensland Law Society and the Resolution Institute as PDREs and that section 177(3) of that Act provides that a PDRE does not incur a civil

monetary liability in relation to nomination of an arbitrator to decide a dispute unless the act or omission is done or made in bad faith or through negligence.

### **Land legislation amendments – providing access to areas of state land**

A potential breach of the FLP to have sufficient regard to the rights and liberties of individuals was raised in relation to the power of authorised officers to enter or traverse a person's land that is adjacent to state land in order to carry out authorised activities on the state land.

It is proposed that the powers would only be used to access otherwise difficult to access state land in certain limited circumstances to protect the State's interest and obligations for that state land.

The powers would only be exercised where:

- access to the state land is required to undertake management and/or compliance activities on the state land;
- there is no access at all, or no reasonably practicable or safe access to the state land other than through the adjacent land;
- the State has first sought to negotiate voluntary access to the state land through the adjacent land and been refused.

The Land Act currently provides existing powers for authorised officers to enter land and undertake certain activities for the purpose of the Land Act and other Acts. The proposed amendments would continue existing requirements under the Land Act that authorised officers be issued with identification documents and produce the identification in the course of exercising a power under the Land Act.

The new power to enter adjacent land balances the rights of individual landholders with the obligations of the Government to effectively administer and manage state land by limiting the power of entry to undertaking authorised activities on the state land. The impact of the potential breach is further mitigated through notice requirements whereby the authorised officer is required to give adequate prior notice to the owner or occupier of the adjacent land about the entry and its purpose.

The amendment includes additional safeguards such as requiring the authorised person to take all reasonable steps to ensure minimal or no damage or inconvenience is incurred while undertaking the authorised activity. Furthermore, if the owner or occupier believes the authorised person has caused or contributed to damage to the adjacent land or something on the land, the amendments include make good provisions that enable the owner or occupier to enter into a remediation agreement with the chief executive to undertake remediation action to make good any damage. The power does not permit entry to residential structures under any circumstances.

The administering agency will develop the appropriate policies, procedures and training to ensure that all powers are exercised lawfully and appropriately.

### **Land legislation amendments – road closures**

A potential breach of FLP was identified in relation to the road closure amendments, namely that they may reduce the number of landholders entitled to a notice of a road closure. Under the Land Act, if the Minister is satisfied a road closure application should proceed, appropriate public notice of the application must be given and appropriate enquiries must be made about the possible effects of the road closure. The public notice sets out that a person may lodge an objection to the road closure application. An ‘appropriate enquiry’ means notifying each registered owner and lessee whose land adjoins the road. If a literal interpretation of the Act is taken, then notifying each registered owner and lessee whose land adjoins the road could require notifying hundreds of land owners as some roads can be many kilometres in length. This was not the intent of making appropriate enquiries.

The Bill clarifies the intent of the notification provision and reflects current operational practice by defining appropriate enquiries as, at a minimum, notifying adjoining landholders to the area of road in question, including properties immediately adjoining those landholders’ and the road, and land for which the road the subject of the application provides a dedicated access that may be affected.

The Bill also streamlines the road closure process by providing that the effect of a issuing a road license is to close the road and its cancellation or surrender reopens the road.

The Bill removes the requirement to publish proposed temporary road closures in the Queensland Government Gazette, thereby allowing publication on the department’s website.

The amendments do not remove the public notice requirement or limit the enquiries that can be made. Any other party deemed to be affected will be notified.

### **Land legislation amendments – prescribed terms**

The prescribed terms framework potentially infringes on the rights and liberties of individuals where a new prescribed term is introduced by regulation. The new prescribed term will apply to relevant existing and new interests created under the Land Act. The impact of any potential change to a prescribed term will be mitigated by a transition period that will apply to all changes. The initial transition period is 12 months from the commencement of the prescribed term. The transition period will be established by regulation, which provides the added protection of Parliamentary oversight.

### **Surveyors Act and Surveyors Regulation amendments**

The amendment of the Surveyors Act, and subsequent amendment of the Surveyors Regulation, which moves the detail of qualifications, experience or representation of particular positions on the Surveyors Board to a regulation is a delegation of legislative power and a potential FLP.

The amendment ensures that administrative and operational detail about expertise of the Surveyors Board can be responsive to future changes and needs of the Surveyors Board. The detail of the types of expertise to be represented on the Surveyors Board is appropriate detail to be delegated as it does not provide critical detail for the operation of the Act and it is not linked to offences under the Act. Further, the delegation provides the ability for the expertise represented on the Surveyors Board to be flexible and responsive to the future needs of the Surveyors Board to deal with changes in surveying profession demands for competency assessment and registration. Appointment to the Surveyors Board must still be made by the Governor-in-Council and the Minister must still seek nominations from appropriate entities before making a recommendation to the Governor-in-Council.

### **Resource authority amendments**

The Minister's power to vary conditions of an exploration authority without application by the holder was raised as a potential FLP breach as this power makes the rights, liberties or obligations of an authority holder dependent on an administrative power which is not defined and subject to internal review. However, this has been addressed by limiting the exercise of this power in an exceptional event. If an industry-wide event negatively affects the resources industry, the power is intended to be used to the authority holder's benefit, to reduce or delay work program requirements or relinquishment requirements.

The Minister's discretion to grant or refuse an extension of up to three years in exceptional events for an exploration authority was raised as a potential breach of an FLP. This power makes the rights, liberties or obligations of an authority holder dependent on an administrative power and is not subject to internal review. This is justified as the power is sufficiently defined in the Act. The application will only be approved if the exploration authority holder can demonstrate that exceptional events have occurred that prevented the holder from carrying out the approved work program and the tenure is about to expire. Exceptional events are those affecting the whole resource exploration industry, such as natural disasters or a global financial crisis.

### **Water compliance and enforcement**

A potential FLP was identified in relation to the proposed clarification that all persons who take water through a common meter are equally responsible and liable. Take of water through a common meter by multiple water entitlement holders is a common occurrence and in these situations it is not possible for the department to establish responsibility, making the existing offences unenforceable. An alternative solution is to require each water entitlement holder to install a separate meter, creating significant additional regulatory burden state-wide. Instead, necessary safeguards such as providing for a reasonable excuse exemption have been included in the provision.

### **Distributor-retailer Infrastructure Charges Notices**

The intent to validate infrastructure charges notices, issued by Distributor-retailers, which did not include reasons, is not considered to retrospectively have an adverse effect on rights and liberties, or the imposition of obligations.

While Distributor-retailers may not have been technically compliant with the requirements, the financial risks and uncertainty for industry and Distributor-retailers is considered high. It is noted that a significant amount of information is already provided by Distributor-retailers to developers via an infrastructure charges notice and the failure to provide reasons in these circumstances is a technical issue.

## **Consultation**

### **Land Holding Act amendments**

The Trustee/Chief Executive Officers of the Aboriginal and Torres Strait Islander communities where leases have been granted and where lease entitlements remain outstanding have been consulted regarding the proposed amendments and broadly support them. Similarly, Native Title Representative Bodies across Queensland have been advised of the proposed amendments and noted that the proposed amendments will improve the processes under the Act for Aboriginal and Torres Strait Islander people. The Queensland Law Society was also consulted and did not raise any issues.

### **Foreign Ownership of Land Register**

Agforce have noted that they would prefer to see the annual report retained.

### **Land legislation amendments**

The Queensland Farmers Federation, AgForce Queensland, the Local Government Association of Queensland (LGAQ), the Queensland Law Society (QLS) and the Resolution Institute were consulted during the development of the Bill. The paragraphs below outline the issues that were raised and how they were addressed by the department.

#### **Dispute resolution**

The QLS and Resolution Institute were consulted during the development of the Bill. Both organisations have agreed to be a 'prescribed dispute resolution entity' for the purpose of nominating a mediator and arbitrator.

The QLS raised concerns about the application of the dispute resolution framework under the *Commercial Arbitration Act 2013* (Commercial Arbitration Act) to any proposed arbitration process in the Land Act. QLS's view was that as far as possible, the Commercial Arbitration Act framework should apply to the proposed dispute resolution framework in the Land Act to avoid any confusion.

In developing the Bill, the policy intent was to establish a new dispute resolution framework that provides for arbitration by agreement with, referring to and adopting the relevant provisions of the Commercial Arbitration Act, to the greatest extent possible. In practice this means that the provisions of the Commercial Arbitration Act have been applied with appropriate modification to suit the particular circumstances of disputes under the Land Act. The application of the Commercial Arbitration Act in this way is similar to the approach taken with dispute resolution provisions in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

The application of the Commercial Arbitration Act is clarified by section 339N which states that the Commercial Arbitration Act applies to arbitration under subdivision 4 to the extent that Act is not inconsistent with this subdivision.

The QLS raised concerns about the threshold of duties and standard of care that would be required of a prescribed dispute resolution entity under the new dispute resolution framework. QLS consider the required duties could impose unreasonable costs on parties beyond the original policy intent.

Amendments were made through the drafting of the Bill that addressed QLS concerns.

Most appropriate tenure and use assessments; ministerial consent; road closures; surrender fee; s 360A

No community consultation was undertaken as the proposed amendments are minor and administrative, either reducing costs or legislative burden.

Providing access to areas of state land

The QLS and LGAQ were consulted on the proposed amendments. Both organisations provided in-principle support, but were concerned that there is potential for the misuse of the proposed powers. To limit any risk of misuse, authorised officers will have appropriate training and oversight in the application of these powers.

Prescribed terms framework

The prescribed terms framework in the *Land and Other Legislation Amendment Act 2017* underwent consultation as part of the amendments in the Land and Other Legislation Amendment Bill 2017. External stakeholder consultation has been undertaken with the QLS and the LGAQ. No further comment has been provided as part of this process.

### **Land titling amendments**

The surveying and development industry have been consulted and support the proposed amendments to the high-density development easement provisions.

### **Surveyors Act and Surveyors Regulation amendments**

The Surveyors Board were consulted and their concerns have been addressed through the drafting of the Bill.

### **Resource authorities and other miscellaneous resource Acts amendments**

Targeted industry consultation was undertaken during the development of the Bill in 2018 and in January 2019. The main issues arising from consultation on the draft Bill were concerns about work programs; the Minister's powers to impose, vary or remove a condition of an exploration authority; and the transitional provisions for existing exploration permits.

The Bill has been amended to address industry's concerns regarding the Minister deciding the type of work program under an exploration permit without an applicant making a request. Industry participants had sought the ability to request either an outcomes-based or activities-based work program at the application stage, rather than submitting both a statement of outcomes and activities. The Bill has been amended to address these concerns. To preserve the integrity of the competitive tender process,



a call for tenders will specify whether the tender is required to be accompanied by an activities-based work program or an outcomes-based work program. Over the counter applications may be accompanied by either a proposed activities-based work program or a proposed outcomes-based work program, at the applicant's discretion. Similarly, authority holders applying for renewal may lodge either type of proposed work program at their discretion.

The Bill has also been amended to address industry's concerns regarding the Minister's power to impose, vary or remove a condition of an exploration authority at any time without application from the holder. This power may be used without notice where a variation of conditions is required due to an exceptional event, which includes natural disasters, global financial crises and other industry-wide events (the department's operational policy provides further information on exceptional events).

Due to the capping of the overall life of new exploration permits in the new framework, transitional arrangements will also limit the overall life of existing exploration permits for coal and minerals. This will replace the current ability for a holder to apply for unlimited renewals. transitional provisions for existing exploration permits, specifically the number and period of renewals permitted after commencement of the amending provisions, have been amended—all exploration permits will be able to renew up to a maximum of 10 years after commencement, regardless of the number of renewals that had been granted previously.

### **Water compliance and enforcement**

The Water Engagement Forum (WEF), the department's peak body advisory group on government-related water matters, were consulted in June 2018. The WEF is comprised of representatives from AgForce Queensland; the Association of Mining and Exploration Companies; the Australian Bankers' Association; Australian Petroleum Production and Exploration Association Ltd; the Environmental Defenders Office; Irrigation Australia; LGAQ; Local Management Arrangements for Irrigation Channel Schemes; NRM Regions Queensland; the Queensland Conservation Council; Queensland Farmers' Federation; Queensland Resources Council; Queensland Seafood Industry Association; State Council of River Trusts; Seqwater; SunWater; The Wilderness Society; and the World Wildlife Fund.

Additional targeted consultation occurred with Irrigation Australia, Queensland Farmers' Federation and Agforce Queensland.

### **Distributor-retailer Infrastructure Charges Notices**

The department consulted with Queensland Urban Utilities, Unitywater, the LGAQ, and the Urban Development Institute of Australia. Support was provided for the proposed amendments to the Distributor-retailer infrastructure charges notices.

The Property Council suggested an alternative to legislative change, however the department's view is that legislative amendment is the only vehicle that will provide the necessary certainty for developers, Distributor-retailers and the community who will benefit from the infrastructure.

### **Water authority boards**

In 2015, the Queensland Government endorsed the 'Women on Boards' initiative to achieve gender parity for statutory boards by 2020. Category 2 water authorities have been aware of the government's Women on Boards initiative since its release. However, current representation of women on category 2 water authority boards is only at approximately 10 per cent of directors.

To address this imbalance, the department published a proposal in September 2018 to change the way in which directors are selected to facilitate balanced gender representation. The department conducted stakeholder engagement sessions in November 2018 and there was the opportunity for feedback via a formal submission process. The category 2 water authority board amendments, although not consulted on publically, considers the recent feedback received from stakeholders.

The amendments also modernise provisions in relation to the selection and appointment process of directors in line with other statutory bodies. These are administrative changes.

The WEF were advised in January 2019 of the proposed amendments to facilitate balanced gender representation and modernise governance arrangements for water authority boards.

### **Other water related amendments**

Seqwater support the amendments to the authority's governance provisions, community service obligation, temporary full supply level, and delegated powers provisions. The LGAQ were also consulted and support the service area amendments and recommended that local governments be required to periodically declare the limits of their service areas for retail water and sewerage services as opposed to doing this at one point in time only. As the Act already provides for service providers to amend declarations of service areas where necessary, the department does not consider it necessary to change the proposed requirements for declaring limits of service areas.

### **CleanCo**

No community consultation was undertaken as the proposed amendments align with existing protections in place for other electricity generation GOCS (CS Energy and Stanwell).

## **Consistency with legislation of other jurisdictions**

### **Land Holding Act amendments**

The amendments are consistent with the Commonwealth *Native Title Act 1993*. The transmission of a granted lease is not an act that affects native title.

### **Surveyors Act and Surveyors Regulation amendments**

The amendments are consistent with all Australian jurisdictions, which maintain similar legislative frameworks to the Surveyors Act. However; there are some differences due to different approaches in specific areas of the legislative frameworks, for example, there is variance in surveying qualifications required for some categories of registration.

### **Resource authorities and other miscellaneous resource Acts amendments**

The proposed outcomes-based work programs for exploration permits and authorities to prospect will be an Australian first. All other Australian jurisdictions require work programs containing specific exploration activities to be undertaken during the current term of the authority. The outcomes-based approach is intended to provide exploration authority holders more flexibility in planning their exploration activities based on exploration results, without requiring to vary the work program via a formal application. Activities-based work programs, consistent with other jurisdictions, will still be used for the first term of authorities granted through a competitive tender processes and in some other circumstances where stricter benchmarks are required to assist with compliance management.

## Notes on provisions

### Chapter 1 Preliminary

#### Short title

*Clause 1* states the short title of the Act on commencement is the *Natural Resources and Other Legislation Amendment Act 2019*.

#### Commencement

*Clause 2* stipulates that chapters 3 and 5 will commence on a date to be fixed by proclamation. All other chapters will commence on assent.

### Chapter 2 Amendments of land legislation commencing on assent

#### Part 1 Amendment of Aboriginal and Torres Strait Islander Land Holding Act 2013

##### Act amended

*Clause 3* states that this part amends the *Aboriginal and Torres Strait Islander Land Holding Act 2013* (Land Holding Act).

##### Amendment of s 35 (Minister may grant lease)

*Clause 4* replaces the term “appropriate person” with “interested person” in subsection 35(1) (b) (ii) to make the clause consistent with the definition in the Schedule.

The clause also removes the reference to the laws of succession. The requirements of these laws are more clearly articulated in the new Division 3 (Vesting of particular leases).

##### Insertion of new pt 8, div 3

*Clause 5* inserts the new Part 8, Division 3, which, provides for the vesting of ownership of leases granted under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985* (1985 Act), where a registered lessee is deceased and their estate is not being administered.

## **Division 3 Vesting of particular leases**

### **New section 69A Vesting of particular leases**

New section 69A provides for the devolution and vesting of a deceased holder's interest in a 1985 Act granted lease or a Land Holding Act granted lease in the person identified under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (JLOMA), as being the person entitled to succeed to the deceased holder's estate.

The vesting under the Land Holding Act will only occur in circumstances where the holder of the lease died intestate; there is no personal representative of the deceased holder; there is no grant of representation; and no application has been made for a grant of representation in relation to the estate of the deceased holder. The vesting takes effect upon registration.

Upon the Registrar of Titles being notified of the vesting, through a vesting notice, the Registrar must record the vesting. This will ensure that the relevant register identifies the entitled successor as the lessee of the granted lease. A vesting notice is provided by the entitled successor or an agent of the entitled successor. This gives the entitled successor the option to complete and lodge the necessary document themselves or authorise another person to do it on their behalf, including a relative, friend or an officer of a Queensland Government agency.

The section also provides an exemption from payment of fees to update the relevant register.

The new section does not replace the process of identification of a beneficiary of an intestate person under the *Succession Act 1981*. A section 60 JLOMA certificate may be issued in circumstances where an Aborigine or Torres Strait Islander has died, or is presumed to have died, and it is impracticable to ascertain the person or persons that are entitled in law to succeed to the estate.

Section 64 of Land Holding Act will not apply to transactions under the new provisions.

### **New section 69B Expiry of division**

New section 69B provides for the division to expire on 30 June 2022. The division will only operate for a limited period to allow for the resolution of specific ownership issues in relation to granted leases.

### **Amendment of s 91 (Review of Act)**

*Clause 6* extends the statutory review period for the Land Holding Act from 5-years to 10-years from its commencement.

### **Amendment of pt 11, hdg (Repeal and transitional provisions)**

*Clause 7* clarifies that part 11 applies from the commencement of the *Aboriginal and Torres Strait Islander Land Holding Act 2013*.

## **Insertion of new pt 12**

*Clause 8* inserts a transitional provision for the *Natural Resources and Other Legislation Amendment Act 2019*.

## **Part 12 Transitional provision for the Natural Resources and Other Legislation Amendment Act 2019**

### **New section 96 Application of former s 69A to particular leases**

New section 96 ensures that if a lessee dies intestate before the expiry of part 8, division 3 that the necessary work can be done to identify the entitled successor/s regardless of the expiry of the division. Similarly, this clause also provides for the division to continue to apply in relation to a lease the subject of a section 60 JLOMA certificate signed prior to expiry of the division but not yet registered. The section also clarifies that the term entitled successor and relevant interest has the meaning given under former section 69A.

## **Part 2 Amendment of Aboriginal Land Act 1991**

### **Act amended**

*Clause 9* states that this part amends the Aboriginal Land Act 1991.

### **Amendment of s 10 (Lands that are transferable lands)**

*Clause 10* replaces the regulation making process for declaring available State land to be transferable land, with a Ministerial declaration process. Transferrable land may be granted as freehold for the benefit of Aboriginal people.

As a grant of land under the *Aboriginal Land Act 1991* is an allocation of land under the *Land Act 1994* (Land Act), an assessment of the most appropriate use and tenure of the land under the Land Act is undertaken before available State land can be declared as transferrable land. The assessment takes into account requirements for public consultation and other stakeholder views, including government agencies.

### **Amendment of s 12 (Aboriginal reserve land)**

*Clause 11* replaces the regulation making process for declaring Aboriginal reserve land, with a Ministerial declaration process. A reserve may be declared to be land that was used as an Aboriginal reserve or for the benefit of Aboriginal people. Transferrable land may be granted as freehold for the benefit of Aboriginal people.

Reserve land proposed to be declared Aboriginal reserve land is administratively assessed before it is advanced to determine it meets one of those criteria.

### **Amendment of s 15 (Definition for div 4)**

*Clause 12* replaces a reference to a declaration made by regulation with a declaration made by the Minister, reflecting a change to a process under section 12 of the *Aboriginal Land Act 1991*.

### **Amendment of s 27 (Tidal land)**

*Clause 13* replaces the regulation making process for declaring tidal land as available State land, with a Ministerial declaration process. Available State land may be declared transferable land and transferrable land may be granted as freehold for the benefit of Aboriginal people.

As a grant of land under the *Aboriginal Land Act 1991* is an allocation of land under the *Land Act 1994* (Land Act), an assessment of the most appropriate use and tenure of the land under the Land Act is undertaken before available State land can be declared as transferrable land. The assessment takes into account requirements for public consultation and other stakeholder views, including government agencies.

### **Amendment of s 28 (Meaning of city or town land)**

*Clause 14* replaces a regulation making process for changing the boundaries of a city or town, with a Ministerial declaration process.

The declaration is made only for the purposes of the *Aboriginal Land Act 1991*. It does not alter the boundaries of a city or town under the *Local Government Act 2009* or the *City of Brisbane Act 2010*.

### **Amendment of s 42 (Minister to act as soon as possible)**

*Clause 15* amends section 42 to correct the cross-reference to the amended section.

### **Amendment of s 55 (Reservations of forest products and quarry material etc.)**

*Clause 16* replaces a regulation making process for reserving forest products and quarry material to the State, with a Ministerial declaration process.

The Ministerial declaration process reserves forest products and quarry material to the State in a deed transferred under the *Aboriginal Land Act 1991*.

### **Amendment of s 82 (Reservations of forest products and quarry material etc.)**

*Clause 17* replaces a regulation making process for reserving forest products and quarry material to the State, with a Ministerial declaration process.

The Ministerial declaration process reserves forest products and quarry material to the State in a deed granted under the *Aboriginal Land Act 1991*.

### **Insertion of new s 249A**

*Clause 18* inserts new section 249A into the *Aboriginal Land Act 1991*.

#### **New Section 249A Name of land trust**

New section 249A reinstates the requirement for existing land trusts to contain the words 'Land Trust' in their name. The remake of the Aboriginal Land Regulation 2011, erroneously omitted this requirement.

### **Amendment of s 258 (Particular information to be recorded in the register)**

*Clause 19* amends section 258(2) to replace the words ‘prescribed under a regulation’ with ‘declared by the Minister’, to reflect the new Ministerial declaration process.

### **Insertion of new s 289**

#### **New section 289 Register of particular declarations**

*Clause 20* inserts a new section to require the chief executive to record certain declarations made by the Minister in a register. Section 289(3) requires the chief executive to make the information contained in the register publicly available.

### **Insertion of new ss 298 and 298A**

*Clause 21* inserts two new sections into the Aboriginal Land Act 1991 for particular purposes.

#### **New section 298 Former Aurukun Shire lease land continues to be transferable land**

New section 298 provides that the former Aurukun Shire lease land that had not been transferred immediately before the commencement of the *Aboriginal and Torres Strait Island Land (Providing Freehold) and Other Legislation Amendment Act 2014*, continues to be transferable land under the *Aboriginal Land Act 1991*.

#### **New section 298A Validation of creation of particular interests in transferable land**

New section 298A validates the creation of particular interests created over the former Aurukun Shire lease land as described in new section 298.

### **Insertion of new pt 25, div 6**

*Clause 22* inserts new Part 25, Division 6 to provide for transitional arrangements for the *Natural Resources and Other Legislation Amendment Act 2019*.

### **Division 6 Transitional provision for Natural Resources and Other Legislation Amendment Act 2019**

#### **New section 310 Particular things taken to have been declared by Minister**

New section 310 is a transitional provision concerning certain declaration processes under the Act. The provision ensures that those existing declarations made by regulation and now replaced by a declaration of the Minister continue in effect after commencement and are taken to be declarations by the Minister.



## **Part 3 Amendment of Aboriginal Land Regulation 2011**

### **Regulation amended**

*Clause 23* states that this part amends the *Aboriginal Land Regulation 2011*.

### **Amendment of s 3 (Definitions)**

*Clause 24* corrects a cross-referencing error.

### **Omission of pt 6 (Declarations)**

*Clause 25* omits part 6, which references declarations made by regulation. Declarations will be publicly available in the register of Ministerial declarations to be kept by the chief executive.

### **Renumbering of pt 6A (Protected areas in Cape York Peninsula Region)**

*Clause 26* renumbers part 6A as part 6.

### **Amendment of s 48A (Prescribed protected areas—Act, s 173)**

*Clause 27* corrects a cross-referencing error.

