Mines Legislation (Streamlining) Amendment Bill 2012

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Explanatory Notes

Short Title of the Bill

The short title of the Bill is the *Mines Legislation (Streamlining) Amendment Bill 2012*.

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Policy objectives and the reasons for them

The purpose of the Bill is to provide the legislative changes necessary to:

- clarify the legislative framework relating to compulsory acquisition of land as it relates to resources interests (**Compulsory Acquisition**);
- implement part of the Streamlining Approvals Project (**Streamlining**);
- confirm and clarify current jurisdictional arrangements in relation to the regulation of hazardous chemicals, major hazard facilities and operating plants (**Safety and Health**); and
- provide increased regulatory certainty for all parties involved in the State's emerging Coal Seam Gas (CSG) to Liquid Natural Gas (LNG) industry (**CSG/LNG Industry**).

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Streamlining

The Streamlining Approvals Project commenced in January 2009 with the aim of reducing the time taken to process resources permit applications without compromising the rigour of the assessment process. In parallel, the Greentape Reduction Project is reforming assessment processes required under the *Environmental Protection Act 1994* for environmental assessment of environmentally relevant activities, including resources activities.

To date the Streamlining Approvals Project has produced three reports, the 2009 Streamlining Approvals Project Mining and Petroleum Tenure Approval Process report (the Streamlining report), the 2010 Supporting

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Resource Sector Growth report (the Industry report), and On The Right Track 2011, a progress report for the Streamlining Approvals Project. The amendments included in the Bill will put in place recommendations made in these reports and are aimed at improving the efficiency of the regulatory framework for the resources sector in Queensland.

A key outcome for the Streamlining Approvals Project is the introduction of an online service delivery platform, by which industry can transact with Government in a seamless online environment. Authenticated customer access will provide additional transparency for assessment processes, reducing enquiries and providing certainty on assessment status. The Bill proposes amendments to provide the legislative framework for migrating to an online service delivery model. The online system, *MyMinesOnline*, will also support reforms made by the Greentape Reduction Project.

The Bill also proposes amendments to establish common structure, terminology and assessment processes for resources activities required under the five legislative frameworks provided by the *Mineral Resources Act 1989*, *Petroleum and Gas (Production and Safety) Act 2004*, *Petroleum Act 1923*, *Greenhouse Gas Storage Act 2009* and *Geothermal Energy Act 2010* (collectively referred to as the 'resources Acts'). This will enable greater flexibility in departmental responses to the significant increases in applications for resources activities.

Compulsory Acquisition

In order to facilitate economic development across Queensland, linear infrastructure such as roads and rail is critical. To support development of this infrastructure, compulsory acquisition of land is often required under various resumption laws. Therefore a well understood and responsive legislative framework for compulsory acquisition is essential to economic development in Queensland.

A recent significant shift in the interpretation of legislation relating to compulsory acquisition of land as it relates to resource interests has meant that all resource interests (rights under or in relation to resource tenure and authority) in connection with resumed land are taken to be extinguished upon the gazetting of a resumption notice. This is inconsistent with the policy intent and current position of Government.

The Government's policy position is that resource tenure can generally co-exist with other forms of tenure and infrastructure development and that the compulsory acquisition of land should not extinguish resources interests under the resources Acts unless it is incompatible with the purpose of the take.

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service delivery model *My mines online*

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The compulsory acquisition amendments contained in this Bill will clarify the relationship between the compulsory acquisition of land and resource interests and ensure the resumption law aligns with Government's policy. The amendments will prospectively and retrospectively manage the impacts on resource interest holders from the taking of land.

CSG/LNG Industry

Queensland's CSG to LNG industry is an emerging industry that is regulated under the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* – collectively referred to as the petroleum Acts.

The petroleum legislative framework was established to facilitate petroleum exploration and production. Adjustments were made soon after introduction to resolve the potential for resource conflict between coal and CSG. The regulatory framework requires further adjustment to reflect specific requirements for this emerging industry.

The current legislation provides no flexibility for petroleum leaseholders to adjust production commencement dates. Legislative changes are necessary to: allow scheduling of production needs to respond to unexpected production success or failure; and to allow for conflicting schedules for petroleum production.

The current legislative framework does not facilitate the efficient transportation and treatment of CSG water and brine both between permit areas and off permit areas nor the development of common user water treatment and brine processing facilities on permit areas. Amendments to the petroleum acts will allow greater flexibility in the transportation and treatment, which would allow industry to implement better solutions for CSG water and brine, and make it easier to comply with the Government's CSG Water Management Policy.

Currently, CSG/LNG proponents are negotiating easement option agreements with landholders along pipeline routes between petroleum leases and State Development Areas. Under the current legislation, LNG proponents are unable to register these easements.

Registration of pipeline easements is critical for:

- finalising the easement option agreements that have already been entered into between the proponent and landholder;
- providing security for the investment made by LNG proponents in its pipeline infrastructure;

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- ensuring the easement will remain with the land in the event of a change in ownership;
- ensuring integrity of the land register; and
- establishing an important safety record.

The Bill also contains a minor amendment to the definition of 'occupier' in the *Petroleum and Gas (Production and Safety) Act 2004*, to fix an inconsistency with other resource legislation.

Safety and Health

The Bill includes amendments to maintain existing jurisdictional arrangements for safety and health at mines following the enactment of the national work safety law. The amendments will also clarify the application of the *Work Health and Safety Act 2011* and the *Petroleum and Gas (Production and Safety) Act 2004* in relation to chemicals, major hazard facilities and operating plants.

Achievement of policy objectives

The Bill amends the *Acquisition of Land Act 1967*, the *Geothermal Energy Act 2010*, the *Environmental Protection Act 1994*, *the Geothermal Energy Act 2010*, the *Greenhouse Gas Storage Act 2009*, the *Mineral Resources Act 1989*, the *Petroleum Act 1923*, the *Petroleum and Gas (Production and Safety) Act 2004* and the *Work Health and Safety Act 2011* and to make consequential amendments of the *Aboriginal Cultural Heritage Act 2003*, the *City of Brisbane Act 2010*, , *Land Court Act 2000*, the *Local Government Act 2009*, the *State Development and Public Works Organisation Act 1971*, the *Torres Strait Islander Cultural Heritage Act 2003* and the *Wild Rivers Act 2005* to achieve the policy objectives as outlined below.

Streamlining

The streamlining reforms to the resources Acts included in this Bill will:

- reduce assessment times by transferring the power to grant and renew *Mineral Resources Act 1989* mining lease and *Petroleum Act 1923* petroleum lease applications from the Governor-in-Council to the Minister;
- facilitate the modernisation of tenure administration by supporting online lodgement of documents for assessment and management of all resources permits;

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The Bill also includes amendments that improve the efficiency of administering resources acts. The amendments do not change the intention of existing provisions but make adjustments in order for them to better achieve their intention. In some cases amendments are required to respond to other legislative changes.¶
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Deleted: The Bill amends the *Mineral Resources Act 1989* (MRA); *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act); *Petroleum Act 1923* (PA); *Greenhouse Gas Storage Act 2010* (GHG); and the *Geothermal Energy Act 2010* (GEA) (collectively referred to as the resources acts), the *Environmental Protection Act 1994* (EP Act) and the *Work Health and Safety Act 2011* (WHS Act) to enable ... [1]

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- streamline administrative processes and requirements for managing mineral and coal exploration permits under the *Mineral Resources Act 1989*;
- establish a single process for all resources permits to deal with business transactions, changes of ownership, and departmental information requests to applicants;
- improve resource stewardship by providing a clear power to require an applicant to progress their application;
- reduce the initial term of a mining claim under the *Mineral Resources Act 1989* from 10 years to five years to align with other reforms to support small scale mining;
- clarify land access arrangements for exploration permit holders under the *Mineral Resources Act 1989* to undertake environmental studies;
- provide consistent process for applications that to be received and allowed to proceed that do not fully comply if the application substantially complies with the requirements;
- reduce assessment times by amending the *Mineral Resource Act 1989* to streamline the process of Land Court referrals of objections to mining claim and lease applications; and
- improve departmental efficiency by designating the powers and functions of a mining registrar to the chief executive so that the chief executive can take appropriate action under the *Mineral Resource Act 1989* were necessary without referral to a mining registrar.

Compulsory Acquisition

The policy objective of the compulsory acquisition amendments is to prospectively and retrospectively manage the impacts on resource interest holders from the compulsory acquisition of land as it impacts on resource interests. In summary, the amendment will:

- ensure that resource interests are not extinguished by compulsory acquisition of land unless it is specifically stated in the gazette resumption notice due to potential conflict with the proposed development (the purpose for the take);
- ensure that past compulsory acquisitions of land generally did not extinguished resource interests unless construction authorities took specific action (for example, issuing relevant notices, recording the take in resource registry or negotiating compensation with tenure holders) to intentionally extinguishing resource interest; and

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• . Designating the powers and functions of a Mining Registrar to the Chief Executive to allow the Chief Executive to make decisions or provide directions to a tenure holder, without referral to Mining Registrar.¶

- provide that compensation to resource interest holders, either from taking of land or easements, will be limited to that actual cost resulting from the extinguishment or injurious affect to the resource interests.

