

# Coal Mining Safety and Health and Other Legislation Amendment Bill 2022

## Explanatory Notes

### Short title

The short title of the Bill is the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 (the Bill).

### Policy objectives and the reasons for them

The principal objectives of the Bill relate to two Queensland Government priorities:

1. Safety and health – to provide for exceptions to direct employment requirements for coal mining statutory positions; and
2. Resources – to enable implementation of a key action in the draft Queensland Resources Industry Development Plan (QRIDP), as well as several housekeeping amendments to a number of Acts in the Resources portfolio to address operational issues and correct clerical errors.

#### Safety and health

A key objective of the Bill is to provide for some exceptions to direct employment requirements under the *Coal Mining Safety and Health Act 1999* (the CMSH Act) for coal mining statutory positions which come into effect on 25 November 2022, when the transitional period ends. The direct employment requirements commenced on 25 May 2020 and require that a person must be an employee of the operator of a coal mine to be appointed to a safety critical statutory position at the coal mine. The impacted statutory positions required to be directly employed by the coal mine operator are:

- for all coal mines—site senior executive (SSE)
- for surface mines only—open-cut examiner (OCE)
- for underground mines only—underground mine manager (UMM), ventilation officer (VO), explosion risk zone (ERZ) controller, electrical engineering manager and mechanical engineering manager.

Since the direct employment amendments were passed, challenges to implementing these requirements have arisen relating to corporate and operational structures, unplanned short-term absences, economic viability for low-risk operations (exploration activities) and situations where a contractor is substantially responsible for the mine operations. Coal mining industry representatives have stated the requirements, if not amended, would have the potential to impact its ability to consistently supply coal and, as a result, would affect the financial viability and sustainability of their businesses.

The exceptions to direct employment requirements included in the Bill are needed to ensure coal mining industry companies have practical ways of implementing the direct employment

requirements that do not unreasonably disrupt their current corporate structures and employment arrangements.

### Resources

The Bill also proposes the following amendments to the Resources Acts:

- Amend the *Mineral Resources Act 1989* (MRA) to implement a framework to defer rent for specific critical minerals mining leases.
- Amend the compliance provisions to remove the requirement for resource authority holder agreement to a monetary penalty for non-compliance under the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) Act, the *Geothermal Energy Act 2010* (GE Act), and the *Greenhouse Gas Storage Act 2009* (GHG Act).
- Minor amendments to reflect the consequential renumbering of provisions in the GE Act and the GHG Act and to correct a provision heading and an error in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

## **Achievement of policy objectives**

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

### **Safety and health**

The key policy objective is achieved by amending the CMSH Act to provide exceptions to the direct employment requirements for certain limited circumstances which will ensure coal mining operations have a practical way to implement the original intent of these requirements while not diminishing the original objective of the direct employment requirements. Specifically, the Bill amends the CMSH Act as outlined below.

1. The Bill amends the CMSH Act to enable direct employment of the SSE, UMM and VO statutory position holders by associated companies/joint ventures. This provides coal mine operators with greater flexibility to engage SSEs, UMMs or VOs from a broader pool of employees across its different operations and joint venture companies, without the need to restructure individual employment arrangements each time. It also facilitates access to a potentially larger pool of eligible appointees across a coal mine operator's different operations and joint venture companies.
2. Further amendments to the CMSH Act in the Bill will provide exemptions to the direct employment requirements for short-term temporary absences or vacancies of up to 12 weeks for the SSE, OCE, UMM, ERZ controller, electrical engineering manager, mechanical engineering manager and VO statutory positions. This change provides coal mine operators some latitude for covering unplanned short-term absences or vacancies for a statutory position, so a person who is not an employee can act temporarily in the role. This will be most beneficial for single mine operators, who may struggle to address unplanned absences or vacancies in statutory roles resulting from resignations, long-term sickness/injury and statutory position holders taking long service leave.
3. In addition, the Bill amends the CMSH Act to provide that the requirement to directly employ an SSE does not apply for a coal mine operator whose only coal mining operations for the coal mine are exploration activities. The change will mean that a company undertaking exploration activities, and that is not involved in other aspects of coal mining operations, would have greater flexibility in relation to appointing an SSE.

This will be most beneficial for junior and mid-tier companies which undertake exploration activities and are not the operator (or an associated entity) of an operating coal mine because they may find it uneconomical to directly employ an SSE.

4. The CMSH Act is also amended by the Bill to provide exemptions to the direct employment requirements for entities which employ at least 80 per cent of the workers at a coal mine. The exemption applies for entities that employ or otherwise engage at least 80 per cent of the total number of coal mine workers at a coal mine in its entirety. This change means the SSE, OCE, UMM, ERZ controller, electrical engineering manager, mechanical engineering manager and VO statutory positions at such a coal mine can be directly employed by the entity (e.g., a large contractor company, major service provider, etc.) which also employs the vast majority of the mine's workers. This change also facilitates the operation of full-service contracts for whole-of-mine operations where the contractor is not the coal mine operator but are substantially responsible for operations and are essentially the *de facto* operator.

## **Resources**

### Prescribed critical mineral resources rent powers

The proposed amendments will support implementation of a key action in the QRIDP that the government will develop and implement a framework to allow the Minister for Resources to defer the first years rent for specific critical minerals mining leases.

The amendments will allow the Minister for Resources to defer rent for a mineral that is prescribed in the Mineral Resources Regulation 2013, and in circumstances where the proponent can prove that the funds saved from the deferral will be utilised towards start-up costs for the project.

### Removal of requirement for a resource authority holder to agree to a monetary penalty

A fundamental principle of the Resources Acts is that resources companies seeking to explore and produce the state's resources must coexist with other landholders. This is supported by the compliance provisions in the P&G Act, the GE Act and the GHG Act.

The ability to levy monetary penalties is limited by sections 790(2)(b) of the P&G Act, 320(2) of the GE Act and 379(2) of the GHG Act which state that a monetary penalty may only be made where the holder has agreed to the requirement being made. The effect of these sections is that a resource authority holder may be able to negotiate the terms of any monetary penalty that might be proposed by a relevant official and delay the resolution of a coexistence matter for an indefinite period.