### **Insertion of new s 48AA**

*Clause 28* inserts a new section into the *Aboriginal Land Regulation 2011*.

### **New section 48AA Available State land that is claimable land—Act, s 23**

New section 48AA moves and renumbers former section 47 of the *Aboriginal Land Regulation 2011*, as new section 48AA.

### **Amendment of s 49 (References to plans)**

*Clause 29* corrects a cross-reference.

### **Omission of s 50A (Change to boundaries of particular city – Act, s 28)**

*Clause 30* removes section 50A from the regulation, as the regulation making process for changing the boundaries of cities or towns is replaced with a Ministerial declaration process under clause 14.

### **Omission of schs 1 and 2**

*Clause 31* removes schedules 1 and 2, which are obsolete with the omission of sections 45 and 46 from the regulation. These declarations will be publicly available in the register of Ministerial declarations to be kept by the chief executive (refer clause 20).

### **Amendment of sch 3 (Available State land that is claimable land)**

*Clause 32* corrects a cross-reference.

### **Omission of sch 4 (Aboriginal reserve land)**

*Clause 33* removes schedule 4, which is obsolete with the removal of section 48 from the regulation. These declarations will be publicly available in the register of Ministerial declarations to be kept by the chief executive (refer clause 20).

### **Relocation and renumbering of sch 4A (Prescribed protected areas)**

*Clause 34* updates the numbering of the schedule.

### **Renumbering of schs 3 and 5**

*Clause 35* updates the numbering of the schedules.

## **Part 4      Amendment of Foreign Ownership of Land Register Act 1988**

### **Act Amended**

*Clause 36* states that this part amends the *Foreign Ownership of Land Register Act 1988*.

### **Omission of s 16 (Annual report)**

*Clause 37* omits the requirement for the preparation of an annual report on the administration of the *Foreign Ownership of Land Register Act 1988*.

## **Part 5      Amendment of Land Act 1994**

### **Act amended**

*Clause 38* states that this part amends the *Land Act 1994*. It also notes that the *Land Act 1994* is also amended by the Bill in chapter 3, part 1.

### **Amendment of s 16 (Deciding appropriate tenure)**

*Clause 39* amends section 16 by omitting subsections (2) to (4), renumbering existing subsections (5) and (6) and inserting two new subsections.

New subsection (2) consolidates the provisions under the former subsections (2) to (3); and, removes the reference to the sunset clause that applied to evaluations for Cape York agreement land under the former subsection (4). This amendment enables evaluations of most appropriate tenure and use under section 16 of the Land Act, to continue taking into account the commitments and undertakings arising from a Cape York agreement. The reinstated provisions will not be subject to a further sunset clause.

Subsection (3) provides for the chief executive to use an earlier assessment conducted by or for the State as the evaluation of the most appropriate use and tenure for the land, if the assessment takes account of the matters required under section 16(2). These amendments will make land evaluation processes more efficient.

It is standard practice to undertake assessment for a variety of dealings under the Land Act, including to support land tenure outcomes negotiated by the State. An Indigenous Land Use Agreements to which the State is a party, is an example.

**Amendment of s 100 (Public notice of closure)**

*Clause 40* amends section 100 to ensure the definition of appropriate enquiries for a road closure requires the notification of adjoining land holders to both the applicant's land and the area of road in question, including holders of properties immediately adjoining those landholders and the road, and land for which the road the subject of the application provides a dedicated access that may be affected.

The clause amends the definition of appropriate public notice for permanent road closures to allowing notification of the road closures by the placement of notices or other appropriate methods.

**Replacement of ch 6, pt 4, div 3A (Mediation for disputes about terms of particular subleases)**

*Clause 41* inserts new division 3A to provide a new process for resolving disputes under particular subleases. This process will act as a safety net dispute resolution process where an existing dispute resolution clause in a sublease is unable to resolve the dispute. This dispute resolution process provides for mediation or arbitration of the dispute.

**Division 3A Process for resolving disputes under particular subleases**

**Subdivision 1 Preliminary**

**New section 339A Definition for division**

New section 339A provides definitions for the following terms as they apply to new division 3A: dispute notice; notifier; prescribed dispute resolution entity; related subleases; related sublessee; responder; and response.

A *dispute notice* is written notice that one party to a sublease can give another party to advise that a dispute exists about the sublease. The dispute notice is used to initiate a dispute resolution process. The notice ensures that the relevant parties are aware of the dispute and that there is clarity and certainty between the parties about the details of the dispute. Section 339F provides more detail about a dispute notice, its content and how it is to be used under this division.

The *notifier* is defined as the party to a sublease that may give another party to the sublease a dispute notice. Further information about the responsibilities of the notifier is provided in section 339F.

A *prescribed dispute resolution entity* is an organisation that can be used to nominate a mediator or arbitrator when parties to a dispute are unable to agree on who should be nominated. The specific organisations that can be approached are listed in the Land Regulation 2009. These organisations are independent bodies with appropriate dispute resolution expertise to be able to nominate mediators or arbitrators for particular disputes.

The term *related subleases* is used to describe a situation where multiple subleases are connected through a common sublessor (holder of the primary lease). It is used in this division to enable multiple disputes about similar sublease issues to be resolved together where subleases are 'related' in this way.

Following on from the definition above, a *related sublessee* is then defined as a sublessee under a related sublease

A *responder* is the party to a sublease that responds to a dispute notice sent to them by another party to the sublease (the notifier defined above). Section 339F provides further explanation of the responsibilities of the responder as part of the dispute notice process.

A *response* is the written response that the responder must give to the notifier if the notifier gives them a dispute notice. Section 339G provides more information about the required content of a response under this division.

### **New section 339B Application of division**

New section 339B states that the new process for resolving disputes applies to a sublease, other than a sublease of trust land or transport land, in the following conditions:

- where there is a dispute between any or all of the parties to the sublease about either the terms of the sublease (including any amount payable under the sublease); or the conduct of a party that affects, or may affect the rights or obligations of another party under the sublease; and
- where no other Act provides a dispute resolution process that specifically deals with that type of dispute; and
- where the sublease does not already include a dispute resolution process that can be used to resolve that type of dispute.

New Division 3A does not apply to disputes relating to a sublease of trust land or transport land because the Land Act already provides a mechanisms for dealing with disputes on these tenure types.

There are a number of exclusions from the application of the new dispute resolution process. The process does not apply if the dispute:

- is already being dealt with as part of a current proceeding between the parties or as part of a current dispute resolution process under this division; or
- has been decided as part of another proceeding; or
- was dealt with as part of a dispute resolution process under this division that resulted in either a binding and enforceable agreement resolving the dispute, or if an award was issued by an arbitrator in relation to the dispute.

### **New section 339C Related disputes may be resolved together**

New section 339C provides that the new dispute resolution process can be used to resolve related disputes on a lease (e.g. sublessees disputing the charges for services applied by the head lessee on a resort lease). This section recognises that there are numerous leases under the Land Act which contain complex subleasing arrangements with multiple sublessees and provides opportunities to streamline and simplify the dispute resolution process for similar disputes. Enabling sublessees to join in seeking to resolve a dispute may result in lower costs and a more efficient and timely process.

For this provision to apply, the subleases must be connected through a common sublessor (holder of the primary lease) for each of the individual subleases. That is, the subleases must be 'related'. The disputes must also be about similar or related issues in a sublease. For example, the dispute may be about an identical or similar term in each of the subleases; or the dispute may be about identical or substantially similar conduct of the sublessor in relation to each of the sublessees.

If the subleases and the disputes are 'related' in this way, then the sublessees can agree to attempt to resolve the disputes as part of the same dispute resolution process under this division. However, if the sublessees want to try and resolve related disputes together in this way, they will still need to comply with subdivision 2 and the requirements for giving a notice of dispute.

This section also provides that related disputes must be resolved together by mediation or arbitration (subdivision 3 or 4 respectively), by the same mediator or arbitrator, only if the related sublessees agree and if the mediator or arbitrator also agrees to resolve the disputes together. This recognises that independent mediators and arbitrators are best placed to determine the most appropriate parties to be involved in the resolution of a dispute. The lessee (holder of the head lease) is not required to give their agreement to the inclusion of other parties as the disputes are between themselves and sublessees with similar concerns.

### **New section 339D Admissibility of evidence**

New section 339D clarifies that evidence of anything said or done, or any admission made by a party as part of the dispute resolution process, is only admissible at the trial of the dispute or in any other civil proceeding, if all parties agree. This applies to any documents prepared for the purpose of a resolution process under this division. This does not apply, however, to a civil proceeding in relation to section 339K(4) where a party is considered to have contravened this Act by not participating in mediation of the dispute in good faith.

### **New section 339E Liability of prescribed dispute resolution entity**

New section 339E provides protection for a prescribed dispute resolution entity from civil liability when appointing a mediator or arbitrator as part of the dispute resolution process under this division. However, protection from civil liability does not apply if the prescribed dispute resolution entity performs these duties in bad faith or through negligence.

## **Subdivision 2 Notice of dispute**

### **New section 339F Notice of dispute**

New section 339F provides that a notice of dispute can be sent from one party to the sublease to another party to the sublease to advise that there is a dispute about the sublease, and provide details of the nature of the dispute. A notice of dispute initiates a dispute resolution process. The notice ensures that the relevant parties are aware of the dispute and that there is clarity and certainty between the parties about the details of the dispute. The party sending the notice becomes the notifier, while the party that receives the notice becomes the responder.

The dispute notice must be in writing, state the parties to the dispute and provide a summary of the dispute, including which aspects of the sublease are the subject of the dispute. The disputed aspect may, for example, be the terms of the sublease under dispute or the conduct of a party that is purported to have affected the notifier's rights or obligations under the sublease. The notice should also include any other information the notifier considers relevant to resolve the dispute.

The dispute notice must advise the responder that a written response to the notice must be given to the notifier within a reasonable timeframe (at least 20 calendar days). The response must also include any relevant information prescribed by regulation or requested by the notifier as reasonably required to resolve the dispute. Prescribing the information requirements ensures flexibility to accommodate different dispute matters and information requirements.

The notice of dispute provides an opportunity for the parties to reach an agreement at an early stage in the dispute process to avoid incurring costs associated with progression of the dispute to mediation or arbitration.

### **New section 339G Response to dispute notice**

New section 339G sets out the requirements for a response to a dispute notice, which must be made in writing and within the timeframe stated in the notice.

The written response must indicate whether the responder agrees or disagrees with any aspect of the dispute as detailed in the notice and address the summary of the dispute. The responder can also include any other information they consider relevant to resolving the dispute. The response must also include any other information that a regulation stipulates must be included in the response.

The responder must provide any additional information that was requested in the dispute notice, unless the responder has a reasonable excuse not to. The responder may in turn ask the notifier to provide more information that the responder reasonably requires for resolving the dispute. This information must be provided within a reasonable timeframe stated in the response (at least 20 calendar days), unless the notifier has a reasonable excuse.

### **New section 339H Requirement for mediation before arbitration**

New section 339H provides that the parties must attempt to resolve the dispute by mediation, before seeking to take the dispute to arbitration. After a party initiates the dispute resolution process through a dispute notice and the parties are unable to resolve the dispute through an exchange of responses to the dispute notice or the provision of information requested by either the notifier or responder, and cannot otherwise agree on a way forward, then the parties must proceed to mediation as the next step.

However, this statutory process does not prevent the parties from agreeing to go straight to arbitration or taking the matter to court.

### **Subdivision 3 Mediation**

#### **New section 339I Appointment of mediator**

New section 339I sets out the requirements for appointing a mediator. The parties may agree to jointly appoint a mediator to mediate the dispute. If they are unable to agree on a mediator, a party to the dispute may ask a prescribed dispute resolution entity to appoint a mediator. A party to the dispute may also ask a prescribed dispute resolution entity to appoint a mediator if another party to the dispute does not comply with any of the relevant dispute notice response requirements under section 339G.

If asked to appoint a mediator, the prescribed dispute resolution entity must appoint an appropriately qualified mediator.

#### **New section 339J Time for mediation**

New section 339J sets out the process for setting a time for mediation. The parties may agree between themselves to a time for the mediation. If they are unable to agree on a time, a party to the dispute may ask the mediator to set a time. A party can also ask a mediator to set a time for mediation if another party to the dispute does not comply with any of the relevant provisions of section 339G (Notice of dispute). If asked, to set a time for the mediation, the mediator must do so after consulting with each party to the dispute.

#### **New section 339K Conduct of mediation**

New section 339K outlines how mediation for a dispute is to be conducted. Mediation must be conducted by the mediator appointed under section 339I, and in a way decided by the mediator and the parties to the dispute. Mediation must also be conducted at the time agreed under section 339J, unless agreed otherwise by the parties or if the mediator decides it is appropriate to conduct the mediation at a later date. The mediator may also decide to adjourn the mediation for a particular reason, for example if proceedings are started in relation to an issue connected to the current dispute, it may be appropriate to adjourn mediation until the matter is resolved.

This section also provides that parties must participate in the mediation in good faith to resolve the dispute. If a sublessor is a party to the dispute and does not act in good faith, they will be deemed to be in contravention of the Land Act. For clarity, the section provides examples of what it means to participate in mediation in good faith.

The section also states that a party to a dispute may appoint an agent to represent them at mediation. This provision does not restrict the type of person a party may choose. For example, the person may be chosen to provide legal representation or may be someone chosen to appear in a support or advocate role.

If compliance action is taken against the sublessor for contravening this Act by not participating in good faith, evidence about the sublessor's participation in the mediation may include the steps the sublessor took in preparing for the mediation.

#### **New section 339L Costs of mediation**

New section 339L states that the parties must each pay an equal share of the cost of the mediation to the mediator, unless otherwise agreed by the parties and the mediator. If related disputes are considered under the one mediation process, all related sublessees must be treated as a single party to the dispute for the purposes of determining costs.

#### **New section 339M When mediation ends**

New section 339M states that mediation is considered to have ended when either:

- the parties enter into a binding and enforceable agreement that resolves the dispute;
- arbitration proceedings start in relation to the dispute;
- a party to the dispute commences another proceeding in relation to the dispute;
- both the mediator and parties agree to end mediation;
- the mediator decides that it has become impossible or unnecessary to continue mediation.

### **Subdivision 4 Arbitration**

#### **New section 339N Application of *Commercial Arbitration Act 2013***

New section 339N states that the *Commercial Arbitration Act 2013* applies to an arbitration under this subdivision of the *Land Act 1994*, unless stated otherwise in the following arbitration provisions.

The *Commercial Arbitration Act 2013* has been determined to be an appropriate model for arbitrating sublease disputes under the *Land Act 1994*, as it facilitates the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense. The *Commercial Arbitration Act 2013* achieves this purpose by enabling parties to agree how their disputes are to be resolved and by providing arbitration procedures that enable commercial disputes to be resolved in a timely, cost-effective and informal manner.



### **New section 339O Appointment of arbitrator**

New section 339O sets out the process for appointing an arbitrator to resolve a dispute. The parties to the dispute may jointly appoint a single arbitrator to decide the dispute. If the parties cannot agree on the joint appointment of an arbitrator, then a party may ask a prescribed dispute resolution entity to appoint a single arbitrator to decide the dispute. Parties to a dispute can only progress to arbitration if both parties agree to take this course of action.

If asked to appoint an arbitrator, the prescribed dispute resolution entity must appoint an appropriately qualified arbitrator to decide the dispute.

The section provides that only a single arbitrator may be appointed to consider and resolve sublease disputes under the Land Act, as a way of reducing the costs associated with arbitration.

### **New section 339P Commencement of arbitral proceedings**

New section 339P clarifies that arbitral proceedings are considered to have started on the day an arbitrator is appointed, or alternatively, on a later day agreed to by the parties.

### **New section 339Q Arbitrator's functions**

New section 339Q states the role an arbitrator has in deciding a dispute. The arbitrator decides the dispute by making a final ruling—issuing an award on the dispute—which becomes the decision about the dispute. The award must be made within 6 months of the arbitration commencing or if decided by the arbitrator, within 9 months after arbitration commences. The timeframe will ensure the arbitral process is concluded in a timely manner.

The award must be consistent with the terms of the primary lease under which the sublease is granted.

While a regulation may prescribe the matters that an arbitrator must consider in deciding an award, it does not limit the matters an arbitrator may consider when making a decision about the dispute.

### **New section 339R Experts appointed by arbitrator**

New section 339R provides that the arbitrator may appoint a qualified person (an appointed expert) to report on specific issues in relation to the dispute. If such a person is appointed, the arbitrator may ask a party to the dispute to give the appointed expert any relevant information or provide access to any relevant documents or property for their inspection.

After the appointed expert delivers their written or oral report, they may be requested to participate in a hearing. A party may request the appointed expert to participate in the hearing or the arbitrator may consider it necessary for the appointed expert to participate in the hearing. At the hearing, the parties can ask questions or present their own expert to give evidence on any points raised by the appointed expert.

A qualified person is defined as a person with qualifications, competencies and experience relevant to the specific issue; and demonstrated knowledge of particular fields of knowledge relevant to the specific issue.

### **New section 339S Law applicable to arbitration**

New section 339S states that the arbitrator's decision about the dispute must be consistent with the law of Queensland and relevant Commonwealth law.

### **New section 339T Effect of arbitrator's decision and limitation of review**

New section 339T clarifies that the arbitrator's decision is final and has the same effect as if the parties themselves had entered into a binding and enforceable agreement. The arbitrator's decision only applies to a matter that is in dispute between the parties to the dispute.

This section clarifies the limitations that are placed on the arbitrator's decision, stating that the decision cannot be challenged, appealed against, reviewed, quashed, set aside or called in question in any way under either the *Judicial Review Act 1991* or by any other court, tribunal or another entity. The section also provides that the arbitrator's decision is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, or a tribunal or other entity on any ground.

However, despite these limitations, the section states that the arbitrator's decision does not affect the power of the chief executive to approve a sublease under chapter 6, part 4, division 3 of the *Land Act 1994*, or prevent the Supreme Court of Queensland from deciding that the arbitrator may have made an error in their final judgement on the outcome of the dispute. The section also clarifies that for the purpose of this section, an arbitrator's decision does not simply mean the final decision but also includes conduct leading up to or forming part of the process of making a decision.

### **New section 339U Costs of arbitration**

New section 339U provides that each party to an arbitration must pay the costs of arbitration in equal shares, unless otherwise agreed by the parties or decided by the arbitrator. If related disputes are considered under the one arbitration process, all related sublessees must be treated as a single party to the dispute for the purposes of determining costs. The section also provides that the arbitrator may take into account any matters prescribed by regulation when deciding the costs of arbitration, for example, whether a party has participated in arbitration proceedings in good faith, and whether a party has made a frivolous or vexatious claim in arbitration. The full set of matters an arbitrator may consider are set out in the Land Regulation 2009.

### **Amendment of s 375 (Document of transfer to trustee)**

Clause 42 amends section 375(1)(b) to clarify the documentation requirements for a transfer to a trustee.

Under the amended section 375(1)(b) either of the following must be deposited with a document of transfer to a trustee:

- a document in the form required by the chief executive stating details of the trust, currently a Form 20 – Trust Details Form; or
- a certified copy of a document creating the trust, generally a trust deed.

### **Amendment of s 393 (Delegation by chief executive)**

Clause 43 makes a consequential amendment to section 393 to delete reference to subsection (4A) which is obsolete with the introduction of Division 3A. Under the Division 3A the chief executive does not have a role in appointing a mediator to help resolve a dispute between parties to a sublease.

### **Amendment of s 394 (Committees)**

Clause 44 amends section 394(1) to provide the Minister with discretion to appoint a Ministerial Advisory Committee.

### **Insertion of new ch 7, pt 3C**

Clause 45 inserts a new part into chapter 7 of the *Land Act 1994* to provide new powers for authorised officers to enter adjacent land next to difficult to access state land to undertake management and compliance activities. It is proposed that these powers would only be used in those situations where the Department of Natural Resources, Mines and Energy has been unable to negotiate access to the State land through the adjacent land.

## **Part 3C Access to State land**

### **Division 1 Preliminary**

#### **New section 431ZA Definitions for part**

New section 431ZA states the important definitions for the new part, including the meaning of adjacent land, authorised activity, interested person, relevant land and relevant person.

A key element of these definitions is to clarify the meaning of adjacent land and relevant land. Relevant land refers to the different types of state land where the state has responsibilities for undertaking management or compliance activities.

For the purpose of this part, the common meaning of adjacent has been used to define what is meant by the term ‘adjacent land’—meaning the land may be lying near, close, or contiguous; or it may be adjoining or neighbouring. Therefore, for this part of the Land Act, if a relevant person (who is the authorised officer) cannot enter the relevant land directly, they may seek to enter via one or more adjacent parcels of land if this provides the most reasonably practical access to the relevant land, even if the

“adjacent” land does not directly adjoin the relevant land, and is instead next to the immediately adjacent land.

An *authorised activity* is defined as an activity that is lawfully carried out on the relevant land under the Department’s obligations for the care or management of that land, or to ensure compliance with the *Land Act 1994* or another Act or law.

For this part of the Land Act, a *relevant person* is defined in relation to the relevant land upon which the relevant person has various authorities to operate. The definition states that the relevant person can be one of the following:

- an authorised person under the Land Act; or
- a person authorised by the chief executive to carry out an authorised activity on the relevant land; or
- a person engaged by the State under a contract or another similar arrangement to carry out an authorised activity on the relevant land.

## **Division 2 Entry to adjacent land**

### **New section 431ZB Authorisation of persons to carry out authorised activities**

New section 431ZB clarifies that the power to enter adjacent land is linked to a statutory power under the *Land Act 1994* that allows an authorised person to enter particular land to carry out authorised activities. The section states that the chief executive has the power to provide this authorisation, and that it must be in writing and state the period during which the authorised person is permitted to enter the relevant land to undertake the authorised activities.

### **New section 431ZC Notice of entry**

New section 431ZC provides that a relevant person intending to enter adjacent land must give the occupier of the land written notice of the entry.

Section 431ZC sets out the information that must be provided in the notice including the authority that gives the relevant person permission to enter the land without consent or a warrant, when entry will be made, the authorised activities that will be carried out and when during the entry the activities will be carried out, and the number of people or other things that need to be taken into or over the adjacent land (for example, if multiple vehicles are needed to undertake the authorised activity).

Most importantly, the section states that the relevant person must make a reasonable attempt to contact the occupier and gain the occupiers consent for entry before a notice is given. This is because this power is only intended to be used as a last resort when it is not possible to negotiate entry to the adjacent land. For this section, a reasonable attempt to contact the occupier could include using all available departmental records to contact the occupier via phone or email, noting that the use of any personal information by the department is governed by the *Information Privacy Act 2009*.

For this section, reference to the occupier includes the registered owner of the land if the land is owner occupied.

### **New section 431ZD Entering adjacent land for authorised activities**

New section 431ZD clarifies the circumstances under which a relevant person may enter adjacent land under this part of the *Land Act 1994*. It clarifies that:

- entry must be for the purpose of carrying out the authorised activity on the relevant land;
- the relevant person has no other reasonably practical way of entering the relevant land other than by entering the adjacent land;
- written notice of entry has been provided;
- entry happens during the time stated in the notice, and occurs after the notice period has ended; and
- entry is for the purpose stated in the notice.

The section states that a relevant person may take any person or thing (such as equipment) into or over the adjacent land that they need to carry out the authorised activity. For example, there may be circumstances where more than one vehicle or piece of equipment is required to undertake the activities on the relevant land. This provision provides for multiple vehicles or pieces of equipment to be moved across the adjacent land onto the relevant land, as required. Examples of things an authorised person may reasonably need to carry out an authorised activity are provided for clarity. The section clarifies that this authority to enter the adjacent land does not give the relevant person permission to enter any structures or buildings on the adjacent land without consent. It also states that entry of the adjacent land should not occur outside of the hours of 7am to 6pm unless it is necessary to do so to carry out the authorised activity.

The section also clarifies that the meaning of entry which includes the ability to re-enter adjacent land. It also defines the meaning of notice period for this part. The notice period is defined as 10 business days starting on the day the occupier of the adjacent land is given the notice of entry. Authorised officers are not permitted to enter the adjacent land until the end of the notice period.

### **Division 3 Damage to adjacent land**

#### **New section 431ZE Duty to avoid inconvenience and minimise damage**

New section 431ZE clarifies that in exercising this power of entry to adjacent land, a relevant person or another person has a duty to avoid or cause as little damage or inconvenience as possible. In particular, the relevant person must take all reasonable steps to cause as little inconvenience to the owner or occupier's use of their land, and do as little damage to the adjacent land, or structure or works on the adjacent land as possible. The section clarifies that the same duty to avoid damage or inconvenience applies if permission to enter to the adjacent land is gained by consent.

