# Resources Safety and Health Legislation Amendment Bill 2024

# Explanatory Notes

## Short title

The short title of the Bill is the Resources Safety and Health Legislation Amendment Bill 2024 (the Bill).

## Policy objectives and the reasons for them

The principal policy objectives of the Bill are to improve the sector's safety and health performance to reduce the occurrence of fatalities and serious accidents. It facilitates growth in high-reliability organisation (HRO) behaviours within the resources sector, modernises regulatory enforcement powers and ensures resources safety and health legislation is contemporary and effective.

The reforms have been informed by: a review of all fatal accidents in Queensland mines and quarries from 2000 to 2019 (Brady Review); the Queensland Coal Mining Board of Inquiry (Coal Mining Board of Inquiry) finalised in May 2021; and the Queensland Government's mining industry-wide safety resets in 2019 and 2021.

The Bill contains a package of preventative and proactive reforms that amend the *Resources Safety and Health Queensland Act 2020* (RSHQ Act), the *Coal Mining Safety and Health Act 1999* (CMSHA), the *Explosives Act 1999* (Explosives Act), the *Mining and Quarrying Safety and Health Act 1999* (MQSHA), and the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act), collectively referred to as the Resources Safety Acts, to:

- facilitate the growth in HRO behaviours within the resources sector—these amendments place emphasis on reforms that improve the implementation of critical controls by industry, increased competency requirements for critical roles, improved training, continual professional development requirements, information sharing and incident notification and reporting, and strengthening protections for workers against reprisals;
- modernise regulatory enforcement powers—these amendments will enhance existing compliance and enforcement tools under the Resources Safety Acts, such as the directives framework, as well as introduce enforceable undertakings and further court orders;
- provide for more contemporary legislation; and
- enhance the operation and administration of the legislation through a range of minor operational amendments.

### Facilitating the growth in high-reliability organisational (HRO) behaviours

Critical control management

The policy objective is to provide a clearer focus on controls that address the most serious risks (critical controls) and ensure that critical controls are incorporated into the safety and health

management systems (SHMSs) for all coal mines, metalliferous mines and quarries. This will allow audits and inspections to be conducted on critical controls as part of the SHMS, implementing a key recommendation of the Coal Mining Board of Inquiry.

Competency for key safety critical roles

The policy objective is to strengthen the competency of those in particular key safety critical roles at coal mines through requiring the holding of particular certificates of competency issued by the Board of Examiners. This will ensure that workers with sufficient experience, knowledge, and understanding of safety and health obligations are working at the operational level at coal mines in complex and hazardous coal mining operations. It will also increase consistency in relation to competency requirements across the major coal mining states of Queensland and New South Wales.

Continuing professional development (CPD)

The policy objective is to establish a compliance and enforcement framework to ensure that holders of certificates of competency, and site senior executive (SSE) notices maintain current knowledge through the existing CPD practising certificate scheme administered by the Board of Examiners.

Improved data and incident reporting

The policy objective is to improve and optimise reporting of incidents, supported by the new electronic reporting system being administered by Resources Safety and Health Queensland (RSHQ), and to facilitate information sharing.

Information sharing to improve safety

The policy objective is to simplify and clarify the existing legislative provisions regarding publishing safety information. The publication power is not limited to information concerning enforcement action but extends to statistical and factual information about serious accidents and high potential incidents (HPIs) to facilitate information sharing.

## Modern regulatory enforcement

Enforceable undertakings

The policy objective is to introduce enforceable undertakings as an alternative to prosecution, to deliver timely and effective safety and health initiatives that provide tangible benefits for workers, industry, and the community as a whole.

Court orders

The policy objective is to broaden court orders available under the Resources Safety Acts following a prosecution, to enhance deterrence, to allow the court to impose a more proportionate response to non-compliance and to provide enhanced safety outcomes.

Directives

The policy objective is to modernise and streamline the existing operation of directives enabling them to be more specifically tailored to risks.

## Contemporary legislation

Labour hire agencies, contractors and service providers

The policy objective is to address the confusion over the meaning of the terms contractors, labour hire agencies and service providers which has served to dilute the intent of the legislation and allow alternative interpretations. It is intended that safety and health obligations are explicit and can function in the intended manner.

Industrial manslaughter

The policy objective is to clarify the types of "employers" that could be liable for industrial manslaughter. The offence of industrial manslaughter was introduced into the Resources Safety Acts by the *Mineral and Energy Resources and Other Legislation Amendment Act 2020* (MEROLA). The Coal Mining Board of Inquiry has made specific findings and recommendations in relation to the industrial manslaughter offence provisions in the existing coal mining safety and health legislation, which prompt the need to clarify the types of "employers" that could be liable for industrial manslaughter.

Remote operating centres (ROCs)

The policy objective is to clarify the safety and health obligations that apply to managing risks associated with ROCs that are located off the mine site. ROCs monitor the mine and provide information which is used in site based operational decisions at the mine (but do not give instructions, directions or make decisions about mining operations at the mine); or/and who remotely operate plant and equipment located at the mine under the direction of the SSE or other supervisors at the mine and under the SHMS.

Safety critical roles at or near the mine site

The policy objective is to require the SSE of a mine to be located at or near the mine site when performing their duties, unless they are temporarily absent, provided that absence is for not more than 14 days. This follows the finding of the Brady Review that as many as 47 individual fatalities during the review period involved inadequate training of workers; controls meant to prevent harm were ineffective, unenforced or absent with no or inadequate supervision.

A contemporary Board of Examiners

The policy objective is to ensure that the board operates with maximum efficiency.

## Consistency and enhanced operation of Resources Safety Acts

The policy objectives for a number of amendments under the Bill aim to achieve consistency and enhance the operation of the legislation.

## Other amendments

Powers to compel someone to answer questions or provide information under the P&G Act

The policy objective is to implement the Coroners Court of Queensland's recommendation from the findings of inquest into the death of Gareth Leo Dodunski (delivered on 31 August 2023) to ensure that inspectors and authorised officers can effectively investigate incidents,

and require answers or information, with appropriate safeguards for individuals who provide such information.

# Achievement of policy objectives

The Bill achieves the above policy objectives by making the following amendments.

## Facilitating the growth in high-reliability organisational (HRO) behaviours

Critical controls

The policy objective is achieved by amending the CMSHA and the MQSHA to integrate critical control requirements within the SHMS. These amendments will ensure critical controls are clearly and specifically incorporated as a component in the overall SHMSs for all coal mines, metalliferous mines and quarries, so that there is a clearer focus on critical controls and their effectiveness and ensuring that risk to persons from operations are kept at an acceptable level. The focus is on the most serious risks to safety and health and the critical controls definition aligns with the International Council on Mining and Metals' guidelines.

Competency for key safety critical roles

The policy objective is achieved by amending the CMSHA to strengthen the competency of those in particular key safety critical roles at coal mines through requiring coal mine workers in those roles to hold particular certificates of competency issued by the Board of Examiners.

The following new certificates of competency are introduced with a 5-year transitional period from commencement of the amendments:

- electrical engineering manager (underground coal mines)
- mechanical engineering manager (underground coal mines)
- surface coal mine manager
- electrical engineering manager (surface coal mine)
- mechanical engineering manager (surface coal mine).

In addition, a person left in charge of an underground coal mine in the absence of an underground mine manager must hold either a first or second class certificate of competency. This amendment was recommended by the Coal Mining Board of Inquiry.

Continuing professional development (CPD)

The policy objective is achieved by amending the CMSHA and the MQSHA to establish a comprehensive compliance and enforcement legislative framework for the practising certificate scheme to ensure that CPD is completed regularly in accordance with requirements, and to require certificate of competency, or SSE notice holders to also hold a practising certificate to remain in their respective key safety critical roles at mines.

Amendments include keeping a register of holders of practising certificates; the suspension, cancellation, or surrender of a practising certificate; the impact of a practising certificate being suspended or cancelled; and obtaining a practising certificate by providing false information.

At the conclusion of the 3-year transitional period, holders of SSE notices or any of the current certificates of competency will not be able to be remain in or be appointed to key safety critical roles requiring a certificate of competency, or SSE notice unless they hold both the relevant certificate of competency, or SSE notice, and the associated practising certificate. For those in key safety critical roles requiring new certificates of competency there will be a 5-year transitional period to obtain both the certificate of competency and associated practising certificate.

Improved data and incident reporting

The policy objective is achieved by amending incident and accident reporting under all Resources Safety Acts. Streamlined reporting using an approved form, will apply in most instances.

Oral reporting to mining inspectors and district workers' representatives (DWRs) is still required for serious accidents and deaths. Oral reporting to industry safety and health representatives (ISHRs) is still required for serious accidents, deaths and HPIs. These oral reports will be followed by a more detailed report—either via the approved form or by notice, depending on the circumstances.

The requirement for telephone reporting of petroleum and gas incidents is retained in recognition of the fact that a significant number of incident reports in that sector have the potential to have broader community safety implications.

Further clarity will be provided through removal of the list of HPIs that require additional information to be reported as prescribed under the Coal Mining Safety and Health Regulation 2017 and Mining and Quarrying Safety and Health Regulation 2017. This will ensure that there is reporting of all HPIs as this list has been previously incorrectly used as a de facto list of what HPIs need to be reported. The amendments will be supported by RSHQ incident reporting guidance.

Requirements for the CEO to maintain a hazards database for coal mining and to track and report on lost time injuries is removed. This will enable the regulator to focus on serious accidents and HPIs and to facilitate the dissemination of the most important safety information to industry.

Information sharing to improve safety

The policy objective is achieved by amending the information sharing provisions across the Resources Safety Acts to clarify what information can be publicly shared. This includes a description of the accident or incident, the name of the mine and the operator/holder of an authority and the injuries sustained.

The amendments will not involve changes to the current provisions as they relate to the publishing of names and the requirement that the information be only published when it is in the public interest.

The changes aim to support an HRO reporting culture. Incident data and its analysis underpin the regulator's ability to share safety learnings and trends with industry, with a view to preventing incidents and serious accidents and to improve safety and health outcomes for resources sector workers. The amendments will be supported by a RSHQ sharing of information policy guide.

## Modern regulatory enforcement

Enforceable undertakings

The policy objective is achieved by introducing enforceable undertakings in the Resources Safety Acts to strengthen RSHQ's enforcement and compliance toolkit. The provisions align with the approach taken under the *Work Health and Safety Act 2011* (WHS Act). Enforceable undertakings will not be available for contraventions causing death. The amendments will be supported by RSHQ enforceable undertaking guidelines on application and decision-making processes during which RSHQ may consult with any affected parties and/or relevant experts as required.

Court orders

The policy objective is achieved by amending the Resources Safety Acts to provide for broader and more tailored court orders consistent with those available in other safety and health legislation such as the WHS Act.

Directives

The policy objective is achieved by streamlining the directive provisions under the CMSHA and the MQSHA relating to SHMSs and reducing risk; by providing an integrated directive power where risk arising from mining operations may reach an unacceptable level or is at an unacceptable level. A directive suspending operations as risk from mining operations may reach an unacceptable risk cannot be stayed and can be given by an inspector, ISHR or DWR. ISHRs and DWRs powers must be exercised only for safety and health purposes, they must not impede production and their appointment can be ended by the Minister if they are not performing their functions correctly. A directive can be given to provide an independent report about risks arising out of mining operations; the safety or part or all of any plant, building or structure at the mine; or a serious accident or HPI at the mine.

The Explosives Act is also amended to broaden the direction power to enable an inspector to give a direction where an inspector reasonably suspects a person is involved in an activity that is likely to result in a contravention under this Act.

## Contemporary legislation

Labour hire agencies, contractors and service providers

The policy objective is achieved by amending the CMSHA and the MQSHA to provide a broad definition of contractor that includes all types of employment arrangements including a person contracted to carry out work at a mine, provide a service to a mine and a person contracted to provide workers to a mine including, for example, a labour hire agency.

The policy objective is further achieved by an obligation being placed on an SSE to report the occurrence of injury, HPIs or proposed changes at the mine that may affect the safety and health of contractors, to the agency that supplied those workers.

Industrial manslaughter

The policy objective is achieved by amending the definitions of "employer" as identified throughout the Resources Safety Acts to ensure that there is clarity on which entity can be subject to industrial manslaughter. As was the original intent under the MEROLA amendments

which introduced industrial manslaughter, the entities have been clearly identified to include an operator, holder, labour hire companies, contractors or any other entity who employs/engages or arranges for a worker to perform work.

Remote operating centres (ROCs)

The policy objective is achieved by amending the CMSHA and the MQSHA to firmly clarify the role of ROC workers and that the SHMS addresses risks from ROCs and remote operation of plant and equipment.

ROC facilities have been defined as a facility located off the mine that monitors mining operations at the mine and does either or both of the following–provides information that is used by the SSE or other supervisors at the mine to make decisions about mining operations at the mine but does not give instructions, directions or make decisions about mining operations at the mine; and/or remotely operates plant or equipment located at the mine under the direction of the SSE or other supervisors at the mine and under the SHMS.

An "operational ROC worker," is a worker for the mine at an ROC facility that does either or both of the following—provides information that is used at the mine to make decisions about operations at the mine but does not give instructions, directions or make directions about operations at the mine; and/or remotely operates a plant of equipment located at the mine under the direction of the site senior executive or other supervisors at the mine and the SHMS.

Safety critical roles at or near the mine site

The policy objective is achieved by amending the CMSHA and the MQSHA to require the SSE for a mine to be located at or near the mine site when performing their duties, unless they are temporarily absent, provided that absence is for not more than 14 days.

A contemporary Board of Examiners

The policy objective is achieved by amending the CMSHA to provide for the appointment of an independent chair for the Board of Examiners and the appointment of a person to the board with demonstrated expertise or experience in the assessment of competencies. To ensure that the Board of Examiners is conducted in accordance with the Queensland Government's good governance standards, a new power has been inserted into the CMSHA allowing for the Minister to give directions to the board. This power will be limited to the way in which the board administers its statutory functions, rather than how it makes decisions regarding notices, certificates or registrations.

## Consistency and enhanced operation of Resources Safety Acts

The policy objective of consistency across the legislation is achieved by making changes that ensure consistency, including by—

- Aligning the court jurisdiction for prosecutions across the Resources Safety Acts with the WHS Act;
- Aligning the timeframe for the commencement of prosecutions across the Resources Safety Acts to within 2 years of the offence coming to the notice of the complainant (WHS prosecutor); and

- Having consistent maximum penalties across the Resources Safety Acts for similar offences, such as obstructing a relevant person (such as an inspector) exercising a statutory power; failing to provide help to site safety and health representatives and committees; and for giving an inspector or authorised officer information a person knows is false or misleading in a material particular.

The Bill has also provided an opportunity to implement a number of amendments that enhance the operation of the legislation and are minor in nature, including—

- Providing exemptions for particular requirements under the Explosives Act relating to explosives security clearances; and
- Streamlining reportable disease notification obligations.

### Other amendments

Powers to compel someone to answer questions or provide information under the P&G Act

The policy objective is achieved by implementing the Coroners Court of Queensland's recommendation from the findings of the inquest into the death of Gareth Leo Dodunski (delivered on 31 August 2023), by amending the P&G Act to empower inspectors and authorised officers investigating incidents under the Act to compel someone to answer questions or provide information, even where such information or answers might tend to incriminate the person. However, the Bill explicitly provides a safeguard to the individual depending on the circumstances—that is, if the questions:

- do not relate to an "incident" as defined under the P&G Act, then the individual does not have to comply with the requirement if they have a reasonable excuse—for example, because complying with the requirement would incriminate the individual or make them liable to a penalty; or
- do relate to an "incident" as defined under the P&G Act, then the individual must comply with the requirement, but the Act provides an assurance that any answers or information provided cannot subsequently be used against that individual for an offence under this Act (unless the answers or information provided was false or misleading).

## Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than by legislative reform.

## Estimated cost for government implementation

Implementation of the amendments will not present additional capital or any significant administrative costs to government. Any implementation costs will be absorbed from existing resources and managed within the existing budget of RSHQ.

## Consistency with fundamental legislative principles

The Bill has been drafted having regard to the fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992* (LS Act) and is generally consistent with these principles. Potential breaches of the FLPs are addressed below.

*Continuing professional development*

The enforcement of continuing professional development (CPD) may engage the FLP relating to whether there is sufficient regard to rights and liberties of individuals, in particular whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a) of the LS Act); and is consistent with principles of natural justice (section 4(3)(b) of the LS Act). The amendment is not considered to be inconsistent with FLPs as natural justice principles and a right of review will apply.

The amendments will provide for the suspension or cancellation of practising certificates by the CEO and requirements for the completion of CPD to retain a practising certificate.

The amendments will integrate the possible suspension, or cancellation of practising certificates with the existing provisions in part 10A of the CMSHA, and part 10A of the MQSHA, which provide reasons and processes for the suspension, or cancellation of certificates of competency, and SSE notices by the CEO, as a practising certificate cannot be retained if the underlying certificate of competency, or SSE notice is suspended or cancelled.

The decision to suspend or cancel certificates of competency, and SSE notices in the existing provisions is dependent on the exercise of administrative power by the CEO, and similarly for any associated decision to suspend or cancel practising certificates.

The amendments impact on the rights and liberties of the individuals who also hold these practising certificates. However, natural justice principles will apply through the show cause process, and through any subsequent process taken by the CEO to suspend or cancel the practising certificate.

If administrative action is taken under the existing sections to suspend or cancel a certificate of competency, or SSE notice, this action will also include suspending or cancelling the associated practising certificate.

In comparison, if administrative action is taken to suspend or cancel only the practising certificate related to non-compliance with CPD requirements, the underlying certificate of competency, or SSE notice will not also be suspended or cancelled.

The exercise of the existing administrative power to suspend or cancel a person's certificate of competency and associated practising certificate will only occur in circumstances where:

- the person has contravened a safety and health obligation;
- the person has committed an offence against a law of Queensland or another state (a corresponding law) relating to mining safety; or
- a certificate, equivalent to a certificate of competency, that was issued to the person under a corresponding law of another state has been suspended or cancelled.

The exercise of the administrative power to suspend or cancel a person's SSE notice and associated practising certificate will only occur in circumstances where:

- the person has contravened a safety and health obligation; or
- the person has committed an offence against a corresponding law.

Before taking proposed action to suspend or cancel a certificate of competency or an SSE notice and the associated practising certificate, the CEO must first give a notice to the person stating each of the following matters:

- the proposed action;
- the ground for the proposed action;
- an outline of the facts and circumstances forming the basis for the ground;
- if the proposed action is to suspend the certificate of competency or SSE notice and associated practising certificate—the proposed period of the suspension; and
- that the person may make a written submission to the chief executive, within a stated period of at least 28 days, to show why the proposed action should not be taken.

A decision to take the proposed action to suspend or cancel a certificate of competency or an SSE notice and associated practising certificate can only occur once the CEO has considered any written submission made by the person and the CEO still considers that a ground exists to take the proposed action.

The CEO must then give the person a notice stating:

- the CEO's decision;
- the reasons for the decision;
- that the person may appeal against the decision within 28 days;
- how the person may appeal; and
- that the person may apply for a stay of the decision if the person appeals against it.

Appeals against the CEO's decision to suspend or cancel a certificate of competency or an SSE notice, and associated practising certificate, or practising certificate alone will be heard by the Industrial Magistrate's Court.

A holder of a certificate of competency or an SSE notice and associated practising certificate have significant responsibilities for the safety and health of mine workers.

Risks to safety and health on a mine site must be appropriately managed by competent persons who operate in accordance with their safety and health obligations.

The amendments to integrate the suspension or cancellation of a practising certificate, with the existing provisions for the suspension or cancellation of a certificate of competency or an SSE notice are justified given both:

- the risks to mine worker safety and health if a person is allowed to continue to perform statutory functions after contravening a safety and health obligation, and the consequential need to suspend or cancel both the certificate of competency or SSE notice and associated practising certificate; and
- the natural justice that is afforded to the person who holds the certificate of competency or an SSE notice and associated practising certificate prior to any suspension or cancellation of a certificate of competency or SSE notice and associated practising certificate.

In comparison, if administrative action is taken to suspend or cancel only the practising certificate related to non-compliance with CPD requirements, the underlying certificate of competency, or SSE notice will not also be suspended or cancelled.

The exercise of the existing administrative power to only suspend or cancel a person's practising certificate and not also the underlying certificate of competency, or SSE notice will occur in circumstances where the holder of a practising certificate has not completed CPD requirements.

A practising certificate can be reinstated if the issue that led to its suspension or cancellation is resolved, for example, the required CPD is completed.

The amendments will also enable the Board of Examiners to keep a register of practising certificates. The Board of Examiners already keeps a register of certificates of competency, SSE notices and notices of registration given by the board under a mutual recognition Act—that is, the *Mutual Recognition Act 1992* (Cwlth) or the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth). Similarly, the register will also include the name and contact details of the holder of a practising certificate as well as details of the practising certificate, and the status of the practising certificate.

The requirements for practising certificates will be integrated with the current requirements for the register kept by the Board of Examiners for certificates of competency, SSE notices and notices of registration given by the board under a mutual recognition Act. Information contained in the register about practising certificates, other than the contact details of the holder, may be made available, as may already occur for certificates of competency, SSE notices and notices of registration given by the board under a mutual recognition Act.

The Board of Examiners is established under part 10 of the CMSHA and has functions described in part 10 of the CMSHA and part 10 of the MQSHA. In 2018, it was noted that the initial amendments to establish the register may result in a potential infringement of the FLP under section 4(2)(a) of the LS Act, and this also applies to the extension of the register to also include practising certificates. This is because the board can disclose information contained in the register. Some of the information to be disclosed may be personal information under the *Information Privacy Act 2009* (for example, a person's name). However, the board is not able to disclose the contact details of an individual including holders of practising certificates to any person or agency.

Access to information from the register is important, particularly for employers seeking to confirm the qualifications of candidates for safety critical roles; it also promotes transparency of qualifications in the mining industry.

The potential breach of FLPs associated with the addition of practising certificates to this public register is considered to be justified given there are significant public-interest benefits associated with the register.

*Improved data and incident reporting*

The amendments relating to improved data and incident reporting may engage the FLP relating to whether the amendments have sufficient regard to the rights and liberties of individuals, in particular whether the penalties are proportionate and relevant (section 4(2)(a) of the LS Act).

The amendment is considered justified because the penalties are proportionate and relevant to the seriousness of the risks being addressed.

The amendments will align the penalty provisions for failure to report incidents to the regulator under the CMSHA, the MQSHA and the P&G Act by increasing the maximum penalties identified to 100 penalty units.

Increasing penalties demonstrates the importance of notifying incidents and reporting safety and health issues. The Brady Review highlights the importance of HPI reporting and that this information can lead to early intervention to prevent serious accidents and fatalities. Incident data can be used to identify hazards and determine appropriate controls to minimise harm. It is considered that the increased penalties balance individual rights against the rights and liberties of persons (particularly workers) that may otherwise be directly impacted by deficiencies in safety standards.

*Improved information sharing*

The improved information sharing amendments may engage the FLP relating to whether the amendments have sufficient regard to rights and liberties of individuals, in particular potential impacts on an individual's right to privacy (section 4(3)(a) of the LS Act).

The release of personal information may impact an individual's privacy; however, it is considered that the amendment is justified as the release of information will be required to be in the public interest and any impact to an individual would be outweighed by the broader safety and health benefits to workers and the community. The requirement to publish information only where it is in the public interest will continue to apply and natural justice requirements will continue.

The Brady Review identified the importance of the regulator facilitating the dissemination of data from industry to inform learnings and future strategic direction for safety and health approaches of the industry. The current provisions will only be amended to the extent that information specific to HPIs and relevant incidents will be allowed to be published, however, the provision as it relates to identifying particular information and persons will remain unchanged.

*Disclosure of information*

The disclosure of information amendments may engage the FLP relating to whether the amendments have sufficient regard to rights and liberties of individuals, in particular potential impacts on an individual's right to privacy (section 4(3)(a) of the LS Act). The disclosure of information to entities administering a law about safety and health may impact an individual's privacy; however, it is considered that the amendment is justified due to the broader safety and health benefits to workers and the community.

Currently, RSHQ is prevented from cooperating with and sharing information with some agencies due to the prescriptive information sharing provisions across the Resources Safety Acts. There have been situations where RSHQ (and previously as a division within the Department of Natural Resources, Mines and Energy) was unable to respond to requests for information and documents, for example from Workplace Health and Safety Queensland. It is important that information can be shared with relevant agencies to enable them to exercise their functions effectively. Not sharing information is a significant impediment and may prevent outcomes for workers, industry, the community and government organisations.

Amendments will enable information to be shared under the Resources Safety Acts with departments or agencies administering a law about safety and health. This will enable appropriate information sharing with other entities, particular safety and health regulators such as the Workplace Health and Safety Queensland. The Acts contains safeguards relating to the use and disclosure of information and these will continue to apply.

*Enforceable undertakings*

The introduction of enforceable undertakings may engage the FLP relating to whether the amendment has sufficient regard to the rights and liberties of individuals, including whether the legislation is consistent with principles of natural justice (section 4(3)(b) of the LS Act). The amendments will not provide a right of review or appeal for enforceable undertakings, however entering into an enforceable undertaking arrangement is voluntary and as such the amendment is considered to be consistent with FLPs.

The amendment is consistent with the principles of natural justice due to both the voluntary nature of an enforceable undertaking and the natural justice principles that are applied during the development of the enforceable undertaking. To support the legislative amendments, guidelines will be developed detailing the enforceable undertaking process. The guidelines will outline the process of development between both parties, and the opportunities for parties to review and agree on the enforceable undertaking. Enforceable undertaking frameworks are well established under Queensland legislation, including the WHS Act, which will be relied upon for the development of the enforceable undertaking framework under the Resources Safety Acts.

*Court orders*

The amendments expanding the court orders currently available under the Resources Safety Acts may engage the FLP relating to whether the amendments have sufficient regard to the rights and liberties of individuals, including the right to conduct business without interference and that penalties are proportionate and relevant (section 4(2)(a) of the LS Act). The amendments will provide for greater consistency with general work health and safety laws to achieve improved regulatory harmonisation. Any potential impact on the rights and liberties of individuals are considered justified noting the broader benefits to workers and the community.

Some court orders can compel a person to undertake specific actions within a specified timeframe (such as adverse publicity orders, safety project orders, training orders or restoration orders). Alternatively, injunction orders can require a person to refrain from doing a specific action. These orders may interfere with the right of the person to conduct their business in the manner they consider most appropriate.

In relation to proportion and relevance, this amendment also includes monetary fines of up to 500 maximum penalty units for the offence of failing to comply with adverse publicity orders, restoration orders, safety project orders or training orders.

The court orders (and associated fine for non-compliance) amendments are justified as they’re proportionate to the misconduct by those prosecuted under the Resources Safety Acts, which regulate industries with hazardous working environments. Contraventions of these Acts could result in serious risks of harm to the safety and health of persons working in those environments, as well as the public. Also, a person is only impacted by this amendment if they have been successfully prosecuted for breaching safety and health laws under the Resources Safety Acts.

The changes are consistent with more contemporary safety and health legislation, such as the WHS Act (which aligns with national work health and safety laws) and resources safety and health legislation in New South Wales and Western Australia.

The 500 penalty units applicable for the new offence of failing to comply with a previous court order is a maximum only. The courts retain their discretion to impose lesser penalties depending on the circumstances of the non-compliance and mitigating factors.

*Directives*

The amendments to the directives frameworks may engage the FLP relating to whether the amendments have sufficient regard to the rights and liberties of individuals, in particular whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a) of the LS Act); is consistent with principles of natural justice (section 4(3)(b) of the LS Act); provides for appropriate protection against self-incrimination (section 4(3)(f) of the LS Act); and is unambiguous and drafted in a sufficiently clear and precise way (s 4(3)(k) of the LS Act).

The amendments are considered to have sufficient regard to the rights and liberties of individuals. The directive provisions continue to be subject to appropriate review and are consistent with principles of natural justice. The power to issue a directive to suspend operations where risk *may* reach an unacceptable level (if there is not an effective SHMS for the mine) already exists in legislation for inspectors. This power has been extended to the ISHRs for the coal sector and DWRs for mineral mines and quarries. There are safeguards in place to ensure that ISHRs and DWRs exercise their power appropriately. Under the legislation ISHRs and DWRs must only exercise their powers for safety and health purposes, they must not unnecessarily impede production and their appointment can be ended by the Minister if they are not performing their functions correctly. While there are existing provisions for review of directives during which a directive can be stayed a directive to suspend mining operations in all or part of a mine cannot be stayed due to the unacceptable level of risk the operations are presenting or may present.

The amendments will provide for appropriate protection against self-incrimination and will ensure that the CMSHA, the MQSHA and the Explosives Act are unambiguous and drafted in a sufficiently clear and precise way.

The amendments to the CMSHA and the MQSHA will provide greater legislative certainty around the form and operation of directives including in relation to the grounds for giving a directive, what is required of the recipient to fulfil a directive, and clarity around the timeframe within which a person must comply with the directive.

The amendments streamlining existing directives relating to SHMSs and reducing risk will provide a simpler directive framework to reduce ambiguity around the current directive types.

Whilst the amendments broaden the directive powers relating to engineering studies to enable other types of reports, SSEs and workers mentioned in the report will be protected from self-incrimination as the reports will not be admissible in evidence for any criminal proceedings other than about the falsity or misleading nature of the report. The right of review by the chief inspector and ability to appeal to the Industrial Court will continue to operate.

The broadening of the directive power in relation to the contravention of the Explosives Act under section 102, will enable an inspector to give a direction where the inspector reasonably suspects a person is involved in an activity that is likely to result in a contravention of the Explosives Act. The right for an internal review under section 107 by the chief inspector will continue to apply, as will the ability to apply for a stay of operation or seek an external review by the Queensland Civil and Administrative Tribunal.

*Labour hire agencies, contractors and service providers*

The proposal relating to the SSE to tell contractors particular things may engage the FLP relating to whether the proposed amendments have sufficient regard to the rights and liberties of individuals, in particular whether the proposed penalties are proportionate and relevant (section 4(2)(a) of the LS Act). The information provided to the contractor by the SSE will assist the contractor in meeting their safety and health obligations with regard to their employees. Other reporting requirements for the SSE that cover notification and information also carry a penalty of 100 penalty units. The amendment is considered justified because the penalties are proportionate and relevant to the seriousness of the risks being addressed. The amendments are considered justified as they will help to ensure the safety and health of all mine workers.

*Industrial manslaughter*

The amendments regarding industrial manslaughter will remove ambiguity and achieve the Parliament's original intention of improving safety and treating the death of workers on sites consistently across all industries. The amendments may engage the FLP relating to whether the amendments have sufficient regard to the rights and liberties of individuals, for example whether the legislation is unambiguous and drafted in a sufficiently clear and precise way (section 4(3)(k) of the LS Act). It is considered that the amendments are not inconsistent with the FLPs and have sufficient regard to the rights and liberties of individuals, including ensuring that the legislation is unambiguous and drafted in a sufficiently clear and precise.

The Coal Mining Board of Inquiry raised concern that the definition of employer for a coal mine in part 3A of the CMSHA, which means a person who employs or otherwise engages a coal mine worker, would not capture liability of a coal mine operator where a worker who was killed was engaged through a labour hire agency. Similarly, that this would also be the case where an independent contractor's employee dies in a serious accident resulting from criminal negligence of a coal mine operator. This issue extends to other Resources Safety Acts as the industrial manslaughter provisions are similar.

The Coal Mining Board of Inquiry identified that amendments may be needed to the CMSHA to ensure the industrial manslaughter offence provisions reflect the Parliament's intention to strengthen the safety culture and ensure consistency in how deaths of workers on sites are treated and who should be liable to prosecution.

Legislative amendments to the Resources Safety Acts clarify that employers who may be liable for industrial manslaughter, where they cause through criminal negligence, the death of a worker, include an operator, holder, labour hire companies, contractors or any other person who employs/engages or arranges for a worker to perform work (and a senior person of such an entity). The amendments will remove the current ambiguity and achieve the Parliament's

original intention of improving safety and treating the death of workers on sites consistently across all industries.

*Remote operating centres (ROCs)*

The amendments to the CMSHA and the MQSHA to clarify the obligations relating to ROCs; persons providing information from off-site ROCs to workers on a mine site and remotely operating plant and equipment may engage the FLPs relating to whether the amendments have sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the LS Act). It is considered that the amendments are not inconsistent with the FLPs and are justified, having regard for the safety and health of workers that are being protected.

The general safety and health obligations under section 39 of the CMSHA and section 36 of the MQSHA are already imposed on all persons that might affect safety and health on a mine site. Similarly, there are obligations for SSEs to ensure that workers undergo induction, training and are competent. Workers at ROCs may not be inducted at the mine site and may not be familiar with the site or particular hazards, which may expose on-site mine workers affected by the ROC to an unacceptable level of risk. The SHMS must provide for the management of all aspects of risks to safety and health in relation to the operation of the mine.

The amendments simply clarify the application of the above components of the safety and health framework to ROCs and ROC workers, to ensure that they do not introduce an unacceptable level of risk. The existing penalties associated with these obligations will apply and are considered to be consistent and proportionate. The amendments are considered justified as they will ensure the safety and health of workers on mines.

*Commencement of offence proceedings*

The amendment regarding the commencement of offence proceedings may engage the FLP relating to whether the legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the LS Act). The amendment is considered justified as this will ensure that contraventions of summary offences are appropriately addressed.

These amendments to the CMSHA, the MQSHA and the Explosives Act, align with the P&G Act regarding the time in which a proceeding can be brought against someone who commits a summary offence under those Acts. The amendment will provide for improved consistency between the Resources Safety Acts and the general work health and safety laws to achieve a greater degree of regulatory harmonisation.

The amendments will likely have adverse effects on an individual who has proceedings initiated against them who would otherwise have avoided these proceedings. However, this change is necessary to ensure that contraventions of summary offences under the Resources Safety Acts are appropriately addressed. These Acts regulate industries with hazardous working environments and serious accidents that occur in these environments can involve complex investigations that require sufficient time to obtain the necessary evidence to commence proceedings. The amendments provide equitable outcomes for all litigants because it will ensure that robust and sufficient investigations can be undertaken into complex matters.

*Protection from reprisals*

The amendments increasing penalties for reprisal offences may engage the FLP relating to whether the amendments have sufficient regard to rights and liberties of individuals, including whether penalties are proportionate and relevant (section 4(2)(a) of the LS Act). The amendment is considered justified because the penalties are proportionate and relevant to the seriousness of the conduct and risks being addressed.

To maximise reporting, workers must feel secure to raise safety concerns. The amendment will amend the Explosives Act and the P&G Act to align with penalties currently provided for under the CMSHA and the MQSHA. Similar penalties for similar reprisal offences are also contained in the WHS Act for general workplaces and in other Australian jurisdictions including New South Wales, Tasmania and South Australia.