CSG/LNG Industry

The policy objective to provide regulatory certainty for the emerging CSG/LNG industry will be achieved by amending the *Petroleum and Gas (Production and Safety) Act 2004* to:

- enable the registration of pipeline easements;
- allow lease holders to seek Ministerial consent to change production commencement where a relevant arrangement is in place;
- allow lease holders to adapt production schedules to facilitate access by coal parties to land held by the lease holder, to optimise development of the State's resources by enabling gas extraction prior to coal extraction;
- extend provisions for pipeline licence instruments to allow the transport of CSG water and brine between permit areas and off permit areas;
- allow the construction and operation of common user water treatment and brine processing facilities on petroleum leases;
- allow for incidental activities, such as roads, electricity lines, and fibre optic cables to be constructed across adjacent petroleum permit areas;
- require a lease holders to submit an annual infrastructure report for incidental activities;
- apply existing provisions for environmental approvals, water regulation, land access and health and safety to infrastructure associated with the transport and treatment of CSG water and brine;
- amend the definition of 'occupier' in the P*etroleum and Gas (Production and Safety) Act 2004* to be consistent with all other resources legislation.

The Bill also includes an amendment to the *Environmental Protection Act 1994* as a consequence of the expansion to incidental activities on petroleum permit areas. The amendment obliges existing permit holders who choose to undertake these expanded incidental activities to submit an annual environmental return to ensure the environmental impacts of these incidental activities are appropriately considered by the regulator.

Safety and Health

Maintaining existing jurisdictional arrangements for safety and health on mine sites will be achieved by amending the *Work Health and Safety Act*

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2011 (before relevant provisions commence) to confirm that the *Work Health and Safety Act 2011* and its subordinate legislation will not apply to mines in relation to hazardous chemicals and major hazard facilities. Amendments will make clear that the regulation of hazardous chemicals and major hazard facilities at mines will continue to be regulated by the *Mining and Quarrying Safety and Health Act 1999, Coal Mining Safety and Health Act 1999* and relevant pieces of subordinate legislation.

Additional amendments to the *Work Health and Safety Act 2011* confirm that in relation to hazardous chemicals and major hazard facilities the *Petroleum and Gas (Production and Safety) Act 2004* prevails to the extent of any inconsistency.

The *Work Health and Safety Act 2011* and the *Petroleum and Gas (Production and Safety) Act 2004* will be amended to clarify when and to what the Acts apply in relation to operating plants.

Alternative ways of achieving policy objectives

Streamlining

The Bill amends the resources Acts to streamline regulatory requirements which could not be achieved without legislative amendments.

Compulsory Acquisition

These amendments were bought about due to a new interpretation of resumption law. There is no other option apart from legislative amendment to achieve the stated objectives.

Safety and Health

There is no option apart from legislative amendment to confirm current jurisdictional arrangements and to clarify the regulation of hazardous chemicals, major hazard facilities and operating plants.

CSG/LNG Industry

Regulatory certainty is essential for the resources sector as it is the means of licensing exploration and production of State owned resources and this can only be achieved through legislative amendments.

Estimated costs for government implementation

Streamlining

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The upfront costs to develop the online system for applications and assessments for resources permits, a key element of the Streamlining Approvals Project, have already been allocated by Government through its budgetary processes. Costs associated with implementing the amendments will be met within existing departmental resources. It is anticipated that as greater efficiencies are realised by streamlining assessment and management processes that there will be reduced costs to Government and to industry.

Compulsory Acquisition

Compulsory acquisition amendments will potentially increase current cost of administering the taking of land by constructing authorities, due to requirements on constructing authorities to assess the compatibility of resource interests with the purpose of the take.

However, any increased cost resulting from these amendments will be offset by lowering the compensation risk associated with maintaining the status quo. Without these amendments constructing authority would have been obliged to extinguish all resource interest in connection with the land taken and follow all associated administrative processes and negotiate compensation to resource interest holders, therefore potentially significantly increasing the cost of developing linear infrastructure.

Safety and Health

No costs are anticipated. Failure to make these amendments would raise industry and stakeholder concerns about duplication of regulation and cost recovery levies for safety and health at mining and petroleum work sites.

CSG/LNG Industry

The estimated costs for Government to implement most of the legislative amendments will be limited to communication of the changes and will be met within existing Departmental resources.

It is expected that the amendments to improve the efficiency of CSG water and brine transport and treatment will increase the administrative burden on the Department Natural Resources and Mines which will assess and administer pipeline licence applications and regulate the health and safety of the pipelines and processing/treatment infrastructure. The costs associated with the administrative burden are expected to be at least partially offset by the fees associated with pipeline licences and annual safety levies.

Consistency with Fundamental Legislative Principles

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CSG/LNG Industry¶
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The estimated costs for government to implement most of the legislative amendments will be limited to communication of the changes and will be met within existing Departmental resources.¶
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It is expected that the amendments will reduce the administrative burden on the Department Environment and Resource Management which is currently receiving applications from the pipeline licence holders to register covenants to protect their negotiated easement option agreements, and for occupation permits.¶
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It is expected that the amendments to improve the efficiency of CSG water and brine transport and treatment will increase the administrative burden on the Department Employment, Economic Development and Innovation which will assess and administer pipeline licence applications and regulate the . health . and . safety . of . the . pipelines . and . processing/treatment infrastructure. . The costs associated with the administrative burden are expected to be at least partially offset by the fees associated with pipeline licences and annual safety levies.

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No costs are anticipated.¶
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The Bill has been drafted with regard to fundamental legislative principles (FLP) as defined in section 4 of the *Legislative Standards Act 1992* and is generally consistent with these provisions. However, the Bill includes a number of provisions that may be regarded as breaching fundamental legislative principles. Any clauses in which fundamental legislative principle issues arise, together with the justification for the breach, is dealt with in the explanation of the relevant clauses and is also outlined below.

Streamlining

Some Streamlining amendments have raised concern that administrational powers have not been sufficiently defined or are not subject to appropriate review.

The Bill transfers the power to grant and renew mining leases and petroleum leases under the *Mineral Resources Act 1989* and the *Petroleum Act 1923* from the Governor-in-Council to the Minister.. This is not considered an issue as the *Mineral Resources Act 1989* already allows the Minister to reject a mining lease application and is not currently subject to an appeal process.

Subject to being a holder of an authority to prospect, the *Petroleum Act 1923* states that an application for a petroleum lease is to be granted by the Governor-in-Council. The same will now apply to the Minister. These decisions are already subject to appropriate review through the judicial review system entitled to applicants aggrieved by decisions made under either of these Acts. In general, aggrieved parties of these types of decisions (e.g. applicants to coal mines) do make use of this review mechanism. In addition, there has been overwhelming support for the proposed amendment by industry representatives without any request for an appeal mechanism.

The Bill also provides a consistent process for applications that do not fully comply, to be received and be allowed to proceed, if the application substantially complies with the Act. This assessment is exercised at the preliminary stage on whether the application is properly made; no rights or interests are being removed as the decider would not be able to assess the application. Therefore a merits based review is not appropriate and applicants are still entitled to judicial review if they are dissatisfied. The new provisions are sufficiently defined as they state that the requirements of the Act must be considered, and these criteria are adequately addressed in relevant sections for making applications, under each Act. It would not be practicable to attempt to define criteria for substantial compliance as this could cover significant variations in circumstances where the application of discretion is appropriate.

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<sp>The amendments creating the framework for Urban Restricted Areas may breach the fundamental legislative principle requiring sufficient regard to the rights and liberties of individuals. . The proposed amendments will diminish existing 'rights' of exploration permit holders to undertake¶
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resources activities in URAs that the holder was entitled to at the time the permit was granted.¶
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The purpose of the URA policy amendments is to make clear that in specific land use conflict situations characterised by resources activities in close proximity to urban centres, the optimum outcome is to prevent exploration and potential high impact surface mining activities.¶
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The Bill transfers the power to grant and renew mining leases and petroleum leases under the MRA and the PA from the Governor-In-Council to the Minister. The lack of an appeal provision has raised the possible breach of the FLP requiring sufficient regard to the rights and liberties of individuals.¶
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Section 267 of the MRA a ... [17]

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Amendments change the determination of priority for some applications under the *Mineral Resources Act 1989*, from a date and time or ballot determination, to a merit based assessment (for applications received on the same day). The *Mineral Resources Act 1989* already provides sufficient detail of the conditions and application requirements as well as defining the purpose of granting applications. These changes are required to facilitate fairness between applications lodged online (at anytime of the day), and paper applications that can only be lodged during office hours. Priority determined by date and time would disadvantage paper based applicants. Merit based assessment of applications is already a common assessment framework for many applications made under the resources Acts.

Compulsory Acquisition

There is a potential FLP issue with the amendment limiting compensation to resource interest holders to actual cost. The amendment provides that in assessing any compensation to be paid to resource interest holders in relation to taking of land (including by taking or otherwise creating an easement) allowance cannot be made for the value of the mineral or energy resource known to be on or below the surface of the land.

The Government's position is that if the resource tenure holders were permitted to claim compensation on the lost opportunity to develop the resource on or below the surface of the land then it would potentially lead to the State, local governments and other infrastructure proponents paying large compensation amounts to acquire land where there is resource tenure and identified resources (particularly production lease). This could effect the feasibility of some linear infrastructure projects, such as a railway across resource regions.

Resource tenure holders (other than production lease holders such as mining lease holders) do not have the right to develop resources on or below the surface of the land. As such, this amendment does not significantly limit their rights to claim compensation. Rather, it provides clarity in assessing the compensation claim, particularly as they relate to exploration tenures.

The rights of the production lease holders are being limited to an extent, because they cannot claim compensation for future revenue that may be obtained by developing the resource on or below the surface of the land. In recognising this, the amendments provide a streamlined process to allow resource tenure holders to include in its tenure, land that was extinguished through compulsory acquisition. This process can only occur however, if the Minister in consultation with the relevant constructing authority is stratified

that re-granting the acquired land is compatible with the purpose for which the land is being used.