#### **New section 431ZF Relevant person must give notice of damage**

New section 431ZF applies if a relevant person or another person that enters adjacent land under these powers or with the occupiers consent, and causes or contributes to damage to the land or something on the land.

The relevant person must give the occupier of the adjacent land notice of the damage. However, if it is not practical to give the notice directly to the owner and occupier, then the relevant person must leave the notice where the damage occurred and make sure the notice is safely secured in a conspicuous position where it can be easily seen.

The notice must state the details of the damage and that the owner of the land or thing may seek remediation of the damage under division 4 of this part of *the Land Act 1994*. If the relevant person believes the damage was caused by an existing defect or some other circumstance beyond their control or the control of another person who entered the adjacent land, this should also be stated in the notice.

The section also states that the relevant person is not obliged to give a notice of damage if they reasonably consider that the damage is trivial, or, if damage occurs to a thing, the relevant person reasonably believes that no-one possesses the thing or that the thing has been abandoned. Evidence to suggest that something is abandoned or not possessed by anyone includes the presence of items such as rusted car bodies and illegally dumped material (e.g. household waste)

### **New section 431ZG Notice of damage**

New section 431ZG gives the owner of adjacent land the ability to give the chief executive a notice of damage if they believe a relevant person or another person has caused or contributed to damage to the land or something on the land while they entered the land to carry out an authorised activity. The notice of damage can only be given by the owner of the land or thing on the land that was damaged. This person is referred to as the interested person, clarifying that they are a different person to the relevant person who may also provide a notice of damage. In circumstances where the interested person does not own the land or thing, the ability to give a notice of damage also applies if the interested person has hired or leased the land or thing.

The notice must be in writing and include the following information:

- details of the damage
- details of the entry when the interested person believes the damage was caused
- whether the relevant person considers the land or thing can be returned to its pre-damage condition, and if so, what remedial action is required to achieve that.
- If the interested person considers the pre-damage condition cannot be achieved, the notice must also state what remedial action is appropriate given the consequences of the damage to the land or thing.

The section provides that the chief executive has 30 days from receiving the notice of damage to notify the interested person whether the chief executive will enter into a remediation agreement to take action to remedy the damage.

### **New section 431ZH Remediation agreement**

New section 431ZH clarifies the circumstances under which a remediation agreement can be entered into. A remediation agreement is an agreement that the chief executive and an interested person can enter into to take remedial action for damage to the adjacent land or something on the land.

For this section to apply, an interested person must give the chief executive notice of damage within the notice period for giving the notice. Alternatively, the section applies if the interested person gives the notice after the end of the notice period, but has a reasonable excuse for doing so. The notice period for giving a notice of damage is defined as 30 days from the last day the relevant person, or other person, entered the adjacent land to carry out the authorised activities.

The remediation agreement will have no effect unless it is in writing, signed by (or for) all parties to the agreement and is filed at a departmental office. Once it has effect, the remediation agreement is binding on all parties to the agreement, this includes any personal representatives, successors or assigns of the parties.

The section also provides that an interested person may apply in writing to the court to have the court decide what remedial action, if any, will be performed on the damaged land or thing. This application can be submitted at any time before a mediation agreement is made.

### **New section 431ZI Court's decision about remedial action**

New section 431ZI applies if an interested person makes an application to the court about remedial action. If this happens, the court must fix a date for the hearing and immediately give written notice of the date of the hearing to the chief executive and the interested person who gave the notice of damage to the chief executive.

The date for the hearing must be at least 20 business days after the day the court fixed the date.

The court may order that remedial action is carried out on the damaged land or thing stated in the notice if it considers it appropriate to do so. In deciding whether or not to order remedial action, or what remedial action should be ordered, the court may consider the following:

- whether it is likely that the damage was caused by a relevant person or another person when entering the adjacent land to carry out the authorised activity (under this part or with the consent of the occupier of the land);
- whether the damage was reasonably necessary for carrying out the authorised activity;
- whether the relevant person or other person took all reasonable steps to prevent the damage;
- whether the land or thing can be returned to its pre-damage condition;
- the consequences of the damage on the use of the land or thing by the interested person;
- whether the claim is vexatious.

If a court orders that remedial action be carried out, it may also state when the remedial action is to take place and the conditions on which it is to be carried out.

If a matter about remedial action is referred to the court, the court may also determine what costs are appropriate and make an order for their payment.

### **Amendment of s 434B (Availability of short-term extension in particular circumstances)**

*Clause 46* amends section 434B(3) so that the provision correctly refers to subsection (2) instead of subsection (1).

### **Insertion of new ch 9, pt 4**

*Clause 47* inserts new transitional arrangements for this Bill into chapter 9 of the *Land Act 1994*.

## **Part 4 Transitional provisions for Natural Resources and Other Legislation Amendment Act 2019**

### **Division 1 Preliminary**

#### **New section 530 Definition for part**

New section 530 clarifies the meaning of the words 'former' and 'new' as they relate to the transitional provisions mentioned in this part.

### **Division 2 Provisions relating to alternative dispute resolution**

#### **New section 531 Existing disputes**

New section 531 provides a transitional provision for existing disputes to clarify that the new dispute resolution process introduced by this Bill will apply to a dispute irrespective of whether the dispute originated before or after commencement of this Bill. The new dispute resolution process, however, will not apply to an existing dispute if it was referred to mediation under former section 339B before commencement.

### **Division 3 Provisions relating to road closures**

#### **New section 532 Steps taken in relation to road closure applications before commencement**

New section 532 applies if, before commencement, the Minister has complied with former section 100 (Public notice of closure) and had given appropriate public notice of the road closure application and made appropriate enquiries about the effect of the closure (section 100(1)(a) and (b)), or accepted that that appropriate public notice of the application and appropriate enquiries had been made by the applicant (section 100(2)), but has not dealt with the application under section 101 (Minister to consider objections).

If the Minister has complied with former section 100(1)(a) and (b), the Minister is taken to have complied with new section 100(1)(a) and (b).

If the Minister acted under former section 100(2), then the Minister is taken to have acted under new section 100(2).



### **Amendment of sch 6 (Dictionary)**

*Clause 48* amends the Dictionary in Schedule 6 to omit the definition for authorised person, and to insert a number of new definitions for chapter 7, part 3C and chapter 6, part 4, division 3A of the *Land Act 1994*.

Definitions are provided for adjacent land, authorised activity, dispute notice, interested person, notifier, occupier, prescribed dispute resolution entity, relevant land, related subleases, related sublessee, relevant person, remedial action, responder and response.

## **Part 6 Amendment of Land and Other Legislation Amendment Act 2017**

### **Act amended**

*Clause 49* states that this part amends the *Land and Other Legislation Amendment Act 2017*.

### **Omission of ss 25-30**

*Clause 50* omits the uncommenced provisions, sections 25 through to 30, from the *Land and Other Legislation Amendment Act 2017*. A new prescribed terms framework is provided in *Clause 144*, which inserts a new chapter 5A into the *Land Act 1994*.

### **Amendment of sch 1 (Other amendments)**

*Clause 51* removes amendments to the prescribed terms in schedule 1.

## **Part 7 Amendment of Land Regulation 2009**

### **Regulation amended**

*Clause 52* states that this part amends the Land Regulation 2009.

### **Insertion of new pt 5A**

*Clause 53* inserts new part 5A, Dispute resolution, into the Land Regulation 2009 to support the new dispute resolution process introduced into the *Land Act 1994*.

## **Part 5A Dispute Resolution**

### **New section 47A Prescribed dispute resolution entities—Act, s 339A**

New section 339A of the *Land Act 1994* defines a prescribed dispute resolution entity for the purpose division 3A, chapter 6, part 4. New section 47A states that for the purpose of section 339A, the prescribed entities include the Queensland Law Society Incorporated ABN 33 423 389 441, and the Resolution Institute ABN 69 008 651 232.

### **New section 47B Matters arbitrator must consider in deciding dispute—Act, s 339Q**

New section 339Q of the *Land Act 1994* states that a regulation may prescribe the matters that an arbitrator must consider in deciding a dispute. Section 47B states that the arbitrator must consider any evidence that has been supplied to the arbitrator as part of conducting the arbitral proceedings.

### **New section 47C Matters arbitrator must consider in deciding costs—Act, s339U**

New section 339U(4) of the *Land Act 1994* states that when an arbitrator makes a decision about the costs of arbitration, the arbitrator must take into account matters prescribed by a regulation. These matters are stated in section 47C and include the following:

- whether or not a party to the dispute has complied with the dispute resolution provisions in chapter 6, part 4, division 3A of the Act;
- whether a party to the dispute has made a frivolous or vexatious claim in arbitration;
- whether a party to the dispute has complied with an order or direction given by the arbitrator;
- whether a party to the dispute has participated in arbitration proceedings in good faith; and
- the amount of any fees incurred due to the arbitrator appointing any experts to report on specific issues as part of arbitration proceedings.

### **Amendment of sch 11 (Fees)**

*Clause 54* repeals all application fees relating to the surrender of tenure.

## **Part 8 Amendment of Land Title Act 1994**

### **Act amended**

*Clause 55* states that this part amends the *Land Title Act 1994*. It also notes that there are amendments to the *Land Title Act 1994* in chapter 3, part 2 of the Bill.

### **Amendment of s 94 (Meaning of *high-density development easement*)**

*Clause 56* amends part of the definition of ***small*** in section 94(4) from '300m<sup>2</sup>' to '450m<sup>2</sup>.'

The amendment has been made to ensure that high-density development easements can be used in the range of developments originally intended. The current 300m<sup>2</sup> restriction in the definition of ***small*** significantly reduced the application of the provisions where one of the 2 small adjoining lots was a corner block and therefore subject to boundary setback restrictions under local government planning schemes.

### **Amendment of s 110 (Instrument of transfer to trustee)**

*Clause 57* amends section 110(3) to clarify the requirements for documentation to be deposited with an instrument of transfer to a trustee.

Under the amended section 110(3) either of the following must be deposited with an instrument of transfer to a trustee:

- a document in the form required by the registrar stating details of the trust, currently a Form 20 – Trust Details Form; or
- a certified copy of a document creating the trust, generally a trust deed.

### **Amendment of s 140 (Effect of a priority notice)**

*Clause 58* amends section 140 to clarify the operation of the priority notice provisions which commenced on 1 January 2018 to align them more closely with their original intent.

Subsection 140(2) is amended to clarify that the effect of a priority notice depends on the instruments to which the priority notice relates being lodged in the order stated in the notice.

Combined with the amendment to section 142, the intent of the amendment is illustrated by the following example - if a priority notice is deposited for an instrument of transfer and an instrument of mortgage, and a requisition notice is issued under section 156 of the Land Title Act in relation to the instrument of mortgage, then the instrument of transfer can be registered but the priority notice will not lapse until the relevant 60 or 90 day period expires or until the instrument of mortgage is registered.

The new subsection 140(3) provides that a priority notice does not prevent the registration of an instrument which was the subject of an earlier, and still current, priority notice.

An example of the application of subsection 140(3) is as follows - if a priority notice is deposited by a party in relation to an instrument of mortgage and then a second priority notice is deposited by a party in relation to a second instrument of mortgage, the second notice will not prevent the registration of the first instrument of mortgage to which the first notice relates.

### **Amendment of s 142 (Lapsing of priority notice)**

*Clause 59* amends section 142 to clarify that a priority notice will lapse when all related instruments have been registered in the order stated in the notice.

### **Amendment of s 148 (Priority of instruments)**

*Clause 60* amends section 148 to correct a spelling error.

### **Insertion of new pt 12, div 8**

*Clause 61* inserts transitional provisions for the *Natural Resources and Other Legislation Amendment Act 2019*.

### **Division 8 Transitional provision for the Natural Resources and Other Legislation Amendment Act 2019**

#### **New section 218 Application of s 94**

New section 218 provides that once section 94 is amended by *the Natural Resources and Other Legislation Amendment Act 2019*, it will apply to a high-density development easement only if it was created after commencement.

## **Part 9 Amendment of Land Valuation Act 2010**

### **Act amended**

*Clause 62* states that this part amends the *Land Valuation Act 2010* (the Land Valuation Act).

#### **Amendment of s 18 (What is a *bona fide* sale)**

*Clause 63* clarifies section 18 to ensure that where there is a sale of the land in question (land subject to valuation), in considering whether terms and conditions are reasonable, regard must be had to the land's location, nature and the state of the market for land of the same type. The change clarifies the section and reflects the Valuer-General's implementation of this section since the Land Valuation Act commenced. There was a concern that the existing wording could be confusing.

#### **Amendment of s 53 (Valuer-general's power)**

*Clause 64* removes section 53(2)(a)(ii) which allowed for a part of a lot to be separately valued where the Valuer-General considered that the part was used as a communication facility. This provision has been treated as 'redundant' for a number of years as it discriminated against telecommunication carriers and was inconsistent with clause 44 of schedule 3 of the *Commonwealth Telecommunications Act*.

#### **Amendment of ch 10, hdg (Repeal, savings and transitional provisions)**

*Clause 65* clarifies that chapter 10 applied from the commencement of the Land Valuation Act in 2010.

#### **Amendment of s 268 (Operation and application of pt 3)**

*Clause 66* inserts a note under section 268 that references new section 303 which limits the application of chapter 10, part 3.

## **Insertion of new ch 11**

*Clause 67* inserts new chapter 11 containing transitional provisions for the *Natural Resources and Other Legislation Amendment Act 2019*.

## **Chapter 11 Transitional provisions for Natural Resources and Other Legislation Amendment Act 2019**

### **New section 303 Application of ch 10, pt 3**

New section 303 states that Chapter 10, part 3 (Saving of repealed Valuation Act for particular purposes – the savings provisions) ceases to have any effect from the commencement of these transitional provisions unless there is a relevant proceeding that had started but was not finally dealt with at commencement. A relevant proceeding relates to a decision of the Valuer-General about a saved valuation within the meaning of section 269(2).

The savings provisions continued the operation of the previous legislation (*Valuation of Land Act 1944* - repealed) for particular purposes. These provisions have been considered redundant for some time. The retrospective regime in the Land Valuation Act has continued to be interpreted and applied consistently with what was applied under the now repealed *Valuation of Land Act 1944*. The retrospective period defined in section 85 of the Land Valuation Act moved past 30 June 2011 (effective date of first valuations under the Land Valuation Act) some time ago and there is no longer a requirement to activate the now repealed *Valuation of Land Act 1944*. The Supreme Court (WB Rural Pty Ltd-v-Valuer-General) determined that by application of section 269 of the Land Valuation Act, the now repealed *Valuation of Land Act 1944* continued in operation for valuations effective before 30 June 2011. This meant that particular valuations for land owned by WB Rural, effective before 30 June 2011, were required to be reviewed by the Valuer-General to determine if they required alteration.

### **Amendment of schedule (Dictionary)**

*Clause 68* amends the schedule (Dictionary) of the Land Valuation Act.

The definition of 'lot' is being amended to include land in the area of a mining, geothermal, GHG or petroleum lease. Chapter 2 part 2 of the Land Valuation Act provides for the methodology for valuing land in the area of those leases and Chapter 2 part 3 of the Land Valuation Act refers to land by reference to 'lots'. The Dictionary definition of 'lot' does not currently include land in the area of these leases. Valuations for land in the area of these leases have always been determined under Chapter 2 part 3 and this amendment is simply a definitional change to clarify the current and historical approach.

## **Part 10 Amendment of Surveyors Act 2003**

### **Act amended**

*Clause 69* states that this part amends the *Surveyors Act 2003* (Surveyors Act).

### **Amendment of s 5 (Mutual recognition legislation not affected)**

*Clause 70* makes a minor administrative amendment to replace the reference to the *Trans-Tasman Mutual Recognition (Queensland) Act 1999* with an updated reference to the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*.

### **Amendment of s 12 (Membership of board)**

*Clause 71* amends the membership of the Board to add a position to provide expertise in registering and regulating surveyors specialising in mining surveys. The Board requires additional capacity to deal with the increase in demand for the registration of surveyors with mining endorsement(s). The increase in demand is due to the significant growth in the resources sector and explicit requirements in the *Coal Mining Safety and Health Act 1999* regarding the signing of annual mine plans.

The clause amends section 12 to move administrative and operational detail, such as the expertise and qualifications that must be represented in the Board's members, to regulation. Removing this operational detail allows the legislation to be responsive to future changes in expertise and qualification requirements for the Board's membership to deal with changes in surveying profession demands for competency assessment and registration. This is a delegation of legislative power and a potential FLP. However, the detail being delegated is appropriate as it does not provide critical detail for the operation of the Act and it is not linked to offences under the Act.

The clause removes redundant historical transitional references necessary at the time the Act came into effect. The references are to Acts and registration frameworks that were the predecessors of the Surveyors Act. The Surveyors Act has been operating for 15 years and all registrations are now conducted under the Surveyors Act alone.

### **Amendment of s 19 (Vacation of office)**

*Clause 72* amends section 19 (Vacation of office) that specifies when a Board member is taken to have vacated their position. This is a consequential amendment, necessary due to the removal to subordinate legislation the administrative and operational detail of the expertise and qualifications that must be represented on the Board. The amendment maintains the current requirement that where a member of the Board stops holding the qualification/position for which they were appointed then they will cease to be a member of the Board.

The clause maintains that the member of the Board can still be a member of the Board despite no longer holding the qualifications or holding a particular position, but only as long as the members of the Board, collectively, still represent the required composition of qualifications and experience on the Board.

### **Amendment of s 21 (Casual vacancy in member's office)**

*Clause 73* is a consequential amendment resulting from the amendment of section 12 (Membership of board) which moves the qualifications and experience required to be represented on the Board to subordinate legislation. Section 21 deals with the filling of a casual vacancy by an appointee of the Minister during the term of a member. This clause ensures that the appointee must hold the same qualifications or experience or hold a position of that type as the vacating member being replaced. For example, if the member was appointed on the basis that they held a mining registration endorsement for the required 5 year period (or periods totalling 5 years) then the appointee by the Minister must also have this qualification.

### **Amendment of s 22 (Leave of absence for a member)**

*Clause 74* is a consequential amendment resulting from the amendment of section 12 (Membership of board) which moves the qualifications and experience required to be represented on the Board to subordinate legislation. Section 22 provides that the Minister may appoint another person where a Board member is absent for more than three months. The amendment ensures that the requirement for the person acting in the member's position must hold the same qualifications or experience or hold the same type of position as the Board member.

### **Replacement of s 27 (Quorum)**

*Clause 75* replaces the quorum requirement to take into account the change in the number of members on the Board. A quorum is the minimum number of members of the Board that must be present for a meeting of the Board. A quorum for a Board meeting will no longer be four appointed members, but a majority of appointed Board members at the time the meeting is held.

### **Replacement of ss 75 and 76**

*Clause 76* replaces section 75 to clarify the offences about who may carry out a cadastral survey and section 76 to clarify who may carry out a business that provides surveying services.

### **New section 75 Carrying out cadastral surveys**

The new section 75 clarifies the offences about who may carry out a cadastral survey.

One offence is that a person is not allowed to carry out a cadastral survey if they are not a cadastral surveyor. A cadastral surveyor is currently defined in the Surveyors Act to mean: a surveyor who holds a registration endorsement for carrying out cadastral surveys. The penalty remains at 100 penalty units.

The other offence under the new section 75 clarifies that a person who is a registrant is not allowed to carry out a cadastral survey if they are not a cadastral surveyor. A registrant here refers to a surveyor, surveying graduate or surveying associate. This offence is to ensure that a registrant under the Surveyors Act, is not allowed to undertake a cadastral survey if they do not hold a registration endorsement for that area of surveying. The penalty remains at 100 penalty units.

The exception to this offence is where the registrant who is not a cadastral surveyor is supervised by a cadastral surveyor and the supervision is consistent with a guideline made by the Board under section 188A and published on the Board's website. The nature of the supervision is dependent on the capabilities of the registered person who is not a cadastral surveyor. For example, a cadastral surveyor supervises a surveying graduate and the surveyor is confident that the surveying graduate is able to take accurate survey measurements for the purpose of the survey, then the cadastral surveyor does not need to be present in the field and supervise the survey. Instead the cadastral surveyor may give direction to the surveying graduate but does not need to accompany the surveying graduate into the field.

To support the offences under the new section 75, definitions of *cadastral survey* and *survey* are being inserted into schedule 3 (Dictionary) of the Surveyors Act.

A *cadastral survey* means a survey to identify or determine the boundaries of land. For example, a survey carried out to prepare a survey plan that reinstates a land boundary and which will be lodged in the land registry. Another example is a survey that works out the location of a land boundary, such as when the boundary survey marks are not in place or partially missing. Also, the placing of a survey mark to represent the location of a land boundary is part of a cadastral survey.

It does not include the preparation of a plan that depicts the approximate location of a boundary and the plan states the location of the boundary is approximate.

A *survey* includes a survey of artificial features on, above or below the earth's surface and recording the survey on a plan.

The new definitions being inserted into schedule 3 (Dictionary) and the clarification of the offences under the new section 75 clarifies what a cadastral survey includes, giving certainty to the surveying profession about when the services of a cadastral surveyor are required. A scenario in the surveying profession is where a registrant (who is not a cadastral surveyor) is carrying out a survey to locate the site of a building which will be set at a specific distance from the land boundary and the land boundary is uncertain because the survey mark is either missing or partially missing.

The new definition for cadastral survey, along with the offence in the new section 75, clarifies that the registrant who is not a cadastral surveyor may not locate the land boundary or place a survey mark that identifies the land boundary. The registrant in the above scenario would need to engage the services of a cadastral surveyor (or work under the supervision of a cadastral surveyor) to locate the land boundary before being able to complete the survey for the siting of the building.

### **New section 76 Carrying on a business providing cadastral surveying services**

The new section 76 clarifies and consolidates the existing two offences that relate to the carrying out of a business that provides cadastral surveying services and the charging of a fee for carrying out a cadastral survey. The new section 76 clarifies the offence that a person who is not a consulting cadastral surveyor must not carry on a business providing cadastral surveying services. A cadastral surveying service are



any services required and related to carrying out the cadastral survey. The penalty for this offence remains the same at 50 penalty units.

The new section 76 also consolidates the existing offence for a person charging a fee for carrying out a cadastral survey, if the person is not a consulting cadastral surveyor. The penalty for this offence remains the same at 50 penalty units.

To clarify the offences in the new section 76, in addition to the definition being inserted for *cadastral survey*, another definition for *consulting cadastral surveyor* is being inserted into Schedule 3 (Dictionary). The definition for consulting cadastral surveyor clarifies that the person must be a cadastral surveyor and a consulting surveyor. That means the person must be a surveyor that holds registration endorsements for:

- carrying out cadastral surveys; and
- carrying out a business providing surveying services.

### **Amendment of s 130 (Appointment)**

*Clause 77* amends who may be appointed as an investigator to undertake compliance investigation for suspected breaches of the Surveyors Act. Currently, the Board may only appoint a surveyor that is not a Board member as an investigator. The clause provides that the Board can appoint an investigator with qualifications aligned to the nature of the suspected misconduct (e.g. business management). This ensures that any compliance investigation has the right expertise to assess the potential misconduct breaches that involve more than technical surveying matters. Members of the Board may still not be appointed as investigators.

### **Amendment of s 144 (General powers after entering places)**

*Clause 78* clarifies that the appointed investigator may only carry out a survey (under section 144(d)) or place survey marks on land (under section 144(e)) if they are suitably qualified to do these activities. With the broadening of who may be appointed as an investigator through the amendment of section 130, the investigator may not hold the appropriate qualification to carry out a survey or place a survey mark on land. In this circumstance the investigator will not be able to carry out a survey or place survey marks on land.

### **Insertion of new s 188B**

#### **New section 188B Board may delegate functions to board members**

*Clause 79* inserts a new section to clarify the extent and scope of powers, functions and responsibility that the Board may delegate and to whom they may delegate. This section will allow the Board to delegate routine administrative functions and responsibilities to a Board member or an employee of the Board, for example approval of forms, registration of surveying graduates or surveying associates, registration of surveyors or registration endorsements under the mutual recognition of qualifications legislation i.e. the *Mutual Recognition (Queensland) Act 1992* or the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*.

The new section also clarifies the core powers, functions and responsibilities that the Board must continue to deal with (i.e. they may not delegate these matters), including:

- approving competency frameworks
- accrediting entities for assessing the competency
- refusing to grant registration renewals
- deciding to monitor registrants' compliance with disciplinary conditions of registration
- authorising investigations
- taking disciplinary proceedings against registrants
- referring disciplinary matters, for hearing, to the Panel or QCAT.