The petroleum and gas and explosives industries have hazardous working environments, and it is important that the safety and health in these industries is bolstered with similar potential maximum financial penalties for a breach.

The penalties are considered proportionate and relevant to the seriousness of the conduct. Importantly, the penalties are a maximum only and the courts will retain their discretion to impose lesser penalties depending on the circumstances of the breach and mitigating factors.

The higher penalties balance individual rights against the rights and liberties of persons (particularly workers) directly impacted by deficiencies in safety and health practices.

*Consistent board of inquiry offence provisions*

The amendments for consistent Board of Inquiry offence provisions may engage the FLP relating to whether the amendments have sufficient regard to rights and liberties of individuals, including whether penalties are proportionate and relevant (section 4(2)(a) of the LS Act). The amendment is considered justified because the penalties are proportionate and relevant to the seriousness of the conduct.

A Board of Inquiry is only convened in the most serious of cases and they are conducted accordingly. Any behaviour that serves to impede these inquiries can have significant consequences for the outcomes. The penalties will serve as a deterrent and are proportionate to the conduct. The penalties are a maximum only and the courts will retain their discretion to impose lesser penalties depending on the circumstances of the breach and mitigating factors. The amendments will also align the CMSHA, the MQSHA and the Explosives Act with the P&G Act to achieve consistency across the Resources Safety Acts.

*Consistent penalties for assault and obstruct offences*

The amendments for consistent penalties for assault and obstruct offences forms part of several amendments to the Resources Safety Acts to provide for greater consistency with general work health and safety laws in Queensland to achieve a greater degree of regulatory harmonisation. The amendments may engage the FLP relating to whether the amendments have sufficient regard to rights and liberties of individuals, including whether penalties are proportionate and relevant (section 4(2)(a) of the LS Act). The amendments are considered to be justified as the penalties are proportionate and relevant to the seriousness of the conduct.

The increased penalties balance individual rights against the rights and liberties of persons directly impacted by deficiencies in safety standards. The Resources Safety Acts regulate industries with hazardous working environments and assaulting or obstructing public officers (such as inspectors) exercising powers under any of these Acts could result in serious risks of harm to the safety and health of persons working in those environments, as well as the public. It is therefore inappropriate that there is currently an unequal level of protection for inspectors depending on which Act they are working under. For example, obstructing an inspector exercising powers under the Explosives Act carries a maximum penalty of 20 penalty units, whereas obstructing an inspector working under the P&G Act has a maximum penalty of 500 penalty units.

The P&G Act is currently the most contemporary of the Resources Safety Acts for assault and obstruct offences, and its applicable maximum penalty is also consistent with comparable safety and health legislation such as the *Water Supply (Safety and Reliability) Act 2008*.

The penalties are proportionate to the conduct and should serve as a sufficient deterrent. Importantly, the penalties are a maximum only and the courts will retain their discretion to impose lesser penalties depending on the circumstances of the breach and mitigating factors. The amendments will also ensure that penalties across the Resources Safety Acts are consistent.

*Increased penalties for failing to help site safety and health representatives and committees*

The amendments for increased penalties relating to site safety and health representatives and committees under the MQSHA forms part of several amendments to the Resources Safety Acts to provide for greater consistency with general work health and safety laws to achieve a greater degree of regulatory harmonisation. The amendments may engage the FLP relating to whether the amendments have sufficient regard to rights and liberties of individuals, including whether penalties are proportionate and relevant (section 4(2)(a) of the LS Act). The amendments are justified as the penalties are proportionate and relevant to the conduct.

The current framework under the MQSHA is anomalous as the maximum penalty for an SSE failing to establish a site safety and health committee (upon request) is 100 penalty units, and the penalty for failing to support that committee is a lesser maximum penalty of 40 penalty units.

If the legislation imposes a penalty for not establishing the committee, the same penalty should apply for not facilitating the committee once established. Having consistent penalties that are proportionate to the conduct should serve as a sufficient deterrent. Importantly, these penalties are a maximum only and the courts will retain their discretion to impose lesser penalties depending on the circumstances of the breach and mitigating factors.

Ensuring the consistency of offence provisions and imposing higher penalties are considered to be justified, having sufficient regard to the rights and liberties of individuals. It will ensure that penalties within legislation are consistent with each other.

*Powers to compel someone to answer questions or provide information under the P&G Act*

The amendments will provide inspectors and authorised officers with coercive powers to require someone to answer questions or provide information for stated purposes under the P&G Act. These amendments engage the FLP relating to whether the amendments have sufficient regard to rights and liberties of individuals by providing appropriate protection against self-incrimination (section 4(3)(f) of the LS Act).

The amendments have sufficient regard to the rights and liberties of individuals as they include appropriate statutory safeguards to the individual. For example, if the requirement does not relate to an "incident" as defined under the P&G Act, then the individual does not have to comply with the requirement if they have a reasonable excuse (for example, because it would incriminate the individual or make them liability to a penalty). If the requirement does relate to an "incident", then the individual must comply with the requirement, but the P&G Act provides an assurance that any answers or information provided cannot be subsequently used against that individual in proceedings for an offence, unless the answers or information they provided was false or misleading. Therefore, these amendments reflect a careful balancing of the importance of the protection against self-incrimination and the necessity to ensure that incidents that involve an unacceptable level of risk of death or injuries are sufficiently investigated to prevent similar incidents occurring in the future.

This ensures that inspectors and authorised officers can overcome potential obstacles from an individual whilst investigating incidents, such as non-cooperation due to fear of self-incrimination. Allowing individuals to avoid answering questions could result in crucial details about the circumstances of an incident remaining undisclosed. This information is essential for stopping a similar incident in the future.

These amendments to the P&G Act are analogous with provisions in the other Resources Safety Acts, namely the CMSHA, the Explosives Act and the MQSHA. These amendments also align with the WHS Act.

*Minor amendments*

The below minor amendments in the Resources Safety Acts may engage the FLPs relating to whether the amendments have sufficient regard to rights and liberties of individuals, including whether the penalties are proportionate and relevant (section 4(2)(a) of the LS Act), and the potential impacts on an individual's right to privacy (section 4(3)(a) of the LS Act). Any impact on FLPs is considered justified and the penalties are considered proportionate and relevant to the conduct.

- Amending the personal details requirements to include the ability to require personal details where an officer has information that leads them to reasonably suspect a person has committed an offence, and increasing the associated maximum penalty to 100 penalty units, will align with equivalent provisions of the WHS Act.
- Aligning the maximum penalty for refusing to give reasonable help to an inspector exercising their powers across the Resources Safety Acts to 100 penalty units.
- Aligning the maximum penalty for giving an inspector or authorised officer information a person knows is false or misleading in a material particular across the Resources Safety Acts to 100 penalty units.

Higher penalties provide consistent offences under the Resources Safety Acts and the WHS Act related to the provision of personal details to an inspector, giving false or misleading information, failing to produce a required document and failing to give an inspector reasonable help. The powers to which these offences attach are designed to enable inspectors to perform their compliance and enforcement duties in an effective manner. The level of penalty for these provisions are equivalent to those already in place under various of the Resources Safety Acts and the WHS Act. Similarly, the penalty is increased for failing to provide notice of a reportable disease under the CMSHA and

the MQSHA to align with penalties for incident reporting. The penalties are considered proportionate to the conduct and should serve primarily as a deterrent. Importantly, all of these penalties are a maximum only, and the courts will retain their discretion to impose lesser penalties depending on the circumstances of the breach and mitigating factors.

The amendments to the notification of reportable disease provisions under the CMSHA and the MQSHA will provide for the reporting of information to RSHQ such as the person's name and date of birth. The amendments may impact an individual's privacy however it is considered that the this is justified due to the broader safety and health benefits to workers and the community. The safeguards regarding disclosure and confidentiality of information under the CMSHA and the MQSHA will continue to apply to this information.

# Consultation

A Consultation Regulatory Impact Statement (CRIS) was made publicly available for a stakeholder consultation period between 23 September to 21 November 2022. RSHQ also met with key stakeholders, such as industry groups and employee unions, during the consultation period to discuss the proposals in the CRIS.

In total, 34 submissions were received during the consultation period for the CRIS. A Decision Regulatory Impact Statement (DRIS) was subsequently released on 29 May 2023 that summarised and responded to these submissions from stakeholders.

An information paper accompanied with a consultation draft of the Bill was published on the RSHQ website for a 6-week consultation period between 28 September to 10 November 2023. Meetings were also held with key stakeholders during this period to discuss the consultation draft. The feedback received was taken into consideration during the final development of the Bill.

# Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland but will achieve greater mining safety and health consistency with the other major coal mining state of New South Wales in relation to certificates of competency for key safety critical roles at coal mines, and practising certificates, rather than uniformity of wording and structure of the Acts and Regulations. This is partly due to the different legislative models used by each state, and state specific circumstances.

The Bill will achieve greater levels of consistency with the model Work Health and Safety laws regarding proceedings for offences, limitation on time for starting proceedings, enforceable undertakings, and possible court orders.

# Notes on provisions

## Part 1 – Preliminary

### Short title

*Clause 1* provides that, when enacted, the Bill will be cited as the *Resources Safety and Health Legislation Amendment Act 2024*.

### Commencement

*Clause 2* sets out the commencement periods for the various provisions of the Bill. Other than the provisions mentioned in subclauses (1) and (2), all the provisions are to commence on a day to be fixed by proclamation under subclause (3).

Subclause (1) states that clauses 26(2), (3) and (4), 27(1), and clause 100 to the extent it inserts new section 332 commence on the day that is 5 years after the commencement under subclause (3) of clause 25.

This will enable the commencement of clauses 26(2), (3) and (4), 27(1) and clause 100 to the extent it inserts new section 332 to start at the conclusion of the 5 year transitional period for a surface mine manager to obtain a certificate of competency and associated practising certificate. At this stage, a surface mine manager will then be able to take over from an SSE in appointing open-cut examiners or acting open-cut examiners.

Subclause (2) states that section 29(3) commences on the day that is 5 years after the commencement under subclause (3) of section 29(2).

This will enable the commencement of section 29(3) that removes the option of appointing a deputy as underground mine manager when the underground mine manager is absent, to synchronise with the 5 year transitional period from proclamation provided for compliance with the other new requirements for certificates of competency.

Clause 26(2), (3) and (4) amend section 59 and subclause (1) provides 5 years after the commencement by proclamation of clause 25 for a surface mine manager to take over from the SSE when appointing an open-cut examiner. This is because there is a 5-year transitional period from the commencement for the appointment of a surface mine manager at a surface coal mine.

Clause 27(1) amends section 59A(2), (3), (4) and (7) to provide 5 years after the commencement by proclamation of clause 25 for a surface mine manager to take over from the SSE when appointing an acting open-cut examiner. This is because there is a 5-year transitional period from the commencement for the appointment of a surface mine manager.

Clause 29(3) amends section 60(8)(a) to provide 5 years after the commencement by proclamation of clause 29(2) for an underground mine manager to only appoint a person holding a first or second class certificate of competency to be responsible for the control and management of underground activities when the manager is not in attendance at the mine.

Clause 100 to the extent it inserts new section 332 provides that if, before the commencement of new section 59(2), (3) and (4), the site senior executive for a surface mine or a separate part of a surface mine appointed a person under former section 59 to be open-cut examiner, the

person is taken to be appointed by the surface mine manager under new section 59 at the conclusion of the 5-year transitional period from the proclamation of clause 25 .

## Part 2 – Amendment of Coal Mining Safety and Health Act 1999

### Act amended

*Clause 3* states that part 2 amends the *Coal Mining Safety and Health Act 1999*.

### Amendment of s 9 (Meaning of *coal mine*)

*Clause 4* subclause (1) amends section 9(1)(b) and subclause (2) amends section 9(2) to omit the term "contiguous with". Stakeholders have questioned the difference between whether operations are "adjoining" or "contiguous with" the coal mining tenure, as the words have been interpreted as having the same or very similar meaning. The words are used in section 9 and other sections mostly together with the word "adjacent". As the terms are not defined in the dictionary schedule to the Act, the Supreme Court applied the Macquarie Dictionary definitions for the meanings in the case of *Smyth v State of Qld and Ors* [2005] QSC 175. To reduce confusion about the terms, the term "contiguous with" is omitted as it is unnecessary. "Adjoining" and "adjacent" are sufficient to cover possible scenarios.

### Replacement of s 26 (Meaning of *supervisor*)

*Clause 5* amends section 26 so that a supervisor is "appointed" rather than "authorised". Stakeholders suggested that a supervisor should be "appointed". This provides consistency with other sections covering how others in statutory positions are appointed. The amendment also confirms that a supervisor is appointed under section 56 to (a) implement and monitor the coal mine's SHMS; and (b) give directions to other coal mine workers at the coal mine in accordance with the SHMS.

### Amendment of s 30 (How is an acceptable level of risk achieved)

*Clause 6* amends section 30(2) to add critical controls to what risk management elements and practices the systems at a coal mine must incorporate to achieve an acceptable level of risk.

### Amendment of s 33 (Obligations for safety and health)

*Clause 7* subclause (1) amends section 33(2) by inserting "designer, constructor or erector of earthworks at a coal mine" in the list of persons who have safety and health obligations under the CMSHA. This corrects an error, as "designer, constructor or erector of earthworks at a coal mine" should have been listed when the *Mines and Energy Legislation Amendment Act 2011* added section 45A to the CMSHA.

Subclause (2) omits service providers from the list of persons who have safety and health obligations, as service providers will come under the definition of "contractor" due to other amendments in this Bill.

Subclause (3) renumbers section 30(2)(fa) and (g) as section 30(2)(g) and (h).

## Replacement of s 39 (Obligations of persons generally)

*Clause 8* replaces section 39. Section 39(1) provides that the obligations apply to each of those who may affect the safety and health of others at a coal mine or as a result of coal mining operations at the coal mine, listed as: a coal mine worker at the coal mine; another person at the coal mine; and an ROC worker for the coal mine.

Section 39(2)(a) provides the person's obligations to comply with the Act and procedures applying to the person that are part of the SHMS for the mine; and (2)(b) if the person has information that other persons need to know to fulfil their obligations or duties under the Act, or to protect themselves from the risk of injury or illness—to give information to the other persons. Section 39(2)(c) provides the obligation for the persons to take any reasonable and necessary course of action to ensure no-one is exposed to an unacceptable level of risk.

Section 39A(1) provides that the additional obligations apply to each of the following persons—a coal mine worker at a coal mine, another person at a coal mine, and an ROC worker for a coal mine.

Subsection (2) provides the additional obligations that apply to the persons in subsection (1): (a) to work or carry out the person's activities in a way that does not expose the person or someone else to an unacceptable level of risk; (b) to ensure, to the extent of the responsibilities and duties allocated to the person, that the work and activities under the person's control, supervision, or leadership is conducted in a way that does not expose the person or someone else to an unacceptable level of risk; (c) to the extent of the person's involvement—to participate in and conform to the risk management practices of the mine; (d) to comply with instructions given for safety and health of persons by the coal mine operator or SSE for the mine or a supervisor at the mine; (e) to work at or for the coal mine only if the person is in a fit condition to carry out the work without affecting the safety and health of others; and (f) not to do anything wilfully or recklessly that might adversely affect the safety and health of someone else at the mine.

This clarifies the role and responsibilities of a person who provides information related to coal mine operations from an ROC but does not make an ROC worker a coal mine worker. Similarly, someone who is a coal mine worker cannot be considered an ROC worker, which for example, would prevent any other statutory position holder with obligations at the mine from being based at the ROC.

## Amendment of s 41 (Obligations of coal mine operators)

*Clause 9* subclause (1) amends section 41(1) to expand the obligations of the coal mine operator to ensure the SSE or the acting SSE is located at or near the mine when performing their duties. An exception is provided when the person is temporarily absent because their duties require it, or for another reason, provided the absence is for not more than 14 days. This clarifies the intention that the duties related to this safety critical role for the coal mine should only be undertaken by a person who is situated close enough to the mine to be able to attend the mine within a short space of time.

The section will still be subject to section 25(2) of the Act, which means the requirement does not apply to an SSE with responsibility for exploration activities under an exploration permit or mineral development licence.

Subclause (2) renumbers section 41(1)(da) to (g) as section 41(1)(e) to (h).

### Amendment of s 42 (Obligations of site senior executive for coal mine)

*Clause 10* amends sections 42(h) to expand the SSE's obligations to ensure that operational ROC workers are inducted in the mine's SHMS, has received training about hazards and risks at the mine and to ensure they are competent to perform their duties.

Sections 42(c), (d)(i) and (f) are also amended by this clause to reflect amendments made by this Bill to include service providers within the definition of "contractor", and to clarify that contractors may perform, provide or arrange for work or services to be done. The new definition includes all aspects of contracting, labour hire agencies and service providers and is provided to make the safety and health obligations of these types of employment arrangements clear.

Section 42(e) is omitted because these amendments mean that a separate subsection dealing with the obligations owed to service providers is no longer required.

Section 42(i) is also amended to provide an additional obligation for an SSE for a coal mine has in relation to the safety and health of persons who may be affected by coal mining operations. The additional obligation is to provide for the development of a schedule of when inspections, including regular periodic inspections, must be carried out.

Subclause (9) renumbers section 42 (i)(va) and (vi) as sections 42(i)(vi) and (vii).

Subclause (10) renumbers section 42(f) to (i) as section 42(e) to (h).

### Amendment of s 43 (Obligations of contractors)

*Clause 11* amends section 43 to clarify the obligations of contractors by:

- ensuring that the obligations apply to contractors for the mine not just at the mine;
- replacing the term "work undertaken" with "work performed, service provided, or work or service arranged" to reflect the various activities under the definition of "contractor";
- specifying that the requirements for ensuring induction in the mine's SHMS and hazard training apply to contractors physically present at the mine as well as coal mine workers engaged by the contractor or arranged by the contractor to perform work or provide a service;
- specifying a new obligation to ensure the fitness for use of plant at the coal mine is not adversely affected by the work undertaken or service provided.

The amendments clarify the responsibilities of contractors regarding their obligations to ensure that their workers are not exposed to an unacceptable level of risk in doing contracted work at a coal mine.

The definition of "safety and health management plan" for a contractor, provided in section 43(2)(a) is amended to mean a plan that identifies the work to be undertaken, service to be provided, or work or service to be arranged, by the contractor.

### Amendment of s 44 (Obligations of designers, manufacturers, importers and suppliers of plant etc. for use at coal mines)

*Clause 12* amends sections 44(4)(b)(iii), (4)(b)(iv) and (6) to omit the term "service providers" which is now covered by the definition of “contractor”.

### Amendment of s 46 (Obligations of manufacturers, importers and suppliers of substances for use at coal mines)

*Clause 13* amends sections 46(2)(b)(iii), (2)(b)(iv) and (4) to omit the term "service providers" which is now covered by the definition of “contractor”.

### Omission of s 47 (Obligations of service providers)

*Clause 14* omits section 47 because the obligations of service providers are now captured under the obligations of contractors.

### Amendment of s 47A (Obligation of officers of corporations)

*Clause 15* subclause (1) amends section 47A(3)(b) and (d) so that the due diligence required of officers of corporations will also include gaining an understanding of critical controls associated with the coal mining operations, and to ensure the corporation’s processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way, also includes receiving and considering information regarding critical controls.

Subclause (2) is a consequential amendment of the section numbering in the example provided under section 47A(3)(f) due to the renumbering of section 41 through an earlier amendment. The current cross-reference in the example, to section 41(1)(f) is changed to section 41(1)(g).

### Amendment of s 48A (Definitions for part)

*Clause 16* amends section 48A by extending the current definition of “employer” to the following entities—

- a person who employs or otherwise engages a coal mine worker for the coal mine;
- a person who arranges for a coal mine worker to work for the coal mine, including for example, a labour hire agency; or
- the coal mine operator for the coal mine; or
- the holder for the coal mine.

The amendment will clarify the types of entities that can be categorised as “employer” for the purposes of the industrial manslaughter provisions. In doing so, the amendment clarifies Parliament’s intent when the industrial manslaughter provisions were introduced under the MEROLA, which was to ensure consistency in how deaths of workers on sites are treated and who should be liable to prosecution.

The Coal Mining Board of Inquiry raised concern that the definition of employer for a coal mine in part 3A of the CMSHA, which means a person who employs or otherwise engages a coal mine worker, would not capture liability of a coal mine operator where a worker who was killed was engaged through a labour hire agency. Similarly, that this would also be the case

where an independent contractor's employee dies in a serious accident resulting from criminal negligence of a coal mine operator.

These amendments clarify that employers who may be liable for industrial manslaughter, where they cause through criminal negligence, the death of a worker, include an operator, holder, labour hire companies, contractors or any other person who employs/engages or arranges for a worker to perform work. Where multiple entities are responsible for the death of a worker through their criminal negligence, multiple entities may be found to be liable for industrial manslaughter. They will ensure that deaths of workers on sites are treated consistently across all industries.

### Amendment of s 49 (Notices by holder)

*Clause 17* amends sections 49(1) and (3) to replace the term "inspector located in" with the term "inspector for" to adopt a more contemporary drafting style.

### Amendment of s 50 (Notices by coal mine operator)

*Clause 18* amends section 50(3) to replace the term "inspector located in" with the term "inspector for" to adopt a more contemporary drafting style.

The clause also inserts a new section 50(4) to require the coal mine operator to give to the inspector for the region in which the coal mine is situated notice that operations have permanently stopped at the mine, within 28 days. A maximum penalty of 100 penalty units will apply for failing to provide the notice to deter non-compliance. The new provision will ensure that a coal mine inspector is kept aware of the status of mines that are no longer operational in their region.

### Insertion of new pt 4, div 2, sdiv 1, hdg

*Clause 19* inserts a new subdivision heading (Subdivision 1 General) before section 53.

### Amendment of s 54 (Limitations on appointment of site senior executive)

*Clause 20* amends section 54(4) to add requirements relating to practising certificates. Section 54(4) provides that a coal mine operator must not appoint a person to be SSE for a coal mine unless the person holds—(a) for an underground mine—(i) an SSE notice; and (ii) the practising certificate required by the board to be held by a person holding the board qualification of SSE notice; or (b) for all or part of a surface mine—(i) an SSE notice; and (ii) the practising certificate required by the board to be held by a person holding the board qualification of SSE notice. The amended section 54(4) will carry a maximum penalty of 500 penalty units consistent with the current legislation.

### Amendment of s 55 (Management structure for safe operations at coal mines)

*Clause 21* renumbers and amends section 55(2)(ca) to omit the term "service providers" which are now captured under the definition of "contractor". It also updates the reference in section 55(4) to subsection (2)(e).

## Replacement of s 56 (Competencies of supervisors)

*Clause 22* replaces and renames the section 56 (Appointment of supervisors). Stakeholders have suggested that a supervisor should be "appointed" and making this amendment to sections 56(1) and (2) provides consistency with other sections covering how others in statutory positions are appointed.

The maximum penalty of 100 penalty units remains unchanged.

## Amendment of s 57 (Acting site senior executive)

*Clause 23* amends section 57 to add requirements relating to practising certificates. It inserts new subsection (3A) which provides that a coal mine operator must not appoint a person to act as SSE for a coal mine or a separate part of a surface mine under subsections (2) or (3) unless the person holds—(a) an SSE notice; and (b) the practising certificate required by the board of examiners to be held by a person holding an SSE notice. A maximum penalty of 500 penalty units applies for section 57(3A) to act as a deterrent to non-compliance.

Subclause (2) updates the drafting style in section 57(5), by omitting "that ends 12 weeks or less after" and instead inserting "of not more than 12 weeks starting on". Subclause (3) renumbers "subsection (5)" in section 57(6) and (7), as "subsection (6)". Subclause (4) renumbers section 57(3A) to (9) as section 57(4) to (10).

## Amendment of s 58 (Other appointments during absences)

*Clause 24* amends section 58(3) to confirm that the section does not apply to a person appointed under section 60(10) or (11), or to any other person appointed under subdivision 2. This is a consequential amendment following additional certificate of competency requirements through the amendments of section 60, renumbering and the insertion of new sections under subdivision 2 covering additional requirements for the management of surface mines.

## Insertion of new pt 4, div 2, sdiv 2, hdg and ss 58A and 58B

*Clause 25* inserts a new subdivision heading (Subdivision 2 Surface mines) before section 59 and inserts new sections 58A and 59B.

Section 58A provides for additional requirements for the management of surface mines as follows. Section 58A(1) provides that this section applies to a surface mine or a separate part of a surface mine.

Section 58A(2) provides, however, that section 58A does not apply to the mine if the only activities at the mine are (a) exploration activities under an exploration permit, mineral development licence or mining lease; or (b) rehabilitation after coal mining operations.

Section 58A(3) provides the SSE must appoint a person to be surface mine manager to control and manage the mine. Failing to do so, carries a maximum penalty of 400 penalty units.

Section 58A(4) confirms that despite subsection (3) the SSE may be appointed surface mine manager for the mine but only by the coal mine operator.

Section 58A(5) states that the SSE or coal mine operator must not appoint a person as surface mine manager unless the person holds both of the following board qualifications: a surface mine manager certificate of competency and the practising certificate required by the board to be held by a person holding the board qualification of surface mine manager's certificate of competency. This subsection carries a maximum penalty of 400 penalty units for non-compliance.

Section 58A(6) provides that the SSE or coal mine operator may appoint a person as surface mine manager for more than one mine at the same time only with the written approval of the chief inspector. Non-compliance with this subsection carries a maximum penalty of 200 penalty units.

Section 58A(7) confirms that the SSE or coal mine operator may appoint more than one person as the surface mine manager to assume the duties of the manager at different times.

Section 58A(8) provides that a person must not give a direction to the surface mine manager about a technical matter in relation to the surface mine unless the person holds both of the following board qualifications: a surface mine manager certificate of competency and the practising certificate required by the board to be held by a person holding the board qualification of surface mine manager's certificate of competency. Non-compliance with this subsection carries a maximum penalty of 200 penalty units.

Section 58A(9) provides that a person must not give a direction to the surface mine manager that may adversely affect safety and health at the mine. Non-compliance with this subsection carries a maximum penalty of 200 penalty units.

Section 58A(10) covers requirements for the appointment of an electrical engineering manager. The surface mine manager must appoint a person, holding both of the following board qualifications, as electrical engineering manager to control and manage the electrical engineering activities of the surface mine: an electrical engineering manager's certificate of competency for a surface mine; and the practising certificate required by the board to be held by a person holding the board qualification of an electrical engineering manager's certificate of competency. Non-compliance with this subsection carries a maximum penalty of 200 penalty units.

Section 58A(11) covers requirements for the appointment of a mechanical engineering manager. The surface mine manager must appoint a person, holding both of the following board qualifications, as mechanical engineering manager to control and manage the mechanical engineering activities of the surface mine: a mechanical engineering manager's certificate of competency for a surface mine; and the practising certificate required by the board to be held by a person holding the board qualification of a mechanical engineering manager's certificate of competency. Non-compliance with this subsection carries a maximum penalty of 200 penalty units.

Section 58A(12) confirms that the surface mine manager may appoint more than one person as the electrical engineering manager under subsection (10), or the mechanical engineering manager under subsection (11), to assume the duties of the respective manager at different times.

Section 58A(13) sets out requirements for surface mine managers, electrical engineering managers and mechanical engineering managers to be employees of particular entities. The coal mine operator for the surface mine must ensure that an SSE required to appoint a surface

mine manager appoints a person only if the person is an employee of—(i) the coal mine operator; or (ii) an associated entity of the coal mine operator; or (iii) an entity that employs or otherwise engages 80% or more of the coal mine workers at the coal mine. A surface mine manager required to appoint an electrical engineering manager or a mechanical engineering manager appoints a person only if the person is an employee of: (i) the coal mine operator; or (ii) an entity that employs or otherwise engages 80% or more of the coal mine workers at the coal mine. Non-compliance with this subsection carries a maximum penalty of 500 penalty units.

Section 58B covers acting managers of surface mines. Section 58B(1) provides that the section applies when appointees to surface mine manager, electrical engineering manager, or mechanical engineering manager positions vacate office or are temporarily absent from duty.

Section 58B(2) provides that if an appointee vacates office, the appointer may appoint a person to act in the office of the appointee during the vacancy.

Section 58B(3) provides that if an appointee is temporarily absent from duty, the appointer must appoint a person to act in the office of the appointee during the absence. Non-compliance with this subsection carries a maximum penalty of 40 penalty units.

Section 58B(4) provides that the coal mine operator for the surface mine must ensure a person appointed under either of the above circumstances acts in the office of the appointee for a period of not more than 12 weeks starting on the day the appointee—(a) vacated office; or (b) was first temporarily absent from duty. Non-compliance with this subsection carries a maximum penalty of 500 penalty units.

Section 58B(5) provides that the time limitation under subsection (4) does not apply if the person appointed under either of the circumstances above is an employee of—(a) for an appointment to act in an office under section 58A(3) as a surface mine manager—(i) the coal mine operator for the mine; or (ii) an associated entity of the coal mine operator; or (iii) an entity that employs or otherwise engages 80% or more of the coal mine workers at the coal mine; or (b) for an appointment to act in an office under section 58A(10) or (11) as an electrical engineering manager or mechanical engineering manager—(i) the coal mine operator for the mine; or (ii) an entity that employs or otherwise engages 80% or more of the coal mine workers at the coal mine.

Section 58B(6) provides that the coal mine operator for the surface mine must ensure a person appointed to act during a vacancy or to act during the absence of the appointee meet the competency requirement for the appointment. Non-compliance with this subsection carries a maximum penalty of—(a) 400 penalty units for an appointment to act in office under section 58A(3); or (b) 200 penalty units for an appointment to act in an office under section 58A(10) or (11).

Section 58B(7) provides that the appointer is taken to comply with the requirement to appoint a person to the office under section 58A(3), (10) or (11) for the period of an appointment under subsection (2) or (3).

Section 58B(8) sets out the meaning of "competency requirement" for section 58B, which refers to holding both of the board qualifications (that is, both relevant certificate of competency and associated practising certificate) required to be held for particular appointments under particular subsections in section 58A.

### Amendment of s 59 (Appointment of open-cut examiner)

*Clause 26* subclause (1) replaces section 59(1) with requirements for appointing an open-cut examiner. The SSE for a surface mine or a separate part of a surface mine must appoint a person holding both of the following board qualifications to be open-cut examiner for each surface mine excavation carried out at the mine or part of the mine: an open-cut examiner's certificate of competency; and the practising certificate required by the board to be held by a person holding an open-cut examiner's certificate of competency. The maximum penalty is unchanged at 200 penalty units.

This clause through subclause (2) and subclause (3) subsequently amends section 59(1) and (2) to replace references to SSE with references to surface mine manager, so that it will in future be the surface mine manager appointing an open-cut examiner rather than the SSE, at the end of the transitional period. Under clause 2 setting out the commencement of clauses, this clause will commence on the day that is 5 years after the commencement of clause 25.

### Amendment of s 59A (Acting open-cut examiner)

*Clause 27* subclause (1) amends section 59A(2), (3), (4) and (7), as amended by subsection (2) to omit references to SSE and instead refer to surface mine manager.

Subclause (2) amends section 59A(4) to replace "that ends 12 weeks of less after" with "of not more than 12 weeks starting on" to adopt a more contemporary drafting style.

Subclause (3) amends section 59A(6) so that the coal mine operator must ensure a person appointed under subsection (2) or (3) during a vacancy or absence of an open-cut examiner holds both of the following board qualifications: an open-cut examiner's certificate of competency, and the practising certificate required by the Board of Examiners to be held by a person holding an open-cut examiner's certificate of competency.

### Insertion of new pt 4, div 2, sdiv 3, hdg

*Clause 28* inserts a new subdivision heading (Subdivision 3 Underground mines) before section 60.

### Amendment of s 60 (Additional requirements for management of underground mines)

*Clause 29* amends section 60(5) so that the coal mine operator or SSE must not appoint a person as an underground mine manager unless the person has both of the following board qualifications: a first class certificate of competency for an underground mine; and the practising certificate required by the Board of Examiners to be held by a person holding a first class certificate of competency for an underground mine.

New section 335(1)(e) is the relevant transitional provision for the amendment of section 60(5) and provides that the requirement for the practising certificate does not apply until 10 June 2025.

This clause also omits current section 60(8) to (10) and inserts section 60(8) to (10B) to update board qualification requirements for the appointments of: persons responsible for the control and management of underground activities when the underground mine manager is not in attendance; control of activities in one or more explosion risk zone; electrical engineering managers; mechanical engineering managers; and to confirm that the underground mine

manager may appoint more than one person as electrical engineering manager, or mechanical engineering manager.

New section 60(8) provides that the underground mine manager must appoint a person holding both of the following board qualifications to be responsible for the control and management of underground activities when the underground mine manager is not in attendance at the mine: a first or second class certificate of competency or a deputy's certificate of competency for an underground mine, and the practising certificate required by the Board of Examiners to be held by a person holding a first or second class or deputy's certificate of competency for an underground mine.

It is noted that subclause (3) omits the alternative requirement under section 60(8)(a) regarding a deputy's certificate of competency at the end of the transitional period, which is 5 years after commencement of clause 29(2) as per clause 2 of the Bill. After then only a person holding a first or second class certificate of competency and the associated practising certificate will be able to be appointed as underground mine manager when the underground mine manager is not in attendance.

New section 335(1)(f) is the relevant transitional provision for the amendment of section 60(8)(b) and provides that the requirement for the board qualification of a practising certificate does not apply until 10 June 2025.

New section 60(9) provides the underground mine manager must appoint a person holding both of the following board qualifications to have control of activities in one or more explosion risk zones— (a) a first or second class, or deputy's certificate of competency for an underground mine; (b) the practising certificate required by the board to be held by a person holding the board qualification of a first or second class, or deputy's certificate of competency.

New section 335(1)(g) is the relevant transitional provision for the amendment of section 60(9)(b) and provides that the requirement for the board qualification of a practising certificate does not apply until 10 June 2025.

New section 60(10) provides that the underground mine manager must appoint a person, holding both of the following board qualifications, as electrical engineering manager to control and manage the electrical engineering activities of the mine— (a) an electrical engineering manager's certificate of competency for an underground mine; and (b) the practising certificate required by the board to be held by a person holding the board qualification of electrical engineering manager's certificate of competency mentioned in paragraph (a).

Each subsection from 60(8) to (10A) carry a maximum penalty of 200 penalty units for non-compliance.

New section 333 is the relevant transitional provision for the amendment of section 60(10) and provides that new section 60(10) does not apply to the appointment of an electrical engineering manager or acting electrical engineering manager under section 60A(2) or (3) until the day that is 5 years after the commencement.

New section 60(11) (renumbered from (10A) to (11) provides that the underground mine manager must appoint a person, holding both of the following board qualifications, as mechanical engineering manager to control and manage the mechanical engineering activities of the mine—(a) a mechanical engineering manager's certificate of competency for an

underground mine; and (b) the practising certificate required by the board to be held by a person holding the board qualification of mechanical engineering manager mentioned in paragraph (a).