Further, a constructing authority cannot simply extinguish resource interests at its discretion. The constructing authority will need to clearly demonstrate that it is necessary to extinguish the resource interest for the purpose of its take due to an inherent conflict. In these cases a resource interest holder would have the opportunity as part of the formal compulsory acquisition process to state its objection. The relevant Minister for the taking of the land needs to consider this objection.

CSG/LNG Industry

Imposing the requirement for annual infrastructure reports on existing lease holders does impose a new obligation and may breach the FLP requiring consideration of whether the amendments adversely affect rights and liberties, or impose obligations, retrospectively. The requirement will apply retrospectively to existing lease holders.

However, it is balanced with a new entitlement that enables incidental activities, such as roads, electricity lines, and fibre optic cables to be constructed across adjacent petroleum permit areas. The intention of the new requirement will provide a public benefit by way of the Department holding and maintaining a comprehensive record of the authorised activities and incidental activities undertaken on petroleum lease areas.

Consultation

Streamlining

Consultation commenced for the proposed amendments with the release of the Streamlining report in November 2009. This report made 13 recommendations to improve the efficiency of regulatory and other approvals processes and initiated a collaborative program of work with industry. In April 2010, industry reviewed and endorsed the Streamlining report, and made further recommendations in the Industry report. Subsequently, industry was invited to participate in a joint government and industry implementation group.

The Government and Industry Implementation Group met between October 2010 and April 2011, establishing five specialist working groups to facilitate implementation of agreed streamlining measures. These working groups developed proposals policy and legislative amendments.

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Internal stakeholders have been actively consulted, including mining and petroleum tenures officers throughout Queensland, both during policy development and on the draft legislation. The Streamlining Approvals Project is linked to the Greentape Reduction Project and the department has worked closely with the Department of Environment and Heritage Protection to ensure alignment between reforms to the *Environmental Protection Act 1994* and the resources Acts.

Industry has provided strong support for amendments that reduce assessment times and unnecessary red tape. The Department has engaged with peak industry representative bodies, in particular the Queensland Resources Council and the Association of Mining and Exploration Companies.

Compulsory Acquisition

The amendments in relation to compulsory acquisition were developed in close consultation with key State Agencies including the Department of State Development, Infrastructure and Planning (Office of the Coordinator General) and Department of Transport and Main Roads.

In addition, limited consultation was also undertaken with the Queensland Resources Council, the Australian Petroleum Production and Exploration Association, Queensland Rail National and Powerlink.

No significant issues were raised in the consultation. However the Queensland Resources Council have raised some concerns regarding the limiting the scope of compensation and ability to re-grant tenures over acquired land.

Safety and Health

There has been extensive consultation with the Department of Justice and Attorney-General for the amendments to the *Petroleum and Gas (Production and Safety) Act 2004* and the *Work Health Safety Act 2011*.

CSG/LNG Industry

The Queensland Resources Council and the Australian Petroleum Production and Exploration Association were consulted on the proposed changes to commencement of production in the *Petroleum and Gas (Production and Safety) Act 2004*. A briefing session was held for these associations and their members to discuss the proposed amendments. Feedback was generally supportive, and concerns were taken into consideration when finalising the amendments.

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There has been extensive consultation with the Department of Environment and Heritage Protection about the amendments to the transportation and treatment of CSG water and brine.

A number of LNG proponents have made submissions to the Government about extending their authority to undertake incidental activities.

The Queensland Resources Council and the Australian Petroleum Production and Exploration Association were consulted on changes to support transition of permits under the *Petroleum Act 1923* to the *Petroleum and Gas (Production and Safety) Act 2004*. Feedback was generally supportive, and concerns were taken into consideration when finalising the proposed amendments.

Consistency with legislation of other jurisdictions

Streamlining

Transferring the power from the Governor-in-Council to the Minister to grant or renew mining and petroleum leases brings Queensland into line with all other states.

Amendments to relinquishment requirements for mineral and coal exploration permits will improve the consistency of the *Mineral Resources Act 1989* with mining legislation in other jurisdictions. While the amendments made in this Bill reduce the number of relinquishment milestones to achieve administrative efficiencies, further steps towards consistency for relinquishment across both the Queensland resources Acts and across other jurisdictions will require further policy development.

Western Australia has separate arrangements for processing business transactions and ownership changes to resources permits under its *Mining Act 1978* and *Petroleum and Geothermal Energy Resources Act 1967*. Under the *Mining Act 1992* (NSW), the renewal, transfer and cancellation of different types of tenure are dealt with under sections similar to the proposed amendments for Queensland resources Acts in the Bill.

Both Western Australia and New South Wales appear to have an information request framework similar to the current provisions in Queensland. Information can be acquired under a multitude of different sections by different authorities such as the Minister, decision maker, registrar or officer. It is anticipated that the proposed amendments will provide regulatory efficiencies for industry and government.

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Attorney-General for the amendments to the WHS Act.¶
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. A briefing session was held by the Department for these associations and their members to discuss the proposed ame ... [19]

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Other Australian States with resource activity comparable to Queensland have in place equivalent legislation to exclude land from exploration and to manage potential urban impacts.¶
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<sp>In Western Australia, the responsible Minister has the power to exempt land from exploration and/or mining. Land classified as a town site under the *Land Administration Act 1997* may only be granted an exploration licence over it with the consent of the Minister. Before consenting, the Minister must consult the Minister responsible for administering the *Land Administration Act* 1997 and the relevant local government to obtain recommendations.¶
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New South Wales has recently introduced additional mea ... [20]

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The particular amendment to designate mining registrar powers to the Chief Executive is unique. However there are similarities and differences in comparison with other jurisdictions. Western Australia (*Mining Act 1978*), New South Wales (*Mining Act 1992*) and South Australia (*Mining Act 1971*) all have statutory mining registrar roles similar to that which is currently operating in Queensland. Victoria (*Mineral Resources (Sustainable Development) Act 1990*) and the Northern Territory (*Mineral Titles Act 2010*) do not have a statutory mining registrar. Tasmania, under the *Mineral Resources Development Act 1995*, has a registrar of mines, which holds a traditional registrar role concerned mainly with lodgement and notification functions, keeping of the register and minor related powers. These later states, place major decision making powers with the Minister and all other powers or functions primarily with the head of their respective mining departments.

The amendments to require an applicant to take action to progress their application will be unique to Queensland. Though other jurisdictions such as Western Australia and New South Wales have robust sections regarding application requirements and sections with clear powers regarding refusal, they do not have sections that are committed to removing the inefficiency and delay that can occur when an applicant unreasonably delays the application process.

The *Mineral Resources Act 1989* will be consistent with New South Wales legislation which prescribes the process for withdrawal of an objection. New South Wales states that the objections in relation to a grant may be withdrawn by means of a notice of withdrawal signed and lodged with the Director General.

Compulsory Acquisition

The proposed compulsory acquisition amendments are consistent with legislation in other Australian resource jurisdictions. The proposed amendments bring Queensland process into line with the Northern Territory where resource interests are not extinguished unless a specific reference in a notification stipulates that the resource interest has been acquired.

In Western Australia, New South Wales and South Australia, resource interests are extinguished by compulsory acquisition unless they are specifically exempted by a construction authority.

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Notes on Provisions

Chapter 1 Preliminary

Short Title

Clause 1 establishes the short title of the Bill is the *Mines Legislation (Streamlining) Amendment Act 2012*.

Commencement

Clause 2 provides that the following provisions of the Bill commence by proclamation:

- chapters 3 and 4;
- schedules 2 and 3.

All other provisions commence on assent.

Chapter 2 Amendments commencing on assent

Part 1 Amendment of Acquisition of Land Act 1967

Act Amended

Clause 3 provides that this part amends the *Acquisition of Land Act 1967*.

Amendment of s 5 (Purposes for which land may be taken)

Clause 4 rewords the existing note under section 5(3).

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Deleted: amendments to the *Geothermal Energy Act 2010*.¶ ¶ ¶ **Replacement of ch 10, pt 2, div 12 (Amendment of Work Health and Safety Act 1995)¶** ¶ Clause 4 replaces chapter 10,

Deleted: 2 division 12 of the *Geothermal Energy Act 2010* with the amended Chapter 10, part 3, division 12 which refers to the *Work Health and Safety A* ... [27]

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Amendment of s 7 (Notice of intention of take land)

Clause 5 inserts a note under section 7(3) referring to the resources Acts for additional requirements if resource interests under that Act are to be wholly or partially extinguished.

Amendment of s 12 (Effect of gazette resumption notice)

Clause 6 inserts a note under section 12(5) referring to resources Acts for the effect of resumption notice on resource interests.

Amendment of s 20 (Assessment of compensation)

Clause 7 inserts a note under section 20(1) referring to resources Acts in relation the assessment of any compensation for resource interest holders.

Part 2 Amendment of Geothermal Energy Act 2010

Act Amended

Clause 8 provides that this part amends the *Geothermal Energy Act 2010*.

Insertion of new s 8A

Clause 9 inserts a new section 8A, which declares that a geothermal tenure is not personal property under the Commonwealth's *Personal Property securities Act 2009*.