### **Insertion of new s 190A**

#### **New section 190A Particular searches free of charge**

*Clause 80* inserts a new section into the Surveyors Act to exempt the Board, a delegate of the Board or appointed investigator acting under the Surveyors Act from paying the fees for searching and obtaining information from registers, rolls and databases held by the department administering the *Land Title Act 1994*, *Land Act 1994*, *Land Valuation Act 2010* and the *Survey and Mapping Infrastructure Act 2003*. The new section ensures the Board, a member of the Board, delegate of the Board, appointed investigator, or a person acting under the direction of the appointed investigator has access to information required to fulfil their obligations.

There are minimal costs to the department that holds the registers, rolls and databases from exempting the Board from fees for searching and obtaining copies of information. The value of ensuring the enforcement of professional standards in the surveying profession and flow on effect of maintaining the accuracy of Queensland cadastre and survey data outweighs the revenue forgone by the department.

### **Insertion of new pt 14**

*Clause 81* inserts a transitional provision into the *Surveyors Act 2003*.

## **Part 14 Transitional provision for Natural Resources and Other Legislation Amendment Act 2019**

### **New section 209 Existing board members**

New section 209 is a consequential amendment resulting from the amendment of section 12 (Membership of board) which moves the qualifications and experience required to be represented on the Board to subordinate legislation. The transitional provision only applies should the Board not be compliant with the required qualifications, experience or hold the relevant positions on commencement of the Bill.

This section provides that the Board can perform their functions or exercise their powers for a period of 12 months after the section commences. After which the members of the Board must collectively hold the qualifications, experience or positions required to be represented on the Board.

### **Amendment of sch 3 (Dictionary)**

*Clause 82* removes a redundant definition of *first composition* which relates to the first composition of the Board after the commencement of section 12 (Membership of board).

The clause also amends the definition of *investigator* to be consistent with amendments to section 130 (Appointment) that broadens who the Board may appoint as an investigator.

The clause also inserts a definition for *cadastral survey* and *survey*.

A *cadastral survey* means a survey to identify or determine the boundaries of land. For example, a survey carried out to prepare a survey plan that reinstates a land boundary and which will be lodged in the land registry. Another example is a survey that works out the location of a land boundary such as when the boundary survey marks are not in place or partially missing. Also, the placing of a survey mark to represent the location of a land boundary is part of a cadastral survey.

It does not include the preparation of a plan that depicts the approximate location of a boundary and the plan states the location of the boundary is approximate.

This definition clarifies what a cadastral survey includes, giving certainty to the surveying profession about when the services of a cadastral surveyor is required. A scenario in the surveying profession is where a registrant (who is not a cadastral surveyor) is carrying out a survey to locate the site of a building which will be set at a specific distance from the land boundary and the land boundary is uncertain because the survey mark is either missing or partially missing.

The new definition for cadastral survey, along with the offence in the new section 75, clarifies that the registrant who is not a cadastral surveyor may not locate the land boundary or place a survey mark that identifies the land boundary. The registrant in this scenario would need to engage the services of a cadastral surveyor (or work under the supervision of a cadastral surveyor) to locate the land boundary before being able to complete the survey for the siting of the building.

A *survey* includes a survey of artificial features on, above or below the earth's surface and recording the survey on a plan.

The definition for *consulting cadastral surveyor* being inserted, into Schedule 3 (Dictionary) by this clause, clarifies that the person must be a cadastral surveyor and a consulting surveyor. That means the person must be a surveyor that holds registration endorsements for:

- carrying out cadastral surveys; and
- carrying out a business providing surveying services.

These definitions support the Board in enforcing the offences under the new sections 75 (Carrying out cadastral surveys) and 76 (Carrying on a business providing cadastral surveying services).

## **Part 11 Amendment of Surveyors Regulation 2014**

### **Regulation amended**

*Clause 83* states that this part amends the Surveyors Regulation 2014 (Surveyors Regulation).

### **Insertion of new s 1A**

*Clause 84* inserts a new section into the Surveyors Regulation.

### **New section 1A Qualifications and experience of board members—Act, s 12**

New section 1A provides the operational detail of the qualifications and experiences that must be represented by the members of the Board.

The provision maintains the current requirements of qualifications and experiences to be represented on the Board. These are:

- three cadastral surveyors
- one cadastral surveyor employed in the department
- one surveyor directly involved in teaching surveying
- one other surveyor
- two must represent the interest of the community generally in the conduct and practice of the profession.

This clause provides that the additional member, provided for by the amendment to section 12 (Membership of board) of the Surveyors Act, must hold a mining registration endorsement. A mining registration endorsement is defined as one or more of the following registration endorsements established by the Board:

- Mining O Endorsement (Open Cut)
- Mining UC Endorsement (Underground Coal)
- Mining UM Endorsement (Underground Metalliferous).

This ensures the Board has the necessary expertise to administer a professional surveying registration framework for surveyors specialising in mining surveys.

The clause provides that a surveyor may only be appointed as a member of the Board if they have been registered for period(s) totalling at least five years. Also, where the surveyor is required to hold a registration endorsement, the surveyor must have held the registration endorsement for period(s) totalling at least five years. The policy intention is not to limit how the five year period is made up, as more than one period may make up the minimum of five years.

## **Part 12 Amendment of Torres Strait Islander Land Act 1991**

### **Act amended**

*Clause 85* states that this part amends the *Torres Strait Islander Land Act 1991*.

### **Amendment of s 9 (Lands that are transferrable lands)**

*Clause 86* replaces the regulation making process for declaring available State land to be transferable land, with a Ministerial declaration process. Transferrable land may be granted as freehold for the benefit of Torres Strait Islander people.

As a grant of land under the *Torres Strait Islander Land Act 1991* is an allocation of land under the *Land Act 1994* (Land Act), an assessment of the most appropriate use and tenure of the land under the Land Act is undertaken before available State land can be declared as transferrable land. The assessment takes into account requirements for public consultation and other stakeholder views, including government agencies.

### **Amendment of s 11 (Torres Strait Islander reserve land)**

*Clause 87* replaces the regulation making process for declaring Torres Strait Islander reserve land, with a Ministerial declaration process. A reserve may be declared to be land that was being used as a Torres Strait Islander reserve or for the benefit of Torres Strait Islander people. Transferrable land may be granted as freehold for the benefit of Torres Strait Islander people.

Reserve land proposed to be declared Torres Strait Islander reserve land is administratively assessed before it is advanced to determine it meets one of those criteria.

### **Amendment of s 12 (Definition for div 4)**

*Clause 88* replaces a reference to a declaration made by regulation with a declaration made by the Minister, reflecting a change to a process under section 11 of the *Torres Strait Islander Land Act 1991*.

### **Amendment of s 22 (Tidal land)**

*Clause 89* replaces the regulation making process for declaring tidal land as available State land, with a Ministerial declaration process. Available State land may be declared transferable land and transferrable land may be granted as freehold for the benefit of Torres Strait Islander people.

As a grant of land under the *Torres Strait Islander Land Act 1991* is an allocation of land under the *Land Act 1994*. An assessment of the most appropriate use and tenure of the land under the Land Act is undertaken before available State land can be declared as transferrable land. The assessment takes into account requirements for public consultation and other stakeholder views, including government agencies.

### **Amendment of s 23 (Meaning of city or town land)**

*Clause 90* replaces a regulation making process for changing the boundaries of a city or town, with a Ministerial declaration process. The declaration is made only for the purposes of the *Torres Strait Islander Land Act 1991* and does not alter the boundaries of a city or town under the *Local Government Act 2009*.

### **Amendment of s 28ZI (Cancellation of deeds of grant in trust, reserves etc.)**

*Clause 91* removes section 28ZI(1)(a)(iv) to omit an incorrect reference to Aboriginal peoples' traditional land of Aurukun and Mornington Shire leases in the *Torres Strait Islander Land Act 1991*.

### **Amendment of s 41 (Existing Interests)**

*Clause 92* makes a consequential amendment to section 41 to remove reference to section 42 which will be omitted by clause 93.

### **Omission of s 42 (Interests to be endorsed on deed)**

*Clause 93* removes section 42. The equivalent section in the *Aboriginal Land Act 1991* (former section 46) was removed in the *Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014* (2014 No. 45 section 58 schedule 1 part 2) on the basis that the section was obsolete. The removal of this section was overlooked in previous rounds of amendments to the Act.

### **Amendment of s 50 (Reservations of forest products and quarry material etc.)**

*Clause 94* replaces a regulation making process for reserving forest products and quarry material to the State, with a Ministerial declaration process.

The Ministerial declaration process reserves forest products and quarry material to the State in a deed transferred under the *Torres Strait Islander Land Act 1991*.

### **Insertion of new s 155A**

*Clause 95* inserts a new section into the *Torres Strait Islander Land Act 1991*.

#### **New section 155A Name of trust land**

New section 155A reinstates the requirement for existing land trusts to contain the words 'Land Trust' in their name. The remake of the *Torres Strait Islander Land Regulation 2011* erroneously omitted this requirement.

### **Amendment of s 164 (Particular information to be recorded in the register)**

*Clause 96* amends s164(2) to replace the words 'prescribed under a regulation' with 'declared by the Minister', to reflect the new Ministerial declaration process.

## **Insertion of new s 193**

### **New section 193 Register of particular declarations**

*Clause 97* inserts a new section to require the chief executive to record certain declarations made by the Minister in a register. Section 193(3) requires that the chief executive make the information contained in the register publicly available.

## **Insertion of new pt 19, div 5**

### **Division 5 Transitional provision for Natural Resources and Other Legislation Amendment Act 2019**

*Clause 98* inserts a transitional provision for the *Natural Resources and Other Legislation Amendment Act 2019*.

### **New section 208 Particular things taken to have been declared by Minister**

New section 208 ensures that existing declarations made by regulation and now replaced by a declaration of the Minister continue in effect after commencement and are taken to be declarations by the Minister.

## **Part 13 Amendment of Torres Strait Islander Land Regulation 2011**

### **Regulation amended**

*Clause 99* states that this part amends the *Torres Strait Islander Land Regulation 2011*.

### **Omission of pt 4A (Declaration)**

*Clause 100* omits part 4A, which references declarations made by regulation. Declarations will be publicly available in the register of Ministerial declarations to be kept by the chief executive.

## **Part 14 Amendment of Valuers Registration Act 1992**

### **Act amended**

*Clause 101* states that this part amends the *Valuers Registration Act 1992*.

### **Amendment of s 8 (Panel of nominees)**

*Clause 102* removes section 8(2) from the *Valuers Registration Act 1992*. This provision required that appointments to the Valuers Registration Board must live in Queensland. This is a legacy provision and is no longer required. As a consequence of the removal of section 8(2), the clause renumbers existing section 8(3) to 8(2).

## **Chapter 3            Amendments related to land commencing on proclamation**

### **Part 1            Amendment of Land Act 1994**

#### **Act amended**

*Clause 103* states that this part amends the *Land Act 1994*. It also notes that chapter 2, part 5 of the Bill also makes amendments to the *Land Act 1994*.

#### **Amendment of s 23A (Floating reservation on plan of subdivision)**

*Clause 104* amends section 23A to transfer the Minister's responsibilities to the chief executive for the allocation of a floating reservation on plan of subdivision.

#### **Amendment of s 26C (Effect of resumption of forest entitlement area)**

*Clause 105* amends section 26C(b) so that compensation payable in relation to improvements relates to the chief executive's instead of the Minister's decision.

#### **Amendment of s 32 (State leases over reserves)**

*Clause 106* amends section 32 to transfer the Minister's responsibilities to the chief executive for dealings with improvements under subsection (4)(b).

#### **Amendment of s 34H (Dealing with improvements)**

*Clause 107* amends section 34H(1) to provide that applications to remove improvements on a reserve the dedication of which has been revoked may be made in writing to the chief executive.

Amendments to sections 34H(2) and (3) transfer the Minister's responsibilities to the chief executive for dealings with improvements under this section.

#### **Amendment of s 38G (Dealing with improvements)**

*Clause 108* amends subsection (1) of section 38G to provide that applications to remove improvements on a deed of grant in trust that has been cancelled may be made in writing to the chief executive.

Subsections (2) and (3) are amended to transfer the Minister's responsibilities to the chief executive for dealings with improvements under this section.

#### **Amendment of s 41 (Survey not needed)**

*Clause 109* amends s 41(2) to transfer the Minister's responsibilities to the chief executive for the issue of a deed of grant in trust when it has not been surveyed.

#### **Amendment of s 48 (Trustees to give information and allow inspection of records)**

*Clause 110* amends section 48(1) to transfer the Minister's responsibilities to the chief executive for requests to trustees to give information and allow inspection of records under this section.



**Amendment of s 55H (Dealing with improvements)**

*Clause 111* amends sections 55H(2) and (3) to transfer the Minister's responsibilities to the chief executive for dealings with improvements on a deed of grant in trust that has been surrendered.

**Amendment of s 57 (Trustee leases)**

*Clause 112* amends section 57 to remove references to and requirements for a mandatory standard terms document as part of amendments to support implementation of the prescribed terms framework dealt with in new Chapter 5A of the Bill. Sections are renumbered in the process.

**Amendment of s 58 (Other transactions relating to trustee leases)**

*Clause 113* amends section 58 to transfer the Minister's functions under this section, other than the approval of a sublease of a trustee lease, to the chief executive.

This clause also replaces subsection (3) which refers to a mandatory standard terms document to support implementation of the prescribed terms framework the subject of new Chapter 5A of the Bill. New subsection (3) provides that an approval mentioned in subsection (1) may include conditions.

**Amendment of s 59 (Basis of Ministerial approval)**

*Clause 114* amends the heading of section 59 and subsection (1) to reflect the transfer of some of the Minister's responsibilities to the chief executive for decisions under related sections 57 and 58.

Amended section 59(1) provides that decisions made by either the Minister under sections 57 and 58, or the chief executive for transactions under section 58, may be approved only if the trustee lease or transaction—

1. would be consistent with the purpose for which the land was reserved or granted in trust; and
2. would facilitate or enhance the purpose for which the land was reserved or granted in trust.

**Amendment of s 60 (Trustee permits)**

*Clause 115* amends section 60 to remove provisions relating to mandatory standard terms document as part of amendments to support implementation of prescribed terms framework the subject of new Chapter 5A of the Bill.

**Amendment of s 61 (Conditions on trustee leases and trustee permits)**

*Clause 116* amends section 61 to insert a note directing the reader to new chapter 5A for prescribed terms that apply to particular trustee leases or trustee permits.

**Amendment of s 64 (Minister may dispense with approval)**

*Clause 117* amends section 64 to remove subsections (5) and (6) - provisions relating to mandatory standard terms document - as part of amendments to implement prescribed terms framework the subject of new Chapter 5A of the Bill.

Subsection 7 is renumbered as subsection 5.

**Amendment of s 66 (Right to remove improvements on cancellation)**

*Clause 118* amends sections 66(2) to enable the chief executive to allow the trustee lessee or trustee permittee to remove their improvements on the land, within a reasonable time stated, if a trustee lease or trustee permit is cancelled by the Minister.

**Amendment of s 67 (Power to mortgage trust land)**

*Clause 119* amends section 67(4) and (5) to transfer the Minister's responsibilities to the chief executive for dealings under these subsections.

**Amendment of s 68 (Mortgagee in possession)**

*Clause 120* amends sections 68(1) and (3) to transfer the Minister's responsibilities to the chief executive for dealings under this subsections.

**Amendment of s 82 (Trustees may transfer trust to local government)**

*Clause 121* amends section 82(a) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 98 (Closure of road)**

*Clause 122* amends sections 98(1)(b) and (3) to remove the requirement for notification by Gazette notice when a road is temporarily closed. A road is to be considered a temporarily closed road once the road licence is issued under the proposed amendment to section 103 (Issue of road licence).

**Amendment of ch 3, pt 2, div 3, hdg (Road licences for temporarily closed roads)**

*Clause 123* removes the words 'for temporarily closed roads' from the heading to better reflect the content of amended Chapter 3, part 2, division 3.

**Amendment of s 103 (Issue of road licence)**

*Clause 124* amends section 103(1) by omitting 'temporarily closed' and inserting a 'note' directing the reader to section 98 for when the Minister may temporarily close a road.

The amendment ensures that the licence can be issued over a road, which then temporarily closes the road. This is a consequential amendment as a result of amendments to s 98 (Closure of road).

**Amendment of s 104 (Conditions of issuing road licence)**

*Clause 125* amends section 104(b) by replacing the words ‘temporarily closed’ with ‘for which the licence is issued’.

The amendment reflects changes to the process of closing a road under amendments to s 98 (Closure of road).

**Amendment of s 105 (Cancellation or surrender of road licence)**

*Clause 126* amends section 105(6) to provide that if a road licence is cancelled or surrendered, the road is reopened.

This amendment supports amendments to section 98 (Closure of road) and streamlines the process for re-opening a closed road.

**Omission of s 107 (Reopening a temporarily closed road)**

*Clause 127* removes section 107 as this section is redundant following amendments to section 105 (Cancellation or surrender of road licence).

**Amendment of s 113 (Public notice of availability to be given)**

*Clause 128* amends section 113(1) to transfer the Minister’s responsibilities to the chief executive for advertising the intention to make an interest in land available under this section.

**Amendment of s 117 (Interest may be withdrawn from auction, tender or ballot)**

*Clause 129* amends section 117 to transfer the Minister’s responsibilities to the chief executive to withdraw an interest in land for sale.

**Amendment of s 118 (Appeal against exclusion from ballot or tender)**

*Clause 130* amends sections 118(1) and (2) to transfer the Minister’s responsibilities to the chief executive for decisions and actions under these subsections.

**Amendment of s 120 (Offer to winner of ballot or tender)**

*Clause 131* amends subsection (2)(b) of section 120 to insert the chief executive as another decision maker under this subsection.

This amendment will more correctly reflect that both the Minister and the chief executive will have powers to deal with land under the amended Act.

Subsection (4) is amended to require a notification to be made to the chief executive instead of the Minister by an eligible applicant withdrawing from a re-ballot.

**Amendment of s 137 (Right to occupy)**

*Clause 132* amends subsection (1)(b) and (2)(a) of section 137 to transfer the Minister’s responsibilities to the chief executive for dealings under this section.

**Amendment of s 138 (Default)**

*Clause 133* amends section 138(3) to transfer the Minister's responsibilities to the chief executive for decisions under this section.

**Amendment of s 201 (Information condition)**

*Clause 134* amends section 201 to provide that all leases, licences and permits are subject to the condition that the lessee, licensee or permittee must give information about the lease, licence or permit to the Minister or chief executive, if one or the other asks for the information.

The amendment reflects the transfer of some of the Minister's responsibilities to the chief executive under proposed amendments to the Act.

**Amendment of s 202 (Improvement condition)**

*Clause 135* amends section 202 to transfer the Minister's responsibilities to the chief executive for decisions under section.

**Amendment of s 240E (Sale by lessee)**

*Clause 136* amends subsection (1) of section 240E to provide that an application for the sale of the lease by the lessee may be made in writing to the chief executive.

Subsection 2 is amended to transfer the Minister's responsibilities to the chief executive for decisions under this section.

**Amendment of s 240F (Sale by mortgagee instead of forfeiture)**

*Clause 137* amends section 240F(1) to provide that an application for the sale of the lease by the mortgagee may be made in writing to the chief executive.

Subsection (2) is amended to transfer the Minister's responsibilities to the chief executive for decisions under this section.

**Amendment of s 240G (Application)**

*Clause 138* amends subsections (1) and (3) of section 240G to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 240H (Notice of approval)**

*Clause 139* amends section 240H (1) to transfer the Minister's responsibilities to the chief executive for decisions under this section.

**Amendment of s 240M (Transition to sale agreement)**

*Clause 140* amends subsections (2) (a), (b) and (c) of section 240M to include the chief executive as another decision-maker under this section.

### **Amendment of s 240O (Making and registration of transition to sale agreement)**

Clause 141 amends section 240O(1) to remove the requirement for the Minister to approve the chief executive entering into a transition to sale agreement.

This amendment will more correctly reflect that both the Minister and the chief executive will have powers to deal with land under the amended Act.

### **Amendment of s 240S (Notice of forfeiture)**

Clause 142 amends section 240S(1) to transfer the Minister's responsibilities to the chief executive for decisions under this section.

### **Amendment of s 243 (Improvements on forfeited lease)**

Clause 143 amends subsection (1A) of section 243 to provide that the lessee of a forfeited lease may apply in writing, to the chief executive, to remove the lessee's improvements on the lease.

Subsections (1) and (2) are amended to transfer the Minister's responsibilities under this section to the chief executive.

### **Insertion of new chapter 5A**

Clause 144 inserts a new Chapter 5 to establish prescribed terms for particular interests that will be identified by regulation. Subject to a transitional period, prescribed terms will replace the mandatory standard terms documents that currently apply to some interests registered under the Land Act.

## **Chapter 5A Prescribed terms of particular interests**

### **New section 254 Definitions for Chapter**

New section 254 establishes two definitions to apply to the new chapter 5A.

A "*prescribed term*" is defined as a term identified in a regulation as being a term of a relevant type of interest.

The term "*relevant interest*" in Chapter 5A means an interest in lease land, licence land, permit land or trust land that is created under the Land Act. The definition does not include equitable interests in, or held in relation to, the land.

### **New section 255 Regulation may prescribe terms**

New section 255 authorises the making of a regulation to identify which interests prescribed terms will apply to and establish the prescribed terms for those identified interests. Prescribed terms may apply to interests over lease land, licence land, permit land or trust land, whether or not they are required to be registered.

A regulation may prescribe a term, for example, requiring appropriate insurance indemnity to be held in relation to the use of the land under the interest. Other prescribed terms may relate to the use and development of the land; vacating land at the expiry of the interest; and the interest holder's duty of care in relation to the land.

The regulation will provide greater transparency for interest holders to understand their obligations under the Land Act and ensure that the interest is subject to terms considered necessary to protect the State's interest in the land.

### **New section 256 Effect of prescribed term**

New section 256 provides rules for how a prescribed term applies to an interest. A prescribed term will apply either upon the registration (or creation for interests that don't require registration) of the interest or after a transitional period stated in the regulation. Which rule applies depends on which is established first—the interest or the prescribed term.

If the prescribed term is in effect when a new interest is registered, the prescribed terms will take effect from the date of registration. For interests that don't require registration, the prescribed term will apply from the date the interest is created.

If an interest is already registered (or created) when the prescribed term is made by regulation, the prescribed term will apply after a transitional period. The transitional period will be established in the regulation and may stipulate a single period for all interests or different periods for one or more interests.

If a prescribed term is amended or replaced, the transitional period will apply to all relevant existing (registered or created) interests, but only for the amended or replaced term. During this transition period, the amended or replaced term will continue to apply as it did before the amending regulation was made.

A prescribed term has primacy over any inconsistent term that may apply to the interest, irrespective of whether the term is part of the registered document or another document that may apply to the interest. The prescribed terms are binding on each holder of a prescribed interest, including successors in title.

### **New section 257 Amendment of prescribed term**

New section 257 states how a relevant interest that is subject to a prescribed term is affected if the prescribed term is amended. The amended prescribed term will apply to the relevant interest after the transitional period. The transition period for an amended prescribed term is prescribed by regulation and starts from the commencement of the amended prescribed term.

### **Amendment of s 287 (Registered documents must comply with particular requirements)**

*Clause 145* amends section 287 by replacing subsection (1)(c) to allow for the Minister and the chief executive to be responsible for dealings under this section.

This amendment reflects the transfer of some of the Minister's responsibilities to the chief executive.

**Amendment of s 294J (Building management statement affecting freehold and non-freehold land)**

*Clause 146* amends section 294J(3), (4) and (6)(a) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 299A (No registration in absence of required approval or consent of Minister)**

*Clause 147* amends the heading of the section to include the chief executive as a decision maker.

Subsection (1)(a) and (b) are replaced to state that a document is not registered, even if it is recorded in the relevant register, if—

- a required approval has not been obtained from the Minister or chief executive; or
- the terms of the document are inconsistent with the terms of any approval or consent given by the Minister or chief executive for the document.

Subsection (4) is amended to provide that subsection (1) does not affect the operation of a provision of this Act providing for the Minister to give a general authority (e.g. to sublease without seeking the Minister's approval under section 333) or for the chief executive to give an exemption from approval requirement (e.g. to transfer a lease under new s 322AA).

These amendments reflect the transfer, under this Bill, of some of the Minister's approval or consent responsibilities to the chief executive.