The current provisions are inconsistent with the MRA and limit the department's ability to regulate and take action for breaches of the Land Access Framework and obligations and conditions of a resource authority. Failure to address this issue may damage the community's confidence in the department as an efficient and effective regulator that works in the public interest.

The proposed amendments will remove the requirement for holders to agree to the monetary penalty, limiting their ability to delay enforcement action.

These amendments will not limit rights of resource authority holders with notice provisions providing an opportunity for natural justice and any decision being appealable to the Land Court of Queensland.

#### Minor amendments to correct errors across Resource Acts

These amendments correct a provision heading and a cross-referencing error section 21(1)(a)(i) of the *Mineral and Energy Resources (Common Provisions) Act 2014*, which refers to sections 32(1)(c)(i) and section 33(1)(c)(1) of *Mineral and Energy Resources (Financial Provisioning) Act 2018* that no longer exist and renumber notes in certain provisions in the GE Act and the GHG Act after removing section 320(3) of the GE Act and section 379(3) of the GHG Act.

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

There are no alternative ways of achieving the policy objectives.

## **Estimated cost for government implementation**

Implementation of the proposed amendments will not present additional administrative or capital costs to government. Any implementation costs will be absorbed from existing resources.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below in relation to the safety and health amendments and the resources amendments.

### **Safety and health**

The amendments to the CMSH Act introduce new penalties relating to the 12-week limit on acting appointments for statutory positions. These new penalties raise fundamental legislative principles in relation to section 4(2)(a) of the *Legislative Standards Act 1992*. Other amendments to the CMSH Act relating to the direct employment requirements, including requirements for acting in statutory positions temporarily also include penalties; however, these essentially carryover from existing offence provisions for replaced or amended provisions and are based on existing comparable offences – so are not ‘new’ penalties as such.

The relevant fundamental legislative principle relates to the appropriateness of penalties, including:

- a) Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation
- b) Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence
- c) Penalties within legislation should be consistent with each other.

The Bill seeks to create a number of new offence provisions based on existing comparable offence provisions under the CMSH Act. A considered and justified approach was undertaken when determining the maximum penalty for each new offence provision. Each proposed

maximum penalty was assessed to align with similar offence provisions within the same legislation and assessed to be of an appropriate level against the offence. Higher maximum penalties are proposed for offences of greater seriousness. It is considered that any potential breaches of individual rights and liberties by the proposed new offence provisions are justified and appropriate. Details of the new and carry-over offence provisions are outlined below.

*Statutory positions acting appointments limited to 12 weeks*

New offence provisions with a maximum penalty of 500 penalty units are included for sections 57(5), 59A(4), 60A(4) and 61A(6) of the CMSHA Act as amended by the Bill. These provisions moderate the previous requirement for persons acting in the identified positions to be a direct employee of the coal mine operator. The amended provisions relating to acting arrangements no longer require a person to be an employee while acting in an identified position; however, cap the acting period at 12 weeks, after which an offence is committed if a person who is not an employee of the operator or an applicable entity remains acting in the role. The 500 penalty unit amount for non-compliance is proportionate because of the relationship with the direct employment requirements which have a comparable maximum penalty. Not having an equivalent penalty (i.e., 500 penalty units) for direct employment requirements in relation to acting arrangements (i.e., where a person who is not an employee continuing to act in a statutory role after the initial 12 weeks) could be potentially detrimental to the effectiveness of the direct employment requirements as this may create an incentive for noncompliance by continuing acting arrangements using persons who are not employees. These penalties are also justified as they are consistent with the maximum penalties for the direct employment requirements.

*Direct employment requirements*

The offence provisions under amended section 54(5) and replacement section 59(2), which relate to the requirement that a person permanently appointed to an SSE or OCE statutory position be an employee of a listed entity, are a carryover of the existing 500 penalty unit maximum penalty from the existing provisions. The amendments lessen the burden of the existing requirements by providing a broader range of entities the SSE and OCE can be employed by. These penalties are considered proportionate and relevant as they are intended to incentivise compliance with the direct employment requirements, which are critical for managing the risks to safety and health of workers. The 500 penalty unit amount for non-compliance is justified because direct employment of these positions is key to ensuring that holders of such statutory roles at coal mines can make safety complaints, raise safety issues or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment. These penalties are also justified as they are consistent with the maximum penalties for the sections they amend and replace. The amendments for statutory office holders are justified as they are critical for managing the risks to safety and health of workers.

*Competency requirements for appointment of OCE*

The offence provision under replacement section 59(1), which relates to the requirement for the SSE to only appoint a person holding an open-cut examiner's certificate competency to be OCE, is a carryover of the existing 200 penalty unit maximum penalty from the existing provision. This penalty is considered proportionate and relevant as it is intended to incentivise compliance with the competency requirements for appointment of an OCE. This penalty is also justified as it is consistent with the maximum penalty for the existing section 59(1), which this provision replaces.

*Competency requirements for acting appointment*

The offence provisions under new sections 59A(6), 60A(6) and 61A(5), which relate to the competency requirements for persons to be appointed to act in the identified statutory positions, are based on the existing maximum penalties associated with competency requirements for appointment to the specific statutory positions. The 200 penalty unit maximum under new section 59A(6) relating to the OCE position is based on the existing penalty under section 59(1), which would have also applied to an acting appointment. The 200 penalty unit maximum under replacement section 61A(5) relating to the VO position is effectively retained from the existing section 61A(4) which this provision effectively replaces. The 400 penalty unit maximum under new section 60A(6) relating to the UMM and alternate UMM positions is based on the existing penalty under section 60(5), which would have also applied to an acting appointment. The 200 penalty unit maximum under new section 60A(6) relating to a person appointed by the UMM to be responsible for the control and management of underground activities when the UMM is not in attendance at the mine, as well as the ERZ controller, electrical engineering manager and mechanical engineering manager positions is based on the existing penalty under sections 60(8), (9) and (10) which would have also applied to an acting appointment for the relevant statutory position. These penalties are considered proportionate and relevant as they are intended to incentivise compliance with the competency requirements for statutory position acting appointments. These penalties are also justified as they are consistent with the maximum penalties for the comparable provisions of the CMSH Act relating to appointments for statutory positions.