Amendment of s 22 (What is an authorised activity for a geothermal tenure)

Clause 10 inserts a note under section 22 that carrying out of particular activities on particular land in the geothermal tenure's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 30 (Operation of pt 1)

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¶
Section 277F requires that the notice provided to the local government must be in the approved form and specifically cover what activity is proposed, the location of the proposed activity and when (including for how long the proposed will take place) and why the proposed activity is necessary in the URA. Undertaking authorised activities in the URA is not permitted unless written consent has been provided by the local government. Local government consent can be provided with conditions, but it can not be withdrawn.¶
¶
¶
'277G Application to Land Court¶
¶
<sp>Section 277G provides that the Land Court can consider the issue of undertaking authorised activities in the URA if a local government has not¶
¶
Page 21¶
Section Break (Next Page)
<sp>Resources Legislation (Balance, Certainty and Efficiency) Amendment Bill 2011¶
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provided consent within 40 business days. For clarity, this includes the following situations where a local government ... [35]

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to obtain consent prior to entry to land.¶
¶
¶
Amendment of s 129 (Entitlements under exploration permit)¶ ... [36]

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Clause 11 inserts a note under section 30 that carrying out of particular activities on particular land in the geothermal permit's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 39 (Deciding whether to grant geothermal permit)

Clause 12 inserts a note under section 39(2) referring to section 350C if the application relates to acquired land.

Amendment of s 74 (Operation of pt 1)

Clause 13 inserts a note under section 74 that carrying out of particular activities on particular land in the geothermal lease's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 77 (Who may apply)

Clause 14 inserts a note under section 77(1) referring to section 350C(3) for inclusion of acquired land that was previously in the relevant geothermal permit's area.

Amendment of s 80 (Deciding whether to grant geothermal lease)

Clause 15 inserts a note under section 80 referring to section 350C for inclusion of acquired land that was previously in the relevant geothermal permit's area.

Amendment of s 184 (Area of geothermal tenure)

Clause 16 inserts a note under section 184(2) and (5) referring to section 350B(3), which states that the Act applies in relation to the area of the geothermal tenure with necessary and convenient changes to allow for the exclusion of the stated land.

Amendment of s 185 (References to blocks of geothermal tenure)

Clause 17 inserts a note under section 185(2) that for the purpose of that section land in the geothermal tenure's area taken under a resumption law is taken to be same as excluded land.

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Insertion of new pt 6GA¶
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Clause 27 inserts a new part 6GA after section 78K.¶
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Part 6GA . Restricted

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Division 1 . Restricted land¶
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78KA Definitions for div 1¶
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Section 78KA provides th ... [37]

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Section 78KE provides a l ... [40]

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¶ ... [46]

Amendment of s 272 (Geothermal register)

Clause 18 amends section 272 to provide for registering acquired land in the geothermal register.

Amendment of s 290 (General conditions for renewal application)

Clause 19 inserts a note under section 290(2)(c) referring to section 350C(3) in relation to acquired land that was previously in the area of the geothermal tenure being renewed.

Amendment of s 294 (Deciding application)

Clause 20 inserts a note under section 294(2) referring to section 350C for inclusion of acquired land that was previously in the relevant geothermal permit's area.

Insertion of new ss 350A-350D

Clause 21 inserts new sections 350A to 350D.

'350A Extinguishing geothermal interests on the taking of land in a geothermal tenure's area (other than by an easement)

Section 350A outlines the process for extinguishing geothermal interests, as part of taking of the land (other than by an easement) under a resumption law.

Subsection (1) confines the application of section 350A to the taking of land. The taking of an easement is distinct from the taking of land in that the taking of an easement over land does not extinguish any interest in the land existing immediately before the easement is taken.

Subsection (2) provides that despite provisions in any other Acts, geothermal interests are not extinguished by taking of land unless provided for in the resumption notice. If geothermal interest is extinguished it is only extinguished to the extent provided for in the resumption notice.

Subsection (3) provides for the extinguishment of a geothermal interest, as provided in the resumption notice, only to the extent the relevant Minister for

the taking is satisfied the interest is incompatible with the purpose for the purpose for which land is taken.

Subsection (4), without limiting subsection (3), clarifies that a geothermal interest may be extinguished if it is necessary to extinguish all interest in the land, including native title rights and interests.

Subsection (5), to minimise the extent of any extinguishment, provides for a geothermal interest to be extinguished either wholly or partially.

Subsection (6), to minimise the extent of any extinguishment, provides the option for some or all types of geothermal interests to be extinguished in the stated land. In addition, it provides for the shape of the stated land to be described in any way.

Subsection (7) links the taking of a geothermal interest to the resumption law, with necessary and convenient changes to the taking of land for which geothermal interests are extinguished. It also clarifies that an extinguished geothermal interest is converted into a right to claim compensation under the resumption law.

Subsection (8) requires that the notice of intention to resume for the proposed taking of the land must state the extent to which the geothermal interests are proposed to be extinguished.

Subsection (9) requires the entity taking the land must give the chief executive a notice of any extinguishment of geothermal interests in order to record the extinguishment in the geothermal register and take any necessary actions as required under the *Geothermal Energy Act 2010;* following from either the termination of a geothermal tenure, extinguishment of part of a geothermal tenure or restriction on certain authorised activities under and in relation to a geothermal tenure.

Subsection (10) defines the terms *certified copy* and *relevant Minister* used in section 350A.

‘350B Effect of extinguishment of geothermal interests on the taking of land in a geothermal tenure’s area

Section 350B outlines the effect of extinguishment of geothermal interests on the taking of land (other than by an easement) in a geothermal tenure’s area.

Subsection (1) confines the application of section 350B to when, under section 350A, the resumption notice for the taking of land under a

resumption law provides for the extinguishment of geothermal interests for stated land.

Subsection (2) provides that if the resumption notice states that all geothermal interests relating to the stated land are extinguished and a geothermal interest relates only to the stated land, the interest is wholly extinguished.

Subsection (3) provides if the resumption notice states that all geothermal interests relating to the stated land are extinguished and a geothermal interest relates to the stated land and other land then the stated land is no longer the subject of the interest. In terms of a geothermal tenure, the stated land is excluded from the area of the tenure comprising the interest. Where stated land is excluded from the area of the tenure, the *Geothermal Energy Act 2010* applies with necessary and convenient changes to allow for the exclusion of the stated land, including, for example, to allow the area to include a part of a block or sub-block if that part is left after the stated land is excluded from the area.

Subsection (4) provides that if the resumption notice states that the carrying out of stated activities on the stated land by holders of stated geothermal interests is prohibited, the holder of a stated geothermal interest is not, or is no longer, authorised to carry out the stated activities on the stated land.

Subsection (5) clarifies subsections (3) and (4) does not apply in relation to a geothermal interest that comprises, or exists under or in relation to, a new or renewed geothermal tenure granted after the land is taken.

'350C Applications relating to land taken under a resumption law for which geothermal interests were extinguished

Section 350C applies to applications relating to land taken under a resumption law for which geothermal interests were extinguished.

Subsection (1) provides that the Minister may, under a grant provision, grant a new geothermal tenure for an area that includes acquired land. However, the Minister, after consulting the entity that took the land, must be satisfied the grant of the tenure is compatible with the purpose for which the land is being or is to be used.

Subsection (2) determines the priority in assessing application for geothermal tenure for an area that includes the same acquired land if there are two or more applications at any one time.

Subsection (3) provides for existing geothermal tenure holder to apply, at renewal or when applying for a higher tenure, to include acquired land that was immediately before the taking of the land in the existing tenure area. The process of granting tenure would be as if the acquired land were in the existing tenure area. However, this subsection is subject to subsection (1) and (2).

Subsection (4) removes any doubt that this section does not affect the operation of the provisions of this Act about the application for, and grant of, a new geothermal tenure other than to the extent provided for in subsections (1) to (3).

Subsection (5) defines relevant terms used in section 350C.

'350D Compensation for effect of taking of land in a geothermal tenure's area on geothermal interests

Section 350D applies in assessing compensation for the effect on geothermal interests of taking land in a geothermal tenure area.

Subsection (1) applies if land in a geothermal tenure's area is taken under a resumption law (including by taking or otherwise creating an easement).

Subsection (2) applies in assessing any compensation to be paid to the holder of a geothermal interest in relation to the taking of the land. It states that allowance cannot be made for the value of geothermal energy, or geothermal resources from which geothermal energy may be extracted, known or supposed to be on or below the surface of the land.

The Government's position is that if the resource tenure holders were permitted to claim compensation on the lost opportunity to develop the resource on or below the surface of the land then it would potentially lead to the State, local governments and other infrastructure proponents paying large compensation amounts to acquire land where there is resource tenure and identified resources (particularly production lease). This could affect the feasibility of some linear infrastructure projects, such as a railway across resource regions.

Resource tenure holders (other than production lease holders) do not have the right to develop resources on or below the surface of the land. As such, this amendment does not significantly limit rights to claim compensation. Rather, it provides clarity in assessing the compensation claim, particularly as they relate to exploration tenures.

Amendment of ch 9, pt 2 hdg (Transitional provisions)

Clause 22 renames the heading.

Insertion of new ch 9, pt 3

Clause 23 inserts a new part in chapter 9.

‘Part 3 Transitional provisions for Mines Legislation (Streamlining) Amendment Bill 2012

‘Division 1 Preliminary

‘404 Definitions for pt 3

Section 404 defines relevant terms used in part 3, chapter 9.

‘Division 2 Transitional provisions for amendments in amendment Act commencing on assent

‘405 Land in geothermal tenure’s area taken before the commencement

Section 405 applies to land in a geothermal tenure’s area taken before the commencement.