**Replacement of s 311 (Witnessing documents for individuals)**

*Clause 148* replaces section 311 to strengthen the witnessing requirements by aligning the requirements for witnessing paper titling documents, such as transfers, with the verification of identity requirements for paper mortgages in sections 288A and 288B of the Land Act and for electronic conveyancing in the Participation Rules determined under the Electronic Conveyancing National Law (Queensland). This is achieved by:

- including a requirement in section 311(1)(a) for a person who witnesses a document signed by an individual to also take reasonable steps to verify the identity of the individual;
- providing that a witness takes reasonable steps to verify the identity of the individual if the witness complies with practices included in the Land Title Practice Manual (Queensland);
- requiring a witness to either keep a written record of the steps they took or keep certain other evidence for a period of 7 years;
- providing that the chief executive may ask the witness to advise the chief executive about the steps taken by the witness and to produce the evidence kept by the witness. A penalty applies for non-compliance with the chief executive's request.

### **Omission of s 318A (Minister may lodge mandatory standard terms document)**

*Clause 149* removes section 318A as part of the implementation of the prescribed terms framework.

### **Omission of s 320A (Conflict with mandatory standard terms document)**

*Clause 150* removes section 320A as part of the implementation of the prescribed terms framework.

### **Amendment of s 322 (Requirements for transfers)**

*Clause 151* amends section 322(1)(b)(i) and subsections (4) to (9) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

Section 322 is also amended by inserting new subsection (2A). The new subsection provides that section 322(1)(b)(i) does not apply to the transfer of the lease for which an exemption from approval to transfer has been granted under the new section 322AA. New subsection (2A) also applies to a sublease of the exempted lease.

### **Insertion of new ss 322AA and 322AB**

*Clause 152* inserts new sections 322AA and 322AB into the Land Act. The sections introduce new powers for the chief executive to exempt particular leases from requiring approval prior to transfer and to register the exemptions.

### **New section 322AA Chief executive may grant exemption from approval requirement**

The chief executive, if appropriate and by written notice, may dispense with the need for the chief executive's prior approval—under section 322(1)(b)—to transfer an individual lease or a type of lease.

An exemption applies to:

- a) for an individual lease – the lease stated in the notice and its lessee; or
- b) for a type of lease – the type stated in the notice and the associated lessees.

The exemption covers a sublease of the lease or type of lease, as well as the sublessee. The exemption may be subject to any conditions the chief executive considers appropriate.

The chief executive may, at any time and by written notice, impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption or revoke the exemption.

In acting under the notice, the lessee must comply with any requirements prescribed under a regulation. These provisions ensure additional flexibility is available to streamline consent requirements for lease transfers as appropriate. The application of the section to subleases removes the need for sublessees to seek the chief executive's approval to transfer a sublease where prior approval to transfer the head lease has been dispensed with.



### **New section 322AB Recording exemptions**

New section 322AB provides that exemption granted under section 322AA (1) may be recorded in the leasehold land register. Failure to record the exemption does not affect its validity. If a recorded exemption is revoked under section 322AA (5)(c), the exemption must be removed from the register. Amendment of section 323 (Transfers must be registered)

### **Amendment of s 326A (Disclosure of Information to proposed transferee of lease or licensee)**

*Clause 153* amends sections 326A (2) and (3) to transfer the Minister's responsibilities to the chief executive for actions under this section.

### **Amendment of s 327 (Absolute surrender of freehold land)**

*Clause 154* amends sections 327(a) and (b) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

### **Amendment of s 327A (Surrender of lease)**

*Clause 155* amends sections 327A (a) and (b) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

### **Amendment of s 327B (Applying to surrender freehold land)**

*Clause 156* amends section 327B to require that an application under this section is made in writing to the chief executive.

### **Amendment of s 327C (Applying to surrender lease)**

*Clause 157* amends section 327C (1) to require that an application under this section is made in writing to the chief executive.

### **Amendment of s 327I (Dealing with improvements)**

*Clause 158* amends section 327I (1) to require that an application under this section is made in writing to the chief executive.

In addition, subsections (2) and (3) are amended to transfer the Minister's responsibilities to the chief executive for dealings under this section.

### **Amendment of s 329 (Notice of surrender needed)**

*Clause 159* amends section 329(2) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

### **Amendment of s 330 (Requirements for effective surrender)**

*Clause 160* amends section 330(a) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

### **Amendment of s 332 (Requirements for subleases)**

*Clause 161* amends section 332 to remove references to and requirements for a mandatory standard terms document in subsection (1) to support implementation of the prescribed terms framework the subject of new Chapter 5A of the Bill.

In addition, this clause replaces subsections (2) to (9) with the following new provisions:

- Subsection (2) - An application for the Minister's approval to sublease can be made by a lessee or sublessee even if the lessee holds a general authority to sublease. The application must be accompanied by a copy of the proposed sublease.
- Subsection (3) - The Minister must consider the application. The application must be refused if the Minister is satisfied the subleasing would be inconsistent with the purpose of the lease. Otherwise, the Minister may either approve or refuse the application. For example, the Minister may refuse the application if the subleasing would be inappropriate having regard to the purpose and conditions of the lease.
- Subsection (4) - If the Minister refuses to approve the application, the Minister must give the lessee a written notice of the decision that includes a statement of the reasons for the decision.
- Subsections (5) and (6) - The approval lapses unless the sublease is lodged in the land registry within 6 months of the approval being given. However, this time may be extended.
- Subsection (7) - The Minister's decision may be appealed against by the lessee.

### **Insertion of new s 337A**

*Clause 162* inserts a new section into the Land Act

#### **New section 337A Sublease must not contravene lease condition**

New section 337A provides that the lessee of a lease that is sublet, in whole or in part, must ensure the terms of the sublease comply with the conditions of the lease.

### **Amendment of s 358 (Changing deeds of grant-change in description or boundary of land)**

*Clause 163* amends section 358(2) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 360A (Chief executive may change term leases, other than State leases, or perpetual leases)**

*Clause 164* amends the heading of section 360A, and subsections (2) and (3), to transfer the Minister's responsibilities to the chief executive for dealings under this section. Subsection (4) provides that chief executive must register the amendment.

The amendment of section 360A also removes any doubt that while the section applies to term and perpetual leases, it does not apply to a term lease that is a State lease.

**Amendment of s 360C (Applying to amend description of lease)**

*Clause 165* amends section 360C (2) by removing reference to 'other than a State lease' to better reflect the intent of the provision. It removes any doubt that while the section applies to term and perpetual leases, it does not apply to a term lease that is a State lease.

**Amendment of s 362 (Easements may be created only by registration)**

*Clause 166* amends section 362(1) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 363 (Registration of easement)**

*Clause 167* amends section 363(1)(c) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 369A (Transfer of public utility easements)**

*Clause 168* removes the requirement for the Minister's written approval when transferring a public utility easement.

**Amendment of s 373B (Requirements of document creating covenant)**

*Clause 169* amends section 373B(1)(d) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 373C (Amending document creating covenant)**

*Clause 170* amends section 373C(2)(b) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 373G (Profit a prendre by registration)**

*Clause 171* amends section 373G to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 373ZB (Definitions for div 8D)**

*Clause 172* amends the definition of 'approved agreement' to replace 'Minister' with 'chief executive' as part of a suite of amendments transferring administrative responsibilities from the Minister to the chief executive.

**Amendment of s 373ZD (Creation only by registration)**

*Clause 173* amends sections 373ZD (2), (3) and (4) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 373ZE (Requirements for registration)**

*Clause 174* amends section 373ZE (1) to provide that the chief executive may only register a document creating an indigenous cultural interest for land if the document satisfies all of the following requirements:

- a) It is validly executed.
- b) It includes a description and map adequate to identify the part of the lease land the subject of the interest; and, the terms of the interest, including the right to access and use the land.
- c) It is accompanied by the approval mentioned in section 373ZD.

**Amendment of s 373ZF (Amending interest)**

*Clause 175* amends section 373ZF (3) and (4) to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 373ZG (When amendment or replacement of approved agreement ends interest)**

*Clause 176* makes consequential amendments to sections 373ZG (1) and (2) to reflect the transfer of the Minister's responsibilities to the chief executive in relation to decisions under amended section 373ZF.

Amended subsection (1) provides that registration of an indigenous cultural interest ends if the approved agreement for the interest is amended or replaced and the approval mentioned section 373ZF is refused.

Amended subsection (2) provides that if an indigenous cultural interest ends under subsection (1), the interest must be removed from the appropriate register as soon as practicable.

**Amendment of s 373ZH (Surrendering or removing interest)**

*Clause 177* amends section 373ZH by removing subsection (2) so that a document surrendering an indigenous cultural interest no longer requires the Minister's approval before registration.

This reflects the transfer of the Minister's responsibilities to the chief executive under other amendments included in this Bill that relate to indigenous cultural interests.

**Amendment of s 373ZI (Notice of end of approved agreement)**

*Clause 178* amends section 373ZI to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 373ZL (Reviewing approved agreements for indigenous cultural interests)**

*Clause 179* amends section 373ZL to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 375A (Document to vest in trustee)**

*Clause 180* amends section 375A to align terminology.

**Amendment of s 390A (Special provision for transport related land)**

*Clause 181* amends section 390A to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 391A (General provision about approvals)**

*Clause 182* amends section 391A to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Amendment of s 420FA (Regard may be had to information and advice)**

*Clause 183* amends the example in section 420FA to remove reference to section 23A as the Minister's responsibilities under that section have been transferred to the chief executive under this Bill.

**Amendment of s 420I (General power to impose conditions)**

*Clause 184* amends section 420I to transfer the Minister's responsibilities to the chief executive for dealings under this section.

**Insertion of new s 533**

*Clause 185* inserts a new section into the *Land Act 1994*.

**New section 533 Roads temporarily closed by gazette**

New section 533 applies to a road that immediately before commencement was temporarily closed under former section 98(1)(b) but not reopened under former section 107.

The section provides that the Minister may reopen the road by gazette notice.

**Insertion of new ch 9, pt 4, divs 4-6**

*Clause 186* inserts new chapter 9, part 4 into the *Land Act 1994* to provide for transitional arrangements for the *Natural Resources and Other Legislation Amendment Act 2018*.

#### **Division 4 Provisions relating to prescribed terms and mandatory standard terms documents**

##### **New section 534 Definition for division**

New section 534 provides that for this division, reference to a mandatory standard terms document means a mandatory standard terms document that was in force before commencement.

##### **New section 535 Application of mandatory standard terms documents**

New section 535 applies if under section 319 (Standard terms document part of a further document), a mandatory standard terms document formed part of a document immediately before commencement.

If this is the case, then the mandatory standard terms document is not affected by the repeal of former section 318A (Minister may lodge mandatory standard terms document) and the mandatory standard terms document continues to form part of the document unless and until the interest in land to which the document relates becomes subject to the new prescribed term.

If there is any conflict between the document, another document or the mandatory standard terms document, the mandatory standard terms document has primacy. This ruling applies despite section 320(2) which states that if there is a conflict between a standard terms document and terms included in another document, then the other document has primacy.

##### **New section 536 Requirements for mandatory standard terms documents**

New section 536 sets out what happens to an existing approval or authority for an interest in land that is subject to a mandatory standard terms document immediately before commencement. If immediately before commencement the approval or authority included a condition or other requirement for a mandatory standard terms document to form part of the interest in land, and the interest in land becomes subject to a prescribed term, the approval or authority is no longer subject to the condition or requirement.

#### **Division 5 Provisions about functions of Minister and chief executive**

##### **New section 537 Particular applications taken to have been made to the chief executive**

New section 537 applies to a provision which immediately before commencement, required or allowed an application to be made to the Minister; and, on commencement the application is made to the chief executive and but the application is undecided.

This section provides that the undecided application is taken to have been made to the chief executive.

### **New section 538 Particular things taken to have been done by the chief executive**

New section 538 provides that for the Minister's functions (including powers) that are being transferred to the chief executive, anything done in relation to the matter by the Minister before the commencement is taken to have been done by chief executive to the extent that the context permits.

## **Division 6 Other provision**

### **New section 539 Application of new s 311**

New section 539 provides that new section 311 only applies to a document executed after the commencement of the new section 311.

### **Amendment of sch 2 (Original decisions)**

*Clause 187* corrects a cross-reference in schedule 2.

### **Amendment of sch 6 (Dictionary)**

*Clause 188* removes the definition 'mandatory standard terms documents' and inserts new definitions: 'perpetual lease', 'prescribed term' and 'relevant interest'.

## **Part 2 Amendment of Land Title Act 1994**

### **Act amended**

*Clause 189* states that this part amends the *Land Title Act 1994*. It also notes that the Bill amends the *Land Title Act 1994* in chapter 2, part 8.

### **Replacement of s 162 (Obligations of witness for individual)**

*Clause 190* replaces section 162.

### **New section 162 Obligations of witness for individual**

New section 162 strengthens the witnessing requirements by aligning the requirements for witnessing paper titling instruments, such as transfers, with the verification of identity requirements for paper mortgages in sections 11A and 11B of the Land Title Act and for electronic conveyancing in the Participation Rules determined under the Electronic Conveyancing National Law (Queensland). This is achieved by:

- including a requirement in section 162(1)(a) for a person who witnesses an instrument executed by an individual to also take reasonable steps to verify the identity of the individual;
- providing that a witness takes reasonable steps to verify the identity of the individual if the witness complies with practices included in the Land Title Practice Manual (Queensland);
- requiring a witness to either keep a written record of the steps they took or keep certain other evidence for a period of 7 years;

- providing that the registrar may ask the witness to advise the registrar about the steps taken by the witness and to produce the evidence kept by the witness. A penalty applies for non-compliance with the registrar's request.

### **Insertion of new s 219**

*Clause 191* inserts a new transitional provision into the *Land Title Act 1994*.

### **New section 219 Application of new s 162**

New section 219 clarifies that new section 162 only applies to an instrument executed after the commencement of new section 162.

## **Part 3 Amendment of Land Title Regulation 2015**

### **Regulation amended**

*Clause 192* states that this part amends the Land Title Regulation 2015.

### **Amendment of s 3 (Definitions)**

*Clause 193* amends section 3 to make a cross referencing amendment.

### **Amendment of s 4 (Lodging instruments)**

*Clause 194* amends section 4 by providing for the department's website to state the offices of the land registry, and the hours for those offices, at which a document in paper form may be lodged with the land registry. The clause also renumbers the subsections.

### **Amendment of s 6 (Fees)**

*Clause 195* amends section 6 to make a cross referencing amendment.

### **Omission of sch 1 (Offices of the land registry)**

*Clause 196* omits schedule 1 of the Land Title Regulation 2015 to support the amendments to section 4.

### **Renumbering of schs 2 and 3**

*Clause 197* renumbers schedules 2 and 3 to be schedules 1 and 2.



## **Chapter 4        Amendments related to resources legislation commencing on assent**

### **Part 1            Amendment of Geothermal Energy Act 2010**

#### **Act amended**

*Clause 198* states that this part amends the *Geothermal Energy Act 2010*.

#### **Insertion of new ch 9, pt 5**

*Clause 199* inserts a new transitional provision to clarify the impact of the commencement of the Bill on existing conduct and compensation agreements under the *Geothermal Energy Act 2010*.

### **Part 5        Transitional provision for Natural Resources and Other Legislation Amendment Act 2019**

#### **New section 413 Existing conduct and compensation agreements**

New section 413 provides that the new provisions will not apply to conduct and compensation agreements for an authorised activity that was an advanced activity, or preliminary activity for a geothermal tenure in effect prior to commencement.

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

*Clause 200* omits the definitions for *advanced activity* and *preliminary activity* as the definitions in the *Mineral and Energy Resources (Common Provisions) Act 2014* will apply.

The previous definition of preliminary activity in the *Geothermal Energy Act 2010* was slightly different to the definitions in the other resource Acts, providing that a preliminary activity became an advanced activity if it was carried out continuously for more than six months. This element of the definition will no longer apply to new conduct and compensations agreements for geothermal tenures. Removing the six-month distinction for preliminary activities for geothermal tenures ensures consistency across all resource authorities.

### **Part 2        Amendment of Greenhouse Gas Storage Act 2009**

#### **Act amended**

*Clause 201* states that this part amends the *Greenhouse Gas Storage Act 2009*.

#### **Amendment of s 390 (Restriction on building on pipeline land for GHG tenure)**

*Clause 202* amends section 390(1) to correct an error of duplicated words in the sentence.

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

Clause 203 omits the definitions for *advanced activity* and *preliminary activity* as the definitions in the *Mineral and Energy Resources (Common Provisions) Act 2014* will now apply.

### **Part 3 Amendment of Land Access Ombudsman Act 2017**

#### **Act amended**

Clause 204 states that this part amends the *Land Access Ombudsman Act 2017*.

#### **Amendment of s 7 (What is a *land access dispute*)**

Clause 205 amends section 7 to provide correct references in the *Mineral and Energy Resources (Common Provisions) Act 2014* and the *Water Act 2000*.

### **Part 4 Amendment of Mineral and Energy Resources (Common Provisions) Act 2014**

#### **Act amended**

Clause 206 states that this part amends the *Mineral and Energy Resources (Common Provisions) Act 2014*.

#### **Insertion of new ss15A and 15B**

Clause 207 inserts two new sections the *Mineral and Energy Resources (Common Provisions) Act 2014* to define the terms *advanced activity* and *preliminary activity*. These definitions determine the entry requirements for a resource tenure holder to access private land and were previously duplicated in each of the resource Acts. A minor policy change has occurred as a result of the consolidation of these definitions from the resource Acts in relation to the *Geothermal Energy Act 2010*. Refer to new section 15B.

#### **New section 15A What is an advanced activity**

New section 15A states that an advanced activity for a resource authority, is any authorised activity, other than a preliminary activity. For clarity, examples of these authorised activities are provided.

#### **New section 15B What is a preliminary activity**

New section 15B defines a *preliminary activity* as an authorised activity for the authority that will have no impact, or only a minor impact on the business or land use activity of any owner or occupier of the land on which the activity is to be carried out.

The previous definition of *preliminary activity* in the *Geothermal Energy Act 2010* was slightly different to the definitions in the other resource Acts. It provided that a preliminary activity became an advanced activity if it was carried out continuously for more than six months.

This element of the definition will no longer apply to new conduct and compensation agreements made for a tenure under the *Geothermal Energy Act 2010*. Removing the six-month distinction for preliminary activities ensures consistency across all resource authorities.

Both definitions consider the overall impact on the landholder's business and land use. For clarity, examples of the types of activities that comprise a preliminary activity are included.

### **Omission of ch 3, pt 2, div 6 (Access to carry out rehabilitation and environmental management)**

*Clause 208* omits the current provision that authorises access to land to carry out rehabilitation and environmental management.

### **Insertion of new ch 3, pt 4A**

*Clause 209* inserts a new part 4A into chapter 3 to replace the provisions omitted by clause 204, above.

## **Part 4A Rehabilitation and environmental management**

### **New section 72A Application of part**

New section 72A outlines that part 4A applies to all resource authorities.

### **New section 72B Right of access for authorised activities includes access for rehabilitation and environmental management**

New section 72B clarifies that this access right applies to a resource authority holder accessing land under part 2 or 3 of the *Mineral and Energy Resources (Common Provisions) Act 2014*, and holders of prospecting permits, mining claims and mining leases under the *Mineral Resources Act 1989*. The section also clarifies that the resource authority holder's right to enter land to carry out authorised activities includes a right to enter land to carry out rehabilitation or environmental management activities as required under the *Environmental Protection Act 1994*.

New sections 72A and 72B will apply to all resource authorities accessing both private and public land. The effect of this is that resource authority holders will be ensured access to public land as well as private land to undertake rehabilitation and environmental management.

### **Amendment of s 99A (Jurisdiction to decide alleged breach of conduct and compensation agreement)**

*Clause 210* corrects a cross-referencing error in section 99A.

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

*Clause 211* amends the definitions of *advanced activity* and *preliminary activity* to reference the definitions provided in new sections 15A and 15B.

## **Part 5      Amendment of Mineral and Energy Resources (Financial Provisioning) Act 2018**

### **Act amended**

*Clause 212* states that this part amends the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

### **Amendment of s 3 (Main purposes)**

*Clause 213* replaces the term ‘rehabilitation’ with ‘remediation’ to align with the changes made to the *Mineral Resources Act 1989* by this Bill.

Remediation better reflects the activities undertaken by authorised persons at abandoned resource sites.

### **Amendment of s 63 (Application of subdivision)**

*Clause 214* replaces the term ‘rehabilitation’ with ‘remediation’ to align with the changes made to the *Mineral Resources Act 1989* by this Bill.

### **Amendment of sch 1 (Dictionary)**

*Clause 215* removes the definitions for ‘rehabilitation activities’ and ‘remediation activities’ from the dictionary to align with the changes made to the *Mineral Resources Act 1989* by this Bill.

## **Part 6              Amendment of Mineral Resources Act 1989**

### **Act amended**

*Clause 216* states that this part amends the *Mineral Resources Act 1989*.

### **Omission of ss 7A and 7B**

*Clause 217* removes sections 7A and 7B which provide definitions for advanced activity and preliminary activity. This is because the definitions for advanced activity and preliminary activity provided in the *Mineral and Energy Resources (Common Provisions) Act 2014* will now apply.

### **Omission of s 23 (Refund upon rejection of application)**

*Clause 218* omits the provision to refund application fees for rejected prospecting permit applications. A new provision (section 386PA) will establish a consistent approach to refunding all or part of tenure application fees under the *Mineral Resources Act 1989*.

### **Replacement of s 85A (Deciding whether to grant mining claim if compensation not determined)**

*Clause 219* omits the previous section 85A and replaces it with a new section.

### **New section 85A Minister may refuse the grant mining claim if compensation not determined**

New section 85A confirms that the Minister may refuse to grant a mining claim where a compensation agreement has not been determined in relation to when the Land Court remits an objection back to the department without making a recommendation or giving instruction. In this situation the parties must still negotiate compensation, or refer the matter to the Land Court for a determination. If neither of these actions occur, the Minister has discretion to refuse to grant the mining claim. The Minister's power to refuse to grant a mining claim under new section 85A does not limit any other power to refuse to grant a mining claim.

### **Amendment of s 135 (Abandonment of application for exploration permit)**

*Clause 220* omits subsection 135(3), which provides for the refund of application fees for an abandoned mineral (excluding coal) exploration permit. A new provision (section 386PA) will establish a consistent approach to refunding all or part of tenure application fees under the *Mineral Resources Act 1989*.

### **Amendment of s 136 (Grant of exploration permit on application)**

*Clause 221* omits subsection 136(5), which provides for the Minister to decide whether all or part of the application fees for a refused application for a mineral (excluding coal) exploration permit may be refunded. A new provision (section 386PA) will establish a consistent approach to refunding all or part of tenure application fee under the *Mineral Resources Act 1989*.

### **Amendment of s 136N (Grant of exploration permit for surrendered exploration permits)**

*Clause 222* omits subsection 136N(5), which provides for the Minister to decide whether all or part of the application fee for a surrendered application for a mineral (excluding coal) exploration permit may be refunded. A new provision (section 386PA) will establish a consistent approach to refunding all or part of tenure application fee under the *Mineral Resources Act 1989*.

### **Amendment of s 136S (Deciding application)**

*Clause 223* replaces subsection 136S(8) to remove subsection 136S(8)(b), which provides for the Minister to decide whether all or part of the application fee for a refused exploration permit (coal) may be refunded. A new provision (section 386PA) will establish a consistent approach to refunding all or part of tenure application fee under the *Mineral Resources Act 1989*.

### **Amendment of s 136T (Withdrawing application)**

*Clause 224* omits subsection 136T(4), which provides for the Minister to decide whether all or part of the application fee for an exploration permit (coal) that has been withdrawn may be refunded. A new provision (section 386PA) will establish a consistent approach to refunding all or part of tenure application fee under the *Mineral Resources Act 1989*.

**Amendment of s 186 (Minister may grant or refuse application)**

*Clause 225* omits subsection 186(8), which provides for the Minister to decide whether all or part of the application fee for a mineral development licence that has been refused may be refunded. A new provision (section 386PA) will establish a consistent approach to refunding all or part of tenure application fee under the *Mineral Resources Act 1989*.

**Omission of s 188 (Upon rejection of application, application fee or part may be retained)**

*Clause 226* omits section 188, which provides for the Minister to decide whether all or part of the application fee for a mineral development licence that has been rejected may be refunded. A new provision (section 386PA) will establish a consistent approach to refunding all or part of tenure application fee under the *Mineral Resources Act 1989*.

**Amendment of s 189 (Abandonment of application for mineral development licence)**

*Clause 227* omits subsection 189(3), which provides for the Minister to decide whether all or part of the application fee for a mineral development licence that has been abandoned may be refunded. A new provision (section 386PA) will establish a consistent approach to refunding all or part of tenure application fee under the *Mineral Resources Act 1989*.

**Amendment of s 231A (Application of pts 1 and 2)**

*Clause 228* consequentially amends section 231A to omit the reference to section 188 of the *Mineral Resources Act 1989*.