*Requirement to appoint person during absence of SSE*

The offence provisions under replacement sections 57(3) and (4), which relates to requirements for appointing a temporary SSE when the incumbent is absent, are a carryover of the existing 100 penalty unit maximum penalty from existing section 57(1) which is effectively replaced by sections 57(3) and (4). This penalty is considered proportionate and relevant as it is intended to incentivise compliance with the requirements for appointing an acting SSE. This maximum penalty is justified as it is consistent with the maximum penalty for existing section 57(1), which these provisions replace.

*Requirement to appoint person during absence of OCE and SSE*

The offence provisions under new sections 59A(3) and 60A(3), which relates to requirements for appointing a temporary OCE or relevant statutory position for an underground mine when the incumbent is absent, are a carryover of the existing 40 penalty unit maximum penalty from existing section 58(2), on which these requirements are based. This penalty is considered proportionate and relevant as it is intended to incentivise compliance with the requirements for appointing a person to act temporarily in an applicable statutory position when the incumbent holder is temporarily absent. This maximum penalty is justified as it is consistent with the maximum penalty for existing section 58(2).

**Resources**

The proposed amendments to the P&G Act, the GE Act and the GHG Act to remove the requirement for an authority holder to agree to a monetary penalty potentially infringe the fundamental legislative principle contained in section 4(2)(a) of the *Legislative Standards Act 1992*, that legislation has sufficient regard to rights and liberties of individuals. However, the penalty is capped at up to 2,000 penalty units per non-compliance activity and these Acts contain procedural fairness provisions for taking noncompliance action and rights of appeal

against a Ministerial decision regarding noncompliance which provides adequate protection for the rights and liberties of individuals required under section 4(3)(a) of the *Legislative Standards Act 1992*.

## Consultation

### Safety and health

Initial consultation with key stakeholders occurred through a tripartite working group convened by the Commissioner for Resources Safety and Health to identify possible solutions to the implementation challenges from the direct employment requirements. The working group included representatives from coal mine operators, contractor companies and worker representatives as well as the Queensland Mines Inspectorate (representing RSHQ). The working group met periodically in late 2021, received written submissions and face-to-face presentations from impacted stakeholders during this time, and subsequently prepared a report which provided advice and possible solutions.

Following consideration of the working group's advice and the possible solutions it identified, RSHQ subsequently tested refined recommendations for legislative amendments with the Queensland Resources Council (QRC) (representing coal mine operators and contractor companies) and the Mining and Energy Union (MEU) (representing workers) in early 2022.

An exposure draft of the coal mining safety and health amendments contained in the Bill was provided to key stakeholders including the QRC, MEU and other tripartite working group members in late July 2022.

Feedback from industry stakeholders, including the QRC, on the exposure draft did not raise any significant concerns in relation to the drafting of the proposed exceptions to direct employment requirements but industry wanted more flexibility and scope for the exemptions.

The MEU does not support the exemptions to the direct employment requirements in the form shown in the consultation draft of the Bill and wants them tightened, particularly in relation to the exemption for entities employing 80 per cent or more coal mine workers at a coal mine. The exemption for entities employing 80 per cent or more coal mine workers at a coal mine has been tightened.

Further consultation was undertaken with key stakeholders, with the exemption for entities which employ or otherwise engage at least 80 per cent of the workers a coal mine subsequently updated to clarify the exemption applies in relation to the total number of coal mine workers at a coal mine in its entirety.

### Resources

In August 2022, the Department of Resources (the department) met with the QRC, the Australian Petroleum Production and Exploration Association (APPEA), the Association of Mining and Exploration Companies (AMEC) and members of these industry peak bodies to present and discuss the proposed Resources Acts amendments.

An exposure draft of the Resources Acts amendments contained in the Bill was provided to the QRC, APPEA and AMEC in early September 2022.

The QRC and AMEC support the deferral of rent for critical minerals projects however suggest that the department should undertake further consultation with industry to ensure the list of critical minerals is fully considered and to clarify how the policy will be applied where there is a mix of minerals being mined. APPEA do not have concerns about these amendments.

The QRC, AMEC and APPEA support the amendments to remove the requirement for a non-compliant resource authority holder to give consent to the imposition of a monetary penalty.

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

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

# Notes on provisions

## Part 1 – Preliminary

### Short title

*Clause 1* provides that, when enacted, the Bill will be cited as the *Coal Mining Safety and Health and Other Legislation Amendment Act 2022*.

### Commencement

*Clause 2* provides for the commencement of Part 2 of the Bill on 25 November 2022, with the remaining provisions commencing on assent.

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

### Act amended

*Clause 3* states that this part amends the *Coal Mining Safety and Health Act 1999* (the CMSH Act). A note referring to schedule 1 is also included because the schedule also makes two minor drafting/editorial type amendments to the CMSH Act.

### Amendment of s 54 (Appointment of site senior executive)

*Clause 4* amends section 54 by firstly amending the section heading to better reflect the section's content; and secondly replacing subsection (5) to broaden the entities a site senior executive (SSE) may be employed by for appointment by the coal mine operator under section 54. The existing subsection (5) requires that a coal mine operator must not appoint a person to be a site senior executive for a coal mine or a separate part of a surface mine unless the person is an employee of the coal mine operator. The replacement subsection (5) broadens this requirement so the person can also be an employee of an associated entity of the coal mine operator; or an entity that employs or otherwise engages 80 per cent or more of the coal mine workers at the coal mine.