Subsections (1) and (2) provide that prior to the commencement of this section geothermal interests were not extinguished by taking of land unless the entity taking the land has taken action indicating the geothermal tenure was extinguished (wholly or partly) when the land was taken. Examples of the type of actions are outlined in subsection 1(b).

Subsection (3) provides that subsection (2) does not affect the ending of a geothermal interest (wholly or partly) in any other way. For example, if the geothermal interest holder surrendering the interest (wholly or partly) under the *Geothermal Energy Act 2010.*

'406 Land in a geothermal tenure's area for which notice of intention to resume given before the commencement

Section 406 applies to land in a geothermal tenure's area for which notice of intention to resume given before the commencement.

Subsection (1) states that this section applies if before commencement, an entity gave a notice of intention to resume for a proposed taking of land in a geothermal tenure's area under a resumption law, and at the date of commencement the land had not been taken under the resumption law.

Subjection (2) declares that if the land is taken other than by taking or otherwise creating
an easement, sections 350A to 350D apply, except that the resumption notice for the taking may provide for the extinguishment of a geothermal interest on the taking even if the notice of intention to resume does not comply with section 350A(8).

Subsection (3) declares that if the land is taken by taking or otherwise creating an easement, section 350D applies in relation to the taking.

Amendment of sch 2 (Dictionary)

Clause 24 inserts new definitions for *acquired land*, ALA, *geothermal interest*, *notice of intention to resume*, *resumption law*, *resumption notice* and *take*.

Part 3 Amendment of Greenhouse Gas Storage Act 2009

Act Amended

Clause 25 provides that this part amends the *Greenhouse Gas Storage Act 2009*.

Amendment of s 22 (What is an authorised activity for a GHG authority)

Clause 26 inserts a note under section 22 that carrying out of particular activities on particular land in the GHG authority's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 29 (Operation of pt 1)

Clause 27 inserts a note under section 29 stating that carrying out of particular activities on particular land in the GHG permit's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 40 (Deciding whether to grant GHG permit)

Clause 28 inserts a note under section 40(2) referring to section 369C if the tender relates to acquired land.

Amendment of s 44 (Area of GHG permit)

Clause 29 inserts a note under section 44(2) and (5) referring to section 369B(3) if land in the GHG permit's area is taken under a resumption law.

Amendment of s 45 (References to sub-blocks of GHG Permit

Clause 30 inserts a note under section 45(2) referring to section 369B(3) if land in the GHG permit's area is taken under a resumption law.

Amendment of s 96 (Deciding application)

Clause 31 inserts a note under section 96(2) referring to section 369C if the application relates to acquired land.

Amendment of s 97 (Provisions and term of renewed GHG permit)

Clause 32 inserts a note under section 97(3) referring to section 369C in relation to acquired land that was previously in the area of the GHG permit being renewed.

Amendment of s 109 (Operation of pt 1)

Clause 33 inserts a note under section 109 that carrying out of particular activities on particular land in the GHG lease's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 113 (Who may apply)

Clause 34 inserts a note under section 113(1) referring to section 369C(3) for inclusion of acquired land that was previously in the relevant GHG permit's area.

Amendment of s 117 (Deciding whether to grant GHG lease)

Clause 35 inserts a note under section 117(1) referring to section 369C if the application relates to acquired land that was previously in the relevant GHG permit's area.

Amendment of s 130 (Deciding whether to grant GHG lease)

Clause 36 inserts a note under section 130(2) referring to section 369C if the tender relates to acquired land.

Amendment of s 135 (Area of GHG lease)

Clause 37 inserts a note under section 135(2) and (5) referring to section 369B(3) which states that the Act applies in relation to the area of GHG authority with necessary and convenient changes to allow for the exclusion of the stated land.

Amendment of s 136 (Reference to sub-blocks of GHG lease)

Clause 38 inserts a note under section 136(2) referring to section 369B(3) which states that the Act applies in relation to the area of GHG authority with necessary and convenient changes to allow for the exclusion of the stated land.

Amendment of s 235 (Deciding application)

Clause 39 inserts a note under section 235(2) referring to section 369C if the application relates to acquired land.

Amendment of s 238 (Key authorised activities)

Clause 40 inserts a note under section 238 that carrying out of particular activities on particular land in the GHG data acquisition authority's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 339 (GHG Register)

Clause 41 amends section 339 to provide for registering of acquired land in the GHG register.

Insertion of new ss 369A-369D

Clause 42 inserts new sections 369A to 369D.

'369A Extinguishing GHG interests taking of land in a GHG tenure's areas (other than by an easement)

Section 369A outlines the process for extinguishing GHG interests, as part of taking of the land (other than by an easement) under a resumption law.

Subsection (1) confines the application of section 369A to the taking of land. The taking of an easement is distinct from the taking of land in that the taking of an easement over land does not extinguish any interest in the land existing immediately before the easement is taken.

Subsection (2) provides that despite provisions in any other Acts, GHG interests are not extinguished by taking of land unless provided for in the resumption notice. If GHG interest is extinguished it is only extinguished to the extent provided for in the resumption notice.

Subsection (3) provides for the extinguishment of a GHG interest, as provided in the resumption notice, only to the extent the relevant Minister for the taking is satisfied the interest is incompatible with the purpose for the purpose for which land is taken.

Subsection (4), without limiting subsection (3), clarifies that a GHG interest may be extinguished if it is necessary to extinguish all interest in the land, including native title rights and interests.

Subsection (5), to minimise the extent of any extinguishment, provides for a GHG interest to be extinguished either wholly or partially.

Subsection (6), to minimise the extent of any extinguishment, provides the option for some or all types of GHG interests to be extinguished in the stated land. In addition, it provides for the shape of the stated land to be described in any way.

Subsection (7) links the taking of a GHG interest to the resumption law, with necessary and convenient changes to the taking of land for which GHG interests are extinguished. It also clarifies that an extinguished GHG interest is converted into a right to claim compensation under the resumption law.

Subsection (8) requires that the notice of intention to resume for the proposed taking of the land must state the extent to which the GHG interests are proposed to be extinguished.

Subsection (9) requires the entity taking the land must give the chief executive a notice of any extinguishment of GHG interests in order to record the extinguishment in the GHG register and take any necessary actions as required under the *Greenhouse Gas Storage Act 2009;* following from either the termination of a geothermal authority, extinguishment of part of a geothermal authority or restriction on certain authorised activities under and in relation to a geothermal authority.

Subsection (10) defines the terms *certified copy* and *relevant Minister* used in section 369A.

'369B Effect of extinguishment of GHG interests on the taking of land in a GHG tenure's area

Section 369B outlines the effect of extinguishment of GHG interests on the taking of land (other than by an easement) in a GHG authority's area.

Subsection (1) confines the application of section 369B to when, under section 369A, the resumption notice for the taking of land under a resumption law provides for the extinguishment of GHG interests for stated land.

Subsection (2) provides that if the resumption notice states that all GHG interests relating to the stated land are extinguished and a GHG interest relates only to the stated land, the interest is wholly extinguished.

Subsection (3) provides if the resumption notice states that all GHG interests relating to the stated land are extinguished and a GHG interest relates to the stated land and other land then the stated land is no longer the subject of the interest. In terms of a GHG authority, the stated land is excluded from the area of the tenure comprising the interest. Where stated land is excluded from the area of the tenure, the *Greenhouse Gas Storage Act 2009* applies with necessary and convenient changes to allow for the exclusion of the stated land, including, for example, to allow the area to include a part of a block or sub-block if that part is left after the stated land is excluded from the area.

Subsection (4) provides that if the resumption notice states that the carrying out of stated activities on the stated land by holders of stated GHG interests is prohibited, the holder of a stated GHG interest is not, or is no longer, authorised to carry out the stated activities on the stated land.

Subsection (5) clarifies subsections (3) and (4) does not apply in relation to a GHG interest that comprises, or exists under or in relation to, a new or renewed GHG authority granted after the land is taken.

'369C Applications relating to land taken under resumption law for which GHG interests were extinguished

Section 369C Section 369C applies to applications relating to land taken under a resumption law for which GHG interests were extinguished.

Subsection (1) provides that the Minister may, under a grant provision, grant a new GHG authority for an area that includes acquired land. However, the Minister, after consulting the entity that took the land, must be satisfied the grant of the authority is compatible with the purpose for which the land is being or is to be used.

Subsection (2) determines the priority in assessing application for GHG authority for an area that includes the same acquired land if there are two or more applications at any one time.

Subsection (3) provides for existing GHG authority holder to apply, at renewal or when applying for a higher tenure, to include acquired land that

was immediately before the taking of the land in the existing tenure area. The process of granting tenure would be as if the acquired land were in the existing tenure area. However, this subsection is subject to subsection (1) and (2).

Subsection (4) removes any doubt that this section does not affect the operation of the provisions of this Act about the application for, and grant of, a new GHG authority other than to the extent provided for in subsections (1) to (3).

Subsection (5) defines relevant terms used in section 369C.

'369D Compensation for effect of taking of land in a GHG tenure's area on GHG interests

Section 369D applies in assessing the compensation for the effect on GHG interests of taking land in a GHG authority area.

Subsection (1) applies if land in a GHG authority's area is taken under a resumption law (including by taking or otherwise creating an easement).

Subsection (2) applies in assessing any compensation to be paid to the holder of a GHG interest in relation to the taking of the land. It states that allowance cannot be made for the value of GHG energy, or GHG resources from which GHG energy may be extracted, known or supposed to be on or below the surface of the land.