**Replacement of s 279A (Deciding whether to grant mining lease if compensation not determined)**

*Clause 229* omits current section 279A and replaces it with a new section.

**New section 279A Minister may refuse to grant mining lease if compensation not determined**

New section 279A confirms that the Minister may refuse to grant a mining lease where a compensation agreement has not been determined in relation to when the Land Court remits an objection back to the department without making a recommendation. In this situation the parties must still negotiate compensation, or refer the matter to the Land Court for a determination. If neither of these actions occur, the Minister has discretion to refuse to grant the mining lease. The Minister's power to refuse to grant a mining lease under new section 279A does not limit any other power to refuse to grant a mining lease.

**Amendment of s 334J (Access rights for particular activities)**

*Clause 230* amends section 334J to ensure the correct cross reference is made following new section 72B being inserted into the *Mineral and Energy Resources (Common Provisions) Act 2014*.

### **Amendment of s 344 (Definitions to part)**

*Clause 231* amends the cross-referencing definition of rehabilitation activities to reflect amendments made to section 344A by this Bill. It also inserts a new cross-referencing definition for remediation activities.

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

*Clause 232* amends the heading of section 344A to align with the changes made to this section. Section 344A is also amended to provide that remediation activities apply to abandoned mines, and rehabilitation activities apply to final rehabilitation sites. Subsection 344A(1) is also amended to ensure that 'remediation activities' applies in relation to abandoned mines, while 344A(3) is amended to ensure that 'rehabilitation activities' applies in relation to final rehabilitation sites.

The term 'remediation activities' better reflects the activities undertaken by authorised persons at abandoned sites. Using remediation activities clearly differentiates the activities carried out by an authorised person at an abandoned resource site from the activities required for final rehabilitation sites.

### **Amendment of s 344B (Entering land to carry out rehabilitation activities)**

*Clause 233* amends the heading of section 344B to align with the changes made to this section. The change clarifies that remediation activities apply to abandoned mines, and rehabilitation activities apply to final rehabilitation sites. Subsection 344B(2) is also amended to ensure a person may enter land under subsection 344B(2) for either remediation activities or rehabilitation activities. Subsection 344B(2)(a) is amended to clarify that the subsection applies to rehabilitation activities and remediation activities.

### **Amendment of s 344C (Notice of entry)**

*Clause 234* amends section 344C(1)(a) to clarify that the notice of entry under this section applies to remediation activities for the abandoned mine and to rehabilitation activities for the final rehabilitation site. It also amends section 344C(2)(d) to clarify that the subsection applies to both remediation activities and rehabilitation activities.

### **Amendment of 344D (Obligation of authorised person in carry out rehabilitation activities)**

*Clause 235* amends the heading of section 344D to provide that this section applies to both remediation activities and rehabilitation activities.

### **Insertion of new s 386PA**

*Clause 236* inserts new section 386PA into the *Mineral Resources Act 1989*.

### **New section 386PA Chief executive's power to refund application fee**

New section 386PA provides the chief executive with the discretion to refund an application fee when an application for a resource authority is withdrawn, abandoned, refused or rejected. The chief executive will have discretion to refund all or part of any fee paid for the application. This amendment introduces a consistent approach to refunding mining tenement application fees. However, the new power for a chief

executive to refund an application fee does not extend to an application for a water monitoring authority.

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

Clause 237 inserts transitional provisions into the *Mineral Resources Act 1989* to clarify the impact of amendments made in this Bill in relation to certain powers the Minister has to refuse an application for a mining claim or mining lease if compensation is not determined by a Court, and the application of the new application fee refund provisions that have also been made by the Bill.

## **Part 15 Transitional provisions for Natural Resources and Other Legislation Act 2019**

### **New section 846 Power of Minister to refuse application for mining claim if compensation not determined**

New section 846 provides that section 85A applies to an application for a mining claim made before commencement of the *Natural Resources and Other Legislation Amendment Act 2019* but after 24 October 2018. This date relates to the amendments made under the *Mineral, Water and Other Legislation Amendment Act 2018* which commenced on 25 October 2018. Section 85A sets out the conditions under which the Minister may refuse to grant a mining claim if compensation is not referred to the Land Court or agreed between the parties. This provision applies even if the Minister's discretion to refuse the grant falls on a day before commencement of this Bill.

### **New section 847 Power of Minister to refuse application for mining lease if compensation not determined**

New section 847 provides that section 279A applies to an application for a mining lease made before commencement of the *Natural Resources and Other Legislation Amendment Act 2019* but after 24 October 2018. This date relates to the amendments made under the *Mineral, Water and Other Legislation Amendment Act 2018* which commenced on 25 October 2018. Section 279A sets out the conditions under which the Minister may refuse to grant a mining lease if compensation is not referred to the Land Court or agreed between the parties. This provision applies even if the day the Minister's discretion to refuse the grant falls on a day before commencement of this Bill.

### **New section 848 Chief executive's power to refund application fee**

New section 848 inserts a transitional provision in relation to the new provision about the refund of application fees. The discretion to refund or retain applications fees, established under new section 386PA does not apply to an application for a resource authority made, but not decided before the commencement of this section. For the purpose of this transitional section, a resource authority does not include a water monitoring authority.



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

*Clause 238* amends the dictionary to reflect the changes made by this Bill. The terms 'advanced activity' and 'preliminary activity' are omitted and the definition of 'remediation activities' is inserted into the dictionary, referencing the activities listed under section 344A(1) of the *Mineral Resources Act 1989*.

## **Part 7 Amendment of Petroleum Act 1923**

### **Act Amended**

*Clause 239* states that this part amends the *Petroleum Act 1923*.

### **Amendment of s 2 (Definitions)**

*Clause 240* omits the definitions for advanced activity and preliminary activity as the definitions in the *Mineral and Energy Resources (Common Provisions) Act 2014* will now apply.

## **Part 8 Amendment of Petroleum and Gas (Production and Safety) Act 2004**

### **Act amended**

*Clause 241* states that this part amends the *Petroleum and Gas (Production and Safety) Act 2004*.

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

*Clause 242* omits the definitions for advanced activity and preliminary activity as the definitions in the *Mineral and Energy Resources (Common Provisions) Act 2014* will now apply.

## **Chapter 5 Amendments of resources legislation commencing on proclamation**

### **Part 1 Amendment of Mineral Resources Act 1989**

*Clause 243* states that this part amends the *Mineral Resources Act 1989*.

### **Amendment of s 3 (Application of Act to Commonwealth land and coastal waters of the State)**

*Clause 244* consequentially amends section 3 to remove the reference to 'protected area' in section 3(3) of the *Mineral Resources Act 1989*. The *Nature Conservation Act 1992* will continue to prohibit mining activity on protected areas.

### **Insertion of new s 3BB**

*Clause 245* inserts a new section into the *Mineral Resources Act 1989* to clarify the relationship with the *Nature Conservation Act 1992*.

### **New section 3BB Relationship with Nature Conservation Act 1992**

New section 3BB clarifies that the Mineral Resources Act is subject to sections 27 and 70QA of the *Nature Conservation Act 1992*. Sections 27 and 70QA prevent grant of mining interests in prescribed areas under the *Nature Conservation Act 1992*. By clarifying this, and by removing the term 'protected area' in schedule 2 of the *Mineral Resources Act 1989*, the amendment reduces duplication and introduces a clear and consistent approach to protecting these areas.

### **Amendment of s 127 (Land subject to exploration permit)**

*Clause 246* amends section 127(3) to replace the term 'program of work' with 'proposed work program' to align this section with the new terminology used elsewhere across the Resources Acts.

### **Insertion of new s 130AA**

*Clause 247* inserts a new section to explain the different meanings of 'work program' for a term of an exploration permit.

### **New section 130AA Types of work program for term of exploration permit**

The new section introduces two types of work programs; activities-based or outcomes-based. The activities-based work program maintains the requirements from the pre-amended section 133 relating to the program of work, with the exception of the need to provide a year by year description of resources proposed to be committed to the exploration work.

An outcomes-based work program is a document containing details about the following four components: the outcomes proposed; the strategy for pursuing the outcomes; the data and information to be collected as an indication of mineralisation during the term and the existing requirement to provide the estimated human, technical and financial resources proposed to be committed during the term of the exploration permit.

An outcomes-based work program allows the authority holder flexibility in planning and conducting their exploration program in pursuit of the exploration outcomes.

Outcomes-based work programs would generally be accepted for non-competitive, non-tender applications.

For example, a proposed outcome could be to ascertain, within a specified time period during the term of the permit, the likelihood of commercial deposits of specified minerals occurring in a specified geological area, basin, geological period, etc. within an estimated depth range of, for example, 100 to 250 metres. The strategy for pursuing the outcomes could include an in-depth rationale that demonstrates that the applicant understands the approach required in pursuit of the outcomes to the best of their knowledge.

Rather than activities to be conducted to achieve the outcomes, the department is seeking to understand the type of information and data the holder will collect during the exploration program. This will assist in the assessment and consideration of whether the work program is appropriate for the area.

The applicant may determine the type of work program that will accompany an application where the application is not made in a competitive process. A competitive process may be in the form of a call for tender or an application lodged on the same day a moratorium is removed. The applicant will also have the option of which type of work program they want to lodge with an application for renewal.

To clarify, the default position for an application in a competitive processes will require an activities-based work program. However, the Minister will have discretion to change the type of work program in a competitive process. For example, the call for tender for an area for an exploration permit for coal may specify that an outcomes-based work program will be considered for that particular process. This could likely occur on greenfield land that is being released through a tender process.

### **Amendment of s 133 (Application for exploration permit)**

*Clause 248* replaces current subsection 133(f) with a new provision to provide that a proposed work program must now be submitted as part of an application for an exploration permit instead of a program of work. This will align section 133 with the new requirements provided by new section 130AA.

New section 133(f)(i) provides for an activities-based work program as the type of work program to accompany an application for an exploration permit for minerals other than coal where an application is the subject of section 131(1)(b) and (1)(c); that is an application lodged on the day the moratorium is released.

For applications that are lodged any time after the first day of the release of the moratorium period, new section 133(f)(ii) gives the applicant discretion as to the type of work program that may accompany the application.

However, section 133(f)(ii) is also subject to the requirements set out in *Clause 248* which amends section 136C for the purposes of a call for tender for coal exploration permit applications. Refer to *Clause 248* for a further explanation of section 136C.

The section is also renumbered to account for the changes made to subsection 133(f).

### **Amendment of s 134A (Priority of applications for grant of exploration permit)**

*Clause 249* inserts new sub sections into section 134A to provide that before the Minister considers the priority of applications made under section 134A (2), the Minister may require the applicant to submit an activities-based work program. If this request is made, it must be in writing and provide a reasonable time for the applicant to lodge a replacement work program. This provision only applies if one or more applications were lodged on the same day, for the same mineral, and on the same land, and were accompanied by an outcomes-based proposed work program for the permit applied for.

### **Amendment of s 136C (Call for tenders)**

*Clause 250* makes a number of amendments to section 136C to clarify the matters that must be published in a call for tenders.

New section 136(2)(aa) has been inserted to provide that the call for tenders must now include the initial proposed term of the permit. This will improve applicant certainty and transparency and aide decisions for prospective applicants.

Sub sections 136(2)(ca) and (cb) have been inserted to provide that an appropriate work program must accompany the tenders. Generally an activities-based work program will be required for exploration areas released through a tender process. This maintains the integrity for assessing the merits of each application in a competitive process.

Subsections are also renumbered to accommodate the changes made.

### **Amendment of s 136E (Requirements for making tender)**

*Clause 251* inserts a new section 136E (b) to clarify that a tender for an exploration permit for coal must now be accompanied by an appropriate proposed work program, in line with amendments made to section 136(cb). A minor typological amendment is also made to subsection 136E(c) to clarify its meaning.

### **Amendment of s 136G (Amendment of tender)**

*Clause 252* amends section 136G to replace the term 'program of work' with 'work program' to provide consistency with similar changes made to other resource Acts.

### **Amendment of s 136M (Application for exploration permit for surrendered exploration permits)**

*Clause 253* amends section 136M to clarify that the reference to an exploration permit is in a reference to a new exploration permit that was made on the conditional surrender of a granted exploration permit.

### **Amendment of s 136N (Grant of exploration permit for surrendered exploration permits)**

*Clause 254* amends section 136N to implement the new policy for capped terms for exploration permits.

New subsections (5) and (6) provide that the Minister may determine the term of a new exploration permit and that it must end no later than 15 years from the earliest grant date the permits are surrendered in favour of the new exploration permit.

These amendments achieve the policy intent of preventing the conditional surrender process being used to re-start the clock for determining the age of the new exploration permit upon grant and circumnavigating the new capped term requirement. This will encourage and facilitate exploration activities within a reasonable timeframe to allow holders to make business decisions about whether to progress to a higher form of authority or to relinquish the area.

This clause also amends a number of the subsections to clarify the application of this section to new exploration permits. Subsections are also renumbered by this amendment.

#### **Amendment of s 136R (Application)**

*Clause 255* inserts replacement subsection 136R(d) to provide for the new work program policy that provides the option of either an activities-based work program or an outcomes-based work program to accompany an application for an exploration permit for coal in relation to a coal mining project. Replacement subsection 136R(d) also provides that the application must be accompanied by a statement outlining the relevance of the work proposed to be carried out under the exploration permit to the operation of the mining project.

#### **Amendment of s 137 (Prescribed criteria for grant of exploration permit)**

*Clause 256* amends subsection 137(2)(d) to provide that reference to a program of work now becomes reference to a work program for the term of the permit, in line with similar changes to terminology in other resource Acts.

Subsection 137(3) is also amended to update the matters the Minister must consider in deciding whether to approve the work program for an exploration permit to ensure they reflect the new work program policy for exploration permits that now comprises either criteria for an activities-based work program or criteria for an outcomes-based work program.

#### **Amendment of s 137A (Details of exploration permit to be recorded in register)**

*Clause 257* amends section 137A to align it with the new work program policy for exploration permits. Specifically, subsection 137A(h) is amended to clarify that the chief executive must include details of the work program approved under section 137(3) when recording the details of an exploration permit in the register.

#### **Amendment of s 139 (Periodic reduction in area of exploration permit)**

*Clause 258* amends section 139 to implement the new policy of mandatory relinquishment of 50 per cent of the area of an exploration permit in years 5 and 10 of an exploration permit and to provide exceptions for exceptional events and exploration permits within an exploration project. This amendment will streamline the relinquishment requirements by reducing the number of relinquishments, and provide a reasonable timeframe for holders to conduct exploration activities before the first point of relinquishment.

Sub section 139(1) is amended to provide that the holder is required to reduce the area of an exploration permit by 50 per cent of the original area granted by the end of year 5. And a further 50 per cent of the balance of the area remaining after year 5, by the end of year 10. This means that if the exploration permit is due to expire at the end of year 5 or year 10, and there is no intention to apply to renew the term, a reduction in area will not be necessary as the exploration permit will expire.

New sub section 139(3) provides that where the holder of an exploration permit has voluntarily relinquished area under section 140 or has applied for a higher form of

tenure (mineral development licence or a mining lease) under section 177, these areas may count towards the 50 per cent relinquishment requirement. If the total of such areas is less than 50 per cent, the holder will need to identify a further area to relinquish from the exploration permit to make up the shortfall.

New sub section 139(3A) retains the discretionary power for the Minister to direct the holder to reduce the area of the exploration permit by more or less than the area prescribed in new subsection 139(1), that is more or less than 50 per cent. The purpose of this discretion is to allow variation to relinquishment requirements where a permit has been subjected to an exceptional event or to allow for relinquishment requirements to be managed across exploration permits that are within an exploration project, therefore allowing redistribution of relinquishment requirements

For example, section 139(3A) allows for the following:

	EP 1	EP 2	EP 3	EP4	Total
Sub-blocks held	100	100	100	100	400
Number of sub-blocks relinquished for mandatory relinquishment of 50 per cent for individual EP	50	50	50	50	200
Minister's discretion to apply more or less than mandatory of 50% for EPs within a project	Less by 50 per cent Total percentage required = 0%	More by 25% Total percentage required = 75%	More by 15% Total percentage required = 65%	More by 10% Total percentage required = 60%	N/A
Number of sub-blocks relinquished for after relinquishment for project EP	0	75	65	60	200

New sub section 139(4) provides the timeframe in which the holder needs to inform the Minister by way of a submission of the 50 per cent of the sub-blocks that will apply after the reduction at the end of years 5 and 10.

#### **Amendment of s 141 (Conditions of exploration permit)**

*Clause 259* replaces sub section 141(1)(a) to accommodate the new types of work programs that the Minister approves under sub section 137(3) as the condition of the exploration permit.

New sub section 141(1)(f)(i) retains the Ministerial power to provide the Minister a report about the exploration permit and provides for a regulation to provide the way and the period for lodgement of reports and samples.

Sub section 141(f)(ii) provides a discretionary power that allows the Minister to request samples of any materials/samples resulting from exploration activities. An example of materials/ sample could be, but not limited to drill core, rock samples, fluid samples and drill cuttings.

#### **Insertion of new s 141A**

*Clause 260* inserts new section 141A. This section allows the Minister to impose, vary or remove a condition of an exploration permit at any time without application or seeking the views from the permit holder if an exceptional event has occurred. The use of this power is however limited to its use in exceptional events only. Exceptional events are natural disasters or financial crisis which negatively affects the resources industry.

For example, the Minister may change a work program condition to suspend or defer all exploration activities for a period due to a weather event. This allows the Minister to deal with large numbers of exploration permits, rather than requiring all holders impacted to individually apply to amend the conditions that are impacted by exceptional events, thus avoiding an administrative burden or cost to either industry or the government. The ordinary judicial review procedures will apply to this decision making power.

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

*Clause 261* provides that an application to vary the conditions of an existing exploration permit may only be lodged in exceptional events or where the exploration permit forms part of an exploration project.

These limitations on variation applications are required to better manage exploration land turnover and encourage progression to higher tenure.

Exceptional events are events that affect the whole resource industry such as a natural disaster or global financial crisis.

#### **Amendment of s 144 (Provision of security)**

*Clause 262* replaces the term 'program of work' with 'work program' to provide consistency with other resource Acts.

### **Amendment of s 146 (Initial term of exploration permit)**

*Clause 263* omits sections 146(2) and (3), which are no longer necessary as the definition in new section 130AA and amendment to section 136C make it clear that a work program applies for the term of an exploration permit.

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

*Clause 264* makes a minor amendment to reflect the new definition of work program. The work program must be included in an application for renewal of an exploration permit.

### **Amendment of s 147A (Decision on application)**

*Clause 265* clarifies that section 147A relates to decisions on applications for renewal. This clause permits the Minister to decide to grant a renewal of an exploration permit on the basis of either the proposed activities or the proposed outcomes of a work program. This change is required to account for the new outcomes-based work programs. Details of the financial and technical resources of the holder that will be applied to the activities or to pursuing the outcome must also be lodged for consideration in the decision to renew.

This clause also ensures that an exploration permit may not be renewed beyond a total of 15 years, in accordance with the new capped term. The capped term will ensure timely exploration and progression to development and production. The capped term is also ameliorated by the continuation provision in section 148, which keeps the exploration permit in force beyond the expiry date while an application for higher tenure is pending assessment. The 15 year limit can be extended beyond the final term by up to three years if a holder applies for a one-off extension due to exceptional events, under new section 147CA.

### **Amendment of s 147C (Continuation of permit while application being dealt with)**

*Clause 266* amends section 147C to clarify that an outstanding request application for a renewal of an exploration permit means an application that complies with section 147(2)(a) and (b) but does not comply with section 147(2)(c).

### **Insertion of new ss 147CA and 147CB**

*Clause 267* inserts two new sections into the *Mineral Resources Act 1989* in relation to applications for extension of exploration permits.

### **New section 147CA Application for extension of last renewed term of exploration permit**

New section 147CA provides that an application can be made for a one-off extension of the final term of an exploration permit by up to three years. An application can be if the total of the initial term and all renewed terms of the exploration permit do not exceed 15 years and if an exceptional event has prevented exploration activities. Exceptional events are events affecting the whole resource exploration industry, such as natural disasters or a global financial crisis. The application may be made within the extension period which is defined as at least 3 months (or any shorter period allowed by the



Minister in the particular case) before the last renewed term of the exploration permit expires, or not more than 6 months before the last renewed term of the exploration permit expires.

#### **New section 147CB Decision on application for extension**

New section 147CB provides for an application decision process for a one-off extension of the final term of an exploration permit under section 147CA. The extended term cannot be more than 3 years and the work program approved for the second renewed term of the exploration permit applies for the extended term. The last renewed term of an exploration permit may not be extended more than once.

#### **Amendment of s 147D (When term of renewed permit starts)**

*Clause 268* specifies that the term of the extended permit starts on the day after the expiry day.

#### **Amendment of s 147F (Renewal of permit must be in name of last recorded transferee)**

*Clause 269* specifies that an extension of term must be in the name of the last recorded transferee. This clarifies that the holder of the exploration permit remains the holder of the permit into the extended term.

#### **Amendment of s 148 (Rights and obligations upon application for mining claim, mining lease or mineral development licence)**

*Clause 270* creates a continuation provision, so that an exploration permit that would otherwise expire while an application for a mining claim, mineral development licence or mining lease is pending assessment, will continue in force until the new authority is granted or the application is refused or withdrawn. This keeps the exploration permit, which is a prerequisite tenure for a mineral development licence or mining lease, in force without requiring a renewal of the term. This continuation provision may keep the exploration permit in force beyond the end of 15 years despite the new capped term of 15 years or the extended term where it has been approved.

#### **Amendment of s 161 (Surrender of exploration permit)**

*Clause 271* amends section 136N to implement the new policy of capped terms for exploration permits. Currently, a conditional surrender re-starts the clock for the age of the permit upon grant. The intention is that on grant of the new exploration permit emanating from exploration permits surrendered in favour of the new one, that the term the Minister will consider upon grant will be the balance of the term of the earliest grant date of the surrendered permits.

#### **Insertion of new ch 15, pt 14, div 1, hdg**

*Clause 272* inserts a new division heading for transitional provisions in relation to the Resource Authority amendments in this Bill that will commence on assent.

## **Insertion of new ch 15, pt 15, div 2**

*Clause 273* inserts a new division into chapter 15, part 15 to provide transitional provisions for amendments to resource Acts commencing by proclamation.

### **Division 2 Provisions for amendments commencing by proclamation**

#### **New section 849 Definitions**

New section 849 clarifies the meaning of ‘new’ and ‘former’ provisions, meaning those in force before or after the commencement of the amending provisions.

#### **New section 850 Existing programs of work**

New section 850 clarifies that existing programs of work for exploration permits will not be affected by this amending Act, and that an existing program of work is taken to be a work program for the term of the permit. Existing programs of work may be varied under section 141C as if that section had not been amended.

#### **New section 851 Existing applications for particular exploration permits**

New section 851 provides that existing applications for exploration permits for a mineral other than coal for exploration permits will be dealt with and decided under the Act as amended and the affected applicants may update their proposed work programs to comply with the new requirements within the time specified. If the applicant does not submit updated information, the application will be assessed as originally submitted.

#### **New section 852 Existing tenders for particular exploration permits**

New section 852 provides that existing tenders for exploration permits for coal for exploration permits will be dealt with and decided under the Act as if section 137 had not been amended

#### **New section 853 Existing applications to vary conditions of existing permit**

New section 853 provides that an application to vary the conditions of an exploration permit, lodged but not assessed prior to the commencement of the amending provisions, will be assessed as if section 141C had not been amended.

#### **New section 854 Existing applications for renewal of exploration permit**

New section 854 provides that existing renewal applications for exploration permits will be dealt with and decided under the Act as amended and the affected applicants may update their proposed work programs to comply with the new requirements within the time specified. If the applicant does not submit updated information, the application will be assessed as originally submitted. This new section ensures that the Minister has a discretion to approve an outcomes-based work program for any new exploration permit.

**New section 855 Limitation on applications to vary conditions of exploration permit**

The limitations on applications to vary conditions of exploration permits does not apply retrospectively to existing exploration permits. New section 855 provides that former section 141C continues to apply so that existing exploration permits may continue to apply for variations of conditions for their current term. If the exploration permit is renewed after commencement of the amending provisions, new section 141C will apply for the renewed term so that applications to vary conditions will be limited to exceptional events and exploration projects.

**New section 856 Restrictions on renewal of exploration permit**

The capped term of 15 years does not apply retrospectively to existing exploration permits, however there are limitations on the number of further renewals after commencement of the amending provisions. . This will replace the current ability for a holder to apply for unlimited renewals.