New section 334 is the relevant transitional provision for the amendment of section 60(11) and provides that new section 60(11) does not apply to the appointment of a mechanical engineering manager or acting mechanical engineering manager under section 60A(2) or (3) until the day that is 5 years after the commencement.

New section 60(12) (renumbered from (10B) to (12) provides that the underground mine manager may appoint more than one person as the electrical engineering manager under subsection (10), or the mechanical engineering manager under subsection (11), to assume the duties of the manager at different times. This confirms for stakeholders that more than one manager may be appointed, even though the singular in legislation includes the plural under section 32C of the *Acts Interpretation Act 1954*. Similar confirmation was included in amendments in 2018 about requirements for ventilation officers following stakeholder queries about whether there can be more than one.

Subclause (3) omits from section 60(8)(a) as amended by subsection (2), the alternative of appointing a person holding a deputy's certificate of competency to be responsible for the control and management of underground activities when the underground mine manager is not in attendance at the mine.

The underground mine manager will only have the alternative of appointing a person holding a first or second class certificate of competency when the underground mine manager is not in attendance at the mine. The amendment is based on a recommendation of the Coal Mining Board of Inquiry. It commences under clause 2(1) on the day that is 5 years after the commencement.

Subclauses (4) and (5) provide consequential renumbering.

### Amendment of s 60A (Acting managers of underground mines)

*Clause 30* amends sections 60A(1)(a), (5)(b), 6(b) and (7) to make consequential amendments as a result of amendments to section 60.

Subclause (2) updates the wording based upon drafting style to change "that is 12 weeks or less after" to "of not more than 12 weeks starting on".

Subclause (3) amends section 60A(8) to replace the definition of "competency requirement" for acting underground mine managers, and those holding a first or second class certificate of competency or a deputy's certificate of competency in acting positions to require both a certificate of competency and practising certificate required for the certificate of competency (that is, both of the board qualifications), and to specify certificate of competency and the practising certificate required for the certificate of competency (that is, both of the board qualifications) for an appointment to act as an electrical engineering manager, or a mechanical engineering manager or an explosion risk zone controller.

## Amendment of s 61 (Appointment of ventilation officer)

*Clause 31* amends section 61(3) to provide that the underground mine manager must not appoint a person under subsection (2) unless the person holds both of the following board qualifications—(a) a ventilation officer's certificate of competency; and (b) the practising certificate required by the board to be held by a person holding a ventilation officer's certificate of competency.

New section 335 is the relevant transitional provision for the amendment of section 61(3)(b) and provides that the requirement for the practising certificate does not apply until 10 June 2025.

## Amendment of s 61A (Acting ventilation officer)

*Clause 32* subclause (1) amends section 61A(5) to provide that the underground mine manager must not appoint a person to act under subsection (2) or (4) unless the person holds both of the following board qualifications—(a) a ventilation officer's certificate of competency; and (b) the practising certificate required by the board to be held by a person holding a ventilation officer's certificate of competency.

Subclause (2) amends section 61A(6), to update the drafting style by omitting "that is 12 weeks or less after" and inserting "of not more than 12 weeks starting on".

New section 335 is the relevant transitional provision for the amendment of section 61A(5)(b) and provides that the requirement for the practising certificate does not apply until 10 June 2025.

## Amendment of s 62 (Safety and health management system)

*Clause 33* amends section 62(3) to extend the requirement for an SHMS to provide a system for the management of all aspects of risks to safety and health for the operation of the mine to include any ROC for the mine, or the remote operation of plant or equipment.

Subclause (2) amends section 62(5) to include identifying critical controls as a measure to ensure that an SHMS is adequate and effective to achieve an acceptable level of risk.

Subclause (3) renumbers section 62(5)(da) to (g) as section 62(5)(e) to (h).

Subclause (4) amends section 62(6) to extend the requirement for an SSE to provide a copy of the SHMS to ROC workers employed for the coal mine and subclause (5) amends section 62(7) to extend the requirement for an SSE to give a copy of a principal hazard management plan to each coal mine worker whose work is affected by the requirements of the plan and an operational ROC worker for the coal mine whose work at the coal mine is affected by the requirements of the plan, if the person requests a copy. Non-compliance with this subsection carries a maximum penalty of 100 penalty units, which is consistent with all the penalties in section 62.

These amendments will ensure that relevant ROC workers are able to access the SHMS, and principal hazard management plans, so that they can familiarise themselves with the aspects of risk management at the coal mine that they might affect. They will also be able to refer to these important systems and documents in an on-going manner as required.

## Amendment of s 63 (Principal hazard management plan)

*Clause 34* amends section 63(1) to require that a principal hazard management plan must also include critical controls.

## Amendment of s 68 (Mine record)

*Clause 35* subclause (1) amends section 68(2) to clarify that the coal mine operator must keep a mine record for section 68(1) for "at least" 7 years after a matter is included in the mine record.

Subclause (2) amends section 68(4) to omit the reference to the mine record relating to the previous 6 months, as relevant time periods relating to the mine record are covered in new subsection (4A) which is renumbered as subsection (5). Subclause (2) also amends section 68(4) so that the coal mine operator must ensure the mine record is available for inspection also by ISHRs, along with it being already available for coal mine workers at the coal mine, and the SSE.

Subclause (2) also inserts section 68(4A) to provide without limiting subsection (4), if a coal mine worker, ISHR, or SSE asks to inspect a matter kept in the mine record, the coal mine operator must ensure the matter is available for inspection as soon as practicable but not later than: (a) if the matter was recorded in the mine record in the previous 6 months—5 days after the request is made; or (b) otherwise—28 days after the request is made. The maximum penalty for non-compliance with this subsection remains consistent with section 68(4) at 200 penalty units.

Subclause (3) renumbers section 68(4A) to (6) as section 68(5) to (7).

## Replacement of ss 69 and 69A

*Clause 36* renames and amends section 69 (Display of directives, reports and other information) to expand the requirements to make information available. New section 69(1) provides that the SSE must display a copy of the following at the coal mine—(a) each directive currently applying at the coal mine; (b) each report of an inspection carried out at the coal mine; (c) each publication of information under section 275AC that may be relevant to safety and health obligations at the coal mine.

New section 69(2) requires the documents listed under subsection (1) to be displayed in one or more conspicuous positions at the coal mine in a way likely to come to the attention of coal mine workers affected by the documents providing safety and health information.

The clause also inserts a new section 69A (Current or past coal mine worker entitled to training and assessment report). Section 69A(1) provides that it applies if a person is or was a coal mine worker at a coal mine. Under section 69A(2) the person may ask the SSE to give the person a training and assessment report for the person. Under section 69A(3) the SSE must comply with the request within 30 days after the request is made. Non-compliance with this subsection carries a maximum penalty of 200 penalty units.

Section 69A(4) provides a definition of "training and assessment report" for the section. "Training and assessment report" means for a person who is or was a coal mine worker at a coal mine, means a copy of the part of the coal mine's SHMS relating to records of training and assessment given to, and undertaken by, the person as a coal mine worker at the coal mine.

New section 69A is intended to ensure that people employed or previously employed at a coal mine can obtain a copy of their training and assessment records as these records are important to their ability to gain employment.

The clause also inserts new section 69B (Site senior executive entitled to training and assessment report from previous coal mine). Section 69B is a redrafting of pre-amended section 69A with minor drafting style changes. Section 69B(1) provides that the section applies if: (a) a person is a coal mine worker at a coal mine, and (b) the person has previously been a coal mine worker at another coal mine.

Section 69B(2) provides that the SSE for the current coal mine may ask the coal mine operator for the previous coal mine to give the SSE a training and assessment report for the person. Section 69B(3) provides that the SSE must comply with the request within 30 days after the request is made. Non-compliance with this subsection carries a maximum penalty of 200 penalty units.

Section 69B(4) provides a definition of “training and assessment report” for the section. “Training and assessment report" for a person who was a coal mine worker at a previous coal mine, means a copy of the part of the previous coal mine’s SHMS relating to records of training and assessment given to, and undertaken by, the person as a coal mine worker at the previous coal mine.

### Amendment of pt 7, div 2, hdg (Site safety and health representatives)

*Clause 37* amends the heading of division 2 (Election of site safety and health representatives) to reflect the purpose of the division due to amendments made by the Bill.

### Replacement of ss 93–96

*Clause 38* replaces sections 93 to 96 to update drafting style and to incorporate some guidance about the election of site safety and health representatives previously included in the Coal Mining Safety and Health Regulation 2017.

Section 93 provides information about the election of site safety and health representatives including how many site safety and health representatives may be elected.

Section 93(1) provides that the coal mine workers at a coal mine may elect 1 or 2 of their number to be site safety and health representatives for the coal mine. This enables up to 2 site safety and health representatives for a coal mine, or separate part of a surface coal mine.

Section 93(2) provides that if there is more than one SSE at a coal mine, the coal mine workers at each part of the coal mine for which an SSE has responsibility may elect 1 or 2 of their number to be site safety and health representatives for each part of the coal mine.

Section 93(3) provides that a site safety and health representative elected under section 93 is appointed for—(a) the term decided by the coal mine workers; or (b) if no term is decided by the coal mine workers—3 years. Section 93(3) incorporates some of the guidance about term of appointment previously provided by section 12O in the Coal Mining Safety and Health Regulation 2017.

Section 93(4) provides that a person elected under section 93 becomes a site safety and health representative only if the person holds the appropriate safety and health competencies recognised by the coal mining safety and health committee for a site safety and health representative.

Section 93(5) provides that when performing functions or exercising powers, a site safety and health representative is taken to be performing duties as a coal mine worker.

Section 93(6) provides that an election of a site safety and health representative for a coal mine, or part of a coal mine, may be held only in the circumstances mentioned in section 98A which sets out when an election must be held.

Section 94 is redrafted to clarify when and how an election may occur if a site safety and health representative is not available.

Section 94(1) provides that if a site safety and health representative is not available when coal mining operations at a coal mine, or part of a coal mine, are considered unsafe by coal mine workers who are affected by the operations, the affected coal mine workers may elect 2 coal mine workers to inspect the operations. This removes the previous unclear reference to electing practical miners who were not defined and specifies that coal mine workers may elect 2 coal mine workers.

Section 94(2) incorporates guidance previously provided under section 12P of the Coal Mining Safety and Health Regulation 2017. Section 94(2) provides that the method of election under subsection (1) must: (a) be decided by the affected coal mine workers; and (b) be as straightforward as practicable, having regard to the need to deal with the coal mining operations that are considered unsafe in a way that is appropriate in the circumstances.

Section 94(3) provides that a coal mine worker elected under subsection (1) is taken to be a site safety and health representative for the period (a) a site safety and health representative is not available; and (b) the coal mining operations are considered unsafe by the affected coal mine workers.

Section 95(1) is updated to change the reference to section 93(3) to instead be to section 93(4) as a consequential amendment to the amendment of section 93. Section 95(1) provides that a person must not act as a site safety and health representative unless the person holds the competencies mentioned in section 93(4). Non-compliance with this subsection carries a maximum penalty of 40 penalty units.

Section 95(2) provides that subsection (1) does not apply to a person elected under section 94(1).

Section 95(3) provides that a site safety and health representative must perform the functions and exercise the powers of a site safety and health representative under this Act for safety and health purposes and for no other purpose. Non-compliance with this subsection carries a maximum penalty of 40 penalty units.

Section 96 is redrafted according to current drafting style and paragraph (c) is clarified. Section 96 provides that a coal mine worker for a coal mine, or part of a coal mine, stops being a site safety and health representative if the worker (a) tells the SSE that the worker resigns as site safety and health representative; or (b) stops being a coal mine worker at the coal mine, or part of the coal mine; or (c) is removed from office by a vote of a majority of coal mine workers at the coal mine, or part of the coal mine, as notified in writing to the SSE for the coal mine. Paragraph (c) clarifies that the vote to remove a site safety and health representative from office

is by a majority of coal mine workers, and that the result of the vote must be notified to the SSE in writing.

### Insertion of new pt 7, div 3 and div 4, hdg

*Clause 39* inserts a new division heading (Process for election of site safety and health representatives) to reflect the purpose of subsequent new sections. New sections are inserted as follows with many of the new sections covering details about the process for election of site safety and health representatives which were previously included in the Coal Mining Safety and Health Regulation 2017:

Section 98A (When election must be held) replaces when an election must be held in section 12K of the Coal Mining Safety and Health Regulation 2017 and changes who a mine worker asks for an election to be conducted, from the chief inspector to the SSE for the coal mine. Section 98A provides that an election of a site safety and health representative for a coal mine, or part of a coal mine, must be held if (a) the office of a site safety and health representative for the coal mine, or part of the coal mine, becomes vacant or will become vacant before the election; and (b) a coal mine worker for the coal mine, or part of the coal mine, asks the SSE for the coal mine, in writing, for an election to be conducted by an entity mentioned in section 98B(1). The request process is intended to be similar to section 12K of the Coal Mining Safety and Health Regulation 2017 which enabled a coal mine worker to request in writing that an election be held.

Section 98B (Who is to conduct election) replaces who is to conduct an election under section 12L of the Coal Mining Safety and Health Regulation 2017.

Section 98B(1) provides an election for a site safety and health representative for a coal mine, or part of a coal mine, must be conducted by one or more of the following entities: (a) one or more involved unions for the election; (b) the SSE for the coal mine, or part of the coal mine; (c) an appropriately qualified entity appointed by an entity mentioned in paragraph (a) or (b).

Section 98B(2) provides that the SSE for the coal mine, or part of the coal mine, and any involved union for the election, must use all reasonable endeavours, during the period of 7 days starting on the day of the election trigger, to agree on which of the entities mentioned in subsection (1) is to conduct the election.

Section 98B(3) provides if the SSE for the coal mine, or part of the coal mine, and any involved union for the election cannot reach agreement under subsection (2), the election must be conducted—(a) by an appropriately qualified entity appointed by the chief inspector; and (b) as soon as practicable after the end of the 7-day period mentioned in subsection (2).

Section 98B(4) provides that if an involved union participates in the conduct of the election, the election must be conducted by secret ballot under (a) the fair rules of the involved union, or, if more than one involved union participates in the conduct of the election, the fair rules agreed to by each of the involved unions; or (b) otherwise—the process prescribed by regulation. The election process prescribed by regulation is schedule 1B of the Coal Mining Safety and Health Regulation 2017. Section 98(4) otherwise replaces section 12L(6) and (7) of the Coal Mining Safety and Health Regulation 2017.

Section 98B(5) provides that if an involved union does not participate in the conduct of the election, the election must be conducted by secret ballot under the process prescribed by

regulation. The election process prescribed by regulation is schedule 1B of the Coal Mining Safety and Health Regulation 2017.

Section 98B(6) confirms that the reasonable costs of the election are to be paid by the coal mine operator.

Section 98B(7) confirms that to remove any doubt, it is declared that nothing in this section compels an entity to conduct, or jointly conduct, an election of a site safety and health representative.

Section 98B(8) provides the following definitions for the section: "Commonwealth industrial association" means an industrial association under section 12 of the *Fair Work Act 2009* (Cwlth); "election trigger", for an election, means the making of a request for the election by a coal mine worker under section 98A(b); "involved union", for an election, means an industrial organisation, or Commonwealth industrial association, whose membership includes a coal mine worker entitled to vote in the election.

"Appropriately qualified entity" is not defined, as "appropriately qualified" is defined in schedule 1 of the *Acts Interpretation Act 1954.*

Section 98C (Obligations of entity or entities conducting election) replaces section 12M of the Coal Mining Safety and Health Regulation 2017. Section 98C provides that an entity conducting an election under section 98B must ensure the election is (a) supervised by a person who has had formal training as a returning officer; and (b) conducted under fair procedures that give each elector an equal opportunity to freely vote in the election.

Finally, this clause inserts a new division 4 heading (Functions and powers of site safety and health representatives) after new section 98C to reflect the purpose of sections 100 to 105.

### Amendment of s 100 (Powers of site safety and health representative)

*Clause 40* subclause (1) amends section 100(a) to refer to the "SSE for the mine".

Subclause (2) amends section 100 to add paragraph (c) to ensure the site safety and health representative for a coal mine has the power to copy, or to obtain from the SSE within a stated reasonable period a copy of, a document mentioned in paragraph (b). Subclause (2) also adds paragraph (d) which ensures the site safety and health representative for a coal mine has the power to require the SSE to give the site safety and health representative reasonable help to exercise the site safety and health representative's powers under paragraphs (b) and (c).

New section 100(2) provides that if a site safety and health representative asks to copy a document under subsection (1)(c), the SSE must give access to the document as soon as reasonably practicable after being asked, unless the SSE has a reasonable excuse. A maximum penalty of 100 penalty units applies.

New section 100(3) provides that an SSE who is required in a stated reasonable way to help the site safety and health representative under subsection (1)(d) must comply with the requirement. This is a penalty provision with a maximum penalty of 100 penalty units.

### Amendment of s 101 (Stopping of operations by site safety and health representatives)

*Clause 41* subclause (1) amends section 101(2) by inserting "site" before "safety and health representative". Subclause (2) amends section 101(2) by inserting “for the coal mine” after “site senior executive” to clarify the provision and correct drafting oversights.

Subclause (3) inserts a new subsection (2A) to provide that the site safety and health representative must give a copy of the written report given to the SSE under subsection (2) to an inspector and an ISHR.

Subclause (4) omits the existing and inserts a new subsection (4) to broaden who receives a written report about action taken under subsection (4) and the reasons for the action to stop operations to not only the SSE but also an inspector and an ISHR.

Subclause (5) subsequently renumbers section 101(2A) to (4) as section 101(3) to (5).

### Amendment of s 105 (Protection of site safety and health representatives performing functions)

*Clause 42* amends sections 105(a) and (b) to replace "his or her" with "the representative's" to adopt a more contemporary drafting style. This clause also inserts "site" before "safety and health representative" to clarify the intent of the provision and correct a drafting oversight.

### Insertion of new pt 7, div 5, hdg

*Clause 43* inserts a new division heading (Division 5 Obligations of site senior executives) to delineate sections dealing with the obligations of the SSE regarding site safety and health representatives.

### Amendment of s 107 (Site senior executive to display identity of site safety and health representatives)

*Clause 44* subclause (1) amends section 107(1) to expand the requirements for an SSE to display the identity of each site safety and health representative so that coal mine workers can more easily identify and approach site safety and health representatives. Section 107(1) provides that an SSE for a coal mine must display a notice as required under subsections (2) to (4) for each site safety and health representative for the mine. Non-compliance with this subsection carries a maximum penalty of 40 penalty units. New subsection (1A) provides that the notice must: (a) state the name of the site safety and health representative; and (b) state the preferred contact details of the representative; and (c) contain a recent photograph of the site safety and health representative. This expands the requirements for an SSE to display the identity of site safety and health representatives so that workers can more easily identify and approach site safety and health representatives.

Subclause (2) amends section 107(3) to insert examples of conspicuous positions which include “near the mine record”, and “in the crib rooms”.

Subclause (3) inserts section 107(4) to provide a definition for “preferred contact details”, of a site safety and health representative, to mean the telephone number and email address by which the representative prefers to be contacted about safety and health matters. For example,

preferred contact details may be personal telephone numbers and email addresses rather than work telephone numbers and email addresses.

Subclause (4) renumbers section 107(1A) to (4) as section 107(2) to (5).

### Amendment of s 109 (Appointment of industry safety and health representatives)

*Clause 45* amends section 109(2) so that persons appointed to be ISHRs must be holders of both of the following board qualifications: (a) a first or second class certificate of competency or a deputy's certificate of competency; and (b) the practising certificate required by the board to be held by a person holding the board qualification mentioned in paragraph (a). This ensures that ISHRs complete continuing professional development under the practising certificate scheme in a similar way to others who hold a first or second class certificate of competency or a deputy's certificate of competency.

Subclause (2) provides more flexibility for the term of appointment of an ISHR by providing that the term of appointment must not be more than 4 years.

### Amendment of s 119 (Powers of industry safety and health representatives)

*Clause 46* amends section 119 so that ISHRs can more effectively access and use documents relevant to safety and health. Subclause (1) amends section 119(1)(b) to provide that an ISHR has the power to enter any part of a coal mine at any time to carry out the representative's functions. This power is to be exercised in accordance with how inspectors conduct unannounced inspections by an ISHR requesting to see the most senior person present at the coal mine after arriving at the entry to the mine.

Subclause (2) amends section 119(1)(d) so that an ISHR has the power to examine SHMS documents, including principal hazard management plans, standard operating procedures, and training records.

Subclause (3) inserts section 119(1)(da) and (db) so that ISHRs have the power: (da) to copy a document mentioned in paragraph (c) or (d); (db) to require the SSE for a coal mine to give the representative, within a stated reasonable period and by a stated reasonable way, including, for example, by email, a copy of any document mentioned in paragraph (c) or (d).

Subclause (4) inserts section 119(1)(e) to require the person in control or temporarily in control of a coal mine to give the representative reasonable help in a stated reasonable way in the exercise of a power under any of paragraphs (a) to (f).

Subclause (5) amends 119(1)(f) to refer to section 163 instead of section 167.

Subclause (6) and (7) complete consequential renumbering. Subclause (6) renumbers section 119(1)(da) to (f) as section 119(1)(e) to (h).

Subclause (7) clarifies section 119(2) so that a person in control or temporarily in control of a coal mine required in a stated reasonable way to help the ISHR under subsection 1(g) must comply with the requirement unless the person has a reasonable excuse. This provision carries a maximum penalty of 100 penalty units.

Subclause (8) amends section 119(3) as a consequence of amendments to the powers of an ISHR in section 119(1). Section 119(3) provides that if an ISHR asks a person to give access

to documents to enable the representative to examine documents under subsection (1)(c) or (d), or to copy the document under subsection (1)(e), the person must give access to the document as soon as reasonably practicable after being asked, unless the person has a reasonable excuse. A maximum penalty of 100 penalty units applies.

### Amendment of s 126 (Qualifications for appointment as inspector)

*Clause 47* amends section 126 so that if a person who holds a certificate of competency or SSE notice is appointed as an inspector that person must also hold the practising certificate required by the Board of Examiners to be held by a person holding that board qualification.

### Replacement of s 129 (Further functions of inspectors)

*Clause 48* replaces section 129 to remove reference to inspectors making recommendations to the commissioner about prosecutions, as the commissioner does not have the function of bringing prosecutions for offences against the Act.

### Amendment of s 138 (Warrants—procedure before entry)

*Clause 49* amends section 138(2)(a) to replace "himself or herself" with "themself" to adopt a more contemporary drafting style.

### Replacement of ss 152 and 153

*Clause 50* omits section 152 and replaces it with new section 152 (Power to require personal details). Subsection (1) provides that this section applies if an officer (that is, an inspector, an inspection officer, or an authorised officer) finds a person committing an offence, or reasonably suspects the person has just committed an offence. Under subsection (2), the officer may require the person to state the person's name and residential address. The officer may also require the person, under subsection (3), to give evidence of the correctness of the stated information if, in the circumstances, the person could reasonably be expected to be in possession of, or otherwise be able to give, the evidence. Subsection (4) requires the officer to give the person an "offence warning" when making a requirement under this section. Subsection (5) defines the meaning of "offence warning" and "reasonably suspect" for the section.

This clause also omits section 153 and replaces it with new section 153 (Offence to contravene personal details requirement), which makes it an offence to contravene a personal details requirement, unless the person of whom the requirement was made has a reasonable excuse. The maximum penalty under subsection (1) for contravening a personal details requirement is increased from 40 to 100 penalty units. However, under subsection (2), a person may not be convicted of an offence under subsection (1), unless the person is found guilty of the offence in relation to which the personal details requirement was made.

These amendments bring personal details requirements under the CMSHA into line with contemporary legislative standards and improves consistency across the Resources Safety Acts.

### Amendment of s 160 (Additional powers of chief inspector)

*Clause 51* makes a consequential amendment to section 160(a) to change the reference to "section 172" to "167" as a result of amendments made by the Bill to the directive provisions.

### Amendment of pt 9, div 5, hdg (Directives by inspectors, inspection officers and industry safety and health representatives)

*Clause 52* renames the heading of division 5 (Directives).

### Renumbering of pt 9, div 5, sdiv 4 (Review of directives)

*Clause 53* renumbers part 9, division 5, subdivision 4 as part 9, division 5, subdivision 8 to provide for the insertion of additional subdivisions by subsequent clauses of the Bill.

### Replacement of pt 9, div 5, sdivs 1–3

*Clause 54* amends part 9 to insert new part 9, division 5, subdivisions 1 to 7 (preliminary, power to give directives, directives relating to acceptable level of risk, directives relating to other matters, how directives given, compliance with directives, records).

Section 161 provides the definition of "authorised official" for division 5 to mean the chief inspector, any other inspector, an inspection officer or an ISHR.

Section 162 provides an authorised official with the power to give a directive for a matter mentioned in subdivision 3 (directives relating to acceptable level of risk) or 4 (directives relating to other matters).

Section 163 provides that a directive may be given to a person who has a safety and health obligation in relation to the coal mine, if an authorised official believes a risk from coal mining operations is at an unacceptable level or may reach an unacceptable level. RSHQ is able to provide guidance regarding the formation of a belief that a risk may reach an unacceptable level under section 10(2)(a)–(c) of the RSHQ Act.

A directive given under this section may require the person to do one or more actions, such as suspending coal mining operations in all or part of the coal mine (subsection (2)(a)) or taking action as stated in the directive (subsection (2)(b)). The action required under these directives will be proportionate to the level of risk from the coal mining operations.

Section 163 also outlines which of the authorised officials can give a directive depending on the nature of the risk outlined in subsection (1) and the action to be taken under subsection (2). For example, under subsection (3), an inspector, an inspection officer or an ISHR may give a directive under subsection (2)(a) to suspend coal mining operations in all or part of the coal mine because of a risk from coal mining operations at a coal mine is at an unacceptable level (subsection (1)(a)). A directive to suspend coal mining operations in all or part of the mine under subsection (2)(a) because risk may reach an unacceptable level (subsection (1)(b)) may be given by an inspector or an ISHR. A directive to take action stated in the directive under subsection (2)(b) may be given by an inspector or an inspection officer. However, only an inspector may give a directive that requires the stated action of reviewing an SHMS or principal hazard management plan or the carrying out of a test to decide whether a risk is at an unacceptable level.

Section 164 provides that an inspector may give the coal mine operator for the coal mine a directive that the task be performed only by a coal mine worker with the competency where an inspector believes a particular task at a coal mine should be performed only by persons with a particular competency.

Section 165 provides that an inspector may give a directive to a person to isolate and protect the site of an accident or incident where an inspector believes evidence relating to a serious accident or HPI at a coal mine needs to be preserved.

Section 166 provides that an inspector may issue a directive that part of the surface of the coal mine must be operated as a separate coal mining operation, if an inspector believes that part of the mine is taken to be a separate mine for the purposes of section 21(4) of the CMSHA.

If an inspector believes the coal mine operator for the coal mine has not complied with the directive, under subsection (4), an inspector may give the coal mine operator a directive to suspend operations in that part of the surface mine to which the directive applied.

Section 167 provides that the chief inspector may give a directive to a person who has a safety and health obligation in relation to a coal mine to provide a report to the chief inspector. A directive given under this section must state the objectives of the report and that the person who prepares the report must be approved by the chief inspector. The person approved for the report must have relevant professional qualifications and experience to prepare the report and not be an employee of the coal mine operator for the coal mine or a contractor for the coal mine.

The report may be about:

- risks from coal mining operations;
- the safety of part or all of any plant, building or structure at the coal mine; or
- a serious accident or HPI at the coal mine.

A report prepared under section 167 is not admissible in evidence against an SSE, or any other coal mine worker or ROC worker mentioned in the report, in a criminal proceeding other than a proceeding about the falsity or misleading nature of the report.

Section 168 provides the required content for a directive given under subdivision 3 (directives relating to acceptable level of risk) or 4 (directives relating to other matters). This includes the action required; the grounds for the directive and the stated period within which the person must comply; and right to review or appeal.

Section 169 provides that a directive may be given either orally or by notice.

If the directive is given orally in the first instance, it must be confirmed by notice to the person as soon as reasonably practicable after the directive is given. Section 169 also provides that a copy of the notice must be given to the SSE for the coal mine, or part of the coal mine to which the directive relates and to the person in control of the coal mine or part of the coal mine to which the directive relates.

However, failure to confirm the directive by notice or provide a copy of the directive to the SSE and person in control of the mine, or part of the mine, does not affect the validity of the directive.

Also, a formal defect or irregularity in a directive given under subdivision 3 or 4 does not invalidate the directive, unless the defect or irregularity would cause or be likely to cause substantial injustice. A directive is also not invalid only because of a failure to use the correct name of a person in a notice, if the notice sufficiently identifies the person.

Section 170 provides how directives given under subdivision 3 or 4 may be withdrawn. This section also notes section 160 of the CMSHA which provides that the chief inspector also has the powers of an inspector.

Section 171 requires that a person to whom a direction is given, must comply with the directive within the period stated in the directive. The maximum penalty for a contravention is 800 penalty units or 2 years imprisonment.

Section 172 requires an authorised official to keep an accurate record of the directive given under subdivision 3 and 4 for at least 7 years after the directive is given.

Section 173 provides that where an authorised official gives a directive relating to a coal mine under subdivision 3 and 4, an authorised official must enter the directive in the mine record and state the reasons in the mine record for the directive, as soon as reasonably practicable after giving the directive. The SSE for the coal mine must enter the action taken to comply with the directive in the mine record as soon as practicable after taking the action. The maximum penalty for a contravention is 40 penalty units.

Section 174 requires the senior site executive for the coal mine to make a copy of a directive given under subdivision 3 and 4 relating to the coal mine available for inspection by coal mine workers at the coal mine for at least 7 years after the directive was given. The maximum penalty for a contravention is 40 penalty units.

New section 174A provides that where an authorised official gives a report to a person under the CMSHA, the authorised official must keep an accurate record of the report for at least 7 years after the report is given to the person.

New section 174B provides that if an authorised official inspects a coal mine under the CMSHA, the authorised official must make a written report about the inspection and give a copy of the report to the coal mine operator and SSE for the coal mine.

### Amendment of s 175 (Application for review)

*Clause 55* amends section 175 to provide that a person given a directive by an authorised official (other than the chief inspector) may apply under division 5 for the directive to be reviewed.

### Amendment of s 178 (Stay of operation of directive)

*Clause 56* makes a consequential amendment to section 178(6) to reflect renumbering within the division, by amending the reference to section 167 to section 163(2)(a).

### Amendment of s 181 (Obstructing inspectors, officers or industry safety and health representatives)

*Clause 57* increases the maximum penalty for obstructing inspectors, inspection officers, authorised officers or ISHRs from 100 to 500 penalty units.

### Replacement of pt 10, div 1, hdg (Purposes of part)

*Clause 58* amends the heading of this part.

### Insertion of new s 182A

*Clause 59* inserts new section 182A for this part to define "board qualification" as meaning a certificate of competency, an SSE notice or a practising certificate.

### Amendment of s 185 (Functions of board of examiners)

*Clause 60* amends section 185 to support other amendments to the Act and the Coal Mining Safety and Health Regulation 2017 that deal with continuing professional development. New section 185(1)(f) confirms that the Board of Examiners has the additional functions of developing and administering a scheme for the continuing professional development of holders of certificates of competency or SSE notices and includes examples of aspects to be developed and administered.

Subclause (2) renumbers section 185(ea) and (f) as section 185(f) and (g).

### Insertion of new s 185A

*Clause 61* inserts a new section 185A (Minister's power to give directions in public interest) to provide that the Minister may give the Board of Examiners a written direction about a matter relevant to the performance of its functions under the Act if the Minister is satisfied it is necessary, and in the public interest, to give the direction. The direction cannot be about issuing, renewing, or otherwise amending, suspending or cancelling a board qualification. The Board of Examiners must comply with the direction.

As the Board of Examiners is a government board established under a Queensland Act of Parliament the board should be conducted in accordance with Queensland government's good governance standards. The new section therefore introduces similar requirements applying to other boards and is limited to the way in which the board administers its statutory functions, rather than how it makes decisions regarding notices, certificates or registrations.

### Replacement of s 186 (Membership and conduct of board proceedings)

*Clause 62* amends and renames section 186 (Membership) to restructure the provisions and apply new requirements that the Board of Examiners must have at least one person with demonstrated expertise in the assessment of technical or safety competencies, and an appropriately qualified chairperson who must not be currently engaged in the mining industry. Nothing within the section prohibits both these roles from being fulfilled by the same person.

### Amendment of s 188 (Appointment of board of examiners)

*Clause 63* makes a consequential amendment to section 188 to change the reference to "section 186(3A)" to "186(1)(b)(i) and (ii)" as a result of amendments made by the Bill to section 186.

## Amendment of s 190 (Presiding at meetings of the board of examiners)

*Clause 64* amends section 190(3) and inserts a new section 190(4) to provide for a circumstance where the chair does not nominate an inspector in their absence to act as chair, then the chief inspector will preside as chair.

## Amendment of s 193A (Register to be kept by board of examiners)

*Clause 65* amends section 193A to expand what the Board of Examiners' register must include by integrating requirements in relation to practising certificates, with existing requirements in relation to keeping a register of certificates of competency granted, SSE notices issued and notices of registration given under mutual recognition.

Subclause (1) amends section 193A(1) to provide that the Board of Examiners must also keep a register of practising certificates issued by the board.

Subclause (2) renumbers section 193A(1)(ba) and (c) as section 193A(1)(c) and (d).

Subclauses (3) and (4) confirm that the same information currently kept on the register for a certificate of competency or SSE notice must also be kept for a practising certificate, by replacing references to certificate of competency or notice or certificate or notice with board qualification or qualification. This streamlining of terms is due to the definition of "board qualification".

Subclause (5) is a consequential amendment due to the amendment under subclause (1) which reordered (a) to (c) due to the insertion of (ba) and subsequent renumbering.

Subclause (6) omits section 193(4) as the definition of "mutual recognition Act" has been moved to the dictionary.

## Amendment of s 194A (Board of examiners may consider previous suspension, cancellation or surrender of certificate of competency or site senior executive notice)

*Clause 66* renames section 194A (Board of examiners may consider previous suspension, cancellation or surrender of board qualification) and amends it to also capture the previous suspension, cancellation or surrender of a practising certificate in the matters the Board of Examiners may have regard to in deciding an application for a board qualification. By using the defined term "board qualification" section 194A applies if a person has applied for the grant of a certificate of competency, SSE notice or practising certificate; and a certificate of competency, SSE notice or practising certificate previously held by the person was suspended, cancelled or surrendered.