This change and similar changes to other provisions recognises that some coal mining companies operating in Queensland operate under a range of diverse corporate structures, including joint ventures. It also provides for instances where a contractor company may be responsible for all aspects of mining operations at a coal mine, including for implementing a safety and health management system for the mine; namely instances where the contractor company is substantially responsible for operations and employ the majority of the coal mine workers (80 per cent), but are not the appointed coal mine operator. The current maximum penalty of 500 penalty units for failing to comply with the direct employment requirement is also retained for the replacement subsection (5).

This clause also inserts a new subsection (5A) to provide an exemption from the SSE direct employment requirements under replacement subsection (5) if the only coal mining operations at the coal mine, or the separate part of the surface mine, are exploration activities under an exploration permit, mineral development licence or mining lease. This change addresses difficulties experienced by junior and mid-tier companies surrounding ongoing employment of

SSEs who would otherwise be required to directly employ an SSE in relation to their exploration activities.

Finally, this clause rennumbers the new subsection (5A) and existing subsection (6) as subsections (6) and (7) respectively.

**Replacement of s 57 (Appointment of another site senior executive during temporary absence)**

*Clause 5* omits section 57 and inserts a replacement section (Acting site senior executive) to provide more scope for responding to a vacancy or unplanned temporary absence of the appointed incumbent SSE. The replacement section 57 applies if the appointed SSE vacates office (e.g., resigns) or is temporarily absent from duty for more than 14 days.

Subsection (2) provides that the coal mine operator for the coal mine or the separate part of the surface mine may appoint a person to act as site senior executive during the vacancy. The appointment of an acting SSE in relation to a vacancy under replacement section 57 is optional because the alternative is for the operator to permanently appoint a replacement SSE to ensure the operator complies with their safety and health obligation under section 41(1)(d) of the CMSH Act. The optional appointment of an acting SSE under subsection (2) in relation to a vacancy is not limited to a person who is an employee as mentioned in section 54(5) as amended by the Bill.

Subsection (3) requires the coal mine operator for the coal mine or the separate part of the surface mine to appoint a person to act as site senior executive during a temporary absence of the incumbent SSE. This requirement, as well as the maximum penalty of 100 penalty units for failing to comply, is a carry-over from the existing section 57(1). The requirement under subsection (3) to appoint a person to act in the role during the absence is also not limited to a person who is an employee as mentioned in section 54(5) as amended by the Bill.

Subsection (4) requires an appointment made under subsection (2) or (3) to be made by the coal mine operator in writing and as soon as practicable, which can be before the office becomes vacant or the appointed SSE is absent from duty. However, the appointment must be made no later than 14 days after the day the office becomes vacant, or the appointed SSE is first absent from duty. The maximum penalty for failing to comply with subsection (4) is 100 penalty units, which is also based on the maximum penalty for existing section 57(1). An acting appointment must also be notified under existing section 50(2)(b) of the CMSH Act.

Subsection (5) provides for a maximum period of 12 weeks during which a person appointed under subsection (2) or (3) who is not an employee can act in the SSE position. The 12 weeks is tied to the day the appointed SSE vacated office or was first temporarily absent from duty, so only a single period of up to 12 weeks is permitted from the applicable date. If the acting arrangements continue past the initial 12 weeks, the operator commits an offence which attracts a maximum penalty of 500 penalty units for non-compliance.

However, subsections (6) and (7) provide exceptions to the 12-week acting limit imposed under subsection (5). Subsection (6) provides an exception where the person appointed to act as the SSE is an employee of the coal mine operator; an associated entity of the coal mine operator; or an entity that employs or otherwise engages 80 per cent or more of the coal mine workers at the coal mine. This provides that if the person temporarily appointed to act in the role is an

employee, they may continue to act in the role past the initial 12-weeks. Subsection (6) effectively moderates the previous requirement under existing section 57(2) that an acting SSE be a direct employee of the coal mine operator. Subsection (7) provides an exception in relation to exploration activities, so that 12-week acting limit does not apply if the only coal mining activities at the coal mine or the separate part of the surface mine for which the person is appointed are exploration activities under an exploration permit, mineral development licence or mining lease.

Subsection (8) effectively replicates existing section 57(3) and clarifies that the acting SSE is subject to all of the obligations of an SSE. Subsection (9) provides that the coal mine operator is taken to discharge the obligation, mentioned in section 41(1)(d) to appoint an SSE for the mine, for the period of an acting appointment made under subsection (2) in relation to a vacancy or temporary absence.

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

*Clause 6* predominantly amends section 58 as a consequence of the Bill inserting specific provisions to address absences and acting arrangements in relation to the identified statutory positions. Subsection (1) however, first makes a minor drafting change to the wording of the existing 40 penalty unit maximum penalty to remove the reference to ‘subsection (2)’ to align with current drafting practice. The reference to subsection (2) is not required as its location at section 58(2) establishes the link between the offence provision and the penalty.

Subsection (2) of this clause inserts new section 58(3) to reduce potential ambiguity in relation to absences for certain statutory positions by clarifying that section 58 does not apply to any of the following—

- The site senior executive for a coal mine or a separate part of a surface mine because this is addressed under section 57 as amended by the Bill.
- An open cut-examiner (OCE) appointed under section 59(1) because this is addressed under new section 59A as inserted by the Bill.
- A person of the type mentioned in section 60(2), (4), (8), (9) or (10) (i.e., an underground mine manager (UMM); an alternate UMM; a person appointed by the UMM to be responsible for the control and management of underground activities when the UMM is not in attendance at the mine; an ERZ controller; and an electrical engineering manager or mechanical engineering manager) because this is addressed under new section 60A as inserted by the Bill.
- A ventilation officer (VO) appointed under section 61 because this is addressed under section 61A as amended by the Bill.

### **Replacement of s 59 (Additional requirements for management of surface mines)**

*Clause 7* omits section 59 and inserts a replacement section 59 (Appointment of open-cut examiner) which requires that the site senior executive for a surface mine or a separate part of a surface mine must appoint a person holding an open-cut examiner’s certificate of competency to be OCE for each surface mine excavation carried out at the mine or part of the mine. The wording of replacement section 59(1) differs to the existing section 59(1) which referred to appointing an OCE for one or more surface mine excavations; however, the intent and operation of the provision remains the same. The maximum penalty for breaching this requirement under subsection (1) is 200 penalty units, which has been carried over from the existing section 59(1).