New section 856 provides that existing exploration permits will be permitted further renewals totalling a maximum of 10 years from the first renewal after commencement. For example, an exploration permit granted in 2006 and due for renewal in 2021 may be renewed multiple times up to 10 years and will expire in 2031, if the area does not progress to a higher tenure in the meantime.

This transitional provision sets reasonable expectations for the lifespan of existing exploration permits to encourage progression to higher tenure and ensure appropriate turn-over of exploration land.

**New section 857 Relinquishment requirements for exploration permit at less than year 3 of permit**

New section 857 provides that existing exploration permits in their first term which have not relinquished 40 per cent of their area prior to commencement of the amending sections are required to reduce their area by 50 per cent by the end of year 5 of the term, and must relinquish 50 per cent of the remaining area by the end of year 10 from the date the permit was originally granted.

This transitional provision gives existing exploration permits the benefit of the new section relinquishment provisions under amended section 139, while reducing the relinquishment requirements in their current term to ameliorate the effects of the new limitations on variation of relinquishment requirements under section 141C.

**New section 858 Relinquishment requirements for exploration permit at year 3 to year 5 of permit**

New section 858 provides that existing exploration permits in their initial term which have already relinquished 40 per cent of their area prior to commencement of the amending sections are not required to further reduce their area in their initial term, but must relinquish 50 per cent of the remaining area by the end of year 10 after the permit was granted.

This transitional provision gives existing exploration permits the benefit of the new section relinquishment provisions under amended section 139, while reducing the relinquishment requirements in their current term to ameliorate the effects of the new limitations on variation of relinquishment requirements under section 141C.

**New section 859 Relinquishment requirements for exploration permit at more than year 5 of permit if standard relinquishment has happened**

New section 859 provides that existing exploration permits in their second or later term which have already relinquished 40 per cent of their original area and a further 50 per cent of the remaining area prior to commencement of the amending sections are not required to further reduce their area in their current term, but must relinquish 50 per cent of the remaining area within 5 years after the permit is renewed after commencement.

This transitional provision gives existing exploration permits the benefit of the new relinquishment provisions under amended section 139, while reducing the relinquishment requirements in their current term in recognition of previous relinquishment in the current term.

**New section 860 Relinquishment requirements for exploration permit at more than year 5 of permit if standard relinquishment has not happened**

New section 860 provides that existing exploration permits in their second or later term which have not relinquished 40 per cent of their original area and a further 50 per cent of the remaining area by the end of year 5 of the original term and prior to commencement of the amending sections are required to reduce their area by 50 per cent at the end of the current term, and must also relinquish 50 per cent of the remaining area 5 years after the permit is renewed after commencement.

This transitional provision gives existing exploration permits the benefit of the new relinquishment provisions under amended section 139.

**New section 861 Power to direct reduction of area of exploration permit of more or less than prescribed area**

New section 861 provides that the power under new section 139(4) to direct the holder of an exploration permit to reduce the area of the exploration permit by more or less than the area prescribed under new section 139(1) applies to exploration permits granted before commencement as well as those granted after commencement. This will allow the Minister to amend the relinquishment schedule of existing exploration permits, for example as a result of an application made to vary the relinquishment requirements.

**New section 862 Application for extension of last renewed term of exploration permit**

New section 862 provides that a holder of an exploration permit may apply under new section 147CA for an extension of the last renewed term of the permit even if the exploration permit was granted before commencement.

### **New section 863 Power to impose, remove or vary condition of exploration permit**

New section 863 provides that the new power under section 141(7) to impose, vary or remove a condition of an exploration permit applies in relation to exploration permits granted before commencement as well as those granted after commencement. This will allow the Minister to amend the work programs of existing exploration permits to benefit from the Resource Authority amendments, for example by converting the existing work program to an outcomes-based work program.

### **New section 864 Continuation of exploration permit if application for other tenure**

New section 864 provides that the continuation provision under new section 148 only applies for the final term of an exploration permit.

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

*Clause 274* makes a number of amendments to the Dictionary to reflect changes made by this Bill. Current definitions for 'protected area' and 'work program' are omitted and new definitions for *exceptional event*, *exploration project*, *work program*, *work program (activities-based)* and *work program (outcomes-based)* are inserted.

The definition of 'protected area' is omitted because it duplicates the protections in sections 27 and 70QA of the *Nature Conservation Act 1992*. The application of these sections will be clarified in new section 3BB, inserted by this Bill. The definition of 'land' is also amended as a consequence. Amendments are also made to cross-references in the Schedule.

## **Part 2 Amendment of Petroleum and Gas (Production and Safety) Act 2004**

### **Act amended**

*Clause 275* states that this part amends the *Petroleum and Gas (Production and Safety) Act 2004*. It also notes that other amendments to this Act can be found in chapter 4, part 8 of the Bill.

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

*Clause 276* creates a requirement for a call for tenders to state the term of the proposed authority. This amendment ensures that tenderers have all of the information required to prepare a tender for an authority to prospect. Section references are also renumbered to reflect these changes.

### **Amendment of s 41 (Deciding whether to grant authority to prospect)**

*Clause 277* provides a power for the Minister to impose appropriate conditions on the authority, in addition to those conditions listed in section 42.

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

*Clause 278* removes the relinquishment requirements from section 42 so that the new relinquishment requirements may be consolidated in section 66.

## **Insertion of new s 42A**

*Clause 279* inserts a new section to clarify the power the Minister has to amend conditions of an authority to prospect.

### **New section 42A Amendment of conditions by Minister if exceptional event**

New section 42A allows the Minister to impose, vary or remove a condition of an authority to prospect when an exceptional event has impacted on the resource exploration industry, the Minister may use this power to amend the conditions of an authority without application from the holder of the authority. This allows the Minister to amend a large number of authorities in an administratively simple way in the event of a natural disaster, financial crisis or other exceptional event. The ordinary judicial review procedures will apply to this decision making power.

### **Replacement of ch 2, pt 1, div 3, sdiv 1 (Function and purpose of work program)**

*Clause 280* inserts a new subdivision into chapter 2, part 1, division 3 to clarify different types of work programs for an authority to prospect under this Act.

#### **Subdivision 1      Types of work program**

### **New section 45 Types of work program for authority to prospect**

New section 45 introduces two types of work programs; activities-based or outcomes-based. The activities-based work program is similar to the pre-amended Act, with the exception of the need to provide a year by year description of work.

An outcomes-based work program is a document containing details about the following four components: the outcomes proposed; the strategy for pursuing the outcomes; the data and information to be collected in relation to the existence of petroleum and gas during the term and the estimated human, technical and financial resources proposed to be committed during the term of the exploration permit.

An outcomes-based work program allows the authority holder flexibility in planning and conducting their exploration program in pursuit of the exploration outcomes.

For example, a proposed outcome could be to ascertain, within a specified time period during the term of the permit, to the extent possible, the contingent resource within all or part of the area of the authority occurring in a specified geological area, basin, formation, geological period etc., within a specified estimated depth range.

The strategy for pursuing the outcomes could include an in-depth rationale that demonstrates that the applicant understands the approach required in pursuit of the outcomes to the best of their knowledge.

Rather than activities to be conducted to achieve the outcomes, the department is seeking to understand the type of information and data the holder will collect during the exploration program. This will assist in the assessment and consideration of whether the work program is appropriate for the area.

Since new authorities to prospect are issued through competitive processes, the default requirement through a tender will be an activities-based work program. However, the Minister will have discretion to change the type of work program in a competitive process. For example, the call for tender may specify that an outcomes-based work program will be considered for a particular process, perhaps where little is known about the prospectivity of an area.

#### **Amendment of s 46 (Operation of subdivision 2)**

Clause 281 replaces the words *proposed program* with *proposed initial work program* for clarity.

#### **Amendment of s 47 (Program period)**

Clause 282 replaces the words *proposed program* with *proposed initial work program* for clarity.

#### **Replacement of s 48 (General requirements)**

Clause 283 replaces current section 48 with a new section.

#### **New section 48 General requirements**

New section 48 provides that the proposed initial work program must be the type specified under section 35(2)(e) and provides what the relevant work program must include.

#### **Replacement of s 51 (General requirements)**

Clause 284 replaces current section 51 with a new section.

#### **New section 51 General requirements**

New section 51 provides that the proposed later work program for an authority to prospect may be either an activities-based or outcomes-based work program. The new section also stipulates what the later work program must state and include.

#### **Amendment of s 52 (Program period)**

Clause 285 replaces the words *proposed program* with *proposed later work program* for clarity and extends the term of the rest or renewed term of the authority from 4 years to 6 years.

#### **Amendment of s 53 (Implementation of evaluation program for potential commercial area)**

Clause 286 replaces the words *proposed program* with *proposed later work program* for clarity.

#### **Amendment of s 56 (Authority taken to have work program until decision on whether to approve proposed work program)**

Clause 287 replaces the words *proposed program* with *proposed later work program* in the heading and section for clarity.

### **Amendment of s 57 (Deciding whether to approve proposed program)**

*Clause 288* replaces the words *proposed program* with *proposed later work program* for clarity.

### **Amendment of s 59 (Restrictions on amending work program)**

*Clause 289* amends the circumstances in which a work program for an authority to prospect may be amended. If the application is to extend the period of the work program for the authority, the amendment may be granted in one of two circumstances: the amendment is needed for a reason beyond the holder's control; or the holder recently acquired a share in the authority of 50% or more. Restrictions and conditions apply in both circumstances.

### **Amendment of s 62 (Deciding application)**

*Clause 290* amends the decision process for an amendment of a work program to remove references to multiple relinquishment days, as there will only be one relinquishment day for an authority to prospect, as provided for in the new section 64A.

### **Omission of ch 2, pt 1, div 3, sdiv 7 (Special statutory extension of work programs)**

*Clause 291* omits sections 63A to 63E, which granted a two year extension for the work programs and relinquishment requirements for various authorities to prospect in 2014. Those sections are now inoperative and redundant.

### **Insertion of new s 64A**

*Clause 292* inserts a new definition for relinquishment day.

### **New section 64A What is the *relinquishment day***

New section 64A defines the relinquishment day as the day before the sixth anniversary of the day the authority took effect (ie. the end of year 6). This amendment effectively reduces the number of relinquishment due dates from two to one, over a 12 year period. This amendment to relinquishment requirements will provide more time for early exploration prior to relinquishment of area, as well as reducing the administrative burden of relinquishment notices and special amendment of relinquishment applications.

### **Amendment of s 65 (Standard relinquishment condition)**

*Clause 293* amends a reference to relinquishment days to reflect that there will only be one relinquishment day which is sixth anniversary of the day the authority took effect, in accordance with new section 64A. This clause clarifies that if the relinquishment day is deferred, the relinquishment condition is taken to have been deferred.



**Amendment of s 66 (Part usually required to be relinquished)**

*Clause 294* changes the relinquishment requirement from 8.33 per cent of the area of the authority each year (in practice, 33.33 per cent by the end of year 4 and 33.33 per cent by the end of year 8, totalling 66.66 per cent), to 50 per cent by the relinquishment day.

This amendment, in conjunction with the single relinquishment day under new s 64A, reduces administrative burden and provides more time for exploration prior to relinquishment. These proposed amendments, in conjunction with the proposed amendments to section 107A, will reduce the current administrative burden of special amendment applications in relation to relinquishment requirements.

**Amendment of s 68 (Adjustments for sub-blocks that cannot be counted)**

*Clause 295* amends a reference to relinquishment days to reflect that there will only be one relinquishment day which is sixth anniversary of the day the authority took effect, as provided for in the new section 64A.

**Amendment of s 70 (Relinquishment must be by blocks)**

*Clause 296* removes the current requirement to relinquish areas of the authority by whole blocks, and creates greater flexibility by allowing relinquishment by sub-blocks keeping the minimum relinquishment requirement of one block. This amendment will result in a fairer relinquishment requirement for small authorities, because it removes the need to round the relinquishment requirement up to the nearest whole block. The blocks or sub-blocks to be relinquished must be contiguous, per status quo.

**Replacement of s 78 (Compliance with exploration activities in work program)**

*Clause 297* removes references to 'activities' in relation to compliance with the work program, because the work program may be a work program (outcomes-based), which would not mandate specific activities.

**Amendment of s 84 (Deciding application)**

*Clause 298* allows the Minister to request a different type of work program from the applicant before deciding an application for renewal of an authority to prospect. For example, if the applicant lodges a proposed work program (activities-based) but the Minister considers a work program (outcomes-based) would be more appropriate, then the Minister may request that the applicant lodges a proposed work program (outcomes-based) for consideration prior to the decision.

**Amendment of s 85 (Provisions and terms of renewed authority)**

*Clause 299* amends the relinquishment requirements of a renewed authority to align with the new relinquishment requirements in section 66 as amended.

**Amendment of s 89 (Applying for potential commercial area)**

*Clause 300* clarifies that although a potential commercial area may be made up of multiple non-contiguous areas, those areas must all be within the same authority to prospect.

### **Amendment of s 90 (Deciding potential commercial area application)**

*Clause 301* removes the 75 sub-block area limit for a potential commercial area. This amendment will reduce administrative duplication by removing the need for authority holders to apply for multiple potential commercial areas over the same authority at the same time. The requirement for ATP-related applications to justify the proposed area is retained in section 118(c)(i).

### **Amendment of s 105 (Deciding application)**

*Clause 302* amends the decision process for an amendment of a work program to remove references to multiple relinquishment days, as there will only be one relinquishment day for an authority to prospect, as provided for in the new section 64A.

### **Insertion of new ch 2, pt 1, div 8, sdiv 2A**

*Clause 303* inserts provisions for the amalgamation of potential commercial areas.

### **Subdivision 2A Amalgamating potential commercial areas**

#### **New section 107AA Applying to amalgamate**

New section 107AA allows the holder of an authority to prospect to apply for amalgamation of two or more potential commercial areas over the authority to prospect, provided the holder has complied with the provisions of the Act.

#### **New section 107AB Requirements for making application**

New section 107AB sets out the requirements for an application for amalgamation of potential commercial areas, including the approved form, a commercial viability report and an evaluation program.

#### **New section 107AC Deciding application**

New section 107AC allows the Minister to declare the amalgamated potential commercial areas only if satisfied the area is no more than needed to cover the maximum extent of a natural underground reservoir, and if the proposed evaluation program is approved and the holder continues to satisfy the capability criteria, among other requirements.

#### **New section 107AD Term of declaration**

New section 107AD provides that the term of the amalgamated potential commercial area is 15 years from the making of the most recent of the declarations that have been replaced.

#### **New section 107AE Steps after deciding application**

New section 107AE requires the Minister to give the applicant notice of the decision.

### **Amendment of s 107A (Application for special amendment)**

*Clause 304* provides that an authority holder may apply for special amendment of the conditions of the authority only in exceptional events and for an exploration project. Exceptional events are events affecting the whole resource exploration industry, such as natural disasters or a global financial crisis.

The supporting operational policy provides that special amendment of a condition (a work program condition or relinquishment requirement) of an authority to prospect in an exploration project cannot be used to reduce or delay the requirements, it can only relocate the requirements to other authorities within the exploration project.

For example, if an authority to prospect in an exploration project is required to be reduced by 100 sub-blocks by 30 June but the permit holder wants to hold that land for longer, then the permit holder may apply under section 107A to reduce the area of another authority in the same exploration project instead.

If the special amendment is granted, the relinquishment requirement for the first authority will be amended to zero as at 30 June, but the relinquishment requirements of one or more other authorities nominated by the applicant will be increased accordingly, so that 100 sub-blocks are still relinquished from the exploration project by 30 June, in addition to the sub-blocks the other authorities in the exploration project would have otherwise relinquished.

This amendment will improve turn-over of exploration land and reduce the administrative burden of special amendment applications requiring assessment. The effects are ameliorated by: amendments to section 66 reducing the relinquishment requirement; new section 64A delaying the relinquishment day; and amendments to s 48(1)(a) providing for outcomes-based work programs that do not mandate specific activities and therefore will not require amendment under section 107A.

### **Amendment of s 107D (Approval of special amendment)**

*Clause 305* supports the amendment of section 107A by clarifying that approval of a special amendment of condition of an authority must be justified by exceptional events or an exploration project. Exceptional events are events affecting the whole resource exploration industry, such as natural disasters or a global financial crisis.

### **Amendment of s 168 (Area of petroleum lease)**

*Clause 306* removes the 75 sub-block area limit of a petroleum lease to remove the need for authority holders to apply for multiple petroleum leases within the same operational area at the same time. This amendment will reduce administrative duplication. ATP-related applications for petroleum leases will still be required under s 118(c)(i) to justify the proposed area of the lease.

## **Insertion of new ch 2, pt 2, div 7, sdiv 1A**

*Clause 307* inserts a new section providing an application and decision process for the amalgamation of multiple petroleum leases held by the same holders. Amalgamation of petroleum leases may reduce the administrative burden, because the amalgamated petroleum lease will report on a single development plan.

### **Subdivision 1A Amalgamating particular petroleum leases**

#### **New section 170A Application of subdivision**

New section 170A clarifies that the petroleum lease amalgamation provisions do not apply to petroleum leases granted under the *Petroleum Act 1923*.

#### **New section 170B Applying to amalgamate**

This new section provides that an amalgamation application can only be made if the holders of the amalgamated lease will be the same as the holders of the individual leases, all holders consent to the proposed amalgamation, and all holders have complied with the provisions of the Act and paid all rents, royalties, securities, civil penalties and interest payable.

#### **New section 170C Requirements for making an application**

New section 170C lists the requirements for making an application, which are the approved form, a proposed later development plan for the amalgamated lease, and a fee.

#### **New section 170D Deciding application**

New section 170D lists the criteria the Minister must be satisfied of before granting the amalgamated lease. The Minister may grant or refuse the application and may require payment of a security as a condition of granting the amalgamated lease. The petroleum leases proposed for amalgamation are not required to be contiguous, but the proposed development plan must justify how the areas will be utilised in a single operation.

#### **New section 170E Provisions of amalgamated lease**

New section 170E ensures that the mandatory commencement date of a petroleum lease cannot be delayed by applying for amalgamation.

#### **New section 170F Steps after deciding application**

New section 170F requires the Minister to give the applicant and any other holder of the proposed amalgamated lease notice of the decision.

#### **Amendment of 2 173 (Deciding application)**

*Clause 308* amends the decision process for an amendment of a work program to remove references to multiple relinquishment days, as there will only be one relinquishment day for an authority to prospect, as provided for in the new section 64A.

#### **Amendment of s 332 (Right to apply for petroleum lease)**

*Clause 309* amends a cross reference in section 332.

**Amendment of s 352 (Right to apply for petroleum lease)**

*Clause 310* amends a cross reference in section 352.

**Insertion of new ch 15, pt 24**

*Clause 311* inserts transitional provisions in relation to the Resource Authority amendments in this Bill.

**Part 24 Transitional provisions for Natural Resources and Other Legislation Amendment Act 2019**

**New section 1002 Definition for part**

New section 1002 defines a new provision as a provision that is in force from commencement.

**New section 1003 Power to impose, vary or remove condition of authority to prospect**

New section 1003 ensures that the power to impose, remove or vary a condition of an authority to prospect under new section 42A applies to authorities granted before or after the commencement of the amending provisions.

**New section 1004 Relinquishment requirements**

New section 1004 provides that authorities to prospect granted prior to the commencement of the amending provisions are not affected by the amendments to the relinquishment requirements. Existing authorities to prospect will continue to relinquish a minimum of 8.33% per annum on their relinquishment days as set out in the authority, but typically at the end of year 4 and the end of year 8 of the authority.

**New section 1006 Existing applications for renewal of authority to prospect**

New section 1006 relates to applications for renewal of an authority to prospect lodged prior to the commencement of the amending provisions. If an application does not include all of the information required under new section 45 for a proposed paster work program, the applicant may, within 3 months after commencement, provide the additional information. For example, the applicant may provide a proposed work program (outcomes-based) for consideration. If the applicant chooses not to lodge additional information, the Minister must decide whether to approve the proposed later work program originally provided.

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

*Clause 312* amends Schedule 1 to reflect that a refusal to declare an amalgamated potential commercial area for an authority to prospect, or a refusal to grant an amalgamated lease, is a decision subject to appeal, and not a decision subject to review.

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

*Clause 313* inserts definitions for ‘amalgamated lease’, ‘amalgamated potential commercial area’, ‘exceptional event’, ‘individual lease’, ‘relinquishment day’, ‘work program’, ‘work program (activities-based)’ and ‘work program (outcomes-based)’.

## **Chapter 6 Amendments of water legislation**

### **Part 1 Amendment of the South-East Queensland Water (Distribution and Retail Restructuring) Act 2009**

#### **Act amended**

*Clause 314* states that this part amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

#### **Amendment of s 53AQ (Provision about service areas— after water netserv plan is in effect)**

*Clause 315* omits subsection (2) and (3) and inserts new subsections (2) and (3) into section 53AQ.

New subsection 53AQ(2) provides that for a relevant provision, the distributor-retailer’s connection area is taken to be a service area, for both a water service and a sewerage service, and the distributor-retailer is taken to be the service provider for the distributor-retailer’s connection area within the meaning of the *Water Supply Safety and Reliability Act 2008* (Water Supply Act).

New subsection 53AQ(3) provides that a relevant provision means the following provisions of the Water Supply Act:

- (a) section 161(9);
- (b) chapter 2, part 5, divisions 3 and 5; and
- (c) the definition for ‘retail water service’ in schedule 3.

#### **Amendment of s 92DB (Provision about service areas— after water netserv plan is in effect)**

*Clause 316* omits subsection (2) and (3) and inserts new subsections (2), (3) and (4) into section 92DB.

New subsection 92DB(2) provides that new subsection 161(2) does not apply to a withdrawn council. This is because withdrawn councils have a connection area established under their water netserv plan (instead of a declared service area under the Water Supply Act).

Subsection 161(2) provides that a local government must declare a service area for its water service and sewerage service.

New subsection 92DB(3) provides that for a relevant provision, the withdrawn council's connection area is taken to be a service area, for both a water service and a sewerage service, and the withdrawn council is taken to be the service provider for the withdrawn council's connection area within the meaning of the Water Supply Act.

New subsection 92DB(4) provides that a relevant provision means the following provisions of the Water Supply Act:

- (a) section 161(9);
- (b) chapter 2, part 5, divisions 3 to 5; and
- (c) the definition for 'retail water service' in schedule 3.

#### **Amendment of s 99BRCK (Requirements for Infrastructure charges notice)**

*Clause 317* amends section 99BRCK to require an infrastructure charges notice to include the date of the notice, any review or appeal rights and to include or be accompanied by any other information prescribed by regulation.

#### **Amendment of ch 6, hdg (Transitional provisions)**

*Clause 318* amends the heading of chapter 6 to include "validation" to recognise the new validation provisions to be inserted into Part 12.

#### **Insertion of new ch 6, pt 12**

*Clause 319* inserts a new Part 12 to include the validation provision for the *Natural Resources and Other Legislation Amendment Act 2019*.

#### **New section 152 Validation provision for particular infrastructure changes notices**

New section 152 provides for validation of infrastructure charges notices which have been issued without reasons for the infrastructure charges decision.

### **Part 2      Amendment of South East Queensland Water (Restructuring) Act 2007**

*Clause 320* states that this part amends *the South East Queensland Water (Restructuring) Act 2007*.

#### **Amendment of s 13 (Delegation)**

*Clause 321* inserts a new subsection into section 13. The new subsection provides that a person, who has been delegated a function under subsection 13(1), may subdelegate the function to an appropriately qualified employee.

#### **Amendment of s 36 (Quarterly reports)**

*Clause 322* amends section 36 to require a quarterly report to be given to the responsible Ministers within one month (instead of six weeks) after the end of the quarter.

### **Replacement of s 56 (Meaning of *community service obligations*)**

*Clause 323* amends section 56 to broaden the meaning of community service obligations for the Queensland Bulk Water Supply Authority (i.e. Seqwater).

### **New section 56 Meaning of community service obligations**

New section 56 provides that the new meaning of 'community service obligations' now includes activities that the Authority has a statutory duty to perform under another Act and the board has established, to the satisfaction of the responsible Ministers, that the activities are not in the Authority's commercial interest to perform. The new meaning of 'community service obligations' includes activities that are stated in the operational plan as community service obligations of the Authority.

## **Part 3 Amendment of Water Act 2000**

### **Act Amended**

*Clause 324* states that this part amends the *Water Act 2000* (Water Act).

### **Amendment of s 40 (Chief executive may release unallocated water)**

*Clause 325* inserts a note to section 40 of the Water Act to clarify that applications may not be made for unallocated water unless the application is part of a process under this section.

### **Amendment of s 106 (What is a water licence)**

*Clause 326* amends section 106(2) of the Water Act, by removing the word 'generally' and specifying that licences must attach to land, unless the licensee is a prescribed entity or the licence is an associated water license. The term 'generally' has led to recent challenges about whether water licences have to attach to land, even when the licensee is not a prescribed entity. The amendment will put this issue beyond doubt.