## Amendment of s 195 (Obtaining certificates of competency or site senior executive notices by fraud)

*Clause 67* renames section 195 (Obtaining board qualifications by fraud) and amends it to include practising certificates in matters related to a person giving false information to the Board of Examiners. By using the defined term "board qualification", section 195 provides that a person must not become, or attempt to become, the holder of a certificate of competency or SSE notice or practising certificate by giving false information to the Board of Examiners.

Subclause (2) replaces references in this section to "certificate of competency or site senior executive notice" with the broader term "board qualification".

Subclause (3) amends section 195(2) so that the Board of Examiners may cancel a board qualification by notice to the holder if the Board is satisfied that the holder obtained the qualification by giving false information to the Board.

Subclause (4) amends section 195(3) to add paragraphs (c) and (d) to cover who must be notified for decisions relating to practising certificates. Subclause (4) provides that under (c) for a decision relating to cancelling a practising certificate held by an SSE, the Board of Examiners must give notice of a decision to the coal mine operator for each coal mine at which the holder works; and that under (d) for a decision relating to a practising certificate held by a person other than an SSE, the notice must be given to the SSE for each coal mine at which the holder works.

### Amendment of s 196 (Return of certificate of competency or site senior executive notice)

*Clause 68* renames section 196 (Return of board qualification) and amends it to also apply to practising certificates by using the defined term "board qualification". This clause also changes the court jurisdiction for suspending or cancelling a board qualification under section 258, from the industrial magistrates court to the magistrates court as part of other amendments made by the Bill.

### Amendment of s 196A (Effect on particular appointments of suspension, cancellation or surrender of certificate of competency or site senior executive notice)

*Clause 69* renames section 196A (Effect on particular appointments of suspension, cancellation or surrender of board qualification) and amends it to also apply to practising certificates by using the defined term "board qualification".

The amendment provides that if a board qualification is suspended, cancelled or surrendered and the person held an appointment and was required to hold the board qualification to be appointed to the position, the person's appointment ends on the suspension, cancellation or surrender of the person's certificate of competency or SSE notice or practising certificate.

### Amendment of pt 10A, hdg (Suspension and cancellation of certificates of competency and site senior executive notices by CEO)

*Clause 70* renames the heading of part 10A (Suspension and cancellation of board qualifications by CEO) so that this part also applies to practising certificates by using the defined term "board qualification".

### Amendment of s 197A (Grounds for suspension or cancellation)

*Clause 71* amends section 197A by inserting a new subsection (3) to provide that the only ground for the Board of Examiners to suspend or cancel a person's practising certificate is that the person failed to complete the requirements of the Board of Examiners to hold the certificate. This is in contrast to the existing range of grounds under section 197A(1) for suspending or cancelling a person's certificate of competency, and in contrast to the grounds under section 197A(2) for suspending or cancelling a person's SSE notice.

### Amendment of s 197B (Notice of proposed action)

*Clause 72* amends section 197B to include practising certificates by using the defined term "board qualification", so that this section applies if the CEO considers there is a ground to suspend or cancel a person's certificate of competency, SSE notice or practising certificate.

### Amendment of s 197D (Decision to take proposed action)

*Clause 73* amends section 197D(2) to include practising certificates in matters related to a decision by the Board of Examiners to take a proposed action regarding a board qualification by using the defined term "board qualification".

This clause also amends section 197D(6)(a) by inserting new (iii) and (iv) to cover decisions relating to a practising certificate. New section 197D(6)(a)(iii) requires the CEO to give a copy of the notice of a board decision relating to a practising certificate held by an SSE to the coal mine operator for each coal mine at which the SSE works. New section 197D(6)(a)(iv) requires the CEO to give a copy of the notice of a board decision relating to a practising certificate held by a person other than an SSE to the SSE for each coal mine at which the person works.

### Insertion of new s 197E

*Clause 74* inserts new section 197E (Automatic cancellation or suspension of practising certificate) to automatically cancel or suspend a practising certificate if a person's certificate of competency or SSE notice to which the practising certificate relates is cancelled or suspended, for the same period.

### Replacement of s 198 (Notice of accidents, incidents, deaths or diseases)

*Clause 75* replaces and renames section 198 (Notice of accidents, deaths or incidents) to implement the following amendments regarding the requirements for the SSE to give notice of accidents, deaths or incidents at the coal mine:

- change requirements to notify an inspector (orally and in the approved form) and an ISHR (orally and by notice) with requirements tailored to each;
- replace the requirement to give "primary information" to an inspector with a requirement to provide "required information", specified in the approved form;
- apply a requirement for oral notifications to be "as soon as possible";
- omit provisions related to reporting prescribed diseases which are now in new section 198AA.

The purpose of these amendments is to support the development of a new web-based incident reporting system for all resources sectors, which will be the approved form, and which allow the SSE to enter the information about the incident directly. This will improve the capture of incident reports and allow for consistent subsequent analysis and presentation of aggregated data to industry, which in turn will assist industry to better manage hazards at their own mines.

The maximum penalty for non-compliance with either the inspector or the ISHR notification requirement is increased to 100 penalty units to incentivise compliance with the requirements.

To ensure serious accidents or death are notified in a timely manner section 198(1) provides that if the SSE for a coal mine becomes aware of a serious accident or death at the mine they must orally notify both an inspector and an ISHR as soon as possible, providing the required information for the notification to the extent the information is known. Oral notification of

HPIs is also required to be provided to an ISHR under subsection (2) about the incident, and about the required information for the notification, to the extent the information is known to the SSE.

Oral reporting is to be followed up as soon as practicable by the SSE by notifying an inspector via the approved form (subsection (3)(a)); and an ISHR by notice, (subsection (3)(b)).

Subsection (4) provides that the notice to be provided to an inspector in the approved form must make provision for particular information to be provided about the accident, death or incident. The notice to be provided to an ISHR in subsection (3)(b) must include the information prescribed in subsection (5) and examples of types of descriptions that may be given have been included.

If the SSE does not know the required information, or information mentioned in subsection (5), at the time the SSE is required to notify a person by approved form or by notice, they must, under subsection (6)(a), take all reasonable steps to find out the required information as soon as possible; and, under subsection (6)(b), as soon as possible after the required information becomes known to the SSE, give the required information to the person.

Subsection (7) provides for a proceeding under subsection (1)–(3) or (6) , it is not a defence that the giving of the information might tend to incriminate the SSE as the information is not admissible in evidence against the SSE in any criminal proceeding. However, this does not prevent the information being admitted in evidence in a criminal proceeding about the falsity or misleading nature of the information that was provided.

Subsection (10) provides the definition of "required information" for this section. In relation to a notification to be given to an inspector it is the information required by the approved form mentioned in subsection (3)(a). In relation to a notification to be given to an ISHR it is the information required by the notice mentioned in subsection (3)(b).

The clause also inserts a new section 198AA (Notice of reportable diseases), which is based on, but expands on, the previous sections 198(6), (7) and (8) and requires that an SSE for a coal mine who becomes aware that a relevant worker has been diagnosed with a reportable disease, must as soon as practicable notify an inspector about the disease by notice in the approved form; and notify an ISHR about the disease by notice. The notification requirement clarifies that the disease only has to be reported the first time the SSE becomes aware, removing doubt that arose from the wording of the previous section 198(6) which suggested that subsequent reports relating to a single disease incidence had to be reported.

Section 198AA(2) retains the previous requirement that a prescribed person who becomes aware that a relevant worker has been diagnosed with a reportable disease, must as soon as practicable after becoming aware, notify the chief inspector by notice in the approved form.

Sections 198AA(1) and (2) carry a maximum penalty of 100 penalty units.

Section 198AA(3) provides that the approved form mentioned in subsection (1)(a) and (2) must make provision for stating the name and date of birth of the person diagnosed with the reportable disease. This is also an expansion of the previous requirements, which is necessary to ensure notification of a reportable disease to RSHQ includes sufficient information to accurately identify the person. This requirement only applies where the information is being notified to an inspector or chief inspector; it does not apply to a notification to an ISHR to

ensure there is adequate protection of private health information. Workers can still voluntarily provide information to ISHRs about a reportable disease and seek support.

Subsection (4) provides that this section does not apply in the circumstances prescribed by regulation.

Subsection (5) provides definitions for the section.

A "prescribed person" is defined as a person who is prescribed by a regulation for subsection (2) of the section. At this time no category of person has been prescribed.

A "relevant worker" is defined as a person who is, was or may become a coal mine worker; or a person who is, was or may become a worker under the MQSHA. The new definition expands the categories of people who have a reportable disease that must be reported under the section. Previously the requirement only related to coal mine workers however, it is important to broaden the category of workers under the reporting requirements given workers engaged in the mining and quarrying industry can develop similar diseases and as there is mobility between the different sectors. It is also important to require the reporting of a reportable disease of a person who might undertake a health assessment prior to becoming a coal mine worker.

A "reportable disease" is defined as a disease prescribed by regulation to be a reportable disease that must be reported under the section. Consequential amendments will be made to section 13A of the Coal Mining Safety and Health Regulation 2017 to reflect this change.

### Insertion of new s 199A

*Clause 76* inserts section 199A (Site senior executive must tell contractor particular matters) to specify that this section applies if a contractor provides or arranges for a coal mine worker to perform work, or provide a service, at a coal mine; and the SSE becomes aware of any of the following matters—

- an injury or illness to the coal mine worker from coal mining operations that causes the worker to be absent from work;
- an HPI happening at the coal mine that causes or has potential to cause a significant adverse effect on the safety or health of the coal mine worker;
- any proposed change to the coal mine, or plant or substance used at the coal mine, that affects, or may affect, the safety and health of the coal mine worker.

Non-compliance with this new section carries a maximum penalty of 100 penalty units. The new provision will assist contractors to be aware of any safety and health issues which may affect their employees.

Subsection (2) provides that the information must be given by the SSE to the contractor as soon as practicable after it comes to the SSE's knowledge.

### Amendment of s 201 (Action to be taken in relation to site of accident or incident)

*Clause 77* amends section 201(1)(c) to provide that the CEO or the chief inspector, at their discretion, may grant an extension of time for a period of up to 12 months after an accident or incident has occurred for the submission of the required report. For reports that are not granted a longer period, the timeframe for giving the report is amended from "one month" to "30 days". The purpose of the amendment is to ensure that complex investigations and reports do not have

to meet a timeframe that adversely affects the quality of the report, by allowing for an extension of time where the CEO or chief inspector believes it is warranted.

### Amendment of s 216 (Offences by witnesses)

*Clause 78* amends section 216 to increase the maximum penalties for board of inquiry witness offences from 30 to 200 penalty units to provide a greater deterrent. This amendment will improve consistency across the Resources Safety Acts as this is the current maximum penalty for an equivalent offence under the P&G Act, and the MQSHA and the Explosives Act are also being amended by this Bill.

### Insertion of new ss 216A and 216B

*Clause 79* inserts a new section 216A (False or misleading statements to board of inquiry) to make it an offence for a person to state anything to a board of inquiry that the person knows is false or misleading in a material particular, with a maximum penalty of 500 penalty units to act as a deterrent to breaching the provision.

The clause also inserts new section 216B (False or misleading documents to board of inquiry) to make it an offence for a person to give a document to a board of inquiry that the person knows is false or misleading in a material particular, unless the person informs the board to the best of the person's ability, how it is false or misleading and if the person has, or can reasonably get, the correct information, gives the correct information to the board. A maximum penalty of 500 penalty units applies as a deterrent to breaching the provision.

These amendments will improve consistency across the Resources Safety Acts as these sections align the CMSHA with equivalent provisions in the Explosives Act and the P&G Act, and the MQSHA is also being amended by this Bill.

### Amendment of s 217 (Contempt of board)

*Clause 80* renames section 217 (Contempt of board of inquiry).

Subclause (2) amends section 217, by inserting new paragraph (aa) after (a) to make it an offence to impede or obstruct a board of inquiry in the exercise of its powers.

Subclause (3) amends section 217(b) and (c) to refer to the board of inquiry.

Subclause (4) renumbers section 217(aa) to (c) as section 217(b) to (d).

Subclause (5) provides the maximum penalty is 200 penalty units. The maximum penalty has been increased from 30 to 200 penalty units to act as a greater deterrent. This amendment will improve consistency across the Resources Safety Acts as this is the current maximum penalty for an equivalent offence under the P&G Act, and the MQSHA and the Explosives Act are also being amended by this Bill.

### Amendment of s 236A (Appeals against CEO's decisions)

*Clause 81* amends section 236A to also apply to practising certificates, as well as to certificates of competency and to SSE notices by replacing the reference to certificate of competency or SSE notice with the defined term "board qualification".

### Amendment of s 237 (Appeals against board of examiners' decision)

*Clause 82* amends section 237 to also apply to SSE notices and practising certificates, as well as certificates of competency by using the defined term "board qualification".

### Amendment of s 243 (Who may appeal)

*Clause 83* amends section 243 to replace reference to subdivision 4 with subdivision 8 to provide for the insertion of additional subdivisions by subsequent clauses of the Bill.

### Amendment of s 245 (Stay of operation of directive or review decision)

*Clause 84* amends section 245(5) to replace the reference to "section 167" with "section 163(2)(a)" instead.

### Amendment of s 255 (Proceedings for offences)

*Clause 85* amends section 255 so that a prosecution for an offence against this Act, other than an offence against part 3A, must be heard and decided summarily. This amendment intends to align the court jurisdiction across the Resources Safety Acts, as well as the WHS Act, which will ensure consistency for all litigants and a consistent resources safety legislative framework in relation to the jurisdiction of prosecutions.

### Amendment of s 256B (Procedure if prosecution not brought)

*Clause 86* is a consequential amendment that replaces a reference to "section 255(10)" with "section 255(9)" instead.

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

*Clause 87* amends section 257 which sets out the limitation periods for when proceedings for an offence may be brought, excluding proceedings for an offence against part 3A. Proceedings must be commenced within the latest of the following periods to end—

- 2 years after the offence first comes to the notice of the complainant,
- if an enforceable undertaking has been given in relation to the offence, 6 months after the latest of the following happens: the enforceable undertaking is contravened or when it comes to the notice of the CEO that the enforceable undertaking has been contravened or the CEO agrees under section 267Q to the withdrawal of the enforceable undertaking, or
- if the offence involves a breach of an obligation causing death and the death is investigated by a coroner under the *Coroners Act 2003*, 2 years after the coroner makes a finding in relation to the death.

This amendment ensures that there is consistency, equity and alignment across the Resources Safety Acts. It also aligns with the WHS Act which provides for "within 2 years after the offence first comes to the notice of the WHS prosecutor".

This will enable robust investigations to be undertaken into serious accidents and fatalities as well as successful prosecutions that will act as a deterrent and provide justice for the workers and their families. These amendments will facilitate improved safety and health outcomes.

### Amendment of s 258 (Court may order suspension or cancellation of certificate or notice)

*Clause 88* amends section 258 to replace references to an "industrial magistrate" to the "Magistrates Court" instead. It also replaces "Industrial Court" with "District Court" instead.

### Amendment of s 259 (Forfeiture on conviction)

*Clause 89* amends section 259 to replace the references to an "Industrial Magistrates Court" to a "Magistrates Court" instead.

### Amendment of s 264 (Orders for costs)

*Clause 90* amends section 264 to replace the references to an "Industrial Magistrates Court" to a "Magistrates Court" instead. As a result, this clause also omits subsection (3), which is no longer relevant. The remaining subsections are subsequently renumbered.

### Insertion of new pt 15C

*Clause 91* inserts new part 15C which deals with the giving of enforceable undertakings under the Act. This is a new enforcement tool which will strengthen RSHQ's enforcement tool kit and is an alternative to court imposed sanctions. These provisions generally align with the approach taken under the WHS Act.

Section 267L introduces enforceable undertakings under the Act such that the CEO may accept a written undertaking for offences other than an offence arising from an accident causing death, or an industrial manslaughter offence. The giving of an enforceable undertaking does not constitute an admission of guilt. The CEO must publish general guidelines in relation to the acceptance of enforceable undertakings on a Queensland Government website. The CEO may accept an enforceable undertaking in relation to a contravention or alleged contravention before a proceeding in relation to that contravention has been finalised. In such a case the CEO must immediately notify the WHS prosecutor who must take all reasonable steps to have the proceeding discontinued as soon as possible.

Section 267M sets out requirements for notices related to enforceable undertakings such that the CEO must give the person seeking to make an enforceable undertaking written notice of the CEO's decision and of the reasons for the decision, and the decision and reasons must also be published on a Queensland Government website.

Section 267N provides that an enforceable undertaking takes effect and becomes enforceable when the CEO's decision is given to the person who made the undertaking, or at any later date stated by the CEO.

Section 267O provides that if a person contravenes an enforceable undertaking a maximum penalty of 500 penalty units applies.

Section 267P sets out provisions related to the contravention of an enforceable undertaking including that:

- the CEO may apply to a Magistrates Court for an order if a person contravenes an enforceable undertaking;

- if the court is satisfied the undertaking has been contravened it may impose a penalty and make an order directing the person to comply with the order, or an order discharging the undertaking;
- the court may also make other orders it considers appropriate including orders to pay the costs of the proceeding and the reasonable costs of monitoring the enforceable undertaking in the future;
- a proceeding may also be taken for the contravention or alleged contravention of the Act to which the enforceable undertaking relates.

Section 267Q sets out provisions for withdrawing or varying an enforceable undertaking such that:

- a person who has made an enforceable undertaking may at any time, with the written agreement of the CEO, withdraw or vary the undertaking;
- the provisions of the undertaking cannot be varied to deal with a different alleged contravention of the Act;
- the CEO must publish, on a Queensland Government website, notice of the withdrawal or variation of an enforceable undertaking.

Section 267R sets out the proceeding for an alleged contravention of an enforceable undertaking such that:

- no proceeding for a contravention or alleged contravention of the Act may be taken if an enforceable undertaking is in effect in relation to the contravention;
- no proceeding may be taken for a contravention or alleged contravention of the Act if a person has completely discharged an enforceable undertaking.

### Insertion of new pt 16, div 1, hdg

*Clause 92* inserts a new part 16 division 1 heading (General) before section 268 to restructure the part into separate divisions to support the introduction of a range of new orders that may be made by a court.

### Insertion of new pt 16, div 2

*Clause 93* inserts a new part 16 division 2 (Sentencing for offences) after section 270. The purpose of the new division is to provide a broader range of court orders that may be given if a court convicts a person or finds a person guilty of an offence against the Act.

Section 270A provides that this division applies if a court convicts a person or finds them guilty of an offence against the Act.

Section 270B provides that one or more orders under this division may be made against the offender. It also provides that orders can be made under this division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

Section 270C provides for adverse publicity orders, which can be an effective deterrent for an organisation that is concerned about its reputation. Such orders can draw public attention to a particular wrongdoing and the measures that are being taken to rectify it.

The court may order an offender to take either or both of the following actions: to publicise the offence, its consequences, the penalty imposed and any other related matter; or to notify a

specified person or specified class of persons of the offence, its consequences, the penalty imposed and any other related matter.

The offender must give the CEO evidence of their compliance with the order within 7 days after the end of the compliance period stated in the order. The CEO can take the action stated in the order if they do not comply with the adverse publicity order or fail to give the CEO evidence of their compliance with the order. Where this occurs, the CEO is entitled to recover from the offender reasonable expenses associated with them taking that action.

This new section also allows the court to make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.

Section 270D provides for restoration orders, requiring the offender to take steps within a specified period to remedy a matter caused by the commission of the offence that appears to be within the offender's power to remedy. The court can extend (or further extend) the specified period, provided an application for extension is made before the end of the period.

Section 270E provides for safety and health project orders, an order requiring an offender to undertake a specified project within a certain period for the general improvement of safety and health of persons at coal mines or persons who may be affected by coal mining operations. These orders make offenders undertake activities that identify and address the failures that led to their wrongdoing.

The order may specify conditions that must be complied with in undertaking the project. It can also be combined with other non-monetary orders to ensure that failures, that led to the offence being committed in the first place, are addressed.

Section 270F provides for a court-ordered undertaking, which enables a court to adjourn proceedings, with or without recording a conviction, for up to 2 years and make an order for the release of the offender on the condition that they give an undertaking with specified conditions.

Court-ordered undertakings are different from enforceable undertakings (that are also being introduced by the Bill), which are voluntary in nature.

This section sets out the conditions that must be included in a court-ordered undertaking. The undertaking must require the offender to appear before the court if called on to do so during the period of the adjournment. Furthermore, the offender must not commit any offence against this Act during the period of adjournment and must observe any special conditions imposed by the court.

The court can call on the offender to appear before it if the offender is given not less than 4 days' notice of the court order to appear. When the offender appears before the court, if the court is satisfied they have observed the conditions of the undertaking, the court must discharge the offender without any further hearing of the proceeding.

Section 270G provides for injunctions, which require the offender to stop contravening the Act if they have been found guilty of an offence. This court order can be an effective deterrent where a penalty fails to provide one. A note in this new section highlights part 15A of the Act, which separately provides for injunctions that may be granted by the District Court against a person at any time.

Section 270H provides for training orders, which enable a court to make an offender take action to develop skills that are necessary to effectively manage safety and health in coal mines. The court may make an order requiring the offender to undertake, or arrange for coal mine workers to undertake, a specified course of training.

Section 270I makes it an offence for a person to fail to comply with an order made under this new division unless the person has a reasonable excuse. The evidentiary burden is on the defendant to prove a reasonable excuse as this is provided for in the *Justices Act 1886*. This section does not apply to an order under new sections 270F or 270G. Non-compliance with this section carries a maximum penalty of 500 penalty units.

### Amendment of s 274 (Where coal mine worker exposed to immediate personal danger)

*Clause 94* amends sections 274(1)(a) and (3) to replace "himself or herself" with "themself" to adopt a more contemporary drafting style.

### Amendment of s 275AA (Protection from reprisal)

*Clause 95* provides the definition of the term "detriment" under section 275AA. This will serve to strengthen the provision as the broad term "detriment" is open to interpretation.

### Amendment of s 275AC (Public statements)

*Clause 96* amends section 275AC to clarify the details that may be published by RSHQ under the release of public statements. The current section 275AC(2) provides that a public statement may identify particular information and persons. The amendments provide that the information may contain the number of HPIs and serious accidents, a description of the HPI and/or serious accident, the name of the coal mine, the operator of the coal mine, the injuries sustained, and any other information considered appropriate. The requirement that the information be only published when it is in the public interest will continue to apply and natural justice will continue to apply.

The changes aim to support an HRO reporting culture. Incident data and its analysis underpin the regulator's ability to share safety learnings and trends with industry, with a view to preventing incidents and serious accidents and to improve safety and health outcomes for resources sector workers.

The references to public statements are replaced with "publish information" to cater for the broad range of means to share the information, which will continue to include oral statements as well as written forms.

This clause also replaces the liability provisions at section 275AC(4) and (5) as required to meet current drafting practice.

### Amendment of s 275A (Disclosure of information)

*Clause 97* makes two amendments to section 275A. Subclause (1) consequentially amends section 275A(1)(e) to better align this paragraph with section 275AC (Publication of information), as amended by the Bill. Subclause (2) amends section 275A(2) by broadening the disclosure provision so the chief inspector may communicate anything that comes to the chief inspector's knowledge under the CMSHA to an officer or authority responsible for

administering a law of Queensland, the Commonwealth or another state about safety and health. Under the existing provision, this disclosure is limited to being about safety and health "in mining".

### Amendment of s 280 (CEO to keep records)

*Clause 98* amends section 280 to revise the requirements for the CEO to keep records by:

- removing the obligation for the CEO to maintain a database of hazards and methods of controlling the hazards;
- removing all reference to lost time injuries and only referring to serious accidents and HPIs; and
- revising the provision for the CEO to give access to the records by removing reference to the payment of a reasonable fee.

These amendments will remove a redundant requirement for the CEO to keep a hazards database and remove any focus on lost time injury frequency as this is no longer considered to be an appropriate measure of safety performance in a high-risk industry. The amendments recognise that the current hazards database is rarely used, because industry bears responsibility for risk management, has intimate knowledge of mine site operations and therefore is best placed to maintain such information. Keeping the hazards data is a different responsibility to that of the CEO keeping and maintaining a database of HPIs which is being retained. This will allow the regulator to focus on more serious accidents and HPIs rather than minor injuries.

The removal of a charge to access records recognises that imposing such a charge is not in keeping with a culture of sharing safety information. Under the new web-based reporting system being introduced by RSHQ operators will have access to their own reporting information and aggregated industry information against which to benchmark their own performance.

### Amendment of s 281 (Approved forms)

*Clause 99* amends section 281 to insert a reference to the "CEO" as a person who may approve forms for use under the Act. The amendment is necessary because the CEO of RSHQ is also an appropriate person to approve forms for use under the Act and aligns the Act with similar amendments to the other Resources Safety Acts.

### Insertion of new pt 20, div 12

*Clause 100* inserts new division 12 (Transitional provisions for the Resources Safety and Health Legislation Amendment Act 2024) into part 20.

Section 328 (Definitions for division) provides definitions for the terms "former" and "new", for a provision of the CMSHA, as used within the division. A reference to a "former" provision means the provision of the CMSHA as in force from time to time before the commencement of the provision in which the term is used. A reference to a "new" provision, for a provision of this Act, means the provision as in force from the commencement of the provision in which the term is used.

Section 329 (Deferral of requirements relating to critical controls) provides that new sections 30, 47A, 62(5) and 63(1) do not apply until the day that is 1 year after the commencement. Former sections 30, 47A, 62(5) and 63(1) continue to apply until that day that is 1 year after

the commencement. This will provide 1 year for SSEs to have critical controls included in the principal hazard management plans and SHMS for a coal mine.

Section 330 (Deferral of requirements relating to operational ROC workers) provides those amendments to sections 42(h) related to induction and training of operational ROC workers so they are competent and s 62(3) which relates to the inclusion of ROCs or remote operation of plant or equipment in the SHMS do not apply as amended by the Bill until the day that is 6 months after commencement. Former sections 42(h) and 62(3) will continue to apply until the day that is 6 months after commencement. This will ensure SSEs have 6 months before these requirements apply.

Section 331 (Deferral of additional requirements for management of surface mines) provides that new sections 58A and 58B do not apply until the day that is 5 years after the commencement. This provides a 5-year transitional period from the commencement for a surface SSE to appoint surface mine managers and acting surface mine managers with a surface mine manager's certificate of competency and with the practising certificate required by the Board of Examiners to be held by a worker with a surface mine manager's certificate of competency.

New sections 58A and 58B also provide a 5-year transitional period from the commencement for a surface mine manager to appoint electrical engineering managers and mechanical engineering managers (and those acting in these positions) with respective certificates of competency (that is, electrical engineering manager's certificate of competency for a surface mine or mechanical engineering manager's certificate of competency for a surface mine) and with the respective required practising certificates, to these positions.

As these certificates of competency are new certificate of competency requirements for these safety critical workers at surface coal mines, a 5-year transitional period is provided for gaining the relevant certificate of competency from the Board of Examiners. Once a worker has obtained a certificate of competency for a surface mine manager, or surface electrical engineering manager, or surface mechanical engineering manager, within the 5-year transitional period, the worker will be able to register with the Board of Examiners to obtain the practising certificate required by the Board of Examiners to be held by a worker holding the relevant certificate of competency within the 5-year transitional period.

Section 332 (Appointment of open-cut examiner before commencement) applies if, before the commencement of new section 59(2) and (3), the SSE for a surface mine or a separate part of a surface mine appointed a person under former section 59 to be open-cut examiner. Subsection (2) confirms that the person is taken to be appointed by the surface mine manager under new section 59. This transitional provision is required because once appointed surface mine managers will take over from SSEs in appointing open-cut examiners.

Section 333 (Deferral of requirement for electrical engineering manager for underground mine to hold board qualifications) sets out the 5-year transitional period for underground electrical engineering managers and acting electrical engineering managers to gain an electrical engineering manager's certificate of competency for an underground coal mine and the practising certificate required by the Board of Examiners to be held by a worker holding an electrical engineering manager's certificate of competency for an underground coal mine, in order to be appointed under new section 60(10) or under section 60A(2) or (3).

The 5-year transitional period is set out by stating that new section 60(10) does not apply to the appointment of an electrical engineering manager for an underground mine, or to an acting electrical engineering manager appointed under section 60A(2) or (3), until the day that is 5 years after the commencement. The 5-year transitional period is enforced through section 333(2) which confirms, if, on the day that is 5 years after the commencement, an electrical engineering manager for an underground mine, or an acting electrical engineering manager appointed under section 60A(2) or (3), does not hold both of the board qualifications (that is, an electrical engineering manager's certificate of competency for an underground mine, and the practising certificate required by the Board of Examiners to be held by a worker holding an electrical engineering manager's certificate of competency for an underground mine), the appointment of the electrical engineering manager or acting electrical engineering manager is terminated.

Section 333(3) confirms that requirements for electrical engineering managers under former section 60(10) continue to apply until the day that is 5 years after the commencement to provide time for electrical engineering managers to gain the required board qualifications. This enables the appointment of electrical engineering managers according to former section 60(10) requirements until the end of the transitional period, although underground mine managers may appoint electrical engineering managers according to the new requirements at any time during the transitional period.

Section 334 (Deferral of requirement for mechanical engineering manager for underground mine to hold board qualifications) sets out the 5-year transitional period for underground mechanical engineering managers and acting mechanical engineering managers to gain a mechanical engineering manager's certificate of competency for an underground coal mine and the practising certificate required by the Board of Examiners to be held by a worker holding a mechanical engineering manager's certificate of competency for an underground coal mine, in order to be appointed under new section 60(11) or under section 60A(2) or (3).

The 5-year transitional period is set out by stating that new section 60(11) does not apply to the appointment of a mechanical engineering manager for an underground mine, or to an acting mechanical engineering manager appointed under section 60A(2) or (3), until the day that is 5 years after the commencement. The 5-year transitional period is enforced through section 334(2) which confirms, if, on the day that is 5 years after the commencement, a mechanical engineering manager for an underground mine, or an acting mechanical engineering manager appointed under section 60A(2) or (3), does not hold both of the board qualifications (that is, a mechanical engineering manager's certificate of competency for an underground mine, and the practising certificate required by the Board of Examiners to be held by a worker holding a mechanical engineering manager's certificate of competency for an underground mine), the appointment of the mechanical engineering manager or acting mechanical engineering manager is terminated.

Section 334(3) confirms that requirements for mechanical engineering managers under former section 60(10) continue to apply until the day that is 5 years after the commencement to provide time for mechanical engineering managers to gain the required board qualifications. This enables the appointment of mechanical engineering managers according to former section 60(10) requirements until the end of the transitional period, although underground mine managers may appoint mechanical engineering managers according to the new requirements at any time during the transitional period.

Section 335 (Deferral of particular requirements to hold practising certificate) sets out the transitional period until 10 June 2025 for holders of SSE notices, holders of open-cut examiner certificates of competency, holders of a first class certificate of competency for an underground mine, holders of a second class certificate of competency, holders of a deputy's certificate of competency, holders of a ventilation officer's certificate of competency and for acting holders of the respective certificates of competency to hold a practising certificate.

Section 335(1) provides that the section applies to the following requirements to hold a practising certificate by covering all of the requirements under respective sections relating to holders of SSE notices or existing certificates of competency having a practising certificate, including ISHRs, inspectors, and for particular members of the Board of Examiners. Section 335 applies to:

- the requirement under new section 54(4)(a)(ii) and 54(4)(b)(ii) for an SSE for a coal mine to hold a practising certificate;
- the requirement under new section 57(4)(b) for an acting SSE for a coal mine to hold a practising certificate;
- the requirement under new section 59(1)(b) for an open-cut examiner for a surface mine excavation carried out at a surface mine or part of a surface mine to hold a practising certificate;
- the requirement under new section 59A(6)(b) for a person acting as an open-cut examiner for a surface mine to hold a practising certificate;
- the requirement under new section 60(5)(b) for an underground mine manager to hold a practising certificate;
- the requirement under new section 60(8)(b) for a person responsible for the control and management of underground activities at an underground mine when the manager is not in attendance at the mine to hold a practising certificate;
- the requirement under new section 60(9)(b) for a person who is to have control of activities in 1 or more explosion risk zones for an underground mine to hold a practising certificate;
- the requirement under new section 60A(6) and (8) for a person acting in a position mentioned in paragraph (e), (f) or (g) to hold a practising certificate;
- the requirement under new section 61(3)(b) for a ventilation officer to hold a practising certificate;
- the requirement under new section 61A(5)(b) for a person acting as a ventilation officer to hold a practising certificate;
- the requirement under new section 109(2)(b) for an ISHR to hold a practising certificate;
- the requirement under new section 126(2) for particular persons appointed as an inspector to hold a practising certificate;
- the requirement under new section 186(1)(b)(iii) or (iv), (c)(ii) or (d)(ii) or (3)(d) for particular members of the Board of Examiners to hold a practising certificate.

Section 335(2) provides that the requirements to hold a practising certificate for particular appointments listed under subsection (1) do not apply until 10 June 2025.

The transitional period until 10 June 2025 is enforced through section 335(3) which provides, if, on 10 June 2025, a person mentioned in subsection (1) does not hold the required practising certificate, the appointment of the person to the position mentioned in subsection (1) is terminated.

Section 335(4) provides that former sections 54(4), 57, 59(1), 60(5) and (8), 60A(6) and (8), 61(3), 61A(5), 109(2), and 126 continue to apply until 10 June 2025.

Section 335(5) provides that in this sectio "practising certificate" includes a practising certificate under the MQSHA.

This enables the appointment of persons mentioned in subsection (1) according to these former sections until the end of the transitional period to 10 June 2025, although persons may be appointed to these positions according to the new requirements for practising certificates at any time during the transitional period.

Section 336 (Deferral of requirement for board of examiners to include person who has expertise in assessment of competencies) ensures that section 186(1)(a) requiring the Board of Examiners to include a person with expertise in competencies does not apply until the day that is 2 years after the commencement of the Bill. This will provide adequate time to recruit and appoint a suitable person during a time when there will be other significant work being undertaken by the Board due to other amendments being made by this Bill.

Section 337 (Deferral of requirement for chairperson of board of examiners to have particular qualifications) ensures that section 186(2) requiring the chairperson of the Board of Examiners to have particular competencies does not apply until the day that is 2 years after the commencement of the Bill. This will provide adequate time to recruit and appoint a suitable person during a time when there will be other significant work being undertaken by the Board due to other amendments being made by this Bill.

Section 338 (No compensation payable because of termination of appointment under division) applies if a person's appointment to a position is terminated because of the operation of this division. Subsection (2) confirms that no compensation is payable to the person because of the termination.