Subsection (2) is based on the existing section 59(2); however, the replacement provision broadens the entities an OCE may be employed by for appointment by the coal mine operator under subsection (1). The replacement provision requires that the coal mine operator for the surface mine or the separate part of the surface mine to ensure a person appointed by the site senior executive under subsection (1) is an employee of either the coal mine operator or an entity that employs or otherwise engages 80 per cent or more of the coal mine workers at the coal mine. The option of the OCE being an employee of an associated entity of the coal mine operator has specifically been excluded for subsection (2) because the appointed OCE should be attached to a particular mine and not be interchangeable across different mines in relation to an associated entity. The current maximum penalty of 500 penalty units for failing to comply with the direct employment requirement is also retained for the replacement subsection (2).

This clause also inserts new section 59A (Acting open-cut examiner) which applies if an OCE appointed under section 59(1) vacates office (e.g., resigns) or is temporarily absent from duty.

Subsection (2) provides that that the SSE for the surface mine or the separate part of the surface mine may appoint a person to act as OCE for the surface mine excavations mentioned in section 59(1) (i.e., each surface mine excavation carried out at the mine or part of the mine) during the vacancy. The appointment of an acting OCE in relation to a vacancy under new section 59A(2) is optional because the alternative is for the SSE to permanently appoint a replacement OCE to ensure the SSE complies with the requirement under section 59(1) of the CSMH Act as amended by the Bill. The optional appointment of an acting OCE under subsection (2) in relation to a vacancy is not limited to a person who is an employee as mentioned in section 59(2) as amended by the Bill.

Subsection (3) requires the SSE for the surface mine or the separate part of the surface mine to appoint a person to act as OCE for the surface mine excavations mentioned in section 59(1) during the absence. This requirement, as well as the maximum penalty of 40 penalty units, is a carry-over from section 58(2), under which such an absence was previously addressed. The requirement under subsection (3) to appoint a person to act in the role during the absence is also not limited to a person who is an employee as mentioned in section 59(2) as amended by the Bill.

Subsection (4) provides for a maximum period of 12 weeks during which a person appointed under subsection (2) or (3) who is not an employee can act in the OCE position during the vacancy or absence. The 12 weeks is tied to the day the appointed OCE vacated office or was first temporarily absent from duty, so only a single period of up to 12 weeks is permitted from the applicable date. If the acting arrangements continue past the initial 12 weeks, the operator commits an offence which attracts a maximum penalty of 500 penalty units for non-compliance. However, subsection (5) provides an exception to the 12-week acting limit imposed under subsection (4) where the person appointed to act as the OCE is an employee of the coal mine operator or an entity that employs or otherwise engages 80 per cent or more of the coal mine workers at the coal mine. This provides that if the person temporarily appointed to act in the role is an employee, they may continue to act in the role past the initial 12-weeks.

Subsection (6) is based on the requirement under existing section 59(1) and requires the operator for the surface mine or the separate part of the surface mine to ensure a person appointed under subsection (2) or (3) as the acting OCE holds an open-cut examiner's

certificate of competency. The maximum penalty for failing to comply with subsection (6) is 200 penalty units, which is also based on the maximum penalty for section 59(1).

Subsection (7) provides that the SSE is taken to comply with the requirement under section 59(1) to appoint a person to be the OCE for one or more surface mine excavations, for the period of an acting appointment made under subsection (2) in relation to a vacancy.

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

*Clause 8* amends section 60 by replacing subsection (12) to provide more scope for responding to a vacancy or unplanned temporary absence relating to the statutory positions addressed under section 60, which under the existing subsection (12) requires the person acting in such a role to be an employee of the coal mine operator.

The amended subsection (12) provides at paragraph (a) that the coal mine operator for the underground mine must ensure a person appointed under subsections (2), (4) or (8) (i.e., an UMM; an alternate UMM; or a person appointed by the UMM to be responsible for the control and management of underground activities when the UMM is not in attendance at the mine) is an employee of the coal mine operator, or an associated entity of the coal mine operator; or an entity that employs or otherwise engages 80 per cent or more of the coal mine workers at the coal mine.

Further, the amended subsection (12) provides at paragraph (b) that the coal mine operator for the underground mine must ensure a person appointed under subsections (9) or (10) (i.e., an ERZ controller; or an electrical engineering manager or mechanical engineering manager) is an employee of the coal mine operator or an entity that employs or otherwise engages 80 per cent or more of the coal mine workers at the coal mine. The option of a person appointed under subsections (9) or (10) being an employee of an associated entity of the coal mine operator has specifically been excluded for subsection (12)(b) because the appointed person should be attached to a particular mine and not be interchangeable across different mines in relation to an associated entity.

### **Insertion of new s 60A**

*Clause 9* inserts new section 60A (Acting managers of underground mines) which applies if a person appointed under section 60(2), (4), (8), (9) or (10) (the appointee) vacates office (e.g., resigns) or is temporarily absent from duty. This section applies in relation to an absence of a person appointed by the SSE or UMM (the appointer) to any of the following statutory positions – an UMM; an alternate UMM; a person appointed by the UMM to be responsible for the control and management of underground activities when the UMM is not in attendance at the mine; an ERZ controller; an electrical engineering manager; and a mechanical engineering manager.

Subsection (2) provides that the appointer (i.e., either the SSE or the UMM position who appointed the appointee) may appoint a person to act in the office of the appointee during the vacancy. The acting appointment in relation to a vacancy under new section 60A(2) is optional because the alternative is for the appointer to permanently appoint a replacement for the appointee to ensure the appointer complies with their requirement under section 60(2), (4), (8), (9) or (10) of the CSMH Act (i.e., as relevant to the position to which the vacancy relates). The optional appointment of a person to act in the vacant office is not limited to a person who is an

employee as mentioned in section 60(12) as amended by the Bill as relevant to the position to which the vacancy relates.