The Government's position is that if the resource tenure holders were permitted to claim compensation on the lost opportunity to develop the resource on or below the surface of the land then it would potentially lead to the State, local governments and other infrastructure proponents paying large compensation amounts to acquire land where there is resource tenure and identified resources (particularly production lease). This could affect the feasibility of some linear infrastructure projects, such as a railway across resource regions.

Resource tenure holders (other than production lease holders) do not have the right to develop resources on or below the surface of the land. As such, this amendment does not significantly limit their rights to claim compensation. Rather, it provides clarity in assessing the compensation claim, particularly as they relate to exploration tenures.

Insertion of new ch 8, pt 3

Clause 43 inserts a new part in chapter 8.

‘Part 3 Transitional provisions for Mines Legislation (Streamlining) Amendment Act 2012

‘Division 1 Preliminary

‘441 Definitions for pt 3

Section 441 defines some of the terms used in part 3, chapter 8 including *amending act*, *commencement*, and *former*.

Division 2 Transitional provisions for amendments in amending Act commencing on assent

‘442 Land in GHG tenure’s area taken before the commencement

Section 442 applies to land in GHG authority’s area taken before the commencement.

The combination of subsections (1) and (2) declare that resource interests were not extinguished by taking of land prior to the commencement of this section, unless the entity taking the land has taken action indicating the GHG authority was extinguished (wholly or partly) when the land was taken.

Subsection (3) does not affect the ending of a GHG interest (wholly or partly) in any other way. For example, if the GHG interest holder surrendering the interest (wholly or partly) under this *Greenhouse Gas Storage Act 2009*.

‘443 Land in a GHG authority’s area for which notice of intention to resume given before the commencement

Section 443 applies to land in a GHG authority’s area for which notice of

intention to resume given before the commencement.

Subsection (1) states that this section applies if before commencement, an entity gave a notice of intention to resume for a proposed taking of land in a GHG authority's area under a resumption law, and at the date of commencement the land had not been taken under the resumption law.

Subjection (2) declares that if the land is taken other than by taking or otherwise creating an easement, sections 369A to 369D apply, except that the resumption notice for the taking may provide for the extinguishment of a geothermal interest on the taking even if the notice of intention to resume does not comply with section 369A(8).

Subsection (3) declares that if the land is taken by taking or otherwise creating an easement, section 369D applies in relation to the taking.

Amendment of sch 2 (Dictionary)

Clause 44 inserts new definitions for *acquired land*, *ALA*, *GHG interest*, *notice of intention to resume*, *resumption law*, *resumption notice* and *take*.

Part 5 Amendment of Land Act 1994

Act amended

Clause 45 provides that this part amends the *Land Act 1994*.

Amendment of s 230 (Effect of resumption of possession)

Clause 46 inserts a note under section 230(1) referring to the resources Acts for the effect of resumption notice on resource interests.

Part 4 Amendment of Mineral Resources Act 1989

Act amended

Clause 47 provides that this part amends the *Mineral Resources Act 1989*.

Insertion of new ss 10AAA-10AD

Clause 48 inserts new sections 10AAA to 10AAD.

'10AAA Extinguishing mining tenement interests on the taking of land in a mining tenement's area (other than by an easement)

Section 10AAA outlines the process for extinguishing mining tenement interests, as part of taking of the land (other than by an easement) under a resumption law.

Subsection (1) confines the application of section 10AAA to the taking of land. The taking of an easement is distinct from the taking of land in that the taking of an easement over land does not extinguish any interest in the land existing immediately before the easement is taken.

Subsection (2) provides that despite provisions in any other Acts, mining tenement interests are not extinguished by taking of land unless provided for in the resumption notice. If mining tenement interest is extinguished it is only extinguished to the extent provided for in the resumption notice.

Subsection (3) provides for the extinguishment of a mining tenement interest, as provided in the resumption notice, only to the extent the relevant Minister for the taking is satisfied the interest is incompatible with the purpose for the purpose for which land is taken.

Subsection (4), without limiting subsection (3), clarifies that a mining tenement interest may be extinguished if it is necessary to extinguish all interest in the land, including native title rights and interests.

Subsection (5), to minimise the extent of any extinguishment, provides for a mining tenement interest to be extinguished either wholly or partially.

Subsection (6), to minimise the extent of any extinguishment, provides the option for some or all types of mining tenement interests to be extinguished in the stated land. In addition, it provides for the shape of the stated land to be described in any way.

Subsection (7) links the taking of a mining tenement interest to a resumption law, with necessary and convenient changes to the taking of land for which mining tenements are extinguished. It also clarifies that an extinguished

mining tenement interest is converted into a right to claim compensation under the resumption law.

Subsection (8) requires that the notice of intention to resume for the proposed taking of the land must state the extent to which the mining tenement interests are proposed to be extinguished.

Subsection (9) requires the entity taking the land must give the chief executive a notice of any extinguishment of mining tenement interests in order to record the extinguishment in the register and take any necessary actions as required under the *Mineral Resources Act 1989;* following from either the termination of a mining tenement, extinguishment of part of a mining tenement or restriction on certain authorised activities under and in relation to a mining tenement.

Subsection (10) defines the terms *certified copy* and *relevant Minister* used in section 10AAA.

'10AAB Effect of extinguishment of mining tenement interests on the taking of land in a mining tenement's area

Section 10AAB outlines the effect of extinguishment of mining tenement interests on the taking of land (other than by an easement) in a mining tenement's area.

Subsection (1) confines the application of section 10AAB to when, under section 10AAA, the resumption notice for the taking of land under a resumption law provides for the extinguishment of mining tenement interests for stated land.

Subsection (2) provides that if the resumption notice states that all mining tenement interests relating to the stated land are extinguished and a mining tenement interest relates only to the stated land, the interest is wholly extinguished.

Subsection (3) provides if the resumption notice states that all mining tenement interests relating to the stated land are extinguished and a mining tenement interest relates to the stated land and other land then the stated land is no longer the subject of the interest. In terms of a mining tenement, the stated land is excluded from the area of the tenement comprising the interest. Where stated land is excluded from the area of the tenement, the *Mineral Resources Act 1989* applies with necessary and convenient changes to allow for the exclusion of the stated land, including, for example, to allow the area

to include a part of a block or sub-block if that part is left after the stated land is excluded from the area.

Subsection (4) provides that if the resumption notice states that the carrying out of stated activities on the stated land by holders of stated mining tenement interests is prohibited, the holder of a stated mining tenement interest is not, or is no longer, authorised to carry out the stated activities on the stated land.

Subsection (5) clarifies subsections (3) and (4) does not apply in relation to a mining tenement interest that comprises, or exists under or in relation to, a new or renewed mining tenement granted after the land is taken.

'10AAC Applications relating to land taken under a resumption law for which mining tenement interests were extinguished

Section 10AAC applies to applications relating to land taken under a resumption law for which mining tenement interests were extinguished.

Subsection (1) provides that the decision-maker may, under a grant provision, grant a new mining tenement for an area that includes acquired land. However, the Minister, after consulting the entity that took the land, must be satisfied the grant of the tenement is compatible with the purpose for which the land is or is to be being used.

Subsection (2) determines the priority in assessing applications for mining tenement for an area that includes the same acquired land if there are two or more applications at any one time.

Subsection (3) provides for existing mining tenement holder to apply, at renewal or when applying for a higher tenure, to include acquired land that was immediately before the taking of the land in the existing tenure area. The process of granting tenement would be as if the acquired land were in the existing tenure area. However, this subsection is subject to subsections (1) and (2).

Subsection (4) removes any doubt that this section does not affect the operation of the provisions of this Act about the application for, and grant of, a new mining tenement other than to the extent provided for in subsections (1) to (3).

Subsection (5) defines relevant terms used in section 10AAC.

‘10AAD Compensation for effect of taking of land in a mining tenement’s area on mining tenement interests

Section 10AAD applies in assessing the compensation for the effect on mining tenement interests of taking land in a mining tenement area.

Subsection (1) applies if land in a mining tenement area is taken under a resumption law (including by taking or otherwise creating an easement).

Subsection (2) applies in assessing any compensation to be paid to the holder of a mining tenement interest in relation to the taking of the land. It states that allowance cannot be made for the value of mineral known or supposed to be on or below the surface of the land.

The Government’s position is that if the resource tenure holders were permitted to claim compensation on the lost opportunity to develop the resource on or below the surface of the land then it would potentially lead to the State, local governments and other infrastructure proponents paying large compensation amounts to acquire land where there is resource tenure and identified resources (particularly production lease). This could affect the feasibility of some linear infrastructure projects, such as a railway across resource regions.

Resource tenure holders (other than production lease holders) do not have the right to develop resources on or below the surface of the land. As such, this amendment does not significantly limit their rights to claim compensation. Rather, it provides clarity in assessing the compensation claim, particularly as they relate to exploration tenures.

Amendment of s 24 (Grant of prospecting permit)

Clause 49 inserts a note under section 24(1) referring to section 10AAC if the application relates to acquired land.

Amendment of s 48 (Land subject to mining claim)

Clause 50 inserts a note under section 48(1) referring to section 10AAC(3) for inclusion of acquired land that was previously in the area of prospecting permit or prospecting permits. It also inserts a note under section 48(2) referring to the exception provided under section 10AAB(3).

Amendment of s 74 (Grant of mining claim to which no objection is lodged)

Clause 51 inserts a note under section 74(2) referring to section 10AAC if the application relates to acquired land.