Section 339 (Dealing with charges of offences against Act in summary way before Magistrates Court) provides that upon the commencement of new section 255, a prosecution for an offence against this Act, started after the commencement, other than an offence against part 3A, must be heard and decided summarily, including where the offence is alleged to have been committed before or after the commencement of new section 255. However, subsection (2) clarifies that, without limiting section 20 of the *Acts Interpretation Act 1954*, a prosecution already brought under former section 255 before an industrial magistrate may continue before the industrial magistrate. Subsection (3) provides that a person dissatisfied with a decision of an industrial magistrate in a proceeding mentioned in subsection (2) may appeal to the Industrial Court under former section 255 despite the amendment of former section 255 by the *Resources Safety and Health Legislation Amendment Act 2024*.

Section 340 (Limitation period for starting prosecution) ensures that the timeframes for the commencing proceedings under new section 257 do not apply to offences that were committed prior to the commencement of the amendments.

Section 341 (Administrative region established by chief executive before commencement) provides that an administrative region established by the chief executive for the administration of the CMSHA before the commencement, is taken to have been established by the CEO. This ensures an administrative region established before the commencement, which is still in effect

immediately before the commencement, does not have to be reestablished by the CEO of RSHQ after the commencement, and continues to be in effect.

### Amendment of sch 2 (Subject matter for regulations)

*Clause 101* amends schedule 2 to provide that a regulation may be made under this Act about matters relating to board qualifications.

### Amendment of sch 3 (Dictionary)

*Clause 102* subclause (1) omits the definitions of "coal mine worker", "obstruct", "personal details requirement" and "service provider" from Schedule 3 of the Act.

Subclause (2) inserts the following definitions in Schedule 3:

The definition of "authorised official", for part 9, division 5, is inserted to define the term by reference to section 161 of the Act. The amendment is necessary to prescribe who is authorised to give directives.

The definition of "board of inquiry" is inserted to define the term by reference to section 202 of the Act. The amendment is necessary because the term is now used in several provisions within the Act.

The definition of "board qualification" is inserted to define the term by reference to section 182A of the Act. The new term is required because it is used throughout the Act as a reference to a certificate of competency, SSE notice, or practising certificate.

The definition of "coal mine worker" is amended to mean an individual who carries out work at a coal mine and includes the following individuals who carry out work at a coal mine: an employee of the coal mine operator, a contractor or an employee of a contractor.

The definition of "contractor" is inserted and includes a person contracted to carry out work at a coal mine; and a person contracted to provide a service to a coal mine; and a person contracted to provide coal mine workers to a coal mine, including, for example, a labour hire agency. The new definition will ensure that all types of employment arrangements are captured by the definition and are therefore subject to safety and health obligations.

The definition of "critical control" is inserted and means a risk control measure for a coal mine that is critical to prevent a material unwanted event at the coal mine or mitigate the consequences of a material unwanted event at the coal mine; and the absence or failure of which would significantly increase risk despite the existence of other risk control measures. This new definition supports amendments made by this Bill to introduce critical controls as part of SHMS requirements under the Act. It is based on the definition used in the International Council on Mining and Metals' *Health and Safety Critical Control Management: Good Practice Guide*.

The definition of "electrical engineering manager" is inserted to mean a person appointed under section 58A(9) or 60(10) to control and manage a coal mine's electrical engineering activities. Section 58A(9) requires the surface mine manager for the mine to only appoint a person who holds both an electrical engineering manager's certificate of competency for a surface mine and the practising certificate required by the Board of Examiners. Section 60(10) requires the underground mine manager to only appoint a person who holds both a first or second class

certificate of competency or a deputy's certificate of competency for an underground mine, and the practising certificate required by the Board of Examiners.

The new definition supports the introduction of a requirement for the appointment of an electrical engineering manager who holds a certificate of competency issued by the Board of Examiners. This will ensure that workers with sufficient experience, knowledge, and understanding of safety and health obligations are working at the operational level at coal mines in complex and hazardous coal mining operations. It will also increase consistency in relation to competency requirements across the major coal mining states of Queensland and New South Wales.

The definition of "enforceable undertaking" is inserted to define the term by reference to section 267L(1) of the Act, which provides that the CEO may accept a written undertaking (an enforceable undertaking) given by a person in connection with a matter relating to a contravention or alleged contravention of the Act by the person.

The definition of "material unwanted event" at a coal mine, means an unwanted event in relation to which the potential or real consequence to safety or health exceeds a threshold defined by the coal mine operator as warranting the highest level of attention. It is based on the definition used in the International Council on Mining and Metals' *Health and Safety Critical Control Management: Good Practice Guide*.

The definition of "mechanical engineering manager" is inserted to mean a person appointed under section 58A(10) or 60(11) to control and manage a coal mine's mechanical engineering activities. Section 58A(10) provides that a surface mine manager for the mine must appoint a person, holding both a mechanical engineering manager's certificate of competency for a surface mine and the practising certificate required by the Board of Examiners, as mechanical engineer to control and manage the mechanical engineering activities of the mine. Section 60(11) provides that the underground mine manager must appoint a person, holding both a mechanical engineering manager's certificate of competency for an underground mine and a practising certificate required by the Board of Examiners. The new definition supports the introduction of a requirement for the appointment of a mechanical engineering manager who holds a certificate of competency issued by the Board of Examiners. This will ensure that workers with sufficient experience, knowledge, and understanding of safety and health obligations are working at the operational level at coal mines in complex and hazardous coal mining operations. It will also increase consistency in relation to competency requirements across the major coal mining states of Queensland and New South Wales.

The definition of "mutual recognition Act" is inserted to mean either the *Mutual Recognition Act 1992* (Cwlth) or the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth). This does not change the definition but simply moves it into the dictionary as it is referred to in more than 1 section. The definition is therefore omitted from section 193.

The definition of "obstruct" is amended to include assault as well as attempting or threatening to assault, hinder or resist.

The definition of "offender" is inserted to define the term by reference to section 270A of the Act. The amendment is necessary because the term is now used in several provisions within part 16, division 2 of the Act.

The definition of "operational ROC worker", for a coal mine, means an ROC worker for the mine who does either or both of the following—provides information that is used at the mine to make decisions about coal mining operations at the mine but does not give instructions, directions or make decisions about coal mining operations at the mine; and/or remotely operates plant or equipment located at the mine under the direction of the SSE or other supervisors at the mine and the SHMS. This definition supports the policy objective to clarify the safety and health obligations that apply to ROC workers who are located off the mine site, and who monitor the mine and provide information which is used in site based operational decisions at the mine; or who remotely operate plant and equipment.

The definition of "practising certificate" is inserted to mean a practising certificate issued, or renewed, by the Board of Examiners under the Act. The new definition supports multiple amendments to the Act related to the Board of Examiners' continuous professional development program referred to as the practising certificate scheme.

The definition of "Queensland Government website" is inserted to mean a website with a URL that contains 'qld.gov.au', other than the website of a local government.

The definition of "remote operating centre", for a coal mine, is inserted to mean a facility located off the mine that monitors coal mining operations at the mine and does either or both of the following—provides information that is used by the SSE or other supervisors at the mine to make decisions about coal mining operations at the mine to make decisions about mining operations at the mine but does not involve persons at the facility giving instructions or directions or making decisions about mining operations at the mine; and/or remotely operates plant or equipment located at the mine under the direction of SSE or other supervisors at the mine and under the safety and health and management system. The amendment is necessary because the term is used in a number of other amendments made by the Bill.

The definition of *"*ROC worker", for a coal mine, is inserted to mean a person who works at a remote operating centre for the mine. The amendment is necessary because the term is used is a number of other amendments made by the Bill.

Subclause (3) amends the definition of "region" by replacing the reference to "chief executive" with "CEO". This empowers the CEO of RSHQ to establish an administrative region for the administration of the CMSHA. For example, "North region", "North West region" and "South region", are established in relation to the compliance and enforcement functions undertaken by the mines inspectorate for a geographic region.

Subclause (4) amends the definition of "supplier" to replace the term "contractor or service provider" with "or contractor". The meaning of "supplier" of plant, equipment, substances or other goods, means a person who contracts to supply the plant, equipment, substances or other goods to a coal mine operator, or contractor.

The definition of "service provider" is omitted because this category of person is now captured by the definition of "contractor".

The definition of "supplier" is amended to remove the separate reference to "service provider" because this category of person is now captured by the definition of "contractor" which is also within the definition. This amendment is in line with the definition of "contractor".

# Part 3 – Amendment of Explosives Act 1999

## Act amended

*Clause 103* states that part 3 amends the *Explosives Act 1999*.

## Amendment of s 7 (Exemptions)

*Clause 104* amends section 7 to improve clarity and include reference to "a Commonwealth entity" as something that may also be exempted from the Explosives Act or any of its provisions by a regulation. The amendment is necessary to ensure the exemption power under section 7 of the Explosives Act in relation to a government entity also applies in relation to a Commonwealth government entity. As the meaning of "government entity", as defined in schedule 2 (Dictionary), only relates to a State government entity; a new definition for the meaning of "Commonwealth entity" is inserted into schedule 2 of the Explosives Act by another clause of the Bill.

Subclause (1) replaces subsection (1) with two new subsections so that exemptions for an explosive and for a government or Commonwealth entity are addressed under separate provisions. New subsection (1) replicates the existing power to exempt an explosive. New subsection (1A) replicates the existing power to exempt a government entity (as mentioned under paragraph (a)) and extends the application of this provision to also include a Commonwealth entity (as mentioned under paragraph (b)).

Subclause (2) renumbers section 7(1A) to (3) as section 7(2) to (4).

## Amendment of s 12C (Deciding applications)

*Clause 105* is a consequential amendment that replaces a reference to "section 123AC(2)" with section 123S(2)" instead.

## Amendment of s 15A (Persons who are not appropriate persons)

*Clause 106* makes a consequential amendment to section 15A to insert new subsection (4) which provides that a licensed dealer is an appropriate person to hold, or to continue to hold, a security sensitive authority if the only employees of the licensed dealer who have, or will have unsupervised access, to an explosive in the course of the employee's employment, and who do not hold security clearances, are qualified weapons employees.

The Bill also amends schedule 2 (Dictionary) to insert new definitions for "licensed dealer" and "qualified weapons employee".

New subsection (4) relates to the security clearance exemption under new section 33(2) of the Explosives Act (as inserted and renumbered by another clause of the Bill) in relation to particular employees of licenced dealers. Note that new subsection (4) applies only in the context of the security clearance exemption under section 33(2) of the Explosives Act. Moreover, sections 17(2) and 23(1)(i)–(l) of the Explosives Act continue to apply for a licenced dealer who is an applicant for, or who holds, a security sensitive authority under the Explosives Act.

## Amendment of s 17 (How chief inspector may deal with application)

*Clause 107* is a consequential amendment that replaces a reference to "section 123AC(2)" with "section 123S(2)" instead.

## Amendment of s 23 (Grounds for suspending or cancelling authorities)

*Clause 108* amends section 23 to replace the "section 33(2)" reference under subsection (1)(h) with "section 33(3)". This amendment is consequential to the renumbering of that provision by another clause of the Bill.

## Amendment of s 33 (Employers' obligations about employees)

*Clause 109* amends section 33 to provide exemptions, under new subsection (1A), from duplicative security screening requirements for particular employees of licenced dealers. New subsection (1A) applies in relation to an employer, who is a licensed dealer, and who holds a security sensitive authority under the Explosives Act. For example, a licensed dealer who holds a "licence to sell explosives" which authorises the dealer to sell propellant powder. The exemptions under subsection (1A) apply in relation to an employee of a licensed dealer; but only if the employee is a "qualified weapons employee" under the *Weapons Act 1990* (the Weapons Act) because this requires the person to hold a weapons licence. The exemptions which apply for a qualified weapons employee (within the context of section 33) are outlined in subsection (1A)(a) and (b), and directly relate to the employers' obligation under section 33(1)(b). In practical terms, these exemptions mean an eligible employee of a licenced dealer does not need to hold a security clearance to have unsupervised access to an explosive in the course of their employment.

Note that new subsection (1A) does not alter the requirement for a security sensitive authority holder to also hold a security clearance. Moreover, section 17(2) and section 23(1)(i)–(l) of the Explosives Act continue to apply for a licenced dealer who is an applicant for, or who holds, a security sensitive authority under the Explosives Act.

## Replacement of s 37 (Notice to chief inspector)

*Clause 110* omits section 37 and replaces it with new section 37 (Notice to chief inspector) to clarify notification requirements related to the import and export of explosives. This amendment addresses ambiguity associated with the former section 37, including by expressly prescribing key elements of the notification requirements, previously addressed under guidance-type materials. The 20 penalty unit maximum penalties under former sections 37(1) and (2) are carried over and applied, as appropriate, under new section 37(2) and (5).

Subsection (1) provides that new section 37 applies if an authority holder intends to bring an import explosive into, or send an export explosive out of, the country via Queensland (where Queensland is to be the entry or exit port).

Subsection (2) provides that the authority holder must, within the period or at the time requested under subsection (3) or (4), give the chief inspector notice (in the approved form) of: the holder's intention; and if the holder intends to bring an import explosive into the State from another country, the expected arrival date and arrival time for the import explosive; and if the holder intends to send an export explosive to another country, the expected departure date and departure time for the export explosive.

The maximum penalty for failing to notify as required under subsection (2) is 20 penalty units.

Subsection (3) clarifies that the notice under subsection (2) must be given to the chief inspector for an import explosive, at least 7 days before the expected arrival date of the import explosive; or for an export explosive, at least 7 days before the expected departure date for the export explosive.

Subsection (4) acknowledges that an authority holder will not always be aware of the expected arrival or departure date by at least 7 days prior and provides alternate timeframes to those specified under subsection (3). Subsection (4) provides that where the holder is not aware of the expected arrival or departure date, the notice must instead be given as soon as practicable after the holder becomes aware of the expected date, but no later than the day before the arrival date or departure date.

Subsection (5) applies if any information stated in a notice given under subsection (2), or another written notice given under this subsection, about the intended import or export activity previously given to the chief inspector changes; and requires the authority holder to give the chief inspector written notice of the changes as soon as practicable after the holder becomes aware of the changes, but no later than the day before the arrival date or departure date. An authority holder could, for example, give written notice of the changes to the chief inspector by email. A maximum penalty of 20 penalty units applies for failing to notify the chief inspector about any changes to information previously provided.

Subsection (6) provides that the original notification requirement (under subsection (2) and the notification requirement about information changes (under subsection (5)), do not apply if the authority holder has a reasonable excuse.

Subsection (7) provides the meanings for "arrival date", "arrival time", "departure date", and "departure time" for section 37.

### Amendment of s 54A (Definitions for part)

*Clause 111* amends section 54A by omitting the definition of "employee" and extending the current definition of "employer" to the following entities—

- a person who employs or otherwise engages an individual to do the act involving explosives;
- a person who arranges for an individual to do the act involving explosives; or
- the holder of an authority relating to the act involving explosives.

The amendment will clarify the types of entities that can be categorised as "employer" for the purposes of the industrial manslaughter provisions. In doing so, the amendment clarifies Parliament's intent when the industrial manslaughter provisions were introduced under the MEROLA, which was to ensure consistency in how deaths of workers on sites are treated and who should be liable to prosecution.

The Coal Mining Board of Inquiry had raised concern that the definition of employer for a coal mine in part 3A of the CMSHA, which means a person who employs or otherwise engages a coal mine worker, would not capture liability of a coal mine operator where a worker who was killed was engaged through a labour hire agency. Similarly, that this would also be the case where an independent contractor's employee dies in a serious accident resulting from criminal

negligence of a coal mine operator. This also applies to the similar industrial manslaughter provisions in other Resources Safety Acts.

These amendments clarify that employers may be liable for industrial manslaughter, where they cause through criminal negligence, the death of a worker. Where multiple entities are responsible for the death of a worker through their criminal negligence, multiple entities may be found to be liable for industrial manslaughter. They will ensure that deaths of workers on sites are treated consistently across all industries.

The drafting approach for amendments to the definition of "employer" render the definition of "employee" redundant, as such the definition of "employee" is omitted under this clause.

### Replacement of ss 54C and 54D

*Clause 112* replaces current sections 54C and 54D consequential to the amendments to section 54A under clause 109. Amendments to section 54A in clause 109 render the use of the specific term *employee* unnecessary as the definition of "employee" is omitted under clause 109. The reference is instead to an individual who does the act involving explosives, and this is reflected in the new sections 54C and 54D.

### Replacement of s 56 (Notification of explosives incidents)

*Clause 113* replaces and renames section 56 (Notice of explosives incidents) to amend explosives incident notification requirements and provides:

- a requirement for a relevant person to make the notification in the approved form "as soon as possible"; and
- establishing that it is not a defence in a proceeding against the provision that giving the required information might tend to incriminate the person, and that the information is not admissible in evidence against the person in any criminal proceeding, other than in a criminal proceeding about the falsity or misleading nature of the required information.

Non-compliance with section 56(1) carries a maximum penalty of 170 penalty units.

Subsection (5) provides the definition of "required information" for this section. The purpose of these amendments is to support the development of a new web-based incident reporting system, which will be the approved form, and which will allow the relevant person to enter the information about an explosives incident directly. This will improve the capture of incident reports and allow for consistent subsequent analysis and presentation of aggregated data to industry, which in turn will assist industry to better manage hazards in their own operations. While the legislation will no longer refer to "oral reporting", it will still be possible to make an oral report as the required information will be entered directly into the web-based system by the officer taking the call.

### Replacement of s 62B (Chief executive to arrange for services of staff for board of inquiry)

*Clause 114* omits section 62B and replaces it with new section 62B (CEO to arrange for services of staff for board of inquiry). New section 62B replaces former references to "chief executive" with "CEO" and the former reference to "public service employees employed by the department" with "RSHQ". These amendments are necessary because, since the

establishment of RSHQ as Queensland's independent resources safety regulator, RSHQ is responsible for providing the services of staff for a board of inquiry.

### Amendment of s 72 (Offences by witnesses)

*Clause 115* increases the maximum penalties for board of inquiry witness offences in section 72 from 40 to 200 penalty units to act as a deterrent to witnesses committing an offence against the provision. This amendment will improve consistency across the Resources Safety Acts as the penalty will be in line with the same offence under the P&G Act and is consistent with amendments to the other Acts made by this Bill.

### Amendment of s 73 (False or misleading statements to inquiry)

*Clause 116* increases the maximum penalty in section 73 for making false or misleading statements to an inquiry from 200 to 500 penalty units to act as a deterrent. This amendment will improve consistency across the Resources Safety Acts as the penalty will be in line with the same offence under the P&G Act and is consistent with amendments to the other Acts made by this Bill.

### Amendment of s 74 (False or misleading documents to inquiry)

*Clause 117* increases the maximum penalty in section 74 for giving false or misleading documents to an inquiry from 200 to 500 penalty units to act as a deterrent. This amendment will improve consistency across the Resources Safety Acts as the penalty will be in line with the same offence under the P&G Act and is consistent with amendments to the other Acts made by this Bill.

### Amendment of s 75 (Contempt of board)

*Clause 118* omits the offence of insulting a board of inquiry from section 75 under subclause (1). Such an offence limits the freedom of expression because an insult is a subjective consideration, while other elements of the contempt provision ensure there is due respect for the operation of the board of inquiry without any impact on freedom of expression.

Subclause (2) renumbers section 75(b) to (e) as section 75(a) to (d).

### Amendment of s 80A (Functions of inspectors)

*Clause 119* amends section 80A(1)(g) to replace the reference to "the department" with "RSHQ". This amendment is needed as since the establishment of RSHQ as Queensland's independent resources safety regulator, RSHQ is responsible for administering the Explosives Act.

### Amendment of s 81 (Powers of inspector)

*Clause 120* amends section 81 to replace references to "Minister" with "CEO" in subsections (1)(a) and (2)(c). Consequently, an inspector will be subject to the directions of the CEO. The CEO will also be able to limit the powers of an inspector. These amendments are necessary because the current arrangements do not provide a sufficient separation of powers between the Minister and officers of RSHQ, which is the statutory body responsible for administering the Explosives Act. It is also more appropriate that the CEO (of RSHQ) has authority over an inspector, rather than the Minister, as the CEO is responsible for appointing an inspector.

### Amendment of s 88 (Warrants—procedure before entry)

*Clause 121* amends section 88(2)(a) to replace "himself or herself" with "themself" to adopt a more contemporary drafting style.

### Amendment of s 89 (General powers after entering places)

*Clause 122* amends section 89 to increase the maximum penalty for refusing to give reasonable help to an inspector exercising their powers under subsection (3) from 20 to 100 penalty units. This will act as a greater deterrent to non-compliance with the provision and brings the penalties into line with similar provisions in the other Resources Safety Acts, thereby increasing consistency across these Acts.

### Replacement of s 96 (Power to require name and address)

*Clause 123* omits section 96 and replaces it with new section 96 (Power to require personal details). Subsection (1) provides that this section applies if an inspector finds a person committing an offence against the Explosives Act, or reasonably suspects the person has just committed an offence against the Explosives Act. Under subsection (2), the inspector may require the person to state the person's name and residential address. The inspector may also require the person, under subsection (3), to give evidence of the correctness of the stated information if, in the circumstances, the person could reasonably be expected to be in possession of, or otherwise be able to give, the evidence. Subsection (4) requires the inspector to give the person an "offence warning" when making a requirement under this section. Subsection (5) defines the meaning of "offence warning" and "reasonably suspect" for the section. "Offence warning", for a requirement by an inspector, means a warning that, without a reasonable excuse, it is an offence for the person to whom the requirement is made not to comply with the requirement. "Reasonably suspect" means suspect on grounds that are reasonable in the circumstances.

This clause also inserts new section 96A (Offence to contravene personal details requirement) which makes it an offence to contravene a personal details requirement, unless the person of whom the requirement was made, has a reasonable excuse. The maximum penalty under subsection (1) for contravening a personal details requirement is increased from 20 (under former section 96(5)) to 100 penalty units. However, under subsection (2), a person may not be convicted of an offence under subsection (1), unless the person is found guilty of the offence in relation to which the personal details requirement was made.

These amendments bring personal details requirements under the Explosives Act in line with contemporary legislative standards and improve consistency across the Resources Safety Acts, as the Bill also makes comparable amendments to the other Resources Safety Acts.

### Amendment of s 99 (False or misleading information)

*Clause 124* amends section 99 to increase the maximum penalty under subsection (1), for knowingly giving an inspector or authorised officer false or misleading information, from 20 to 100 penalty units. This will act as a greater deterrence to non-compliance with the provision and brings the penalty into line with similar provisions in the other Resources Safety Acts, thereby increasing consistency across these Acts.

## Amendment of s 100 (Power to require production of documents)

*Clause 125* amends section 100 to increase the maximum penalty under subsection (2), for failing to produce a document for inspection by an inspector, from 20 to 100 penalty units. This will act as a greater deterrence to non-compliance with the provision and brings the penalties in line with similar provisions in the other Resources Safety Acts, thereby increasing consistency across these Acts.

## Replacement of s 102 (Power to give direction about contravention)

*Clause 126* amends section 102 to provide that an inspector may give a direction where the inspector reasonably suspects a person has contravened, is contravening, or is involved in an activity that is likely to result in a contravention of the Explosives Act. It provides power to the inspector to give directions, via a written notice (a remedial action notice), to remedy the situation. The notice may be given to the person or attached to the thing to which the notice relates.

This clause also provides the matters required to be stated in the notice, what must be accompanied with the notice, how the notice may be given and the circumstances within which a person is taken to have complied with the notice.

It is an offence for the person not to comply with the notice or to remove the notice from the thing it relates to prior to rectification. The maximum penalty for failing to comply with the notice is the maximum penalty for the contravention of the provision stated in the notice by an individual.

The maximum penalty for removing the notice from a thing or vehicle prior to rectification is 100 penalty units.

## Amendment of s 105 (Obstruction of inspectors)

*Clause 127* amends section 105 to increase the maximum penalty for obstructing an inspector, or a person helping an inspector, from 20 to 500 penalty units.

The definition of "obstruct" is also amended to include assault as well as attempting or threatening to assault, hinder or resist.

## Amendment of s 105E (Appointment conditions and limit on powers)

*Clause 128* amends section 105E to replace the reference to "Minister" with "CEO" in subsection (3). Consequently, an authorised officer will be subject to the directions of the CEO, rather than the Minister. The amendment is required because the current arrangements do not provide a sufficient separation of powers between the Minister and officers of RSHQ, which is the statutory body responsible for administering the Explosives Act. It is also more appropriate that the CEO (of RSHQ) can direct the activities of authorised officers, as the CEO is responsible for appointing an authorised officer.

## Replacement of pt 6, div 3, hdg (Additional power of Minister)

*Clause 129* amends the heading of division 3 (Seized things to be forfeited to the State) to better reflect the matter addressed under the division.

## Amendment of s 118 (Proceeding for offence)

*Clause 130* renames section 118 (Proceedings for offences) and amends the limitation periods for when proceedings for an offence may begin, excluding proceedings for an offence against part 4A. Proceedings must be commenced within the latest of the following periods to end—

- 2 years after the offence first comes to the notice of the complainant,
- if an enforceable undertaking has been given in relation to the offence, 6 months after the latest of the following happens: the enforceable undertaking is contravened or when it comes to the notice of the CEO that the enforceable undertaking has been contravened or the CEO agrees under section 123F to the withdrawal of the enforceable undertaking, or
- if the offence involves a breach of an obligation causing death and the death is investigated by a coroner under the *Coroners Act 2003*, 2 years after the coroner makes a finding in relation to the death.

This amendment ensures that there is consistency, equity and alignment across the Resources Safety Acts. It also aligns with the WHS Act which provides for "within 2 years after the offence first comes to the notice of the WHS prosecutor".

This will enable robust investigations to be undertaken into serious accidents and fatalities as well as successful prosecutions that will act as a deterrent and provide justice for the workers and their families. These amendments will facilitate improved safety and health outcomes.

## Amendment of s 118C (Procedure if prosecution not brought)

*Clause 131* is a consequential amendment that replaces a reference to "section 118(7)" with "section 118(8)" instead.

## Insertion of new s 121A

*Clause 132* inserts new section 121A (Court may order suspension or cancellation of authority) which provides that if a person is convicted of an offence and holds an authority or a security clearance, a Magistrates Court may suspend or cancel the authority or security clearance. The court must subsequently notify the chief inspector about the decision made under this new section.

This section also provides a right to appeal to the District Court for a person dissatisfied with the magistrate's decision to suspend or cancel the person's authority or security clearance.

## Amendment of s 122 (Recovery of costs from convicted person)

*Clause 133* amends section 122 to replace the reference to "the department" with "RSHQ" in subsection (1)(b). The amendment is necessary because, since the establishment of RSHQ as Queensland's independent resources safety regulator, RSHQ is responsible for investigating explosives offences.

## Renumbering of s 123A (Treatment of partnerships)

*Clause 134* renumbers section 123A as section 123W (Treatment of partnerships) because of new division 1AA (which includes a new section 123A) inserted into part 8 of the Explosives Act by another clause of the Bill.

## Insertion of new pt 8, divs 1AA and 1AB

*Clause 135* inserts 2 new divisions to restructure the part to support the introduction of enforceable undertakings and a range of new court orders.

Enforceable undertakings

This clause inserts division 1AA (Enforceable undertakings) which deals with the giving of enforceable undertakings under the Act. This is a new enforcement tool and is an alternative to court imposed sanctions and will strengthen RSHQ's enforcement tool kit. These provisions align with the approach taken under the WHS Act.

Section 123A introduces enforceable undertakings such that the CEO may accept a written undertaking for offences other than an offence arising from an accident causing death or an industrial manslaughter offence. The giving of an enforceable undertaking does not constitute an admission of guilt. The CEO must publish general guidelines in relation to the acceptance of enforceable undertakings on a Queensland Government website. The CEO may accept an enforceable undertaking in relation to a contravention or alleged contravention before a proceeding in relation to that contravention has been finalised. In such a case the CEO must immediately notify the WHS prosecutor who must take all reasonable steps to have the proceeding discontinued as soon as possible.

Section 123B sets out requirements for notices related to enforceable undertakings such that the CEO must give the person seeking to make an enforceable undertaking written notice of the CEO's decision and of the reasons for the decision, and the decision and reasons must also be published on a Queensland Government website.

Section 123C prescribes when an undertaking takes effect and becomes enforceable. An enforceable undertaking is enforceable when the CEO's decision is given to the person who made the undertaking, or at any later date stated by the CEO.

Section 123D is an offence provision for the contravention of an enforceable undertaking and prescribes a maximum penalty of 500 penalty units.

Section 123E sets out provisions related to the contravention of an enforceable undertaking such that:

- the CEO may apply to a Magistrates Court for an order;
- if satisfied there has been a contravention, the court may impose a penalty and make an order directing the person to comply with the order or an order discharging the undertaking;
- the court may also make other orders it considers appropriate including orders to pay the costs of the proceeding and the reasonable costs of monitoring the enforceable undertaking in the future;
- a proceeding may also be taken for the contravention or alleged contravention of the Act to which the enforceable undertaking relates.

Section 123F sets out provisions for withdrawing or varying an enforceable undertaking such that:

- a person who has made an enforceable undertaking may at any time, with the written agreement of the CEO, withdraw or vary the undertaking;

- the provisions of the undertaking cannot be varied to deal with a different alleged contravention of the Act;
- the CEO must publish, on a Queensland Government website, notice of the withdrawal or variation of an enforceable undertaking.

Section 123G sets out the proceeding for an alleged contravention of an enforceable undertaking such that:

- no proceeding for a contravention or alleged contravention of the Act may be taken if an enforceable undertaking is in effect in relation to the contravention;
- no proceeding may be taken for a contravention or alleged contravention of the Act if a person has completely discharged the enforceable undertaking.

Court orders

This clause also inserts new division 1AB (Sentencing for offences) to support the introduction of a range of new orders that may be made by a court.

Section 123H provides that this division applies if a court convicts a person or finds them guilty of an offence against the Act.

Section 123I provides that one or more orders under this division may be made against the offender. It also provides that orders can be made under this division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

Section 123J provides for adverse publicity orders, which can be an effective deterrent for an organisation that is concerned about its reputation. Such orders can draw public attention to a particular wrongdoing and the measures that are being taken to rectify it.

The court may order an offender to take either or both of the following actions: to publicise the offence, its consequences, the penalty imposed and any other related matter; or to notify a specified person or specified class of persons of the offence, its consequences, the penalty imposed and any other related matter.

The offender must give the CEO evidence of their compliance with the order within 7 days after the end of the compliance period stated in the order. The CEO can take action stated in the order if they do not comply with the adverse publicity order or fail to give the CEO evidence of their compliance with the order. Where this occurs, the CEO is entitled to recover from the offender reasonable expenses associated with them taking that action.

This new section also allows the court to make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.

Section 123K provides for restoration orders, requiring the offender to take steps within a specified period to remedy a matter caused by the commission of the offence that appears to be within the offender's power to remedy.

The court can extend (or further extend) the specified period, provided an application for extension is made before the end of the period.

Section 123L provides for safety and health project orders, an order requiring an offender to undertake a specified project within a certain period for the general improvement of safety and

health of persons who may be affected by explosives. These orders make offenders undertake activities that identify and address the failures that led to their wrongdoing.

The order may specify conditions that must be complied with in undertaking the project. It can also be combined with other non-monetary orders to ensure that failures, that led to the offence being committed in the first place, are addressed.

Section 123M provides for a court-ordered undertaking, which enables a court to adjourn proceedings, with or without recording a conviction, for up to 2 years and make an order for the release of the offender on the condition that they give an undertaking with specified conditions.

Court-ordered undertakings are different from enforceable undertakings (that are also being introduced by the Bill), which are voluntary in nature.

This section sets out the conditions that must be included in a court-ordered undertaking. The undertaking must require the offender to appear before the court if called on to do so during the period of the adjournment. Furthermore, the offender must not commit any offence against this Act during the period of adjournment and must observe any special conditions imposed by the court.

The court can call on the offender to appear before it if the offender is given not less than 4 days' notice of the court order to appear. When the offender appears before the court, if the court is satisfied they have observed the conditions of the undertaking, the court must discharge the offender without any further hearing of the proceeding.

Section 123N provides for injunctions, which require the offender to stop contravening the Act if they have been found guilty of an offence. This court order can be an effective deterrent where a penalty fails to provide one. A note in this new section highlights part 6, division 4 of the Act, which separately provides for injunctions that may be granted by the District Court against a person at any time.

Section 123O provides for training orders, which enable a court to make an offender take action to develop skills that are necessary to effectively manage the safety and health of persons who may be affected by explosives. The court may make an order requiring the offender to undertake, or arrange for persons handling explosives to undertake, a specified course of training.

Section 123P makes it an offence for a person to fail to comply with an order made under this new division unless the person has a reasonable excuse. The evidentiary burden is on the defendant to prove a reasonable excuse as this is provided for in the *Justices Act 1886*. This section does not apply to an order under new sections 123M or 123N. Non-compliance with this section carries a maximum penalty of 500 penalty units.

### Amendment of s 123AB (Definitions for division)

*Clause 136* is a consequential amendment that replaces a reference to "section 123AA(1)" with "section 123Q(1)" instead.

### Amendment of s 123AF (When biometric information must be destroyed if authority or security clearance given)

*Clause 137* amends section 123AF to also require the destruction of a person's biometric information under subsection (2)(a), following the cancellation or surrender of an occupational authority or security clearance. This amendment provides lawful authority for the chief inspector to delete the digital photo and digitised signature of a person, kept by the chief inspection in relation to an occupational authority or security clearance issued to the person, if the person's authority or clearance is cancelled or surrendered by the person.

This clause also includes a consequential amendment that replaces a reference to "section 123AD" with "section 123T" instead.

### Renumbering of ss 123AA–123AF

*Clause 138* renumbers sections 123AA to 123AF as sections 123Q to 123V, as part of the restructuring of part 8.

### Insertion of new s 124A

*Clause 139* inserts new section 124A (Recovery of fees) which provides that an unpaid fee under this Act may be recovered by the CEO in summary proceedings under the *Justices Act 1886* or by action for a debt in a court of competent jurisdiction.

This clause also provides for a fee to be recovered in a proceeding for an offence against this Act, and how an order is made enforceable.

### Amendment of s 126 (Disclosure by doctors and psychologists of certain information)

*Clause 140* amends section 126(2) to replace "his or her" with "the doctor's or psychologist's" to adopt a more contemporary drafting style.

### Amendment of s 126A (Protection from reprisal)

*Clause 141* amends the maximum penalty for contravention of section 126A from 40 to 1,000 penalty units.

Subclause (2) provides the definition of the term "detriment" under section 126A. This will serve to strengthen the provision as the broad term "detriment" is open to interpretation.

### Amendment of s 126C (Public statements)

*Clause 142* amends section 126C to clarify the details that may be published by RSHQ. The current section 126C(3) provides that a public statement may identify particular information and persons. The amendments will provide that the information may contain the number of explosives incidents, a description of the explosives incident, the holder of an authority, the injuries sustained and any other information considered appropriate. The requirement that the

information only be published when it is in the public interest will continue to apply and natural justice requirements will continue.