Subsection (3) requires the appointer to appoint a person to act in the office of the appointee during the absence. This requirement, as well as the maximum penalty of 40 penalty units, is a carry-over from section 58(2), under which such an absence was previously addressed. The requirement under subsection (3) to appoint a person to act in the role during the absence is also not limited to a person who is an employee as mentioned in section 60(12) as amended by the Bill as relevant to the position to which the absence relates.

Subsection (4) provides for a maximum period of 12 weeks during which a person appointed under subsection (2) or (3) who is not an employee can act in the appointees' position during the vacancy or absence. The 12 weeks is tied to the day the appointee vacated office or was first temporarily absent from duty, so only a single period of up to 12 weeks is permitted from the applicable date. If the acting arrangements continue past the initial 12 weeks, the operator commits an offence which attracts a maximum penalty of 500 penalty units for non-compliance.

However, subsection (5) provides an exception to the 12-week acting limit imposed under subsection (4) if the person appointed to act in the appointees' position is an employee as mentioned in section 60(12) as amended by the Bill as relevant to the position to which the vacancy or absence relates. Specifically, subsection (5)(a) provides that a person acting as the UMM, the alternate UMM, or a person appointed by the UMM to be responsible for the control and management of underground activities when the UMM is not in attendance at the mine, may continue to act in the position past the initial 12-weeks if the person is an employee of the coal mine operator, an associated entity of the coal mine operator, or an entity that employs or otherwise engages 80 per cent or more of the coal mine workers at the coal mine. Specifically, subsection (5)(b) provides that a person acting in the position of ERZ controller, electrical engineering manager, or mechanical engineering manager may continue to act in the position past the initial 12-weeks if the person is an employee of the coal mine operator or an entity that employs or otherwise engages 80 per cent or more of the coal mine workers at the coal mine.

Subsection (6) requires the coal mine operator for the underground mine to ensure a person appointed under subsection (2) or (3) meets the competency requirement for the appointment. A maximum penalty of 400 penalty units applies for failing to comply with the competency requirement in relation to a temporary appointment to the position of UMM or alternate UMM. A maximum penalty of 200 penalty units applies for failing to comply with the competency requirement in relation to a temporary appointment to the position of an ERZ controller; an electrical engineering manager; a mechanical engineering manager; or a person appointed by the UMM to be responsible for the control and management of underground activities when the UMM is not in attendance at the mine.

Subsection (7) requires provides that the appointer is taken to comply with the requirement to appoint a person to a position as required under section 60(2), (4), (8), (9) or (10) of the CSMH Act, for the period of an acting appointment made under subsection (2) in relation to a vacancy.

Finally, subsection (8) specifies the meaning of 'competency requirement' for new section 60A as referred to in subsections (6) and (7) for an acting appointment under subsections (2) and (3). The identified competency requirements reflect those required for appoint to the applicable

positions as specified under section 60(5), (8), (9) and (10) of the CMSH Act as relevant for the identified position.

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

*Clause 10* amends section 61(4) to broaden the entities a VO may be employed by for appointment by the UMM under section 61. The existing subsection (4) requires that a coal mine operator for an underground mine to ensure the UMM appoints a person to be a VO only if the person is an employee of the coal mine operator. The replacement subsection (4) broadens this requirement so the person can also be an employee of an associated entity of the coal mine operator; or an entity that employs or otherwise engages 80 per cent or more of the coal mine workers at the mine.

**Amendment of s 61A (Absence of ventilation officer)**

*Clause 11* omits section 61A and inserts a replacement section 61A (Acting ventilation officer) which includes comparable direct employment requirement exemptions for acting arrangements under other sections of the CMSH Act as amended by the Bill. Replacement subsection (1) also expands application of section 61A so it applies for a vacancy in addition to a temporary absence.

Replacement subsection (2) provides that that the UMM may appoint a person to act in the VO position during a vacancy. The acting appointment in relation to a vacancy under replacement subsection (2) is optional because the alternative is for the UMM permanently appoint a replacement VO to ensure the UMM complies with the requirement to appoint a person as the VO for the mine under section 61 of the CMSH Act. The optional appointment of an acting OCE under replacement subsection (2) in relation to a vacancy is not limited to a person who is an employee as mentioned in section 61(4) as amended by the Bill.

Replacement subsection (3) complements replacement subsection (2) by specifying that the UMM may assume the duties of the VO during a temporary absence, provided the absence is for seven days or less and the UMM holds a ventilation officer's certificate of competency. New subsection (3) effectively replaces the existing subsection (2).

Replacement subsection (4) replaces the existing subsection (3) and provides that if the UMM does not assume the duties of the ventilation officer in relation to a temporary absence, the UMM must appoint another person to act in the VO role during the absence. The 200 penalty unit maximum penalty from existing subsection (3) is retained for the replacement subsection (4).

Replacement subsection (5) replaces the existing subsection (4) and requires the UMM to not appoint a person to act in the VO role in relation to a vacancy or temporary absence unless the person holds a ventilation officer's certificate of competency. The 200 penalty unit maximum penalty from existing subsection (4) is retained for the replacement subsection (5).

The current direct employment requirement under existing subsection (5) is effectively replaced new subsections (6) and (7). Existing subsection (5) currently requires the coal mine operator for the underground mine to ensure the UMM appoints a person to act in the VO role in relation to a temporary absence only if the person is an employee of the coal mine operator. The replacement subsection (6) provides greater flexibility by providing for a maximum period

of 12 weeks during which a person who is not an employee can act in the VO position. The 12 weeks is tied to the day the appointed VO vacated office or was first temporarily absent from duty, so only a single period of up to 12 weeks is permitted under new section 61A(5). If the acting arrangements continue past the initial 12 weeks, the operator commits an offence which attracts a maximum penalty of 500 penalty units for non-compliance. However, replacement subsection (7) provides an exception to the 12-week acting limit imposed under replacement subsection (6). Namely, it provides that replacement subsection (6) does not apply where the person appointed to act as the VO is an employee of the coal mine operator; an associated entity of the coal mine operator; or an entity that employs or otherwise engages 80 per cent or more of the coal mine workers at the mine. This means an employee may continue to act in the role past the initial 12-weeks. Replacement subsection (7) effectively replicates the direct employment requirement in place under the existing subsection (5) but broadens the entities the VO may be employed by to also include an associated entity of the coal mine operator or an entity that employs or otherwise engages 80 per cent or more of the coal mine workers at the coal mine.