Amendment of s 80 (Grant of mining claim at instruction of Land Court or with consent of Governor in Council)

Clause 52 inserts a note under section 80(1) referring to section 10AAC if the application relates to acquired land.

Amendment of s 93 (Renewal of mining claim)

Clause 53 inserts a note under section 93(4) referring to section 10AAC if the application relates to acquired land.

Amendment of s 137 (Grant of exploration permit)

Clause 54 inserts a note under section 137(3) referring to section 10AAC if the application relates to acquired land.

Amendment of s 139 (Periodic reduction in land covered by exploration permit)

Clause 55 inserts a note under section 139(2) referring to the exception provided under section 10AAB(3).

Amendment of s 140 (Voluntary reduction in land covered by exploration permit)

Clause 56 inserts a note under section 140(2) referring to the exception provided under section 10AAB(3).

Amendment of s 186 (Minister may grant or refuse application)

Clause 57 inserts a note under section 186(3) referring to section 10AAC if the application relates to acquired land.

Amendment of s 197A (Decision on application)

Clause 58 inserts a note under section 197A(1) referring to section 10AAC if the application relates to acquired land.

Amendment of s 232 (Land subject to mining lease)

Clause 59 inserts two notes under section 232(1) referring to section 10AAB(3) for land that is not contiguous and 10AAC(3) for inclusion of acquired land that was previously in the relevant mining tenement's area.

Amendment of s 271 (Minister to consider application for grant of mining lease)

Clause 60 inserts a note under section 271(3) referring to section 10AAC if the application relates to acquired land.

Amendment of s 286A (Decision on application)

Clause 61 inserts a note under section 286A(1) referring to section 10AAC if the application relates to acquired land.

Amendment of s 387 (Registers to be maintained)

Clause 62 amends section 387 to provide for registering acquired land in the register.

Insertion of new pt 19, div 16

Clause 63 inserts a new division in part 19.

'Division 16 Transitional provisions for Mines Legislation (Streamlining) Amendment Act 2012 – amendments commencing on assent

'788 Definitions for div 16

Section 788 defines relevant terms used in division 16, part 19 including *amending act*, and *commencement*.

‘789 Particular land in mining tenement’s area taken before the commencement

Section 789 applies to land in a mining tenement’s area taken before the commencement.

Subsections (1) and (3) provide that prior to the commencement of this section mining tenement interests were not extinguished by taking of land unless the entity taking the land has taken action indicating the mining tenement was extinguished (wholly or partly) when the land was taken. Examples of the type of actions are outlined in subsection 1(b).

Subjection (2) provides that this section does not apply in relation to the taking of land in the area of a mining lease for a transport infrastructure purpose.

Subsection (4) provides that subsection (2) does not affect the ending of a mining tenement interest (wholly or partly) in any other way. For example, if the mining tenement interest holder surrendering the interest (wholly or partly) under the *Mineral Resources Act 1989*.

Subsection (5) defines *transport infrastructure purpose*.

‘790 Land in a mining tenement’s area for which notice of intention to resume given before the commencement

Section 790 applies to land in a mining tenement’s area for which notice of intention to resume given before the commencement.

Subsection (1) states that this section applies if before commencement, an entity gave a notice of intention to resume for a proposed taking of land in a mining tenement’s area under a resumption law, and at the date of commencement the land had not been taken under the resumption law.

Subjection (2) declares that if the land is taken other than by taking or otherwise creating
an easement, sections 10AAA to 10AAD apply, except that the resumption notice for the taking may provide for the extinguishment of a mining tenement interest on the taking even if the notice of intention to resume does not comply with section 10AAA(8).

Subsection (3) declares that if the land is taken by taking or otherwise creating an easement, section 10AAD applies in relation to the taking.

Amendment of sch 2 (Dictionary)

Clause 64 inserts new definitions for *acquired land*, *mining tenement interest*, *notice of intention to resume*, *resumption law*, *resumption notice* and *take*.

Part 6 Petroleum Act 1923

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Act amended

Clause 65 provides that this part amends the *Petroleum Act 1923*.

Amendment of s 2 (Definitions)

Clause 66 amends the dictionary in section 2 to provide new definitions including. *1923 petroleum Act interest*, *acquired land*, *ALA*, *notice of intention to resume*, *resumption law*, *resumption notice* and *take*.

Amendment of s 18 (Authority to prospect)

Clause 67 inserts a note under section 18(4) that the carrying out of particular activities on particular land in an authority to prospect's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 20 (Area of authority to prospect reduced on grant of lease)

Clause 68 inserts a note under section 20(2) referring to section 124B in relation to the exclusion of land from an authority to prospect's area following the taking of the land under a resumption law.

Amendments of s 40 (Lease to holder of authority to prospect)

Clause 69 amends section 40 to ensure that ensure that approval mention in subsection (6) is not required if the land in the authority to prospect's area is not contiguous only because a of the exclusion of acquired land from the area.

Amendment of s 44 (Form etc. of lease)

Clause 70 inserts a note under section 44(1) that carrying out of particular activities on particular land in a lease's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 75D (General restriction on carrying out authorised activities)

Clause 71 inserts a note under section 75D that carrying out of particular activities on particular land in a 1923 Act petroleum tenure's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 80A (Petroleum register)

Clause 72 amends section 80A(1) to provide for registering acquired land in the petroleum register.

Insertion of new ss 124A-124C

Clause 73 inserts new sections 124A to 124D.

'124A Extinguishing 1923 Act petroleum interests on the taking of land in a 1923 Act petroleum tenure's area (other than by an easement)

Section 124A outlines the process for extinguishing 1923 Act petroleum interests, as part of taking of the land (other than by an easement) under a resumption law.

Subsection (1) limits the application of section 124A to the taking of land. The taking of an easement is distinct from the taking of land in that the taking of an easement over land does not extinguish any interest in the land existing immediately before the easement is taken.

Subsection (2) provides that despite provisions in any other Acts, 1923 Act petroleum interests are not extinguished by taking of land unless provided for in the resumption notice. If 1923 Act petroleum interest is extinguished it is only extinguished to the extent provided for in the resumption notice.

Subsection (3) provides for the extinguishment of a 1923 Act petroleum interest, as provided in the resumption notice, only to the extent the relevant Minister for the taking is satisfied the interest is incompatible with the purpose for the purpose for which land is taken.

Subsection (4), without limiting subsection (3), clarifies that a 1923 Act petroleum interest may be extinguished if it is necessary to extinguish all interest to the land, including native title rights and interests.

Subsection (5), to minimise the extent of any extinguishment, provides for a1923 Act petroleum interest to be extinguished either wholly or partially.

Subsection (6), to minimise the extent of any extinguishment, provides the option for some or all types of 1923 Act petroleum interests to be extinguished in the stated land. In addition, it provides for the shape of the stated land to be described in any way.

Subsection (7) links the taking of a 1923 Act petroleum interest to the resumption law, with necessary and convenient changes to the taking of land for which petroleum interests are extinguished. It also clarifies that an extinguished 1923 Act petroleum interest is converted into a right to claim compensation under the resumption law

Subsection (8) requires that the notice of intention to resume for the proposed taking of the land must state the extent to which the 1923 Act petroleum interests are proposed to be extinguished.

Subsection (9) requires the entity taking the land must give the chief executive a notice of any extinguishment of 1923 Act petroleum interests in order to record the extinguishment in the petroleum register and take any necessary actions as required under the *Petroleum Act 1923;* following from either the termination of a 1923 Act petroleum tenures area, extinguishment of part of a 1923 Act petroleum tenures or restriction on certain authorised activities under and in relation to a petroleum tenures.

Subsection (10) defines the terms *certified copy* and *relevant Minister* used in section 124A.

‘124B Effect of extinguishment of 1923 Act petroleum interests on the taking of land in a 1923 Act petroleum tenure’s area

Section 124B outlines the effect of extinguishment of 1923 Act petroleum interests on the taking of land (other than by an easement) in a 1923 Act petroleum tenure’s area.

Subsection (1) limits the application of section 124B to when, under section 124A, the resumption notice for the taking of land under a resumption law

provides for the extinguishment of 1923 Act petroleum interests for stated land.

Subsection (2) provides that if the resumption notice states that all 1923 Act petroleum interests relating to the stated land are extinguished and a 1923 Act petroleum interest relates only to the stated land, the interest is wholly extinguished.

Subsection (3) provides if the resumption notice states that all1923 Act petroleum interests relating to the stated land are extinguished and a 1923 Act petroleum interest relates to the stated land and other land then the stated land is no longer the subject of the interest. In terms of a 1923 Act petroleum tenure, the stated land is excluded from the area of the tenure comprising the interest. Where stated land is excluded from the area of the tenure, the *Petroleum Act 1923* applies with necessary and convenient changes to allow for the exclusion of the stated land, including, for example, to allow the area to include a part of a block or sub-block if that part is left after the stated land is excluded from the area.

Subsection (4) provides that if the resumption notice states that the carrying out of stated activities on the stated land by holders of stated 1923 Act petroleum interests is prohibited, the holder of a stated 1923 Act petroleum interest is not, or is no longer, authorised to carry out the stated activities on the stated land.

Subsection (5) clarifies subsection (4) do not apply in relation to a 1923 Act petroleum interest that comprises, or exists under or in relation to, a new or renewed 1923 Act petroleum tenure granted after the land is taken.

‘124C Compensation for effect of taking of land in a 1923 Act petroleum tenure’s area on 1923 Act petroleum interests

Section 124D applies in assessing the compensation for the effect on 1923 Act petroleum interests of taking land in a petroleum tenure area.