The references to "public statements" are being replaced with "publish information" to cater for the broad range of means to share the information, which will continue to include oral statements as well as written forms.

This clause also inserts a new liability provision at 126C(5) and (6) as required to meet current drafting practice.

### Amendment of s 126D (Chief inspector may issue safety and security alerts)

*Clause 143* amends section 126D to replace the reference to "the department's website" with "a Queensland Government website" in subsection (3)(b). The meaning of "Queensland Government website" is defined under schedule 3 (Dictionary). The amendment is necessary because, since the establishment of RSHQ as Queensland's independent resources safety regulator, RSHQ is responsible for administering the Explosives Act and information, including notices about explosives safety and security alerts, is no longer published on a departmental website.

### Amendment of s 132 (Disclosure of information)

*Clause 144* makes two amendments to section 132. Subclause (1) consequentially amends section 132(1)(e) to better align this section with section 126C (Publication of information), as amended by the Bill. Subclause (2) amends section 132(2)(b) by broadening this disclosure provision so the chief inspector may communicate anything that comes to the chief inspector's knowledge under the Explosives Act to an officer or authority responsible for administering a law of Queensland, the Commonwealth or another state about safety and health. Under the existing provision, this disclosure is limited to being about "explosives".

### Amendment of s 134 (Approval of forms)

*Clause 145* renames section 134 (Approved forms) and amends it to insert a reference to the "CEO" as a person who may approve forms for use under the Act.

The amendment is necessary because the CEO of RSHQ is also an appropriate person to approve forms for use under the Act, which also aligns the Act with similar amendments to the other Resources Safety Acts.

### Insertion of new pt 10, div 8

*Clause 146* inserts new division 8 (Transitional and validation provisions for the Resources Safety and Health Legislation Amendment Act 2024) into part 10.

Section 160 (Definitions for division) provides definitions for the terms "former" and "new", for a provision of the Explosives Act, used within the division. A reference to a "former" provision means the provision of the Explosives Act as in force from time to time before the commencement. A reference to a "new" provision means the provision of the Explosives Act as in force after the commencement.

Section 161 (Notice given to chief inspector about import or export of explosive before commencement) provides that a notice given under former section 37 about the intended import

or export of explosives that was not completed before the commencement, is taken to have been given under new section 37(2). Note that new section 37(3) and (4) do not apply for a notice given under former section 37 to which section 161(2) applies, because the notice is taken to have been given under new section 37(2). Subsection (3) clarifies that new section 37(5) does apply to the authority holder in relation to a notice given under former section 37 to which section 161(2) applies, meaning the authority holder is required to notify the chief inspector about any changes to information previously provided. Note that while subsection (3) specifically confirms the application of new section 37(5), new section 37(6) and (7) also apply to the authority holder; with new section 37(6) applying in the context of new section 37(5) in relation to a notice given under former section 37 to which section 161(2) applies.

Section 162 (Notice limiting powers of inspector given by Minister before commencement) provides that a notice given by the Minister under former section 81(2)(c), is taken to have been given by the CEO under new section 81(2)(c). This ensures that any such notices continue to be valid after the commencement.

Section 163 (Direction given by Minister to authorised officer before commencement) provides that a direction given by the Minister under former section 105E(3), is taken to have been given by the CEO under new section 105E(3). This ensures that any such directions continue to be valid after the commencement.

Sections 164 and 165 insert validation provisions into the Explosives Act. These validation provisions relate to the amendments made, by the Bill, to section 7 (Exemptions), which will be given effect through subsequent amendments to the Explosives Regulation 2017 to exempt government entities and Commonwealth entities from particular requirements under the Explosives Act relating to security clearances. For example, to exempt the Queensland Police Service (QPS) in relation to QPS employees needing to hold a security clearance under the Explosives Act to have unsupervised access to an explosive (which includes small arms ammunition) in the course of their employment. Imposing duplicative security screening requirements for QPS employees is unreasonable given QPS employees are already subject to comparable security screening requirements (including continuous monitoring). Additionally, to exempt government entities and Commonwealth entities from executive officer security clearance requirements in relation to holding a security sensitive authority, because these requirements were never intended to apply to government or Commonwealth entities. Sections 164 and 165 are included in the Bill so the abovementioned matters are able to be addressed.

Section 164 (Validation of security sensitive authority issued to Queensland Police Service contrary to s 15A) validates decisions made by the chief inspector before the commencement relating to the QPS being issued, and continuing to hold, a security sensitive authority even if an employee of the QPS had or would have had unsupervised access to an explosive and did not hold a security clearance. Section 164 also validates the security sensitive authority issued to the QPS and anything done under the authority whether before or after the commencement.

Section 165 (Validation of security sensitive authority issued to government entity or Commonwealth entity contrary to s 17) validates decisions made by the chief inspector before the commencement relating to a government entity or a Commonwealth entity being issued, and continuing to hold, a security sensitive authority even if each executive officer of the entity did not hold a security clearance. Section 165 also validates a security sensitive authority issued to a government entity or a Commonwealth entity and anything done under the authority whether before or after the commencement.

Section 166 (Limitation period for starting prosecution) ensures that the timeframes for the commencing proceedings under new section 118(7) do not apply to offences that were committed prior to the commencement of the amendments.

### Amendment of sch 2 (Dictionary)

*Clause 147* subclause (1) removes the definition of "employee" from Schedule 2 (Dictionary) for the Act.

Subclause (2) inserts the following definitions in Schedule 2:

The definition for "board of inquiry" is inserted to define the term by reference to section 60 (Minister may establish board of inquiry) of the Act.

The definition of "Commonwealth entity" is inserted to mean an entity or part of an entity, established under an Act or another law of the Commonwealth for a public or Commonwealth purpose.

The definition of "enforceable undertaking" is inserted to define the term by reference to section 123A(1) of the Act, which provides that the CEO may accept a written undertaking (an enforceable undertaking) given by the person in connection with a matter relating to a contravention or alleged contravention of the Act by the person.

The definition of "licensed dealer" is inserted to define the term by reference to schedule 2 of the Weapons Act.

The definition of "offender" is inserted to define the term by reference to section 123H of the Act. The amendment is necessary because the term is now used in several provisions within part 8, division 1AB of the Act.

The definition of "qualified weapons employee" is inserted to define the term by reference to section 70(2) of the Weapons Act.

The definition of "Queensland Government website" is inserted to mean a website with a URL that contains "qld.gov.au", other than the website of a local government. The amendment is necessary because the term is now used in a number of places throughout the Act.

Subclause (3) amends the definition of "appropriately qualified" in Schedule 2 to replace the reference to "department" with "employing office", which refers to the employing office of RSHQ. This amendment is necessary because RSHQ is responsible for administering the Explosives Act and the Department of Resources no longer has responsibility for the exercise of a power under the Act.

Subclauses (4) to (7) makes consequential amendments to section numbers referenced in the definitions of "biometric information", "destroy", "relevant application" and "take".

## Part 4 – Amendment of Mining and Quarrying Safety and Health Act 1999

### Act amended

*Clause 148* states that part 4 amends the *Mining and Quarrying Safety and Health Act 1999.*

## Amendment of s 9 (Meaning of *mine*)

*Clause 149* amends section 9(1)(b) and section 9(2) to omit the term "contiguous with". Stakeholders have questioned the difference between whether operations are "adjoining" or "contiguous with" the mining tenure, as the words have been interpreted as having the same or very similar meaning. The words are used in section 9 and other sections mostly together with the word "adjacent". As the terms are not defined in the dictionary schedule to the Act, the Supreme Court applied the Macquarie Dictionary definitions for the meanings in the case of *Smyth v State of Qld and Ors* [2005] QSC 175. To reduce confusion about the terms, the term "contiguous with" is omitted as it is unnecessary. "Adjoining" and "adjacent" are sufficient to cover possible scenarios.

## Amendment of s 10 (Meaning of *operations*)

*Clause 150* subclauses (1) and (2) amend section 10 to clarify the meaning of "operations" in relation to winning or treating. The meaning of "operations" is one of the key terms in the MQSHA and is relevant to when the MQSHA applies.

The intention is to clarify and confirm that "operations" can include the treating of mineral or rock after winning has ceased, or whilst winning is not also occurring simultaneously.

The intention is for operations to include treating minerals or rock, even if winning has ceased at the time. Treating is categorised as a separate activity, so that where it occurs on land the subject of a mining tenure, or where it should be subject to a mining tenure, in the case of illegal mining, it is regulated under the MQSHA. This overcomes the combined reference to "winning and treating".

This will still exclude smelting, refining, stockpiling, or processing on land that is near a mining tenure, but not occurring under a mining tenure, and not integral to the winning occurring within a nearby mining tenure, due to the meaning of "mine" under section 9 of the MQSHA.

Subclauses (3) and (4) amend section 10 to omit the term "contiguous with". Stakeholders have questioned the difference between whether operations are "adjoining" or "contiguous with" the mining tenure, as the words have been interpreted as having the same or very similar meaning. The words are used together with the word "adjacent". As the terms are not defined in the dictionary schedule to the Act, the Supreme Court applied the Macquarie Dictionary definitions for the meanings in the case of *Smyth v State of Qld and Ors* [2005] QSC 175. To reduce confusion about the terms, the term "contiguous with" is omitted as it is unnecessary. "Adjoining" and "adjacent" are sufficient to cover possible scenarios.

## Amendment of s 11 (Meaning of *quarry*)

*Clause 151* subclause (1) amends section 11(2)(a) to omit the term "contiguous with". Stakeholders have questioned the difference between whether operations are "adjoining" or "contiguous with" the mining tenure, as the words have been interpreted as having the same or very similar meaning. The words are used together with the word "adjacent". As the terms are not defined in the dictionary schedule to the Act, the Supreme Court applied the Macquarie Dictionary definitions for the meanings in the case of *Smyth v State of Qld and Ors* [2005] QSC 175. To reduce confusion about the terms, the term "contiguous with" is omitted as it is unnecessary. "Adjoining" and "adjacent" are sufficient to cover possible scenarios.

Subclause (2) amends section 11(2)(c) to clarify when a place on land where operations are carried on, continuously or from time to time, to produce construction or road building material is not a quarry. Stakeholders have previously questioned whether it is only the extraction of river gravel that is outside the meaning of a "quarry", or the extraction of all gravel. This led to uncertainty about whether the MQSHA applies in some scenarios when the intention was to exclude river sand, and any type of gravel, if the river sand or any type of gravel is extracted only.

If any type of gravel or river sand is extracted, and crushed or shaped to produce a product, it is within the meaning of "quarry". Road gravel or river gravel are provided as examples of types of gravel. Operations that extract but not crush or shape any type of gravel, or river sand will be outside the definition of a "quarry".

### Replacement of s 23 (Meaning of *supervisor*)

*Clause 152* amends section 23 so that a supervisor is "appointed" rather than "authorised". Stakeholders suggested that a supervisor should be "appointed". This provides consistency with other sections covering how others in statutory positions are "appointed". This clause also clarifies that a supervisor is appointed under section 51 to (a) implement and monitor the mine's SHMS; and (b) give directions to other mine workers at the mine in accordance with the SHMS.

### Amendment of s 27 (Risk management)

*Clause 153* amends section 27 to add critical controls to what risk management elements and practices the systems at a mine must incorporate to achieve an acceptable level of risk.

### Amendment of s 30 (Obligations for safety and health)

*Clause 154* amends section 30 by inserting a new subsection (2)(g) to include "designer, constructor or erector of earthworks at a mine" in the list of persons who have safety and health obligations under the Act. This corrects an error as "designer, constructor or erector of earthworks at a mine" should have been listed when the *Mines and Energy Legislation Amendment Act 2011* added section 42A to the MQSHA.

This clause also amends section 30 by omitting service providers from the list of persons who have safety and health obligations as service providers will come under the definition of "contractor" due to other amendments in this Bill. It also makes consequential amendments to renumber section 30(2)(fa) and (g) as section 30 (2)(g) and (h).

### Replacement of s 36 (Obligations of persons generally)

*Clause 155* amends section 36 to include an ROC worker as a person who holds the same general obligations under the Act as a worker or other person at a mine.

Section 36(1) provides that this section applies to each of the following persons who may affect the safety and health of others at a mine or as a result of operations at a mine; a worker at a mine, another person at a mine, and an ROC worker for a mine. Section 36(2) provides that these persons have the following obligations: (a) to comply with this Act and procedures applying to the person that are part of the SHMS for the mine; (b) if the person has information that other persons need to know to fulfil their obligations or duties under this Act, or to protect themselves from the risk of injury or illness—to give the information to the other persons; and (c) to take any other reasonable and necessary course of action to ensure no-one is exposed to an unacceptable level of risk.

Section 36A provides the additional obligations that apply to each of the following persons—a worker at a mine, another person at the mine, and an ROC worker for the mine, which are to: (a) manage the risk of injury or illness to the themself or any other person in the person's own work and activities, so that the risk is at an acceptable level; (b) to ensure, to the extent of the responsibilities and duties allocated to the person, that the risk of injury or illness to any person is managed in the work and activities under the person's control, supervision, or leadership, so that risk is at an acceptable level; (c) to the extent of the person's involvement—to participate in and conform to the risk management practices of the mine; (d) comply with instructions given for safety and health of persons by the operator or site senior executive for the mine or a supervisor at the mine; (e) work at or for the mine only if the person is in a fit condition to carry out the work without affecting the safety and health of others; and (f) to not do anything wilfully or recklessly that might adversely affect the safety and health of someone else at the mine.

This clarifies the role and responsibilities of a person who provides information related to coal mine operations from an ROC but does not make an ROC worker a coal mine worker. Similarly, someone who is a coal mine worker cannot be considered an ROC worker, which for example, would prevent any other statutory position holder with obligations at the mine from being based at the ROC.

## Amendment of s 38 (Obligations of operators)

*Clause 156* amends section 38(1) to expand the obligations of the mine operator to ensure the SSE or the acting SSE is located at or near the mine when performing their duties, unless the SSE or acting SSE is temporarily absent because their duties require it or for another reason, provided the absence is for not more than 14 days.

This clarifies the intention that the duties related to this key safety critical role for the mine should only be undertaken by a person who is situated at or nearby to the mine. Subclause (2) renumbers section 38(1)(da) to (f) as section 38(1)(e) to (g). Subclause (3) replaces references to subsection (f) in section 38(3) and (4) as subsection (g) instead.

The section will still be subject to section 22(2) of the Act, which means the requirement does not apply to an SSE with responsibility for exploration activities under a prospecting permit, exploration permit or mineral development licence.

## Amendment of s 39 (Obligations of site senior executive for mine)

*Clause 157* makes a number of changes to the obligations of an SSE for a mine. Subclause (1) amends section 39(1)(c) to require the SSE for a mine to develop and maintain an SHMS for all persons at the mine, including contractors. This amendment reflects the definition of "contractor" which includes all aspects of contracting, labour hire agencies and service providers and is provided to make the safety and health obligations of these types of employment arrangements clear.

Subclause (2) amends section 39(1)(d) to capture contractors for the mine. Subclause (3) amends section 39(1)(d)(i) to require the SSE for a mine to give a contractor for the mine information in the SSE's possession about all relevant components of the mine's SHMS, required by the contractor to identify risks arising in relation to any work to be performed, service to be provided, or work or service to be arranged, by the contractor.

Subclause (4) omits the SSE obligation under section 39(1)(e) which mirrors the obligation under section 39(1)(d) but for a service provider at the mine rather than for a contractor. This provision is no longer required as service providers is captured by the definition of "contractor".

Subclause (5) omits 'and service providers within the meaning of section 40 or 44' from section 39(1)(f).

Subclause (6) amends section 39(1)(h) to require the SSE to ensure that no work is to be undertaken by a worker at the mine or operational ROC worker for the mine until the worker has been inducted in the mine's SHMS, has received training about hazards and risks at the mine and has received training to ensure they are competent to perform their duties.

These amendments ensure that a person who is providing information related to mine operations from an ROC is fully integrated into the SHMS, understands the risks and hazards that their instructions may affect, and that they are competent to perform the tasks they are assigned.

Subclause (7) amends section 39(1)(i) to provide an additional obligation that an SSE for a mine has in relation to the safety and health of persons who may be affected by mining operations. The additional obligation is to provide for the development of a schedule of when inspections, including regular periodic inspections, must be carried out.

Subclause (8) amends section 39(1)(i)(vi) to remove the term "service providers" now captured under the definition of "contractor".

Subclause (9) renumbers section 39(i)(va) and (vi) as section 39(i)(vi) and (vii).

Subclause (10) renumbers section 39(1)(f) to (i) as section 39(1)(e) to (h).

Subclause (11) replaces a reference in section 39(2) to "Subsection (1)(c) to (f) and (h)(i)" with "Subsection (1)(c), (d), (e) and (g)(i)".

Subclause (12) replaces a reference in section 39(3) to "subsection (1)(c) to (f) and (h)(i)" with "subsection (1)(c), (d), (e) and (g)(i)".

### Amendment of s 40 (Obligations of contractors)

*Clause 158* amends section 40 with subclause (1) replacing "contractor at a mine" with "contractor for a mine" to ensure contractors who may work off-site also have safety and health obligations. Subclause (2) and (3) amend (a) to (d) to replace "undertaken" and "undertakes work" with a broader description that covers the type of work that a contractor for a mine could be engaged in.

Subclause (4) inserts paragraphs (e) and (f) to ensure that if the contractor or a worker engaged by the contractor is physically present at the mine they will need to be inducted in the mine's SHMS and received appropriate training appropriate to their work before work commences. The next paragraph (g) ensures that the fitness for use of plant at the mine is not adversely affected by the contractors work or services to be provided. Subclause (5) also ensures that in the definition of "safety and health management plan", all aspects of a contractors work with the mine is covered.

### Amendment of s 41 (Obligations of designers, manufacturers, importers and suppliers of plant etc. for use at mines)

*Clause 159* amends subclauses in section 41 to remove the term "service providers" as it is included in the definition of "contractor".

### Amendment of s 43 (Obligations of manufacturers, importers and suppliers of substances for use at mines)

*Clause 160* amends subclauses in section 43 to remove the term "service providers" as it is included in the definition of "contractor".

### Omission of s 44 (Obligations of service providers)

*Clause 161* removes the obligations of services providers as service providers have been included in the definition of "contractor" and therefore have the same obligations as contractors established in section 40.

### Amendment of s 44A (Obligation of officers of corporations)

*Clause 162* subclause (1) amends section 44A(3)(b) and (d) so that the due diligence required of officers of corporations will also include gaining an understanding of critical controls associated with the operator's mining operations, and to ensure the corporation's processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way, also includes receiving and considering information regarding critical controls.

Subclause (2) is a consequential amendment of the section numbering in the example provided under section 44A(3)(f) due to the renumbering of section 38 through an earlier amendment. The current cross-reference in the example, to section 38(1)(e) is changed to section 38(1)(f).

### Amendment of s 45A (Definitions for part)

*Clause 163* amends section 45A by extending the current definition of "employer" to the following entities—

- a person who employers or otherwise engages a worker for the mine; or
- a person who arranges for a worker to work for the mine, including, for example, a labour hire agency; or
- the operator for the mine; or
- a holder for the mine.

The amendment will clarify the types of entities that can be categorised as "employer" for the purposes of the industrial manslaughter provisions. In doing so, the amendment clarifies Parliament's intent when the industrial manslaughter provisions were introduced under the MEROLA, which was to ensure consistency in how deaths of workers on sites are treated and who should be liable to prosecution.

The Coal Mining Board of Inquiry raised concern that the definition of employer for a coal mine in part 3A of the CMSHA, which means a person who employs or otherwise engages a coal mine worker, would not capture liability of a coal mine operator where a worker who was killed was engaged through a labour hire agency. Similarly, that this would also be the case

where an independent contractor's employee dies in a serious accident resulting from criminal negligence of a coal mine operator. These issues also apply across the industrial manslaughter offence provisions across the Resources Safety Acts.

These amendments clarify that employers who may be liable for industrial manslaughter, where they cause through criminal negligence, the death of a worker, include an operator, holder, labour hire companies, contractors or any other person who employs/engages or arranges for a worker to perform work. Where multiple entities are responsible for the death of a worker through their criminal negligence, multiple entities may be found to be liable for industrial manslaughter. They will ensure that deaths of workers on sites are treated consistently across all industries.

### Amendment of s 47 (Notices by operator)

*Clause 164* inserts a new section 47(6) to require the mine operator to give to the inspector for the region in which the mine is situated notice within 28 days that operations have permanently stopped at the mine. A maximum penalty of 100 penalty units will apply for failing to provide the notice. This will ensure that the mines inspectorate is kept aware of the status of mines that are no longer operational.

### Amendment of s 49 (Appointment of site senior executive)

*Clause 165* amends section 49(3)(c) to clarify the reference to winning and treating. It is a consequential amendment to the amendment about winning or treating in relation to the meaning of "operations" under section 10. The combined reference to "winning and treating" is omitted. Winning or treating are inserted as separate activities, so that it is clear that "operations" can include the treating of mineral or rock after winning has ceased, or whilst winning is not also occurring simultaneously.

This clause amends section 49(4) to provide that if more than 10 workers are employed at a mine or the mine is prescribed by regulation to be a mine to which this subsection applies, an operator for the mine must not appoint a person to be SSE for the mine, or a separate part of the mine, unless the person holds both of the following board qualifications: an SSE notice, and the practising certificate required by the Board of Examiners to be held by a person holding an SSE notice.

### Amendment of s 50 (Management structure for safe operations at mines)

*Clause 166* amends section 50(2)(ca) to remove "and service providers" as service providers are now captured under the definition of "contractors".

Subclause (2) renumbers section 50(2)(ca) and (d) as section 50(2)(d) and (e).

### Replacement of s 51 (Competencies of supervisors)

*Clause 167* replaces and renames section 51 (Appointment of supervisors). Stakeholders have suggested that a supervisor should be "appointed". This amendment to section 51 provides consistency with other sections covering how others in statutory positions are "appointed" rather than "assigned tasks".

The clause also confirms the competency requirements for the appointment of a supervisor.

Section 51 provides that the SSE must not appoint a person to be a supervisor at the mine unless the person (a) is competent to be a supervisor; and (b) if there is a safety and health competency for supervisors recognised by the mining safety and health advisory committee, has the relevant competency.

The requirements under the amended section carry a maximum penalty of 100 penalty units.

### Amendment of s 52 (Appointment of another site senior executive during temporary absence)

*Clause 168* renames section 52 (Acting site senior executive) to better reflect the fact that the person is being appointed as the acting SSE and adopts all the responsibilities of the SSE.

### Amendment of s 53 (Additional requirements for management of underground mines)

*Clause 169* replaces section 53(3) to provide that, if 20 or more persons work underground in a mine—(a) the SSE must not appoint a person as an underground mine manager unless the person has both of the following board qualifications: (i) a first class certificate of competency for an underground mine; and (ii) the practising certificate required by the Board of Examiners to be held by a person holding a first class certificate of competency for an underground mine; and (b) the operator must not appoint the SSE as underground mine manager unless the SSE holds both of the following board qualifications: (i) a first class certificate of competency for an underground mine; and (ii) the practising certificate required by the Board of Examiners to be held by a person holding a first class certificate of competency for an underground mine. A maximum penalty of 400 penalty units applies.

### Amendment of s 54 (Appointment of another underground mine manager during temporary absence)

*Clause 170* renames section 54 (Acting underground mine manager) to better reflect the fact that the person is being appointed as the acting underground mine manager and adopts all the responsibilities of the underground mine manager.

### Amendment of s 55 (Safety and health management system)

*Clause 171* subclause (1) amends section 55(3) to ensure that the SHMS includes any ROC, or the remote operation of plant or equipment, for the mine.

Subclause (2) amends section 55(5) so that the requirements for a mine's SHMS to be adequate and effective to achieve an acceptable level of risk also includes identifying critical controls. Under other subsections of section 55 this will also require implementing and monitoring critical controls as part of the SHMS.

Subclause (3) is consequential to subclause (2), which renumbers section 55(5)(da) to (g) as section 55(5)(e) to (h).

Subclause (4) inserts section 55(6) to require the SSE to make available for inspection, by workers employed at the mine, and ROC workers employed for the mine, a copy of the SHMS. A maximum penalty of 100 penalty units applies.

### Insertion of new s 56A

*Clause 172* inserts a new section 56A (Changes in management structure to be reported to inspector) to require the SSE to give notice of any change in the management structure to an inspector within 14 days. Non-compliance with this new section carries a maximum penalty of 50 penalty units. The requirement does not apply to an opal or gem mine employing no more than 4 workers. The amendment replicates a similar requirement in the CMSHA, thereby increasing consistency between the CMSHA and the MQSHA.

### Amendment of s 59 (Mine record)

*Clause 173* subclause (1) amends section 59(2) to clarify that the mine operator for section 59(1) must keep a mine record for "at least" 7 years after a matter is included in the mine record.

Subclause (2) amends section 59(4) to omit the reference to the mine record relating to the previous 6 months, as relevant time periods relating to the mine record are covered in new subsection (4A) which is renumbered as subsection (5). Section 59(4) then requires that the mine operator must ensure the mine record is available for inspection.

Subclause (3) amends section 59(4)(b) so that the mine operator must ensure the mine record is available for inspection also by DWRs, along with it being already available for workers at the mine, and the SSE.

Subclause (4) inserts section 59(4A) to provide without limiting subsection (4), if a worker, DWR, or SSE asks to inspect a matter kept in the mine record, the mine operator must ensure the matter is available for inspection as soon as practicable but not later than: (a) if the matter was recorded in the mine record in the previous 6 months—5 days after the request is made; or (b)otherwise—28 days after the request is made. Non-compliance with this subsection carries a maximum penalty of 200 penalty units.

Subclause (5) renumbers section 59(4A) to (6) as section 59(5) to (7).

### Replacement of s 60 (Display of reports and directives)

*Clause 174* replaces and renames section 60 (Display of reports, directives and other information) to expand the requirements to make information available. New section 60(1) provides that the SSE must display a copy of the following at the mine—(a) each directive currently applying at the mine; (b) each report of an inspection carried out at the mine; (c) each publication of information under section 254C that may be relevant to safety and health obligations at the mine.

New section 60(2) requires the documents listed under subsection (1) to be displayed in one or more conspicuous positions at the mine in a way likely to come to the attention of workers at the mine affected by the documents providing safety and health information.

The clause also inserts a new section 60A (Current or past worker entitled to training and assessment report). Section 60A(1) provides that it applies if a person is or was a worker at a mine. Under section 60A(2) the person may ask the SSE to give the person a training and assessment report for the person. Under section 60A(3) the SSE must comply with the request within 30 days after the request is made. A maximum penalty of 200 penalty units applies to

section 60A(3). Section 60A(4) provides a definition of "training and assessment report" for the section. "Training and assessment report" for a person who is or was a worker at a mine, means a copy of the part of the mine's SHMS relating to records of training and assessment given to, and undertaken by, the person as a worker at the mine.

New section 60A is intended to ensure that workers employed or previously employed at a mine can obtain a copy of their training and assessment records as these records are important to their ability to gain employment.

The clause also inserts section 60B (Site senior executive entitled to training and assessment report from another mine). Section 60B provides that the section applies if (a) a person is a worker at a mine; and (b) the person has previously been a worker at another mine.

Section 60B(2) provides that the SSE for the current mine may ask the operator for the previous mine to give the SSE a training and assessment report for the person. Section 60B(3) provides that the operator for the previous mine must comply with the request within 30 days after the request is made. The maximum penalty is 200 penalty units.

Section 60B(4) provides a definition of "training and assessment report" for the section. "Training and assessment report" for a person who was a worker at a previous mine, means a copy of the part of the previous mine's SHMS relating to records of training and assessment given to, and undertaken by, the person as a worker at the previous mine.

### Amendment of s 63 (Guidelines)

*Clause 175* amends section 63. Subclause (1) amends subsection (3) to replace the reference to "Queensland government website" with "Queensland Government website", to ensure "Government" is capitalised. Subclause (2) omits subsection (4), because the definition of "Queensland Government website" has been included in schedule 2 (dictionary) by another clause of the Bill.

### Amendment of s 93 (Powers of site safety and health representative)

*Clause 176* subclause (1) amends section 93 to add subsection (1)(c) and (d) to ensure that site safety and health representatives can more effectively access and use documents relevant to safety and health.

Section 93(1)(c) provides that the powers of a site safety and health representative include to require the SSE to give the site safety and health representative within a stated reasonable period a copy of a document mentioned in paragraph (b).

Section 93(1)(d) provides that the powers of a site safety and health representative include to require the SSE to give the site safety and health representative reasonable help to exercise the site safety and health representative's powers under paragraphs (b) and (c).

Subclause (2) inserts new subsections (2) and (3) to indicate that reasonable help must be provided for the site safety and health representative by the SSE. New section 93(2) provides if a site safety and health representative asks to copy documents under subsection (1)(c), the SSE must give access to the documents as soon as reasonably practicable after being asked, unless the SSE has a reasonable excuse.

New section 93(3) provides that an SSE who is required in a stated reasonable way to help the site safety and health representative under subsection (1)(d) must comply with the requirement.

A maximum penalty of 100 penalty units applies for section 93(2) and section 93(3).

### Amendment of s 94 (Stopping operations by site safety and health representatives)

*Clause 177* amends section 94(4) to provide that the site safety and health representative must give a written report about the action taken under section 94(3) to stop the operations or part of the operations and evacuate persons to a safe location to each of the following persons and the reasons for the action—(a) the SSE; (b) an inspector; (c) a DWR. This broadens the current requirement to give a written report to the SSE, by providing a written report about the action also to an inspector and a DWR.

### Amendment of s 97 (Protection of site safety and health representatives performing functions)

*Clause 178* amends section 97 to replace "his or her" with "the representative's" to adopt a more contemporary drafting style.

### Amendment of s 98 (Site safety and health committees)

*Clause 179* amends section 98 to ensure that the full term “site safety and health committee” is used throughout the section to clarify the provision and correct a drafting oversight.

### Amendment of s 104 (Provision for help to representatives and committees)

*Clause 180* amends section 104 to increase the maximum penalty from 40 to 100 penalty units for failing to provide help to site safety and health representatives and committees. This amendment makes the maximum penalty consistent with section 98, for failing to establish a site safety and health committee when asked or directed.

These committees provide a vital forum for management and workers to come together to discuss systemic safety and health issues and look at ways to improve SHMSs. The intent of having a site safety and health committee is just as important as the intent of helping the committee carry out its functions.

This clause also amends section 104(c) to replace “committee members” with “members of site safety and health committees” to clarify the provision.

### Amendment of s 106 (Site senior executive to display identity of site safety and health representatives)

*Clause 181* subclause (1) amends section 106(1) to provide that the SSE for a mine must display a notice as required by subsections (2) to (5) for each site safety and health representative for the mine. Non-compliance with this section carries a maximum penalty of 40 penalty units. New subsection (1A) provides that the notice must (a) state the name of the site safety and health representative; and (b) state the preferred contact details of the representative; and (c) contain a recent photograph of the representative. This expands the requirements for an SSE to display the identity of site safety and health representatives so that workers can more easily identify and approach site safety and health representatives.

Subclause (2) inserts section 106(3) to provide examples of conspicuous positions where the notice about each representative's identity may be displayed. Examples include near the mine record, and in the crib rooms.

Subclause (3) inserts a new subsection (5) to define "preferred contact details" of a site safety and health representative, to mean the telephone number and email address by which the representative prefers to be contacted about safety and health matters. For example, preferred contact details may be personal telephone numbers and email addresses rather than work telephone numbers and email addresses.

Subclause (4) renumbers section 106(1A) to (5) as section 106(2) to (6).

### Amendment of s 116 (Powers of district workers' representatives)

*Clause 182* amends section 116 so that DWRs can more effectively access and use documents relevant to safety and health. Subclause (1) amends section 116(1)(b) to provide that a DWR has the power to enter any part of a mine at any time to carry out the representative's functions. This power is to be exercised in accordance with how inspectors conduct unannounced inspections by a DWR requesting to see the most senior person present at the mine after arriving at the entry to the mine.

Subclause (2) amends section 116(1)(d) so that a DWR has the power to examine SHMS documents, including standard work instructions, and training records.

Subclause (3) inserts section 116(1)(da) and (db) so that DWRs have the following powers—(da) to copy a document mentioned in paragraph (c) or (d); (db) to require the SSE to give the representative within a stated reasonable period and by a stated reasonable way, including, for example, by email, a copy of a document mentioned in paragraph (c) or (d).

Subclause (4) inserts section 116(1)(e) to require the person in control or temporarily in control of a mine to give the representative reasonable help in a stated reasonable way in the exercise of a power under any of paragraphs (a) to (f).

Subclause (5) amends section 116(1)(f) to replace the reference to section 164 with a reference to section 160(2)(a) due to amendments regarding directives. Section 160(2)(a) refers to the directive to suspend operations in all or part of the mine.

Subclause (6) renumbers section 116(1)(da) to (f) as section 116(1)(e) to (h).

Subclause (7) amends section 116(2) to replace the reference to subsection (1)(e) to subsection (1)(g) as a consequence of renumbering subclause (6).

Subclause (8) amends section 116(3) as a consequence of amendments to the powers of a DWR in section 116(1). Section 116(3) provides that if a DWR asks a person to give access to documents to enable the representative to examine documents under subsection (1)(c) or (d), or to copy documents under subsection (1)(e), the person must give access to the documents as soon as reasonably practicable after being asked, unless the person has a reasonable excuse. A maximum penalty of 100 penalty units applies.

### Amendment of s 123 (Qualifications for appointment as inspector)

*Clause 183* amends section 123 so that if a person who holds a certificate of competency or SSE notice is appointed as an inspector that person must also hold the practicing certificate required by the Board of Examiners to be held by a person holding that board qualification.

### Amendment of s 135 (Warrants—procedure before entry)

*Clause 184* amends section 135(2)(a) to replace "himself or herself" with "themself" to adopt a more contemporary drafting style.

### Replacement of ss 149 and 150

*Clause 185* omits section 149 and replaces it with new section 149 (Power to require personal details). Subsection (1) provides that this section applies if an officer (that is, an inspector, an inspection officer, or an authorised officer) finds a person committing an offence, or reasonably suspects the person has just committed an offence. Under subsection (2), the officer may require the person to state the person's name and residential address. The officer may also require the person, under subsection (3), to give evidence of the correctness of the stated information if, under the circumstances, the person could reasonably be expected to be in possession of, or otherwise give, the evidence. Subsection (4) requires the officer to give the person an "offence warning" when making a requirement under this section. Subsection (5) defines the meaning of "offence warning" and "reasonably suspect" for the section.

This clause also omits section 150 and replaces it with new section 150 (Offence to contravene personal details requirement), which makes it an offence to contravene a personal details requirement, unless the person of whom the requirement was made has a reasonable excuse. The maximum penalty under subsection (1) for contravening a personal details requirement is increased from 40 to 100 penalty units. However, under subsection (2), a person may not be convicted of an offence under subsection (1), unless the person is found guilty of the offence in relation to which the personal details requirement was made.