New subsection (8) provides that the UMM is taken to comply with the requirement under section 61(2), to appoint a person as the VO for the mine, for the period of an acting appointment made under replacement subsection (2) in relation to a vacancy.

### **Insertion of new pt 20, div 10**

*Clause 12* inserts new Part 20, division 10 (Transitional provisions for *Coal Mining Safety and Health and Other Legislation Amendment Act 2022*). New section 322 (Definitions for division) defines the meanings of ‘former’ and ‘new’ for the purpose of the transitional provisions for new division 10.

New section 323 (Application of new pt 4, div 2) provides for the application of the ‘new’ Part 4 (Provisions about the operation of coal mines), division 2 (Management of coal mines) of the CSMH Act from the commencement (i.e., 25 November 2022). The meaning of ‘new’ in this context means the provisions under Part 4, division 2 of the CSMH Act as in force from 25 November 2022. Note that this includes the direct employment requirements as inserted into the CSMH Act on 25 May 2020 (which come into full effect on 25 November 2022) and subsequently amended by the *Coal Mining Safety and Health and Other Legislation Amendment Act 2022* (the CSMHOLA Act). Accordingly, section 323 provides that Part 4, division 2 of the CSMH Act as in force from 25 November 2022 (i.e., including the direct employment changes as amended by the CSMHOLA Act) applies in relation to the appointment of a person, whether the appointment was made before, or is made after, 25 November 2022.

New section 324 (Particular existing appointees go out of office) provides that any person who is in one of the identified positions (i.e. an SSE for a coal mine or held an appointment under former section 59(1), 60(2), (4), (8), (9) or (10) or 61(2)) on 25 November 2022 (i.e., the appointee), and could not be appointed under the ‘new appointment provisions’ as identified in subsection (4) (i.e., is not an employee of a relevant entity for the position) – the appointee will no longer hold a valid appointment to the position. Subsection (3) also provides that the State will not be liable for the payment of any compensation, in the event that an appointee no longer holds a valid appointment, as a result of section 324. The positions this section applies to includes that of an SSE, an OCE, an UMM, an alternate UMM, a person appointed by the UMM to be responsible for the control and management of underground activities when the

UMM is not in attendance at the mine, an ERZ controller, an electrical engineering manager and a mechanical engineering manager.

New section 325 (Continuation of acting appointments made before commencement) and section 326 (When particular acting appointments made before commencement taken to commence) deal with existing acting arrangements in relation to the following statutory positions – SSE, OCE, UMM, alternate UMM, person appointed by the UMM to be responsible for the control and management of underground activities when the UMM is not in attendance at the mine, ERZ controller, electrical engineering manager and mechanical engineering manager.

New section 325 (Continuation of acting appointments made before commencement) applies to an acting arrangement in relation to a temporary absence for an identified statutory position in place immediately before 25 November 2022, for which the person was appointed under a former provision of the CSMH Act. Subsection (2) provides that for such an existing acting arrangement, the appointee is (from 25 November 2022) taken to be appointed under the new section as amended by the CSMHOLA Act for the applicable statutory position.

New section 326 (When particular acting appointments made before commencement taken to commence) supports new section 325 by establishing 25 November 2022 as the effective ‘start date’ for continued acting arrangements under the CSMH Act (as amended by the CSMHOLA Act) for the identified statutory positions. New section 326 also provides that the 12-week maximum period for acting arrangements applies to the continued acting arrangements. The effect of this is that the operator commits an offence if an appointee who is not an employee as required in relation to the relevant statutory position under the CSMH Act (as amended by the CSMHOLA Act) remains acting in the position after 17 February 2023 (i.e., more than 12-weeks after 25 November 2022). Subsection (5) clarifies that new section 326 does not limit the exemptions to direct employment requirements under the new sections of the CSMH Act (as amended by the CSMHOLA Act) as identified within the subsection relating to acting arrangements or exploration activities.

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

*Clause 13* amends the dictionary to include a definition for the term ‘associated entity’ as referred to in multiple provisions relating to the direct employment requirements for statutory positions. The meaning of ‘associated entity’ defers to the meaning under section 50AAA of the *Corporations Act 2001* (Cth).

## **Part 3 – Amendment of Geothermal Energy Act 2010**

### **Act amended**

*Clause 14* states that this part amends the *Geothermal Energy Act 2010*.

### **Amendment of s 320 (Types of noncompliance action that may be taken)**

*Clause 15* omits section 320(2) to remove the requirement for a resource authority holder to agree to a penalty of an amount no more than the monetary value of 2000 penalty units being made instead of the taking of other noncompliance action under section 320(1) of the

*Geothermal Energy Act 2010*. Consequentially, section 320(3) to (5) have been renumbered as section 320(2) to (4).

#### **Insertion of new ch 9, pt 7**

*Clause 16* inserts a new Part 7 into Chapter 9 of the *Geothermal Energy Act 2010* to establish a transitional provision by inserting new section 416 which provides that new section 320 only applies in relation to an event in section 321(2) or (3) that happens after the commencement.

### **Part 4 – Amendment of Greenhouse Gas Storage Act 2009**

#### **Act amended**

*Clause 17* states that this part amends the *Greenhouse Gas Storage Act 2009*.

#### **Amendment of s 379 (Types of noncompliance action that may be taken)**

*Clause 18* omits section 379(2) to remove the requirement for a resource authority holder to agree to a penalty of an amount no more than the monetary value of 2000 penalty units being made instead of the taking of other noncompliance action under section 379(1) of the *Greenhouse Gas Storage Act 2009*. Consequentially, section 379(3) to (5) have been renumbered as section 379(2) to (4).