This clause also clarifies what may happen to a licence unless the Act provides otherwise. A water licence may be amended, renewed, reinstated, relocated, transferred, amalgamated, subdivided, surrendered, cancelled or repealed. A water licence granted under s40A however, cannot be renewed, reinstated, relocated, amalgamated or subdivided.

### **Replacement of s 109 (When application may not be made)**

*Clause 327* replaces current section 109 with a new section.

### **New section 109 When application may not be made**

New section 109 clarifies that an application for a water licence in relation to the release of unallocated water may not be made outside of release processes that are specified in the regulation. The Water Regulation 2016 (Part 3, Subdivision 2, section 16) prescribes the processes for releasing unallocated water by public auction, tender, fixed price sale, or grant.



There have been recent attempts to submit applications outside of these processes for accessing unallocated water, and this has created an administrative burden and unrealistic water user expectation about the release of unallocated water.

#### **Amendment of s 112 (Public notice of application for water licence)**

*Clause 328* makes a minor correction to section 112(4)(b) of the Water Act. The section requires applicants to publish a notice stating where copies of their application may be inspected. The amendment makes it clear that an applicant may be required to indicate copies are available on the department's website or on the Queensland Government business and industry portal for inspection.

#### **Amendment of s 134 (Amendment of water licence after show cause process)**

*Clause 329* amends section 134, which makes provisions for the chief executive to amend a water licence after a show cause process. Section 134(2)(d) specifies that the amendment must not increase or change the interference with water under the water licence. The current inclusion of the words 'or change' precludes changes that are beneficial in nature, such as lowering the height of storage that interferes with water. In these situations, a person must apply through section 130, and is subject to additional costs and delays due to statutory timeframes. The amendment removes the words 'or change' from section 134(2)-(d) to enable the chief executive to amend licences under provisions of this section where the change is beneficial.

#### **Amendment of s 241 (Referral panels)**

*Clause 330* amends section 241(1)(c) of the Water Act for clarity by directly referencing the sections under which the chief executive may establish a referral panel to advise on the proposed granting of water licences (s116), the proposed amendment of water licences (s133) and the proposed granting of water allocations (s147).

#### **Replacement of ch 4, pt 4, div 1 (Appointment etc. of board of directors)**

*Clause 331* replaces chapter 4, part 4, division 1 and modernises and clarifies provisions in relation to the appointment of directors to the boards of category 1 and category 2 water authority boards.

Substantive changes relate to category 2 water authority boards only.

#### **Division 1 Appointment and related matters**

##### **New section 597 Board of directors**

New section 597 provides that each water authority has a board of directors.

##### **New section 598 Role of board**

New section 598 clarifies the role of the board of directors of a water authority.

##### **New section 599 Number of directors**

New section 599 provides that the board of a water authority consists of the number of directors for the authority notified by the chief executive in a gazette notice.

### **New section 600 Appointment**

New section 600 provides for appointment of directors of a category 1 and category 2 water authority.

The Governor in Council may appoint an appropriately qualified person as a director of a category 1 water authority. The Minister may appoint an appropriately qualified person as a director of a category 2 water authority. In recommending a person for appointment as a director for category 1 water authorities or for category 2 water authorities, the Minister must have regard to providing balanced gender representation in the boards of water authorities and any other matters the Minister considers relevant.

Further, for category 2 water authorities, the Minister must have regard to the names of suitable candidates, if any, given to the Minister under s609.

### **New section 601 Chairperson**

New section 601 provides for the selection of the chairperson of the board of a category 1 and category 2 water authority. It also specifies the length of time the chairperson holds office.

### **New section 602 Disqualification as director**

New section 602 sets out the events of automatic disqualification from being appointed or continuing as a director for a water authority.

### **New section 603 Criminal history report**

New section 603 provides for the Minister to obtain a written report about the criminal history of a person to decide if the person is disqualified from being appointed or continuing as a director for a water authority.

### **New section 604 Term**

New section 604 provides for the term of appointment for a director of a water authority. The stated term is in the director's instrument of appointment and must not be more than 3 years.

A director may be reappointed. Please see section 25 of the *Acts Interpretation Act 1954*. If an Act authorities or requires a person or body to appoint a person to an office the power also includes power to reappoint a person to the office if the person is eligible to be appointed to the office.

A director of category 1 water authority continues holding office after director's term of office ends until the day director's successor is appointed under section 600.

Upon commencement, a director of a category 2 water authority will no longer be able to continue to hold office after director's term of office ends until the director's successor is appointed.

Transitional arrangements require that directors who continue to hold office despite the end of their term under the former section 604(2) immediately before commencement, will continue to hold office until the earlier of the following days:

- the director's successor is appointed under new section 600
- the Minister appoints an acting director to the office
- 9 months after the commencement of the provision

#### **New section 605 Resignation**

New section 605 provides for resignation of a director of a water authority.

#### **New section 606 Removal of director**

New section 606 provides for removal of a director of a water authority.

#### **New section 607 Vacancy in office**

New section 607 provides for when there is a vacancy in the office of a director of a water authority.

#### **New section 608 Acting director**

New section 608 provides for appointment of an acting director.

#### **New section 609 Category 2 water authority board must seek and nominate suitable candidates**

New section 609 provides that the board must seek and nominate suitable candidates for the office of director of a category 2 water authority board.

This provision requires that at least 6 months, but not more than 12 months, before the end of a director's term of office, or within 3 months after the office becomes vacant as described, the board of the authority must seek suitable candidates for the office and give the Minister the names of suitable candidates for the office. In seeking suitable candidates, the board must have regard to providing balanced gender representation in the board. Suitable candidate means an appropriately qualified person suitable for appointment under this division as a director.

The meaning of *appropriately qualified* is contained in *Acts Interpretation Act 1954*. For appointment to an office, appropriately qualified means having the qualifications, experience or standing appropriate to perform the functions of the office.

Examples of having the qualifications, experience or standing appropriate to perform the functions of the office as a director of a category 2 water authority include persons with relevant skills and experience in financial and business management or the water activities provided by a category 2 water authority.

The requirements under section 609(2) do not apply to those category 2 water authority boards that the Minister gives a notice stating the Minister does not expect to appoint a person to the office of the director because the water authority may be amalgamated, or dissolved, or its functions transferred to a local government under part 7.

This provision also provides the chief executive with power to require the board of a category 2 water authority to seek suitable candidates in a particular way, including, for example, by asking the authority's ratepayers or another entity to elect or nominate suitable candidates. The chief executive may also require the board of a category 2 water authority to give the Minister, under section 609(2)(b) a stated number of names of suitable candidates. If the chief executive makes a requirement under section 609(4), the chief executive must publish the requirement on the department's website.

#### **New section 609A Removal of all directors of board**

New section 609A provides for removal of all the directors of a water authority's board from office.

#### **New section 609B Administration of water authority if no board**

New section 609B provides for the appointment of persons to administer a water authority.

#### **Amendment of s 782 (Compliance with compliance notice)**

*Clause 332* amends section 782 by increasing the maximum penalty for failure to comply with a compliance notice. Currently, the maximum penalty is equal to the number of penalty units that applies for the offence to which the notice relates. The amendment increases the maximum penalty by a multiplier of 1.5, in order to create a stronger deterrent for non-compliance. For example, if the maximum penalty for an offence is 200 penalty units, the penalty units would then amount to 300.

There will be consequential amendments to the State Penalties Enforcement Regulation 2014 to revise the Penalty Infringement Notices for this offence.

#### **Insertion of new s 808A**

*Clause 333* inserts a new offence provision for the Water Act.

#### **New section 808A Taking water in excess of volume or rate allowed under water entitlement**

New section 808A clarifies that the holder of a water entitlement must not take water in excess of the volume or rate of take stated on their water entitlement. The amendment will strengthen compliance for unlawful take, by making it clear that section 808(1) applies when a person takes or supplies water without authorisation, and section 812 applies when a person contravenes the conditions of their water entitlement, seasonal water assignment notice or water permit.

The amendment introduces a maximum penalty of 1,665 units for the new offence, which is similar to other comparable offences. There will be consequential amendments to the State Penalties Enforcement Regulation 2014 to establish a new Penalty Infringement Notice for the offence.

#### **Replacement of s 816 (Unauthorised water bore activities)**

*Clause 334* replaces current section 816 of the Water Act with a new section.

### **New section 816 Unauthorised water bore drilling activities**

Current section 816 provides for offences for persons carrying out water bore drilling activities who are not 'licenced' or exempt under other legislation.

New section 816 will clarify what constitutes an exempt activity under the *Mineral Resources Act 1989*, and provides a definition for 'water bore drilling activity'.

The clause also amends the maximum penalty to 1,665 penalty units for parity with other comparable offences.

### **Insertion of new s 829**

*Clause 335* introduces a new section 829 into the Water Act.

### **New section 828 Persons taken to have committed particular offences**

New section 829 makes it clear that joint entitlement holders and separate entitlement holders who share a meter are jointly and severally liable, respectively, for ensuring that the water taken under the water entitlement and the taking of water through the works is lawful and can be accounted for. The new provision will provide clarity in situations where it would be difficult or not possible for the department to identify the actual person(s) responsible for unlawful take.

The section includes a reasonable excuse provision. Under section 829(4)(a), a person who is the holder of a water entitlement (*person A*) is not liable for an offence constituted by the taking of water if another person (*person B*), voluntarily makes a written admission stating that the offence was committed by the other person (*person B*). The other person (*person B*), under section 829(4)(a), may include, but is not limited to, a joint holder of the water entitlement.

Section 829(4) will also apply, provided the chief executive, under section 829(4)(b), is reasonably satisfied that a person is not liable for an offence constituted by the taking of water. Supporting information would include that the person demonstrates to the chief executive's satisfaction that the water was taken by another person, and the person was not associated with the other person and that the person took all reasonable steps to prevent the water being taken. Supporting evidence could include records of water usage including times and estimates of take, and any agreements between the other parties as to how water use will be managed by each party.

### **Amendment of s 1014 (Regulation-making power)**

*Clause 336* amends section 1014 by inserting a new head of power to support additional processes for ensuring faults in meters are identified and repaired. For example, this provision would allow the regulation to set out a process for the chief executive to issue a direction to the holder of a metered entitlement, or the owner of works, to inspect a meter and confirm whether or not there is a fault, or to fix a fault with a meter that the chief executive is aware of.

### **Amendment of s 1235 (Term of existing water licence)**

Clause 337 amends section 1235 which is a transitional provision for the now-repealed section 213A. Section 213A was introduced under the *Land, Water and Other Legislation Act 2013* to extend the term of water licences from 10 years to 99 years. The *Water Reform and Other Legislation Amendment Act 2014* subsequently repealed section 213A, and introduced transitional provision section 1235 for existing licences. This amendment inserts the word “former” in front of references to section 213A contained in section 1235, to make clear that section 213A is now repealed.

### **Insertion of new ch 9, pt 12**

Clause 338 provides transitional provisions for the Water Act.

## **Part 12 Transitional provisions for Natural Resources and Other Legislation Amendment Act 2019**

### **Division 1 Provisions relating to water licences**

#### **New section 1291 Continued effect of former s 213A**

New section 1291 makes it clear that the former section 213A continues to be in effect.

### **Division 2 Provisions relating to boards of water authorities**

#### **New section 1292 Definitions for division**

New section 1292 provides the definitions for the division. It defines the term ‘former’ for a provision as in force before commencement, and the term ‘new’ for a provision as in force from the commencement.

#### **New section 1293 Number of directors comprising boards of water authorities**

New section 1293 provides that a notice published in the gazette by the chief executive under former section 598(1) that states the number of directors comprising a water authority’s board that is in force immediately before the commencement is taken to be a notice published in the gazette under new section 599.

#### **New section 1294 Directors for water authorities**

New section 1294 provides that if immediately before the commencement, a person held office under former section 600 as a director of a water, the person is taken to hold office under new section 600.

#### **New section 1295 Chairpersons of boards of water authorities**

New section 1295 provides if, immediately before the commencement, a person held office under former section 601 as a chairperson of a board of a water authority the person is taken to hold office under new section 601.

**New section 1296 Continuation of holding of office of particular directors**

New section 1296 requires a director of a category 2 water authority who continues to hold office despite the end of their term under the former section 604(2) immediately before commencement, will continue to hold office until the earlier of the following days:

- the director's successor is appointed under new section 600
- the Minister appoints an acting director to the office
- 9 months after the commencement of the provision

The section requires a director of a category 1 water authority who continues to hold office despite the end of their term under the former section 604(2) immediately before commencement, will continue to hold office until the director's successor is appointed under new section 600.

For a category 2 water authority, the Minister may appoint an acting director to the office under section 608 as if there were a vacancy in the office.

**New section 1297 Removal of director for category 2 water authority by Minister even if appointed by Governor in Council**

New section 1297 provides that the Minister may remove a director for a category 2 water authority under new sections 606 or 609A even if the director was appointed by the Governor in Council.

**New section 1298 Vacancy in office if director nominated by local government**

New section 1298 provides that a reference in new section 607 to a nominee of a local government includes a person nominated by a local government under former section 598(1)(b) or 598A as a director for a water authority.

**New section 1299 Nomination or election of directors for water authority**

New section 1299 provides that if anything had been done or begun, under former section 598 or 598A in relation to the election or nomination of a director for a category 2 water authority and immediately before the commencement, the Minister had not appointed under former section 600(2), a person as director in relation to the election or nomination, then despite section 20 of the *Acts Interpretation Act 1954*, any requirement to continue anything related to appoint a director who is elected or nominated does not apply. If before commencement, the Minister had been given a name of a person elected or nominated as a director under former section 598 or 598A and the person is appropriately qualified under the new section 600(2), the name of the person is taken to have been given to the Minister under the new section 609 and the person may be appointed under the new s 600(2).

### **New section 1300 Notice in gazette of proposed change in composition of board of water authority**

New section 1300 provides that if before commencement the chief executive published, under former section 598A(2), a notice in the gazette of a proposed change in the composition of the board of a water authority; and immediately before the commencement, the chief executive had not published, under former section 598A(4), a notice in the gazette relating to the notice published under the former 598, then despite section 20 of the *Acts Interpretation Act 1954*, the requirements under the former section 598A(4) do not apply.

### **Amendment of sch 4 (Dictionary)**

Clause 339 provides for modernisation of the definition of *criminal history* and also includes a definition for *spent conviction*. It includes minor corrections to the definitions for properly made submission, submitter and water sharing rules. A definition for Queensland Government business and industry portal has been inserted.

## **Part 4 Amendment of the Water Supply (Safety and Reliability) Act 2008**

### **Act amended**

Clause 340 states that this part amends the *Water Supply (Safety and Reliability) Act 2008*.

### **Amendment of s 30A (Ownership and operation of service provider's infrastructure that is part of land)**

Clause 341 amends section 30A to remove subsection (3), which provided that a service provider's infrastructure cannot be:

- levied or seized in execution; or
- sold in exercise of a power of sale or otherwise disposed of by a process under a law of a State taken against the holder or the owner of the land.

The intent of this amendment is to ensure the provision is consistent with section 53BA of the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

### **Replacement of s 160 (Application of pt 5)**

Clause 342 replaces current section 160 with a new section to clarify definitions for the part.

### **New section 160 Definition for pt 5**

New section 160 inserts the definition of service provider for part 5. In this part, a service provider means an entity, declared under section 161 to be the service provider of the service in the area. A notation reference has also been included to sections 53AQ and 92DB within the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.



### **Replacement of s 161 (Declaration of service area)**

*Clause 343* replaces current section 161 with a new section.

### **New section 161 Declaration of service area**

New section 161 *provides that*:

- if a local government, or local government entity, supplies a reticulated water service or a sewerage service in all or part of the local government area for the local government;
- the local government must, by resolution, declare:
  - (i). the relevant area to be a service area for the reticulated water service or a sewerage service; and
  - (ii). the local government, or a local government entity, to be the service provider for the service area.

If a local government is required to make a declaration, then it must be made within 1 year from when the services were first supplied. Transitional provisions are provided in section 676 which apply if a local government or local government entity supplied a service before the commencement.

The local government must not amend a service area declaration without written agreement from the declared service provider. However, written agreement is not required if the local government or a local government entity is the declared service provider for the service area.

Only the service provider for a service area may supply the retail water service or sewerage service in the service area. The local government may declare a service area for another service provider if there is not already a declaration.

### **Amendment of s 162 (Notice of declaration of service area)**

*Clause 344* inserts a new subsection (c) into section 162 which provides that if a local government makes a declaration or amends a declaration under subsection 161, the local government must provide a copy of the notice to the regulator.

### **Amendment of s 167 (Owner may ask for connection to service provider's infrastructure)**

*Clause 345* inserts new subsection (4) into section 167. This subsection clarifies that this section does not apply to a service provider that is a distributor-retailer.

### **Amendment of s 168 (Notice requiring connection to registered service)**

*Clause 346* inserts new subsection (5) into section 168. This subsection clarifies that this section does not apply to a service provider that is a distributor-retailer.

### **Amendment of s 301 (Making declaration)**

*Clause 347* omits subsection (2)(c) from section 301.

Subsection 301(2)(c) required the regulator to declare a recycled water scheme to be a critical recycled water scheme if, under the scheme, at least 5ML of recycled water a day is supplied, or proposed to be supplied, for use in electricity generation.

Omitting subsection 301(2)(c) means that the regulator will not be required to declare these schemes to be a critical recycled water scheme. However, the regulator may still declare such a scheme under subsection (1) to be a critical recycled water scheme.

### **Amendment of s 352K (Approval of plan)**

*Clause 348* amends subsection (3) in section 352K.

If within 30 business days after the emergency action plan is given to the chief executive for approval under section 352F or 352S, and the chief executive has not decided to approve, or refused to approve the plan, the plan is deemed to be approved under s 352K(4).

### **Amendment of s 352Q (Amending plan by agreement)**

*Clause 349* inserts new subsection (1A) which provides that the owner may, within 10 business days after a change in ownership of the dam, ask the chief executive to amend the approved emergency action plan to record a change in ownership of the dam, as well as other necessary changes to the plan required because of the change in ownership.

Subsection (4) is amended to provide that the chief executive is taken to have approved the amendment if the chief executive has not decided to approve, or refuse to approve the amendment within 10 business days after the request is made.

### **Amendment of s 352S (Renewal of plan)**

*Clause 350* amends the timeframe for the renewal of an emergency action plan from one month to two months before the end of the approval period for the plan. It inserts new subsection 352S(3) which states that the chief executive must decide to approve or refuse to approve the new emergency action plan under subdivision 4.

### **Replacement of s 366 (Sections 366–369 not used)**

*Clause 351* omits and inserts a new section 366, which applies if there is a change in ownership of a referable dam or a dam that has been failure impact assessed under this part, and of which a further failure impact assessment is required to be completed under subsection 345(2)(b).

The former owner of the dam must, within 10 business days after the change in ownership of the dam, give the chief executive notice of the change. Under subsection 366(3) the notice must state:

- (a) the name of the dam; and
- (b) the date of the change in ownership; and
- (c) the real property description of the land on which the dam is situated; and

- (d) the contact details for the new owner, including, for example, the new owner's name and address; and
- (e) if the new owner is a corporation
  - a. the new owner's ABN or ACN; and
  - b. the name of the new owner's chief executive officer (however described).

Subsection 366(4) provides that the former owner of the dam must ensure all dam safety documentation is provided to the new owner of the dam within 10 business days after the change in ownership of the dam.

**New section 367 Sections 367-369 not used**

New section 367 provides that sections 367 to 369 are not used.

**Amendment of s 390 (Minister may declare temporary full supply level)**

*Clause 352* amends s 390(4)(b)(ii) to increase the time before which a declaration ceases to have effect from six months to one year. Accordingly, a declaration under this section ceases to have effect on the earlier of the following days –

- (a) the day stated in the declaration;
- (b) the day that is 1 year after the declaration is made;
- (c) the day the declaration is revoked.

**Insertion of new ch 10, pt 12**

*Clause 353* inserts a new chapter 10, part 12 into the *Water Supply (Safety and Reliability) Act 2008*.

**Part 12 Transitional provisions for Natural Resources and Other Legislation Amendment Act 2019**

**New section 675 Definition for part**

In this part **former**, in relation to a provision, means as in force from time to time before the commencement of the section in which the term is used.

**New section 676 Application of new s 161**

Section 676 provides a transitional period for the amended section 161(2).

Subsection 676(1) provides that this section applies if a local government (or local government entity) supplied a reticulated water or sewerage service before commencement of this section.

If the local government declared a service area under the former section 161(1), this is taken to be the declared service area under section 161(2) and the local government, or local government entity, is declared to be the service provider for the service in the service area.

If the local government did not declare a service area for the service under the former section 161(1), then the local government must make the declaration in relation to the service under new subsection 161(2) within 1 year of the commencement of this section.

### **New section 677 Continued application of former s 390**

Former s 390(4)(b)(i) continues to apply in relation to a declaration made under that section before the commencement.

### **Amendment of sch 3 (Dictionary)**

*Clause 354* inserts a new definition for ‘local government entity’ service area and ‘service provider’. The definitions of *sewerage service* and *water service* are also amended.

The amended definitions make it clear that the terms sewerage service or water service do not include a service supplied by infrastructure if the owner of the infrastructure is a body corporate for a community titles scheme, under the *Body Corporate and Community Management Act 1997*, however described, established under an Act and the service is only used by the occupants of lots in the scheme.

Examples provided include:

- the *Body Corporate and Community Management Act 1997*
- *Mixed Use Development Act 1993*
- *Sanctuary Cove Resort Act 1985*.

## **Chapter 7 Other amendments**

### **Part 1 Amendment of Electricity Act 1994**

#### **Act amended**

*Clause 355* states that this part amends the *Electricity Act 1994*.

#### **Amendment of s 259A (Regulation may declare a State electricity entity)**

*Clause 356* amends the heading of section 259A by adding the words “for particular purposes”.

#### **Amendment of sch 5 (Dictionary)**

*Clause 357* amends schedule 5, definition of “State electricity entity” by inserting a new paragraph that enables a regulation to be made to declare a government owned corporation (GOC), a GOC subsidiary or a government company, as a State electricity entity if the activities of the entity relate to:

- the electricity industry; or
- the national electricity market within the meaning of the National Electricity (Queensland) Law.

This enables a wider range of entities to be declared a State electricity entity, including, for example, an entity involved in the trading of electricity derivatives.

## **Part 2 Amendment of Right to Information Act 2009**

### **Act amended**

*Clause 358* states that this part amends the *Right to Information Act 2009*.

### **Amendment of sch 2 (Entities to which this Act does not apply)**

*Clause 359* amends schedule 2, part 2 by inserting a new section 13A. This has the effect of ensuring that the *Right to Information Act 2009* does not apply to CleanCo Queensland Limited or its subsidiaries except so far as it relates to CleanCo Queensland Limited's community service obligations.

## **Part 3 Minor and consequential amendments**

### **Legislation amended**

*Clause 360* amends the following legislation.

### **Schedule 1 Legislation amended**

#### ***Water Act 2000***

##### **Section 40A(5), '106(4)'**

*Clause 1* amends section 40A(5) to include the correct reference to section 106(3).

##### **Section 114(7), 'person'—**

*Clause 2* amends section 114 to replace the term person with the term entity.

##### **Section 119(2), 'Land Protection (Pest and Stock Route Management) Act 2002'**

*Clause 3* replaces reference to *Land Protection (Pest and Stock Route Management) Act 2002* in section 119(2) with '*Stock Route Management Act 2002*'.

##### **Section 691(1)(c), '700 or'**

*Clause 4* removes reference to section 700.

##### **Section 784(1)(c), '934'**

*Clause 5* corrects a reference in section 784.

##### **Section 972H(2), 'persons'**

*Clause 6* amends section 972H, subsection (2) to replace the term persons with the term entities.

##### **Section 972H(2) and (3), 'the person'**

*Clause 7* amends section 972H, subsections (2) and (3) to replace the term person with the term entity.

**Section 972H(2)(b), 'a person'**

*Clause 8* amends section 972H, subsection (2)(b) to replace the term person with the term entity.

**Section 1207(4), note**

*Clause 9* includes a note for clarification for section 1207.

**Section 1218(3)**

*Clause 10* inserts a note for clarification for section 1218.

**Schedule 4, definition owner's notice, '37(2)'**

*Clause 11* corrects a reference in schedule 4 in relation to the definition of owner's notice.

**Water Regulation 2016**

*Clause 1* amends Schedule 19 to omit the definition of *Queensland Government business and industry portal* from the Water Regulation 2016.