These amendments bring personal details requirements under the MQSHA into line with contemporary legislative standards and improve consistency across the Resources Safety Acts, as the Bill also makes comparable amendments to the other Resources Safety Acts.

### Amendment of s 157 (Additional powers of chief inspector)

*Clause 186* amends section 157(a) to update the relevant section number from 169 to 164 which refers to the power of the chief inspector to issue directives to provide a report.

### Amendment of pt 9, div 5, hdg (Directives by inspectors, inspection officers and district workers' representatives)

*Clause 187* renames the heading of division 5 (Directives).

### Renumbering of pt 9, div 5, sdiv 4 (Review of directives)

*Clause 188* renumbers part 9, division 5, subdivision 4 as part 9, division 5, subdivision 8 to provide for the insertion of additional subdivisions by a subsequent clause of the Bill.

## Replacement of pt 9, div 5, sdivs 1–3

*Clause 189* inserts new part 9, division 5, subdivisions 1 to 7 (preliminary, power to give directives, directives relating to acceptable level of risk, directives relating to other matters, how directives given, compliance with directives, records).

Section 158 provides the definition of "authorised official" for division 5.

Section 159 provides an authorised official with the power to give a directive under subdivision 3 (directives relating to acceptable level of risk) or 4 (directives relating to other matters).

Section 160(1) provides that a directive may be given to a person who has a safety and health obligation in relation to the mine, if an authorised official believes a risk from mining operations is at an unacceptable level or may reach an unacceptable level.

A directive given under this section may require the person to do one or more actions, such as suspend operations in all or part of the mine and take action stated in the directive. The action required under these directives will be proportionate to the level of risk from operations. This could include, for example, requiring a review of the SHMS to ensure the system is effective or requiring a test be carried out to decide whether a risk from operations is at an unacceptable level.

A directive to suspend operations under subsection (2)(a) may be given by an inspector, inspection officer or a DWR if risk from operations at a mine is believed to be at an unacceptable level (subsection (1)(a)), or by an inspector, or a DWR if it is believed that operations may reach an unacceptable level (subsection (1)(b)).

A directive to take action stated in the directive under subsection (2)(b) may be given by an inspector or inspection officer. However, only an inspector may give a directive under subsection (2)(b) that relates to a review of the SHMS or the carrying out of a test to decide whether a risk is at an unacceptable level.

Section 161 provides that an inspector may give the mine operator for the mine a directive that the task be performed only by a worker with the competency where an inspector believes a particular task at a mine should be performed only by persons with a particular competency.

Section 162 provides that an inspector may give a directive to a person to isolate and protect the accident or incident site where an inspector believes evidence relating to a serious accident or HPI at a mine needs to be preserved.

Section 163 provides that an inspector may issue a directive that part of the surface of the mine must be operated as a separate mining operation, if an inspector believes that part of the mine is taken to be a separate mine for the purposes of section 21(4) of the MQSHA and is not being operated as such.

If an inspector believes the mine operator for the mine has not complied with a directive given to operate a part of the mine as a separate mining operation, the inspector may give the mine operator for the mine a directive to suspend operations in the part of the mine under subsection (4).

Section 164 provides that the chief inspector may give a directive to a person who has a safety and health obligation in relation to a mine to provide a report to the chief inspector. A directive

given under this section must state the objectives of the report and that the person who prepares the report must be approved by the chief inspector. The person approved for the report must have professional qualifications and experience relevant to preparing the report and not be an employee of the operator for the mine or a contractor at the mine.

The report may be about:

- risks from operations at the mine;
- the safety of part or all of any plant, building or structure at the mine; or
- a serious accident or HPI at the mine.

A report prepared under section 164 in not admissible in evidence against an SSE, or any other worker or ROC worker mentioned in the report, in a criminal proceeding other than a proceeding about the falsity or misleading nature of the report.

Section 165 provides the required content for a directive given under subdivision 3 (directives relating to acceptable level of risk) or 4 (directives relating to other matters).

Section 166 provides that a directive under subdivision 3 (directives relating to acceptable level of risk) or 4 (directives relating to other matters) may be given either orally or by notice.

If the directive is given orally, it must be confirmed by notice to the person as soon as reasonably practicable after the directive is given. Section 166 also provides that a copy of the notice must be given to the SSE for the mine, or part of the mine to which the directive relates, and to the person in control of the mine, or part of the mine relevant to the directive.

However, failure to confirm the directive by notice or provide a copy of the directive to the SSE for the mine or part of the mine and person in control of the mine or part of the mine, does not affect the validity of the directive.

Formal defects or irregularities in directives given under this part do not invalidate the directives, unless the defect or irregularity would cause or is likely to cause substantial injustice. Subsection (5)(b) clarifies that a failure to use the correct name of a person in a notice given under this section falls within this provision, if the notice sufficiently identifies the person.

Section 167 provides how directives given under subdivision 3 or 4 may be withdrawn. This section also notes section 157 of the MQSHA, which provides that the chief inspector also has the powers of an inspector.

Section 168 establishes an offence provision for non-compliance with a directive given under subdivision 3 or 4 within the period stated. The maximum penalty for a contravention is 800 penalty units or 2 years imprisonment.

Section 169 requires an authorised official to keep an accurate record of the directive given under subdivision 3 or 4 for at least 7 years after the directive is given.

Section 170 provides that where an authorised official gives a directive relating to a mine under subdivision 3 or 4, an authorised official is required to enter the directive in the mine record and state the reasons in the mine record for the directive, as soon as reasonably practicable after giving the directive. The SSE for the mine must enter the action taken to comply with the

directive in the mine record as soon as practicable after taking the action. The maximum penalty for a contravention is 40 penalty units.

Section 171 requires the SSE for the mine to make a copy of a directive given under subdivision 3 or 4 relating to the mine available for inspection by workers at the mine for at least 7 years after the directive was given. The maximum penalty for a contravention is 40 penalty units.

New section 171A provides that where an authorised official gives a report to a person under the MQSHA, the authorised official must keep an accurate record of the report for at least 7 years after the report is given to the person.

New section 171B provides that if an authorised official inspects a mine under the MQSHA, the authorised official is required to make a written report about the inspection and give a copy of the report to the operator and SSE for the mine.

### Amendment of s 172 (Application for review)

*Clause 190* amends section 172 to provide that a person given a directive under subdivision 3 or 4 by an authorised official (other than the chief inspector) may apply under division 5 for the directive to be reviewed.

### Amendment of s 174 (Review of directive)

*Clause 191* replaces "time" with "period" in section 174(5) to adopt a more contemporary drafting style.

### Amendment of s 175 (Stay of operation of directive)

*Clause 192* makes a consequential amendment to section 175(6) to reflect renumbering within the division, by amending the reference to section 164 to section 160(2)(a).

### Amendment of s 178 (Obstructing inspectors, officers or district workers' representatives)

*Clause 193* amends section 178 to increase the maximum penalty for obstructing inspectors, inspection officers, authorised officers or DWRs from 100 to 500 penalty units.

### Amendment of s 180 (Functions of the board of examiners)

*Clause 194* renames section 180 (Functions of board of examiners) and amends it to support other amendments to the Act and the Mining and Quarrying Safety and Health Regulation 2017 that deal with continuing professional development and practising certificates.

This clause inserts new section 185(f) which confirms that the Board of Examiners has the additional functions of developing and administering a scheme for the continuing professional development of holders of certificates of competency or SSE notices, and includes examples of aspects developed and administered.

### Insertion of new s 180A

*Clause 195* inserts new section 180A (Minister's power to give directions in public interest) to provide that the Minister may give the Board of Examiners a written direction about a matter

relevant to the performance of its functions under the Act if the Minister is satisfied it is necessary, and in the public interest, to give the direction. The direction may not be about issuing, renewing or otherwise amending, suspending or cancelling a board qualification. The Board of Examiners must comply with the direction.

As the Board of Examiners is a government board established under a Queensland Act of Parliament the board should be conducted in accordance with Queensland government's good governance standards. The new section therefore introduces similar requirements applying to other boards and is limited to the way in which the board administers its statutory functions, rather than how it makes decisions regarding notices, certificates or registrations.

### Amendment of s 181A (Board of examiners may consider previous suspension, cancellation or surrender of certificate of competency or site senior executive notice)

*Clause 196* renames section 181A (Board of examiners may consider previous suspension, cancellation or surrender of board qualification) and amends it to also capture the previous suspension, cancellation or surrender of a practising certificate in the matters the Board of Examiners may have regard to in deciding an application for a board qualification. By using the defined term "board qualification" section 181A applies if a person has applied for the grant of a certificate of competency, SSE notice or practising certificate; and a certificate of competency, SSE notice or practising certificate previously held by the person was suspended, cancelled or surrendered.

### Amendment of s 182 (Obtaining certificates of competency or site senior executive notices by fraud)

*Clause 197* renames section 182 (Obtaining board qualifications by fraud) and amends it to include practising certificates in matters related to a person giving false information to the Board of Examiners. By using the defined term "board qualification" section 182 in effect provides a person must not become, or attempt to become, the holder of a certificate of competency or SSE notice or practising certificate by giving false information to the Board of Examiners. Subclause (2) replaces "certificate of competency or site senior executive notice" with the broader applying "board qualification" throughout section 182(1), (2) and (3).

Subclause (3) amends section 182(3) to add paragraphs (c) and (d) to cover who must be notified for decisions relating to practising certificates. Subclause (3) provides that: (c) for a decision relating to cancelling a practising certificate held by an SSE, the Board of Examiners must give notice of a decision to the operator for each mine at which the holder works; and (d) for a decision relating to a practising certificate held by a person other than an SSE, the notice must be given to the SSE for each mine at which the holder works.

### Amendment of s 183 (Return of certificate of competency or site senior executive notice)

*Clause 198* renames section 183 (Return of board qualification) and amends it to also apply to practising certificates by using the defined term "board qualification". This clause also changes the court jurisdiction for suspending or cancelling a board qualification under section 237, from the industrial magistrates court to the magistrates court as part of other amendments made by the Bill.

### Amendment of s 184 (Effect on particular appointments of suspension, cancellation or surrender of certificate of competency or site senior executive notice)

*Clause 199* renames section 184 (Effect on particular appointments of suspension, cancellation or surrender of board qualification) and amends it to also apply to practising certificates by using the defined term "board qualification".

The amendment provides that in effect, if a board qualification is suspended, cancelled or surrendered and the person held an appointment and was required to hold the board qualification to be appointed to the position, the person's appointment ends on the suspension, cancellation or surrender of the person's certificate of competency or SSE notice or practising certificate.

### Amendment of s 185 (Register to be kept by board of examiners)

*Clause 200* expands what the Board of Examiners' register must include by integrating requirements in relation to practising certificates, with existing requirements in relation to keeping a register of certificates of competency granted, SSE notices issued and notices of registration given under mutual recognition.

Subclause (1) amends section 185(1) to provide that the Board of Examiners must also keep a register of practising certificates issued by the board.

Subclause (2) renumbers section 185(1)(ba) and (c) as section 185(1)(c) and (d).

Subclauses (3) and (4) confirm that the same information currently kept on the register for a certificate of competency or SSE notice must also be kept for a practising certificate, by replacing references to a certificate of competency or SSE notice with board qualification. This streamlining of terms is due to the added definition of "board qualification".

Subclause (5) replaces the reference to subsection (1)(c) in section 185(2)(b) with subsection (1)(d) instead.

Subclause (6) omits section 185(4) as the definition of "mutual recognition Act" has been moved to the dictionary.

### Amendment of pt 10A, hdg (Suspension and cancellation of certificates of competency and site senior executive notices by CEO)

*Clause 201* renames the heading of part 10A (Suspension and cancellation of board qualifications by CEO) so that this part also applies to practising certificates by using the defined term "board qualification".

### Amendment of s 186 (Grounds for suspension or cancellation)

*Clause 202* amends section 186 by inserting a new subsection (3) to provide that the only ground for the Board of Examiners to suspend or cancel a person's practising certificate is that the person failed to complete the requirements of the Board of Examiners to hold the certificate. This is in contrast to the existing range of grounds under section 186(1) for suspending or cancelling a person's certificate of competency, and in contrast to the grounds under section 186(2) for suspending or cancelling a person's SSE notice.

### Amendment of s 187 (Notice of proposed action)

*Clause 203* amends section 187 to include practising certificates by using the defined term "board qualification", so that this section applies if the CEO considers there is a ground to suspend or cancel a person's certificate of competency, SSE notice or practising certificate.

### Amendment of s 189 (Decision to take proposed action)

*Clause 204* amends section 189(2) to include practising certificates in matters related to a decision by the Board of Examiners to take a proposed action regarding a board qualification by using the defined term "board qualification".

This clause also amends section 189(6)(a) by inserting new (iii) and (iv) to cover decisions relating to a practising certificate. New section 189(6)(a)(iii) requires the CEO to give a copy of the notice of a board decision relating to a practising certificate held by an SSE to the mine operator for each mine at which the SSE works. New section 186(6)(a)(iv) requires the CEO to give a copy of the notice of a board decision relating to a practising certificate held by a person other than an SSE to the SSE for each mine at which the person works.

### Insertion of new s 190

*Clause 205* inserts new section 190 (Automatic cancellation or suspension of practising certificate) to automatically cancel or suspend a practising certificate if a person's certificate of competency or SSE notice to which the practising certificate relates is cancelled or suspended, for the same period.

### Replacement of s 195 (Notice of accidents, incidents, deaths or diseases)

*Clause 206* replaces and renames section 195 (Notice of accidents, deaths or incidents) to implement the following amendments regarding the requirements for the SSE to give notice of an accident, death or incident at the mine:

- replace the requirement to notify an inspector or DWR "orally or by notice" with a requirement to provide the notice orally as soon as possible and also as soon as practicable in the approved form;
- replace the requirement to give "primary information" with a requirement to provide the information required in the approved form;
- increase the maximum penalty for breaching any requirement to 100 penalty units; and
- omit provisions related to reporting prescribed diseases which are now in new section 195AA.

The purpose of the amendment is to support the development of a new web-based incident reporting system, which will be the approved form, that allows the SSE to enter the information about the incident directly. This will improve the capture of incident reports and allow for consistent subsequent analysis and presentation of aggregated data to industry, which in turn will assist industry to better manage hazards at their own mines.

Because the DWRs have access to RSHQ facilities, including the incident reporting system, details of the incident being reported only need be entered into the system to meet written reporting obligations to both an inspector and a DWR.

Section 195(1) provides that if the SSE for a mine becomes aware of a serious accident or death at the mine the SSE must as soon as possible orally notify both an inspector and a DWR about

the accident or death and provide required information to the extent the information is known to the SSE.

Section 195(2) provides also, the SSE must, as soon as practicable after becoming aware of a serious accident, death, or HPI at the mine notify both of the following persons in the approved form—(a) an inspector; (b) a DWR.

Section 195(3) provides that the notice to be provided to an inspector and a DWR in the approved form must make provision for particular information to be provided about the accident, death or incident.

Section 195(4) establishes that if the SSE does not know the required information at the time the SSE is required to notify an inspector and a DWR under subsection (2) they must—(a) take all reasonable steps to find out the required information as soon as possible; and (b) as soon as possible after the required information becomes known to the SSE, give the required information to the person.

Section 195(5) provides that it is not a defence in a proceeding under subsections (1), (2) or (4) that the giving of the required information might tend to incriminate the SSE.

Section 195(6) provides the required information is not admissible in evidence against the SSE in a criminal proceeding. Section 195(7) provides that subsection (6) does not prevent the required information being admitted in evidence in a criminal proceeding about the falsity or misleading nature of the required information.

Section 195(8) provides the definition of "required information" for this section to mean the information required by the approved form mentioned in subsection (2).

This clause also inserts a new section 195AA regarding a notice of reportable diseases. Similar to the notification of accidents, deaths or incidents if the SSE for a mine becomes aware that a worker has been diagnosed with a reportable disease, they must notify both an inspector by notice in the approved form and a DWR by notice.

Section 195AA(2) provides that if a prescribed person becomes aware that a relevant worker has been diagnosed with a reportable disease, the person must, as soon as practicable after becoming aware, notify the chief inspector by notice in the approved form. Subsection (3) states that the approved form must make provision for the name and date of birth of the person diagnosed. Subsections (1) and (2) carry a maximum penalty of 100 penalty units.

Subsection (4) allows for certain circumstances for when this section does not apply to be prescribed by regulation.

Subsection (5) provides some definitions for the section such as "prescribed person", "relevant worker" which may include a person who is, was or may become a worker as well as a person who is, was or may become a coal mine worker as defined in the CMSHA, and a "reportable disease" which is described by regulation.

### Insertion of new s 196A

*Clause 207* inserts a new section 196A (Site senior executive must tell contractor particular matters) that ensures that if a contractor provides or arranges for a worker to perform work, or provide a service, at a mine and the SSE for becomes aware of any of the following matters:

(a) an injury or illness to the worker from operations that causes the worker to be absent from work; (b) an HPI happening at the mine that causes or has the potential to cause a significant adverse effect on the safety or health of the worker; (c) any proposed change to the mine, or plant or substance used at the mine, that affects, or may affect, the safety and health of the worker.

Subsection (2) provides that the SSE for the mine must tell the contractor about the matter as soon as practicable after it comes to the SSE's knowledge.

Section 196A carries a maximum penalty of 100 penalty units.

### Amendment of s 198 (Action to be taken in relation to site of accident or incident)

*Clause 208* amends section 198(1)(c) to provide that the CEO or the chief inspector, at their discretion, may grant an extension of time for a period of up to 12 months after a serious accident has occurred for the submission of the report. For reports where a longer period, is not granted the timeframe for giving the report is amended from 1 month to 30 days. This will ensure that complex investigations and reports do not have to meet a timeframe that affects the quality of the report, by allowing for an extension of time where the CEO or chief inspector believes it is warranted. It further provides that if the report is about a HPI the report is only required if it is requested by the inspector, within the period required by the inspector.

### Amendment of s 213 (Offences by witnesses)

*Clause 209* amends sections 213(1), (2) and (3) to increase the penalties for board of inquiry witness offences from 30 to 200 penalty units, which will provide a greater deterrent to people committing these offences. This is the current maximum penalty for an equivalent offence under the P&G Act, so the amendment will also increase consistency across the Resources Safety Acts.

### Insertion of new ss 213A and 213B

*Clause 210* inserts section 213A (False or misleading statements to board of inquiry) to make it an offence for a person to state anything to a board of inquiry that the person knows is false or misleading in a material particular, with a maximum penalty of 500 penalty units applying to act as a deterrent to breaching the provision.

The clause also inserts section 213B (False or misleading documents to board of inquiry) to make it an offence for a person to give a document to a board of inquiry that the person knows is false or misleading in a material particular, unless the person informs the board to the best of the person's ability, how it is false or misleading and corrects the information. A maximum penalty of 500 penalty units applies as a deterrent to breaching the provision.

These sections align the MQSHA with equivalent provisions already in the Explosives Act and the P&G Act and are being made to equivalent provisions of the CMSHA by this Bill, which will increase consistency between the Resources Safety Acts.

### Amendment of s 214 (Contempt of board)

*Clause 211* renames section 214 (Contempt of board of inquiry) and amends it to insert a new paragraph (b) to make it an offence to impede or obstruct a board of inquiry in the exercise of

its powers. The maximum penalty is increased from 30 to 200 penalty units to act as a greater deterrent. This is the current maximum penalty for an equivalent offence under the P&G Act and is being introduced in equivalent provisions of the other Acts by this Bill, so the amendment will also increase consistency across the Resources Safety Acts.

### Amendment of s 216A (Appeals against CEO's decisions)

*Clause 212* amends section 216A so that the section also applies to practising certificates as well as to certificates of competency and SSE notices by replacing the reference to certificate or SSE notice with the defined term "board qualification".

### Amendment of s 217 (Appeals against board of examiners' decision)

*Clause 213* amends section 217 so that the section also applies to practising certificates and SSE notices as well as to certificates of competency by using the defined term "board qualification".

### Amendment of s 234 (Proceedings for offences)

*Clause 214* amends section 234 so that a prosecution for an offence against this Act, other than an offence against part 3A, must be heard and decided summarily. This amendment intends to align the court jurisdiction across the Resources Safety Acts, as well as the WHS Act, which will ensure consistency for all litigants and a consistent resources safety legislative framework in relation to the jurisdiction of prosecutions.

### Amendment of s 235B (Procedure if prosecution not brought)

*Clause 215* is a consequential amendment that replaces a reference to "section 234(10)" with "section 234(9)" instead.

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

*Clause 216* amends section 236 which sets out the limitation periods for when proceedings for an offence may be brought, excluding proceedings for an offence against part 3A. Proceedings must be commenced within the latest of the following periods to end—

- 2 years after the offence first comes to the notice of the complainant,
- if an enforceable undertaking has been given in relation to the offence, 6 months after the latest of the following happens: the enforceable undertaking is contravened or when it comes to the notice of the CEO that the enforceable undertaking has been contravened or the CEO agrees under section 246Q to the withdrawal of the enforceable undertaking, or
- if the offence involves a breach of an obligation causing death and the death is investigated by a coroner under the *Coroners Act 2003*, 2 years after the coroner makes a finding in relation to the death.

This amendment ensures that there is consistency, equity and alignment across the Resources Safety Acts. It also aligns with the WHS Act which provides for "within 2 years after the offence first comes to the notice of the WHS prosecutor".

This will enable robust investigations to be undertaken into serious accidents and fatalities as well as successful prosecutions that will act as a deterrent and provide justice for the workers and their families. These amendments will facilitate improved safety and health outcomes.

### Amendment of s 237 (Court may order suspension or cancellation of certificate or notice)

*Clause 217* amends section 237 to replace references to an "industrial magistrate" to the "Magistrates Court" instead. It also replaces "Industrial Court" with "District Court" instead.

### Amendment of s 238 (Forfeiture on conviction)

*Clause 218* amends section 238 to replace the references to an "Industrial Magistrates Court" to a "Magistrates Court" instead.

### Amendment of s 243 (Orders for costs)

*Clause 219* amends section 243 to replace the references to an "Industrial Magistrates Court" to a "Magistrates Court" instead. As a result, this clause also omits subsection (3), which is no longer relevant. The remaining subsections are subsequently renumbered.

### Insertion of new pt 14C

*Clause 220* inserts new part 14C which deals with the giving of enforceable undertakings under the Act. This is a new enforcement tool is an alternative to court imposed sanctions that will strengthen RSHQ's enforcement tool kit. These provisions align with the approach taken under the WHS Act. The new sections that make up the part are as follows.

Section 246L introduces enforceable undertakings under the Act such that the CEO may accept a written undertaking for offences other than an offence arising from an accident causing death, or an industrial manslaughter offence. The giving of an enforceable undertaking does not constitute an admission of guilt. The CEO must publish general guidelines in relation to the acceptance of enforceable undertakings on a Queensland Government website. The CEO may accept an enforceable undertaking in relation to a contravention or alleged contravention before a proceeding in relation to that contravention has been finalised. In such a case the CEO must immediately notify the WHS prosecutor who must take all reasonable steps to have the proceeding discontinued as soon as possible.

Section 246M sets out requirements for notices related to enforceable undertakings such that the CEO must give the person seeking to make an enforceable undertaking written notice of the CEO's decision and of the reasons for the decision, and the decision and reasons must also be published on a Queensland Government website.

Section 246N provides that an enforceable undertaking takes effect and becomes enforceable when the CEO's decision is given to the person who made the undertaking, or at any later date stated by the CEO.

Section 246O provides that if a person contravenes an enforceable undertaking a maximum penalty of 500 penalty units applies.

Section 246P sets out provisions related to the contravention of an enforceable undertaking such that:

- the CEO may apply to a Magistrates Court for an order if a person contravenes an enforceable undertaking;
- if the court is satisfied the undertaking has been contravened it may impose a penalty and make an order directing the person to comply with the order, or an order discharging it;
- the court may also make other orders it considers appropriate including orders to pay the costs of the proceeding and the reasonable costs of monitoring the enforceable undertaking in the future;
- a proceeding may also be taken for the alleged contravention of the Act to which the enforceable undertaking relates.

Section 246Q sets out provisions for withdrawing or varying an enforceable undertaking such that:

- a person who has made an enforceable undertaking may at any time, with the written agreement of the CEO withdraw or vary the undertaking;
- the provisions of the undertaking cannot be varied to deal with a different alleged contravention of the Act;
- the CEO must publish, on a Queensland Government website, notice of the withdrawal or variation of an enforceable undertaking.

Section 246R sets out a proceeding for an alleged contravention of an enforceable undertaking such that:

- no proceeding for a contravention or alleged contravention of the Act may be taken if an enforceable undertaking is in effect in relation to the contravention;
- no proceeding may be taken for a contravention or alleged contravention of the Act if a person has completely discharged an enforceable undertaking.

### Insertion of new pt 15, div 1, hdg

*Clause 221* inserts a new part 15 division 1 heading (General) before section 247 to restructure the part into separate divisions to support the introduction of a range of new orders that may be made by a court.

### Insertion of new pt 15, div 2

*Clause 222* inserts a new part 15 division 2 (Sentencing for offences) after section 249. The purpose of the new division is to provide a broader range of court orders that may be given if a court convicts a person or finds a person guilty of an offence against the Act.

Section 249A provides that this division applies if a court convicts a person or finds them guilty of an offence against the Act.

Section 249B provides that one or more orders under this division may be made against the offender. It also provides that orders can be made under this division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

Section 249C provides for adverse publicity orders, which can be an effective deterrent for an organisation that is concerned about its reputation. Such orders can draw public attention to a particular wrongdoing and the measures that are being taken to rectify it.

The court may order an offender to take either or both of the following actions: to publicise the offence, its consequences, the penalty imposed and any other related matter; or to notify a specified person or specified class of persons of the offence, its consequences, the penalty imposed and any other related matter.

The offender must give the CEO evidence of their compliance with the order within 7 days after the end of the compliance period stated in the order. The CEO can take the action stated in the order if they do not comply with the adverse publicity order or fail to give the CEO evidence of their compliance with the order. Where this occurs, the CEO is entitled to recover from the offender reasonable expenses associated with them taking that action.

This new section also allows the court to make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.

Section 249D provides for restoration orders, requiring the offender to take steps within a specified period to remedy a matter caused by the commission of the offence that appears to be within the offender's power to remedy.

The court can extend (or further extend) the specified period, provided an application for extension is made before the end of the period.

Section 249E provides for safety and health project orders, an order requiring an offender to undertake a specified project within a certain period for the general improvement of safety and health of persons at mines or persons who may be affected by operations. These orders make offenders undertake activities that identify and address the failures that led to their wrongdoing.

The order may specify conditions that must be complied with in undertaking the project. It can also be combined with other non-monetary orders to ensure that failures, that led to the offence being committed in the first place, are addressed.

Section 249F provides for a court-ordered undertaking, which enables a court to adjourn proceedings, with or without recording a conviction, for up to 2 years and make an order for the release of the offender on the condition that they give an undertaking with specified conditions.

Court-ordered undertakings are different from enforceable undertakings (that are also being introduced by the Bill), which are voluntary in nature.

This section sets out the conditions that must be included in a court-ordered undertaking. The undertaking must require the offender to appear before the court if called on to do so during the period of the adjournment. Furthermore, the offender must not commit any offence against this Act during the period of adjournment and must observe any special conditions imposed by the court.

The court can call on the offender to appear before it if the offender is given not less than 4 days' notice of the court order to appear. When the offender appears before the court, if the court is satisfied they have observed the conditions of the undertaking, the court must discharge the offender without any further hearing of the proceeding.

Section 249G provides for injunctions, which require the offender to stop contravening the Act if they have been found guilty of an offence. This court order can be an effective deterrent where a penalty fails to provide one. A note in this new section highlights part 14 of the Act, which separately provides for injunctions that may be granted by the District Court against a person at any time.

Section 249H provides for training orders, which enable a court to make an offender take action to develop skills that are necessary to effectively manage safety and health at mines. The court may make an order requiring the offender to undertake, or arrange for workers to undertake, a specified course of training.

Section 249I makes it an offence for a person to fail to comply with an order made under this new division unless the person has a reasonable excuse. The evidentiary burden is on the defendant to prove a reasonable excuse as this is provided for in the *Justices Act 1886*. This section does not apply to an order under new sections 249F or 249G. Non-compliance with this section carries a maximum penalty of 500 penalty units.

### Amendment of s 253 (Where worker exposed to immediate personal danger)

*Clause 223* amends sections 253(1)(a) and (3) to replace "himself or herself" with "themself" to adopt a more contemporary drafting style.

### Amendment of s 254A (Protection from reprisal)

*Clause 224* provides the definition of the term "detriment" under section 254A(7). This will serve to strengthen the provision as the board term "detriment" is open to interpretation.

### Amendment of s 254C (Public statements)

*Clause 225* amends section 254C to clarify the details that may be published by RSHQ. The amendments will provide that the information may contain the number of HPIs and serious accidents, a description of the HPI and/or serious accident, the name of the mine at which the incident occurred, the operator of the mine, the injuries sustained, and any other information considered appropriate. The current section 254C(2) provides that a public statement may identify particular information and persons, and the amendments will carry that through by allowing the release of identifying information.

The references to public statements are being replaced with "publish information" to cater for the broad range of means to share the information, which will continue to include oral statements as well as written forms. The requirement that the information be only published when it is in the public interest and natural justice requirements also continue to apply unchanged.

This clause also replaces the liability provision at section 254C(4) and (5) to meet current drafting practice.

### Amendment of s 255 (Disclosure of information)

*Clause 226* makes two amendments to section 255. Subclause (1) consequentially amends section 255(1)(e) to better align this paragraph with section 254C (Publication of information), as amended by the Bill. Subclause (2) amends section 255(2) by broadening the disclosure

provision so the chief inspector may communicate anything that comes to the chief inspector's knowledge under the MQSHA to an officer or authority responsible for administering a law of Queensland, the Commonwealth or another state about safety and health. Under the existing provision, this disclosure is limited to being about safety and health "in mining".

### Amendment of s 260 (CEO to keep records)

*Clause 227* amends section 260 related to the requirements for the CEO to keep records in order to:

- remove the obligation for the CEO to maintain a database of hazards and methods of controlling the hazards;
- remove all reference to lost time injuries and only refer to serious accidents and HPIs;
- amend the provision for the CEO to give access to the records by removing reference to the payment of a reasonable fee.

The amendments will remove any focus on lost time injury frequency as this is no longer considered to be an appropriate measure of safety performance in a high-risk industry. The amendments also recognise that the current hazards database is rarely used, because industry bears responsibility for risk management, has intimate knowledge of mine site operations and therefore is best placed to maintain such information. This is a different responsibility to that of the CEO keeping and maintaining a database of HPIs which will be retained.

The removal of a charge to access to records is no longer appropriate or in keeping with a culture of sharing safety information. Under the new reporting system operators will have access to their own reporting information and aggregated industry information to benchmark their own performance.

### Amendment of s 261 (Approved forms)

*Clause 228* amends section 261 to insert a reference to the "CEO" as a person who may approve forms for use under the Act. The amendment is necessary because the CEO of RSHQ is also an appropriate person to approve forms for use under the Act, which also aligns the Act with similar amendments to the other Resources Safety Acts.

### Amendment of s 262 (Regulation-making power)

*Clause 229* amends section 262 to provide that a regulation to be made under this Act about matters relating to board qualifications.

### Insertion of new pt 20, div 8

*Clause 230* inserts new division 8 (Transitional provisions for the Resources Safety and Health Legislation Amendment Act 2024) into part 20. The purposes of the inserted sections are as follows:

Section 295 (Definitions for division) provides definitions for the terms "former" and "new", for a provision of the MQSHA, as used within the division. A reference to a "former" provision means the provision of the MQSHA as in force from time to time before the commencement. A reference to a "new" provision means the provision of the MQSHA as in force from the commencement.

Section 296 (Deferral of requirements relating to critical controls) subclause (1) provides that new sections 27, 44A, and 55(5), as amended by the *Resources Safety and Health Legislation Amendment Act 2024*, do not apply until the day that is 1 year after the commencement.

Subclause (2) provides former sections 27, 44A and 55(5) continue to apply until that day that is 1 year after the commencement.

Section 297 (Deferral of requirements relating to operational ROC workers) provides that amendments to sections 39(1)(h) related to training and assessment of ROC workers does not apply as amended by the Bill until the day that is 6 months after commencement. This will provide SSEs with 6 months to ensure that operational ROC workers have been demonstrated as meeting the new induction, training and competence obligations. This section also defers new section 55(3) which relates to including ROCs and remote operation of equipment in the SHMS. Again, the SSE will be given 6 months to ensure that this is addressed.

Section 298 (Deferral of particular requirements to hold practising certificate) sets out the transitional period until 10 June 2025 for holders of SSE notices, or underground mine manager certificate of competency holders, including any inspectors who hold either an SSE notice or underground mine manager certificate of competency.

Section 298(1) provides that the section applies to the following requirements to hold a practising certificate by covering all of the requirements under respective sections relating to holders of SSE notices or certificates of competency having a practising certificate including inspectors. Section 298 applies to:

- the requirement under new section 49(4)(b) for an SSE to hold a practising certificate;
- the requirement under new section 53(3)(a)(ii) or (b)(ii) for an underground mine manager to hold a practising certificate;
- the requirement under new section 123(2) for an inspector to hold a practising certificate.

Section 298(2) provides that the requirements to hold a practising certificate for appointments listed under subsection (1) do not apply until 10 June 2025.

The transitional period until 10 June 2025 is enforced through section 298(3) which provides that if on 10 June 2025, the person mentioned in subsection (1) does not hold the required practising certificate, the appointment of the person to the position mentioned in subsection (1) is terminated.

Section 298(4) provides that former sections 49(4), 53(3), and 123 continue to apply until 10 June 2025. This enables the appointment of persons mentioned in subsection (1) according to these former sections until the end of the transitional period to 10 June 2025, although persons may be appointed to these positions according to the new requirements for practising certificates at any time during the transitional period.

Section 299 (No compensation payable because of termination of appointment under division) provides that if a person's appointment to a position is terminated because of the operation of this division, the State will not be liable for the payment of any compensation because of the termination.

Section 300 (Dealing with charges of offences against Act in summary way before Magistrates Court) provides that upon the commencement of new section 234, a proceeding for an offence against this Act, other than an offence against part 3A, must be heard and decided summarily, including where the offence is alleged to have been committed before or after the commencement of new section 234. However, subsection (2) clarifies that, without limiting section 20 of the *Acts Interpretation Act 1954*, a proceeding already started under former section 234 before an industrial magistrate may continue before the industrial magistrate. Subsection (3) provides that a person dissatisfied with a decision of an industrial magistrate in a proceeding mentioned in subsection (2) may appeal to the Industrial Court under former section 234 despite the amendment of former section 255 by the *Resources Safety and Health Legislation Amendment Act 2024*.