#### **Insertion of new ch 8, pt 6**

*Clause 19* inserts a new Part 6 into Chapter 8 of the *Greenhouse Gas Storage Act 2009* to establish a transitional provision by inserting new section 452 that provides that new section 379 only applies in relation to an event mentioned in section 380(2) or (3) that happens after the commencement.

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

#### **Act amended**

*Clause 20* states that this part amends the *Mineral and Energy Resources (Common Provisions) Act 2014*.

#### **Amendment of s 21 (Failure to pay contribution to scheme fund or give surety prevents registration of dealing)**

*Clause 21* omits section 21(1)(a)(i) to refer to a changed holder event under the *Mineral and Energy Resources (Financial Provisioning) Act 2018* for a resource authority that authorises the carrying out of a resource activity for an environmental authority.

### **Part 6 – Amendment of Mineral Resources Act 1989**

#### **Act amended**

*Clause 22* states that this part amends the *Mineral Resources Act 1989*.

### **Insertion of new s 291**

*Clause 23* inserts new section 291 to provide the head of power and criteria that apply for the Minister to defer the first years rent for specific mining leases. Subsection (1) makes it clear that a rent deferral applies if, on the grant of the lease, the Minister is satisfied the applicant for the mining lease proposes to mine a critical mineral under the lease, proposes to spend an amount equivalent to the first rent of the mining lease on start-up and development costs to establish the mine, and requests that payment of the first rent for the lease be deferred.

Subsection (2) provides that if the Minister is satisfied that the applicant meets the criteria in subsection (1), on the grant of the lease, the Minister must defer payment of the first years rent for the mining lease.

Subsection (3) states that it is a condition of the mining lease that the holder must pay the first rent in instalments as provided for by regulation.

Subsection (4) provides that if the lease is cancelled, terminated or is not renewed before the first rent is paid in full, the unpaid portion is a debt due to the state. This subsection also inserts a new note to refer readers to section 309 of the *Mineral Resources Act 1989* in the event of surrender.

Subsection (5) states that new section 291 applies despite section 290(1).

Subsection (6) provides the definitions that apply for new section 291. This subsection defines: ‘critical mineral’ to be a mineral prescribed by regulation to be a critical mineral; ‘first rent’ for a mining lease to be the rental payable for the first rental period of the lease; and ‘first rental period’ for a mining lease to be the period from the start of the term of the mining lease and ending on the next 31 August as stated in section 290(1).

The Minister’s decision to defer payment of the first years rent for the lease is subject to review under the *Judicial Review Act 1991* (Qld).

### **Insertion of new ch 15, pt 21**

*Clause 24* inserts new section 899 which is a transitional provision that applies to an application for a mining lease that has been made, but not decided, immediately before the commencement for which the Minister may defer the first rent of the mining lease if the Minister is satisfied that the application meets the criteria in section 291(1).

## **Part 7 – Amendment of Mineral Resources Regulation 2013**

### **Act amended**

*Clause 25* states that this part amends the *Mineral Resources Regulation 2013*.

### **Insertion of new ss 98A and 98B**

*Clause 26* inserts new section 98A (Way deferred rental on particular mining leases must be paid – Act, s 291) and new section 98B (Critical minerals– Act, s 291).

New section 98A(1) provides for payment of the first rent by instalments if the Minister defers the first years rent under section 291(3) of the *Mineral Resources Act 1989*. Subsection (2) states that the first rent must be paid in five instalments and subsection (3) states that the amount of rent payable for each instalment is equivalent to 20 per cent of the first rent rounded to the nearest cent. These instalments are in addition to the rent to be paid under section 290(3). Subsection (4) requires these instalments to be paid within 20 business days after the end of the lease year in each of the fourth to eighth years of the mining lease.

New section 98B states that for the definition of ‘critical mineral’ in section 291(6) of the Act, each mineral listed in schedule 4A of the Mineral Resources Regulation 2013 is prescribed to be a critical mineral.

### **Insertion of new sch 4A**

*Clause 27* provides new schedule 4A which lists minerals that are prescribed critical minerals that are eligible for a rent deferral.

## **Part 8 – Amendment of Petroleum and Gas (Production and Safety) Act 2004**

### **Act amended**

*Clause 28* states that this part amends the *Petroleum and Gas (Production and Safety) Act 2004*.

### **Amendment of s 790 (Types of noncompliance action that may be taken)**

*Clause 29* amends section 790(2) to remove the requirement for a resource authority holder to agree to a penalty of an amount no more than the monetary value of 2000 penalty units being made instead of the taking of other noncompliance action under section 790(1) of the Act.

### **Insertion of new ch 15, pt 29**

*Clause 30* inserts new section 1034 which clarifies that the amended section 790 only applies to a non-compliance event mentioned in section 791(2) or (3) that happens after commencement.

## **Part 9 Other amendments**

### **Legislation amended**

*Clause 31* states that Schedule 1 (Other amendments) amends the legislation it mentions. These amendments are made to renumber certain sections and to correct clerical errors. Schedule 1 lists:

- the correction of a previous drafting error in section 53 (Appointment of coal mine operator) of the CMSH Act to insert ‘the’ after ‘if’ in subsection (1) so the amended provision reads ‘if the mine is or includes...’.
- the correction of a previous drafting error in section 132 (Production or display of identity card) of the CMSH Act to insert ‘inspection’ after ‘person’s’ in subsection (1) paragraph (a) so the amended provision reads ‘...for the other person’s inspection.’.
- the replacement of section 320(3) with section 320(2) in note 1 of section 22 of the *Geothermal Energy Act 2010*;
- the replacement of section 379(3) with section 379(2) in note 1 of section 22 of the *Greenhouse Gas Storage Act 2009*; and
- the addition of ‘Peninsula’ after ‘York’ in Schedule 1, section 7(2)(d) of the *Mineral and Energy Resources (Common Provisions) Act 2014*.