Section 301 (Limitation period for starting prosecution) ensures that the timeframes for the commencing proceedings under new section 236 do not apply to offences that were committed prior to the commencement of the amendments.

Section 302 (Administrative region established by chief executive before commencement) provides that an administrative region established by the chief executive for the administration of the MQSHA before the commencement, is taken to have been established by the CEO. This ensures an administrative region established before the commencement, which is still in effect immediately before the commencement, does not have to be re-established by the CEO of RSHQ after the commencement, and continues to be in effect.

## Amendment of sch 2 (Dictionary)

*Clause 231* subclause (1) omits the definitions of "hard rock", "holder", "obstruct", "service provider", "treatment" and "worker" from Schedule 2 of the Act.

Subclause (2) inserts the following definitions in Schedule 2:

The definition for "authorised official", for part 9, division 5, see section 158.

The definition for "board of inquiry" is inserted to define the term by reference to section 199 (Minister may establish boards of inquiry) of the Act.

The definition of "board qualification" means (a) a certificate of competency; or (b) an SSE notice; or (c) a practising certificate. The amendment is necessary because the term is now used in several provisions within the Act.

The definition of "contractor" is inserted to include a person contracted to carry out work at a mine; and a person contracted to provide a service to a mine; and a person contracted to provide workers to a mine, including, for example, a labour hire agency. The new definition will ensure that all types of employment arrangements are captured by the definition and therefore subject to safety and health obligations.

The definition of "critical control" is inserted to mean a risk control measure for a mine that is critical to prevent material unwanted event or mitigate the consequences of a material unwanted event at the mine; and the absence or failure would significantly increase risk despite the existence of other risk control measures. This new definition supports amendments made by this Bill to introduce critical controls as part of SHMS requirements under the Act. It is based

on the definition used in the International Council on Mining and Metals' *Health and Safety Critical Control Management: Good Practice Guide*.

The definition of "enforceable undertaking" is inserted to define the term by reference to section 246L(1) of the Act, which provides that the CEO may accept a written undertaking (an enforceable undertaking) given by a person in connection with a matter relating to a contravention or alleged contravention of the Act by the person.

The new definition for "hard rock" clarifies that river sand or any type of gravel may come within the meaning of "hard rock" if any type of gravel is extracted and crushed or shaped to produce a product; or river sand is extracted and crushed or shaped to produce a product (for example, manufactured sand), after any type of gravel or river sand has been excavated.

Rock that must be broken, including, for example, by drilling and blasting, ripping, or crushing by machinery, to enable it to be extracted also is within the meaning of "hard rock".

The definition for "holder" has been amended to reflect a more contemporary drafting style, providing that the holder is "for a mine".

The definition of "material unwanted event", at a mine, means an unwanted event in relation to which the potential or real consequence to safety or health exceeds a threshold defined by the operator as warranting the highest level of attention. It is based on the definition used in the International Council on Mining and Metals' *Health and Safety Critical Control Management: Good Practice Guide*. The amendment is necessary because the term is now used in several provisions within the Act.

The definition of "mutual recognition Act" means—(a) the *Mutual Recognition Act 1992* (Cwlth); or (b) the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth). This does not change the definition but simply moves it to the dictionary as it is now referred to in more than one section. The definition is deleted from section 185 where it had been a definition only for that section.

The definition of "obstruct" is amended to include assault as well as attempting or threatening to assault, hinder or resist.

The definition of "offender" is inserted to define the term by reference to section 249A of the Act. The amendment is necessary because the term is now used in several provisions within part 15, division 2 of the Act.

The definition of "operational ROC worker," for a mine means an ROC worker for the mine who does either or both of the following—provides information that is used at the mine to make decisions about operations at the mine but does not give instructions, directions or make directions about operations at the mine; remotely operates a plant of equipment located at the mine under the direction of the SSE or other supervisors at the mine and the SHMS.

The definition of "practising certificate" means a practising certificate issued, or renewed, by the Board of Examiners under this Act. The new definition supports multiple amendments to the Act related to the Board of Examiners' continuous professional development program referred to as the practising certificate scheme.

The definition of "Queensland Government website" is inserted to mean a website with a URL that contains "qld.gov.au", other than the website of a local government.

The definition of "remote operating centre", for a mine, means a facility located off the mine that monitors operations at the mine and does either or both of the following—provides information that is used by the SSE or other supervisors at the mine to make decisions about operations at the mine but does not involve persons at the facility giving instructions or directions or making decisions about mining operations at the mine; and/or remotely operates plant or equipment located at the mine under the direction of the SSE or other supervisors at the mine and under the safety and health and management system. The amendment is necessary because the term is used in a number of other amendments made by the Bill.

The definition of "ROC worker", for a mine, is inserted to mean a person who works at a remote operating centre for the mine. The amendment is necessary because the term is used in a number of other amendments made by the Bill.

The definition of "site safety and health committee" is inserted to mean a site safety and health committee established under section 98 of the Act.

The definition of "treat" replaces the definition for "treatment". The intention of the amendment is to clarify that treating can take place at a quarry, as a quarry may not be on a mining tenure. The definition of "treat" applies at a quarry, as well as at a mine which is on a mining tenure. "Treat" means any process that is carried out with the objective of preparing material won in operations for its end purpose that takes place at either of the following places—(a) land the subject of a prospecting permit, exploration permit, mineral development licence, mining lease or mining claim; or (b) a quarry.

The definition of "worker" is amended to mean an individual who carries out work at a mine and includes an employee, a contractor, and an employee of a contractor. This amendment is necessary to capture all types of work arrangements for the mine.

Subclause (3) amends the definition for "region" by replacing the reference to "chief executive" with "CEO". This is an RSHQ Act consequential amendment, which empowers the CEO of RSHQ to establish an administrative region for the administration of the MQSHA. For example, "North region", "North West region" and "South region", are established in relation to the compliance and enforcement functions undertaken by the mines inspectorate for a geographic region.

Subclause (4) amends the definition of "supplier" to replace the term "contractor or service provider" with "or contractor". The meaning of "supplier" of plant, equipment, substances or other goods, means a person who contracts to supply the plant, equipment, substances or other goods to a coal mine operator, or contractor.

## Part 5 – Amendment of Petroleum and Gas (Production and Safety) Act 2004

### Act amended

*Clause 232* states that part 5 amends the *Petroleum and Gas (Production and Safety) Act 2004.*

### Amendment of s 670 (What is an *operating plant*)

*Clause 233* amends the meaning of operating plant to clarify that the production of hydrogen as fuel gas is an activity to which operating plant under section 670(5) applies. This will ensure

that the production of hydrogen from non-fossil fuel sources, such as through electrolysis is covered.

### Amendment of s 705D (Reporting of particular accidents and prescribed high potential incidents)

*Clause 234* renames section 705D (Reporting of designated accident or incident) and amends the section to replace the reference to reporting an HPI of a type prescribed under section 198(2)(b) of the CMSHA, with a requirement to report a designated accident or incident the operator of the plant is required to report to the chief inspector under section 706. The amendment also removes the requirement to notify the chief inspector of an incident that must otherwise be reported to the SSE under the CMSHA.

The first of these changes is necessary because amendments made by this Bill to the reporting requirements that apply to the SSE under section 198 of the CMSHA, will remove the list of HPIs that is currently listed in Schedule 1C of the Coal Mining Safety and Health Regulations 2017. Since this list will no longer be in the legislation it is appropriate to replace it with a requirement to report those petroleum and gas related incidents which otherwise have to be reported to the chief inspector. This means that all accidents and incidents that must be reported under amended section 705D are also incidents that must be reported to the chief inspector under section 706, which makes retaining any requirement to report to the chief inspector under the amended section 198(2)(b) duplicative and potentially confusing.

In keeping with the purpose of the section that the SSE is informed of any incidents relevant to the safety of coal mining operations, the amendment retains the current limitation on reporting of an accident or incident to being only where it affects, or is likely to affect, the safety and health of coal mine workers. Section 10 of the Petroleum and Gas (Safety) Regulation 2018 prescribes that a "dangerous incident" must be reported under section 706. Section 8 of the regulation in turn defines a dangerous incident, thereby providing a list of incidents that must be reported to the SSE, where such an incident affects, or is likely to affect, the safety and health of coal mine workers.

### Replacement of s 706 (Requirement to report prescribed incident)

*Clause 235* amends section 706 to remove the requirement to prescribe by regulation how a prescribed incident must be notified. It requires notifying via telephone as soon as possible after becoming aware of the prescribed incident and then notifying in the approved form within two business days after the prescribed incident. The approved form must make provision for the particular information to be provided. The telephone notification must include the required information to the extent the required information is known to the operator for operating plant or to the person carrying on the business for a gas related device.

If the information is not known at the time of notification to the chief inspector in the approved form, the operator or person must take all reasonable steps to find out the required information as soon as possible and after the require information becomes known, give the required information to the chief inspector.

The amendment also provides that it is not a defence in a proceeding regarding a prescribed incident that the giving of the required information might tend to incriminate the operator or the person, but also provides that the required information is not admissible in evidence against

the operator or the person in any criminal proceeding, other than a proceeding about the falsity or misleading nature of the information.

The purpose of these amendments is to support the development of a new web-based incident reporting system, which will be the approved form, and which will allow the operator to enter the information about a prescribed incident directly. This will improve the capture of incident reports and allow for consistent subsequent analysis and presentation of aggregated data to industry, which in turn will assist industry to better manage hazards in their own operations.

A penalty will also apply to incentivise reporting under the section; the maximum penalty has been set at 100 penalty units to align with the penalty applicable under equivalent provisions of the other Resources Safety Acts.

The section also includes a definition for "required information".

### Amendment of s 708C (Protection from reprisal)

*Clause 236* increases the maximum penalty for contravention of section 708C from a maximum penalty of 40 penalty units to 1,000 penalty units. Subclause (2) provides a definition of the term "detriment". This will serve to strengthen the provision as the broad term "detriment" is open to interpretation.

### Amendment of s 722 (Contempt of board)

*Clause 237* replaces the offence of insulting a board of inquiry in section 722(a) with a provision prohibiting a person from impeding or obstructing a board of inquiry in the exercise of its powers. The amendment is necessary because an insult is a subjective consideration, and the former provision limited the freedom of expression. The new provision supports the other elements of the section which ensure there is due respect for the operation of the board of inquiry without any impact on freedom of expression.

### Amendment of s 724 (Types of gas device)

*Clause 238* amends section 724(3) to provide that a limited capacity biogas system is a gas device (type B). Subclause (2) provides the definition of a "limited capacity biogas system".

### Amendment of s 731AA (Approval of gas devices for supply, installation and use)

*Clause 239* amends section 731AA(2) to ensure that a gas device (type B) must not be supplied unless accompanied with a written notice in the approved form stating that the device must be approved for installation and use. Subsection (3) is amended so that if an approval of a gas device (type A) is cancelled for a reason other than safety the regulator can ensure that the safety approval for mass produced devices such as BBQs remain in place. The amendments allows the chief inspector time to consider the cancellation or suspension before it stops having effect.

### Amendment of s 731AB (Who may apply)

*Clause 240* allows for the type of gas device approval authority to be prescribed by regulation. This provides the flexibility to provide for new types of gas devices as new technology emerges.

## Amendment of s 734AC (Access to register)

*Clause 241* amends section 734AC by removing the requirement for the chief inspector to ensure the public has physical access to the register (of details about gas work licences, gas work authorisations and gas device approval authorities) during business hours at the head office of RSHQ.

This amendment will instead provide that the chief inspector may publish the register in a way the chief inspector considers appropriate—for example, RSHQ currently publishes information from the register on a Queensland Government website.

Since RSHQ's establishment on 1 July 2020, there has not been a single instance where a member of the public has accessed the physical registers required under the Act.

## Amendment of s 739 (Production or display of identity card)

*Clause 242* amends section 739(1)(a) to replace the reference to "his or her" with "the inspector's or authorised officer's" to adopt a more contemporary drafting style.

## Amendment of s 744 (Inspector's additional entry power for emergency or incident)

*Clause 243* amends section 744(2)(a) to replace the reference to "himself or herself" with "themself" to adopt a more contemporary drafting style.

## Amendment of s 752 (Warrants—procedure before entry)

*Clause 244* amends section 752(2)(a) to replace the reference to "himself or herself" with "themself" to adopt a more contemporary drafting style.

## Replacement of ss 754–756

*Clause 245* amends sections 754 to 756 to implement a recommendation from the inquest into the death of Gareth Leo Dodunski, by empowering inspectors and authorised officers investigating incidents under the Act to compel someone to answer questions or provide information even where such information or answers might tend to incriminate them. However, the Bill will explicitly provide a safeguard that such information cannot be used against them in proceedings for an offence or civil penalty, other than proceedings arising out of the falsity or misleading nature of the answer, information or document.

These amendments will ensure that inspectors and authorised officers can overcome potential obstacles from an individual whilst investigating incidents, such as non-cooperation due to fear of self-incrimination.

Section 754 (General powers)

This clause replaces this section as follows:

New subsection (1) clarifies that this section applies to an inspector performing their functions under section 736(1) of the Act or an authorised officer performing their functions under section 736(2) or (3) of the Act.

New subsection (2) lists the powers that an inspector or authorised officer may exercise under this section. The powers under subsection (2)(a) to (e) already exist under the current Act, and the Bill will introduce the following new powers:

- Subsection (2)(f): Require a person at the place to give the inspector or authorised officer reasonable help to them exercise any of their powers under subsection (2)(a) to (e).
- Subsection (2)(g): Require a person at the place to answer questions by the inspector or authorised officer to help them ascertain whether this Act is being or has been complied with, or for the purpose of conducting an investigation under this Act.

New subsection (3) provides that, when making a requirement mentioned in subsection (2)(f) or (g), the inspector or authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

Section 755 (Failure to help inspector or authorised officer)

This clause renames section 755 (Failure to help inspector or authorised officer) and replaces it to provide that a person required to give reasonable help under new section 754(2)(f) must comply with the requirement, unless the person has a reasonable excuse. A maximum penalty of 100 penalty units is applicable if this section is contravened.

Section 756 (Failure to answer questions)

This clause renames section 756 (Failure to answer questions) and replaces this section as follows:

Subsection (1) is amended to provide that a person of whom a requirement is made under new section 754(2)(g) must not fail to comply with a requirement to answer a question unless the person has a reasonable excuse. The maximum penalty of 500 penalty units is retained.

Subsection (2) is amended to provide that it is a reasonable excuse for an individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty.

Subsection (3) is amended to provide that subsection (2) does not apply if the requirement relates to an "incident", which is defined in schedule 2 (Dictionary).

## Replacement of s 757 (Power to require name and address)

*Clause 246* omits section 757 and replaces it with new section 757 (Power to require personal details). Subsection (1) provides that this section applies if an inspector or authorised officer finds a person committing an offence, or reasonably suspects the person has just committed an offence. Under subsection (2), the inspector or authorised officer may require the person to state the person's name and residential address. The inspector or authorised officer may also require the person, under subsection (3), to give evidence of the correctness of the stated information if, under the circumstances, the person could reasonably be expected to be in possession of, or otherwise give, the evidence. Subsection (4) requires the inspector or authorised officer to give the person an "offence warning" when making a requirement under this section. Subsection (5) defines the meaning of "offence warning" and "reasonably suspect" for the section.

This clause also inserts new section 757A (Offence to contravene personal details requirement), which makes it an offence to contravene a personal details requirement, unless the person of whom the requirement was made has a reasonable excuse. The maximum penalty under subsection (1) for contravening a personal details requirement is 100 penalty units. Note that this amendment also addresses a historical drafting oversight, as the former section 757(3) required an inspector or authorised officer to warn a person it is an offence to fail to state the person's name or residential address unless the person has a reasonable excuse; however, the related offence provision was inadvertently not included in the P&G Act. Subsection (2) provides that a person may not be convicted of an offence under subsection (1), unless the person is found guilty of the offence in relation to which the personal details requirement was made.

These amendments bring personal details requirements under the P&G Act into line with contemporary legislative standards and improve consistency across the Resources Safety Acts, as the Bill also makes comparable amendments to the other Resources Safety Acts.

## Replacement of ss 761 and 762

*Clause 247* amends sections 761 to 762 and introduces new section 762A to implement a recommendation from the inquest into the death of Gareth Leo Dodunski, by empowering inspectors and authorised officers investigating incidents under the Act to compel someone to answer questions or provide information even where such information or answers might tend to incriminate them. However, the Bill will explicitly provide a safeguard that such information cannot be used against them in proceedings for an offence or civil penalty, other than proceedings arising out of the falsity or misleading nature of the answer, information or document.

These amendments will ensure that inspectors and authorised officers can overcome potential obstacles from an individual whilst investigating incidents, such as non-cooperation due to fear of self-incrimination.

Section 761 (Power to require attendance of persons before inspector or authorised officer to answer questions)

This clause renames section 761 (Power to require attendance of persons before inspector or authorised officer to answer questions) and replaces this section as follows:

Subsection (1) is amended to provide that an inspector or authorised officer may require a person to attend before the inspector or authorised officer and to answer questions for the stated purposes provided in subsections (1)(a)–(d).

Subsection (2) is amended to provide that a requirement made of a person under this section to attend before an inspector or authorised officer must be made by notice given to the person and state a reasonable time and place for the person's attendance.

New subsection (3) provides that when making a requirement under this section, the inspector or authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

Section 762 (Failure to comply with requirement about attendance)

This clause renames section 762 (Failure to comply with requirement about attendance) and replaces this section as follows:

Subsection (1) is amended to provide that a person of whom a requirement is made under section 761 must comply with the requirement unless the person has a reasonable excuse. A maximum penalty of 500 penalty units applies.

Subsection (2) is amended to provide that it is a reasonable excuse for an individual not to comply with a requirement to answer a question if complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty.

New subsection (3) notes that subsection (2) does not apply if the requirement relates to an "incident", which is defined in schedule 2 (Dictionary).

Section 762A (Use of particular evidence in proceedings)

This clause inserts this new section as follows:

Subsection (1) provides that subsection (2) applies in relation to an answer given by an individual in response to a requirement under section 754(2)(g) or 761(1).

Subsection (2) provides that neither the answer nor any information, document or other thing obtained as a direct or indirect result of the answer is admissible in any proceeding against the individual, other than a proceeding in which the falsity or misleading nature of the answer is relevant.

Subsection (3) provides that if a document, produced in response to a requirement under section 754(2)(f), is the personal property of an individual of whom the requirement is made and the document might incriminate the individual or make the individual liable to a penalty, the document is admissible in a proceeding against the individual for an offence under this Act, but neither the document nor anything obtained as a direct or indirect result of the individual producing the document is admissible in any other proceeding against the individual for an offence.

## Amendment of s 799I (Definitions for part)

*Clause 248* amends section 799I(1) by extending the definition of "employer" to the following entities—

- a person who employs or otherwise engages a person to carry out work in relation to the operating plant or gas work;
- a person who arranges for a person to carry out work in relation to operating plant or gas work, including, for example, a labour hire agency;
- the operator of an operating plant;
- the holder of a gas work licence, gas work authorisation or gas device approval authority relating to the gas work.

The definition of "worker" is also amended by clause 239 as a consequence of the amendments to the definition of "employer". A worker will be an individual employed or otherwise engaged or arranged to carry out the relevant work.

The amendment will clarify the types of entities that can be categorised as "employer" for the purposes of the industrial manslaughter provisions. In doing so, the amendment clarifies Parliament's intent when the industrial manslaughter provisions were introduced under the

MEROLA, which was to ensure consistency in how deaths of workers on sites are treated and who should be liable to prosecution.

The Coal Mining Board of Inquiry had raised concern that the definition of employer for a coal mine in part 3A of the CMSHA, which means a person who employs or otherwise engages a coal mine worker, would not capture liability of a coal mine operator where a worker who was killed was engaged through a labour hire agency. Similarly, that this would also be the case where an independent contractor's employee dies in a serious accident resulting from criminal negligence of a coal mine operator. This also applies to the similar industrial manslaughter provisions in other Resources Safety Acts.

These amendments clarify that employers may be liable for industrial manslaughter, where they cause through criminal negligence, the death of a worker. Where multiple entities are responsible for the death of a worker through their criminal negligence, multiple entities may be found to be liable for industrial manslaughter. They will ensure that deaths of workers on sites are treated consistently across all industries.

### Amendment of s 817 (Who may apply for internal review)

*Clause 249* amends section 817 by replacing subsections (2)(b) and (c) to clarify who may apply for and make an internal review by making previously missed consequential amendments relating to the establishment of RSHQ. New subsection (2)(b) includes a reference to an authorised officer (safety and health), so an internal review application, for the review of an original decision made by an authorised officer (safety and health), may be made only to the chief inspector. New subsection (2)(c) includes a reference to the chief inspector, so an internal review application, for the review of an original decision made by the chief inspector, may be made only to the CEO.

### Insertion of new ch 13, pt 2, div 1, hdg

*Clause 250* inserts a new part 2 division 1 heading (General) before section 837 to restructure the part into separate divisions to support the introduction of a range of new orders that may be made by a court, as well as a framework for enforceable undertakings.

### Amendment of s 837 (Proceedings for offences)

*Clause 251* amends section 837 which sets out the limitation periods for when proceedings may be brought, excluding proceedings for an offence against chapter 11, part 1AA. Proceedings must be commenced within the latest of the following periods to end—

- 2 years after the offence first comes to the notice of the complainant,
- if an enforceable undertaking has been given in relation to the offence, 6 months after the latest of the following happens: the enforceable undertaking is contravened or when it comes to the notice of the CEO that the enforceable undertaking has been contravened or the CEO agrees under section 841J to the withdrawal of the enforceable undertaking, or
- if the offence involves a breach of an obligation causing death and the death is investigated by a coroner under the *Coroners Act 2003*, 2 years after the coroner makes a finding in relation to the death.

## Amendment of s 837C (Procedure if prosecution not brought)

*Clause 252* is a consequential amendment that replaces a reference to "section 837(8)" with "section 837(10)" instead.

## Insertion of new s 839A

*Clause 253* inserts new section 839A (Court may order suspension or cancellation of authority) which provides that if a person is convicted of an offence and holds a gas work licence or authorisation or a gas device approval authority, a Magistrates Court may suspend or cancel the licence, authorisation or authority. The court must subsequently notify the chief inspector about the decision made under this new section.

This section also provides a right to appeal to the District Court for a person dissatisfied with the Magistrates Court's decision to suspend or cancel the person's gas work licence or authorisation or gas device approval authority.

## Amendment of s 840A (Costs of investigation)

*Clause 254* amends section 840A(1) to include RSHQ as a body to whom the court may order a person convicted of an offence against this Act, to pay the reasonable costs of investigating the offence, including reasonable costs of preparing for the prosecution of offences. The amendment is necessary because RSHQ, as the independent resources safety regulator, is responsible for undertaking investigations that may lead to a prosecution under the Act.

## Insertion of new s 841AA and new ch 13, pt 2, div 2

*Clause 255* inserts new section 841AA (Recovery of fees) which provides that an unpaid fee under this Act may be recovered by the CEO in summary proceedings under the *Justices Act 1886* or by action for a debt in a court of competent jurisdiction. This clause also provides for a fee to be recovered in a proceeding for an offence against this Act, and how an order is made enforceable.

Court orders

This clause also inserts new division 2 (Sentencing for offences) to support the introduction of a range of new orders that may be made by a court.

The sections introduced by the clause are as follows:

Section 841AB provides that this division applies if a court convicts a person or finds them guilty of an offence against the Act.

Section 841AC provides that one or more orders under this division may be made against the offender. It also provides that orders may be made under this division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

Section 841AD provides for adverse publicity orders, which can be an effective deterrent for an organisation that is concerned about its reputation. Such orders can draw public attention to a particular wrongdoing and the measures that are being taken to rectify it.

The court may order an offender to take either or both of the following actions: to publicise the offence, its consequences, the penalty imposed and any other related matter; or to notify a specified person or specified class of persons of the offence, its consequences, the penalty imposed and any other related matter.

The offender must give the CEO evidence of their compliance with the order within 7 days after the end of the compliance period stated in the order. The CEO can take the action if they do not comply with the adverse publicity order or fail to give the CEO evidence of their compliance with the order. Where this occurs, the CEO is entitled to recover from the offender reasonable expenses associated with them taking that action.

This new section also allows the court to make an adverse publicity order on its own initiative or on the application of the person prosecuting the offence.

Section 841AE provides for restoration orders, requiring the offender to take steps within a specified period to remedy a matter caused by the commission of the offence that appears to be within the offender's power to remedy. The court can extend (or further extend) the specified period, provided an application for extension is made before the end of the period.

Section 841AF provides for safety and health project orders, an order requiring an offender to undertake a specified project within a certain period for the general improvement of safety and health of persons who may be affected by activities involving petroleum or fuel gas. These orders make offenders undertake activities that identify and address the failures that led to their wrongdoing.

The order may specify conditions that must be complied with in undertaking the project. It can also be combined with other non-monetary orders to ensure that failures, that led to the offence being committed in the first place, are addressed.

Section 841AG provides for a court-ordered undertaking, which enables a court to adjourn proceedings, with or without recording a conviction, for up to 2 years and make an order for the release of the offender on the condition that they give an undertaking with specified conditions.

Court-ordered undertakings are different from enforceable undertakings (that are also being introduced by the Bill), which are voluntary in nature.

This section sets out the conditions that must be included in a court-ordered undertaking. The undertaking must require the offender to appear before the court if called on to do so during the period of the adjournment. Furthermore, the offender must not commit any offence against this Act during the period of adjournment and must observe any special conditions imposed by the court.

The court can call on the offender to appear before it if the offender is given not less than 4 days' notice of the court order to appear. When the offender appears before the court, if the court is satisfied they have observed the conditions of the undertaking, the court must discharge the offender without any further hearing of the proceeding.

Section 841AH provides for injunctions, which require the offender to stop contravening the Act if they have been found guilty of an offence. This court order can be an effective deterrent where a penalty fails to provide one. A note in this new section highlights chapter 13, part 3 of

the Act, which separately provides for injunctions that may be granted by the District Court against a person at any time.

Section 841AI provides for training orders, which enable a court to make an offender take action to develop skills that are necessary to effectively manage the safety and health of persons who may be affected by activities involving petroleum or fuel gas. The court may make an order requiring the offender to undertake or arrange for persons undertaking activities involving petroleum or fuel gas to undertake, a specified course of training.

Section 841AJ makes it an offence for a person to fail to comply with an order made under this new division unless the person has a reasonable excuse. The evidentiary burden is on the defendant to prove a reasonable excuse as this is provided for in the *Justices Act 1886*. This section does not apply to an order under new sections 841AG or 841AH. Non-compliance with this section carries a maximum penalty of 500 penalty units.

### Insertion of new ch 13, pt 4

*Clause 256* inserts a new part 4 which deals with the giving of enforceable undertakings under the Act. This is a new enforcement tool is an alternative to court imposed sanctions that will strengthen RSHQ's enforcement tool kit. These provisions align with the approach taken under the WHS Act. The new sections that make up the part are as follows.

Section 841E introduces enforceable undertakings such that the CEO may accept a written undertaking for offences other than an offence arising from an accident causing death, or an industrial manslaughter offence. The giving of an enforceable undertaking does not constitute an admission of guilt. The CEO must publish general guidelines in relation to the acceptance of enforceable undertakings on a Queensland Government website. The CEO may accept an enforceable undertaking in relation to a contravention or alleged contravention before a proceeding in relation to that contravention has been finalised. In such a case the CEO must immediately notify the WHS prosecutor who must take all reasonable steps to have the proceeding discontinued as soon as possible.

Section 841F sets out requirements for notices related to enforceable undertakings such that the CEO must give the person seeking to make an enforceable undertaking written notice of the CEO's decision and of the reasons for the decision, a notice of the decision to accept an enforceable undertaking and reasons must also be published on a Queensland Government website.

Section 841G prescribes when an undertaking takes effect and becomes enforceable. An enforceable undertaking is enforceable when the CEO's decision is given to the person who made the undertaking, or at any later date stated by the CEO.

Section 841H is an offence provision for the contravention of an enforceable undertaking and prescribes a maximum penalty of 500 penalty units.

Section 841I sets out provisions related to the contravention of an enforceable undertaking such that:

- the CEO may apply to a Magistrates Court for an order;
- if satisfied there has been a contravention the court may impose a penalty and make an order directing the person to comply with the order, or to discharge it;

- the court may also make other orders it considers appropriate including orders to pay the costs of the proceeding and the reasonable costs of monitoring the enforceable undertaking in the future;
- a proceeding may also be taken for the alleged contravention of the Act to which the enforceable undertaking relates.

Section 841J sets out provisions for withdrawing or varying an enforceable undertaking such that:

- a person who has made an enforceable undertaking may at any time, with the written agreement of the CEO withdraw or vary the undertaking;
- the provisions of the undertaking cannot be varied to deal with a different alleged contravention of the Act;
- the CEO must publish, on a Queensland Government website, notice of the withdrawal or variation of an enforceable undertaking.

Section 841K sets out a proceeding for an alleged contravention of an enforceable undertaking such that:

- no proceeding for a contravention or alleged contravention of the Act may be taken if an enforceable undertaking is in effect in relation to the contravention;
- no proceeding may be taken for a contravention or alleged contravention of the Act if a person has completely discharged the enforceable undertaking.

### Amendment of s 842 (Requirements for making an application)

*Clause 257* subclause (1) amends section 842 heading to reflect a more contemporary drafting style. Subclause (2) amends the definition of "relevant person" in section 845(5)(a)(i) to refer to sections 622, 728 or 731AB.

### Amendment of s 843 (Request to applicant about application)

*Clause 258* amends section 843(1)(b) and (c) to replace "or another stated officer of the department" with "a stated officer of the department, or a stated staff member of the employing office". This ensures an employee of RSHQ is a person to whom information about an application may be given, and include an application made under section 731AC related to an application for a gas device approval authority.

This clause also amends definition of "relevant person" in section 843(7)(a)(i) to refer to sections 622, 728 or 731AB.

### Amendment of s 844 (Amending applications)

*Clause 259* amends the definition of "relevant person" in section 844(5)(a)(i) to refer to sections 622, 728 or 731AB.

### Amendment of s 848 (Power to correct or amend)

*Clause 260* amends section 848 to replace subsection (3) to allow an official to amend a condition of an authority if the holder agrees in writing to the amendment and subsection (4) which requires the chief executive to record in the register the details of an amendment, other

than an amendment made to a gas work licence, gas work authorisation or gas device approval authority.

This clause also inserts a new subsection to make the chief inspector responsible for recording an amendment made to a gas work licence, gas work authorisation or gas device approval authority in the register kept under section 734AB.

### Replacement of s 851A (Public statements)

*Clause 261* amends section 851A to ensure that that provision applies to the chief executive as the newly added section 851B will now apply to RSHQ and the Minister. Current section 851A applies to the Minister, chief executive, CEO or chief inspector as this provision is jointly administered by RSHQ and the Department of Resources.

The newly added section 851B carries over the parts of existing section 851A which apply to RSHQ, and the Minister responsible for administering that part, and the new parts of the provision aim to clarify the details that may be published by RSHQ when publishing information. The new parts of the provision will provide that the information may contain the number relevant incidents, a description of the relevant incident, details of the holder of an authority issued under the Act related to the relevant incident, the injuries sustained and any other information about the relevant incident considered appropriate. The current section 851A(2) provides that a public statement may identify particular offences and persons, and the amendments will carry that through by allowing the release of identifying information. A relevant incident for this amendment is one that is a designated accident or incident under section 705D(4) or a prescribed incident under section 706(1).

The references to public statements are being replaced with “publish information” to cater for the broad range of means to share the information, which will continue to include oral statements as well as written forms. The requirement that the information be only published when it is in the public interest, and natural justice requirements also continue to apply unchanged.

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

*Clause 262* amends section 856(1)(c) to include RSHQ as a body for whom a contractor carrying out activities relating to the administration of the Act is protected from incurring civil liability.

### Amendment of s 858 (Approved forms)

*Clause 263* amends section 858 so that the CEO may approve forms for use under chapter 9 or in relation to the payment of safety and health fees under a regulation. This amendment will also allow the chief inspector, in addition to approving forms under chapters 7 to 10, to approve forms in relation to a review application under section 818.

These amendments are necessary to clarify the authorisation of approved forms under the Act since the establishment of RSHQ as an independent statutory body to regulate safety and health in the resources sector.

### Amendment of sch 2 (Dictionary)

*Clause 264* amends the dictionary for the Act to achieve the following:

The definition of "enforceable undertaking" is inserted to define the term by reference to section 841E(1) of the Act, which provides that the CEO may accept a written undertaking (an enforceable undertaking) given by a person in connection with a matter relating to a contravention or alleged contravention of the Act by the person.

The definition of "gas related device" is amended to also include a device used to produce fuel gas.

The definition of "gas system" is broadened to include devices that produce fuel gas and are either used with, or designed or intended to be used with fuel gas or is used, or designed or intended to be used, to produce fuel gas for use in gas devices. An example of a gas system such as an electrolyser, and associate pipe work used to produce fuel gas has been included. This is to ensure that production from non-fossil fuel sources via domestic scale and micro-electrolysis are included.

The definition of "offender" is inserted to define the term by reference to section 841AB of the Act. The amendment is necessary because the term is now used in several provisions within chapter 13, part 2, division 2 of the Act.

The definition for "prescribed incident", see section 706(1).

The definition of "Queensland Government website" is inserted to mean a website with a URL that contains "qld.gov.au", other than the website of a local government. The amendment is necessary because the term is now used in a number of places within the Act.

## Part 6 – Amendment of Resources Safety and Health Queensland Act 2020

### Act amended

*Clause 265* states that part 6 amends the *Resources Safety and Health Queensland Act 2020.*

### Amendment of s 67 (CEO may disclose information to particular entities)

*Clause 266* amends section 67(3) to make consequential amendments as a result of amendments made by other clauses of the Bill to disclosure of information provisions under the Resources Safety Acts and the repeal of chapter 6, part 5 of the P&G Act by the *Royalty Legislation Amendment Act 2020*.

Subclause (1) omits paragraph (d) from the meaning of "prescribed confidentiality provision", as it refers to the repealed chapter 6, part 5 of the P&G Act.

Subclause (2) broadens the meaning of "prescribed entity" by including new paragraph (aa) so the CEO may also disclose anything that comes to the CEO's knowledge under the RSHQ Act or a Resources Safety Act to the chief executive of a department or another entity responsible for administering a law of Queensland, the Commonwealth or another state about safety and health. For example, this amendment enables the CEO to disclose information to the Queensland, Commonwealth, and interstate, safety and health regulators.

Subclause (3) amends the meaning of "prescribed entity" under section 67(3) to renumber paragraphs (aa) to (c) as paragraphs (b) to (d).