Subsection (1) applies if land in a 1923 Act petroleum tenure’s area is taken under a resumption law (including by taking or otherwise creating an easement).

Subsection (2) applies in assessing any compensation to be paid to the holder of a1923 Act petroleum interest in relation to the taking of the land. It states that allowance cannot be made for the value of petroleum known or supposed to be on or below the surface of the land.

The Government's position is that if the resource tenure holders were permitted to claim compensation on the lost opportunity to develop the resource on or below the surface of the land then it would potentially lead to the State, local governments and other infrastructure proponents paying large compensation amounts to acquire land where there is resource tenure and identified resources (particularly production lease). This could affect the feasibility of some linear infrastructure projects, such as a railway across resource regions.

Resource tenure holders (other than production lease holders) do not have the right to develop resources on or below the surface of the land. As such, this amendment does not significantly limit rights to claim compensation. Rather, it provides clarity in assessing the compensation claim, particularly as they relate to exploration tenures.

Insertion of new pt 14

Clause 74 inserts a new part in the *Petroleum Act 1923*

'Part 14 Transitional provisions for Mines Legislation (Streamlining) Amendment Act 2012

'Division 1 Preliminary

'190 Definitions for pt 14

Section 190 defines relevant terms used in part 14 including *amending act*, *commencement* and *former*.

'Division 2 Transitional provisions for amendments in amending Act commencing on assent

'191 Land in area of 1923 Act petroleum tenure taken before the commencement

Section 191 applies to land in a 1923 Act petroleum tenure's area taken before the commencement.

Subsections (1) and (2) provide that prior to the commencement of this section 1923 Act petroleum interests were not extinguished by taking of land unless the entity taking the land has taken action indicating the petroleum tenure was extinguished (wholly or partly) when the land was taken. Examples of the type of actions are outlined in subsection 1(b).

Subsection (3) provides that subsection (2) does not affect the ending of a1923 Act petroleum interest (wholly or partly) in any other way. For example, if the1923 Act petroleum interest holder surrendering the interest (wholly or partly) under the *Petroleum Act 1923*.

192 Land in a 1923 Act petroleum tenure's area for which notice of intention to resume given before the commencement

Section 192 applies to land in a 1923 Act petroleum tenure's area for which notice of intention to resume given before the commencement.

Subsection (1) states that this section applies if before commencement, an entity gave a notice of intention to resume for a proposed taking of land in a 1923 Act petroleum tenure's area under a resumption law, and at the date of commencement the land had not been taken under the resumption law.

Subjection (2) declares that if the land is taken other than by taking or otherwise creating an easement, sections 124A to 124C apply, except that the resumption notice for the taking may provide for the extinguishment of a 1923 Act petroleum interest on the taking even if the notice of intention to resume does not comply with section 124A(8).

Subsection (3) declares that if the land is taken by taking or otherwise creating an easement, section 124C applies in relation to the taking.

Part 7 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Act Amended

Clause 75 provides that this part amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Insertion of new s 15A

Clause 76 inserts section 15A.

'15A What is produced water

Section 15A provides that produced water is underground water which is extracted through the process of exploring for or producing coal seam gas under a petroleum authority and associated water extracted in connection with an authorised activity under a petroleum authority. Importantly, this section also includes coal seam gas water in its natural state, coal seam gas water which has been treated, and the concentrated saline waste water or brine produced as a consequence of the water treatment.

Amendment of s 16 (What is a pipeline)

Clause 77 amends section 16 to include produced water in the list of substances which can be transported under a pipeline.

Amendment of s 22 (What is an authorised activity)

Clause 78 inserts a note under section 22(1) that carrying out of particular activities on particular land in area petroleum authority's area may not be authorised following the taking of the land under a resumption law.

Insertion of new ss 30AA-30D

Clause 79 inserts new sections 30AA to 30D

'30AA Extinguishing petroleum interest on taking of land in petroleum tenure's area (other than by an easement)

Section 30AA outlines the process for extinguishing petroleum interests, as part of taking of the land (other than by an easement) under a resumption law.

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Subsection (1) limits the application of section 30AA to the taking of land. The taking of an easement is distinct from the taking of land in that the taking of an easement over land does not extinguish any interest in the land existing immediately before the easement is taken.

Subsection (2) provides that despite provisions in any other Acts, petroleum interests are not extinguished by taking of land unless provided for in the resumption notice. If petroleum interest is extinguished it is only extinguished to the extent provided for in the resumption notice.

Subsection (3) provides for the extinguishment of a petroleum interest, as provided in the resumption notice, only to the extent the relevant Minister for the taking is satisfied the interest is incompatible with the purpose for the purpose for which land is taken.

Subsection (4), without limiting subsection (3), clarifies that a petroleum interest may be extinguished if it is necessary to extinguish all interest in the land, including native title rights and interests.

Subsection (5), to minimise the extent of any extinguishment, provides for a petroleum interest to be extinguished either wholly or partially.

Subsection (6), to minimise the extent of any extinguishment, provides the option for some or all types of petroleum interests to be extinguished in the stated land. In addition, it provides for the shape of the stated land to be described in any way.

Subsection (7) links the taking of a petroleum interest to the resumption law, with necessary and convenient changes to the taking of land for which petroleum interests are extinguished. It also clarifies that an extinguished petroleum interest is converted into a right to claim compensation under the resumption law

Subsection (8) requires that the notice of intention to resume for the proposed taking of the land must state the extent to which the petroleum interests are proposed to be extinguished.

Subsection (9) requires the entity taking the land must give the chief executive a notice of any extinguishment of petroleum interests in order to record the extinguishment in the petroleum register and take any necessary actions as required under the *Petroleum and Gas (Production and Safety) Act 2004;* following from either the termination of a petroleum authority area, extinguishment of part of a petroleum authority or restriction on certain authorised activities under and in relation to a petroleum authority.

Subsection (10) defines the terms *certified copy* and *relevant Minister* used in section 30AA.

'30AB Effect of extinguishment of petroleum interests on the taking of land in a petroleum tenure's area

Section 30AB outlines the effect of extinguishment of petroleum interests on the taking of land (other than by an easement) in a petroleum authority's area.

Subsection (1) limits the application of section 30AB to when, under section 30AA, the resumption notice for the taking of land under a resumption law provides for the extinguishment of petroleum interests for stated land.

Subsection (2) provides that if the resumption notice states that all petroleum interests relating to the stated land are extinguished and a petroleum interest relates only to the stated land, the interest is wholly extinguished.

Subsection (3) provides if the resumption notice states that all petroleum interests relating to the stated land are extinguished and a petroleum interest relates to the stated land and other land then the stated land is no longer the subject of the interest. In terms of a petroleum authority, the stated land is excluded from the area of the tenure comprising the interest. Where stated land is excluded from the area of the tenure, the *Petroleum and Gas (Production and Safety) Act 2004* applies with necessary and convenient changes to allow for the exclusion of the stated land, including, for example, to allow the area to include a part of a block or sub-block if that part is left after the stated land is excluded from the area.

Subsection (4) provides that if the resumption notice states that the carrying out of stated activities on the stated land by holders of stated petroleum interests is prohibited, the holder of a stated petroleum interest is not, or is no longer, authorised to carry out the stated activities on the stated land.

Subsection (5) clarifies subsections (3) and (4) does not apply in relation to a petroleum interest that comprises, or exists under or in relation to, a new or renewed petroleum tenure granted after the land is taken.

'30AC Applications relating to land taken under a resumption law for which petroleum interests

Section 30AC applies to applications relating to land taken under a resumption law for which petroleum interests were extinguished.

Subsection (1) provides that the Minister may, under a grant provision, grant a new petroleum authority for an area that includes acquired land. However, the Minister, after consulting the entity that took the land, must be satisfied the grant of the authority is compatible with the purpose for which the land is being or is to be used.

Subsection (2) determines the priority in assessing application for petroleum authority for an area that includes the same acquired land if there are two or more applications at any one time.

Subsection (3) provides for existing petroleum authority holder to apply, at renewal or when applying for a higher tenure, to include acquired land that was immediately before the taking of the land in the existing authority area. The process of granting authority would be as if the acquired land were in the existing tenure area. However, this subsection is subject to subsection (1) and (2).

Subsection (4) removes any doubt that this section does not affect the operation of the provisions of this Act about the application for, and grant of, a new petroleum authority other than to the extent provided for in subsections (1) to (3).

Subsection (5) defines relevant terms used in section 30AC.

‘30AD Compensation for effect taking of land in petroleum tenure’s area on petroleum interests

Section 30AD applies in assessing the compensation for the effect on petroleum interests of taking land in a petroleum tenure area.

Subsection (1) applies if land in a petroleum authority’s area is taken under a resumption law (including by taking or otherwise creating an easement).

Subsection (2) applies in assessing any compensation to be paid to the holder of a petroleum interest in relation to the taking of the land. It states that allowance cannot be made for the value of petroleum known or supposed to be on or below the surface of the land.

The Government’s position is that if the resource tenure holders were permitted to claim compensation on the lost opportunity to develop the resource on or below the surface of the land then it would potentially lead to

the State, local governments and other infrastructure proponents paying large compensation amounts to acquire land where there is resource tenure and identified resources (particularly production lease). This could affect the feasibility of some linear infrastructure projects, such as a railway across resource regions.

Resource tenure holders (other than production lease holders) do not have the right to develop resources on or below the surface of the land. As such, this amendment does not significantly limit their rights to claim compensation. Rather, it provides clarity in assessing the compensation claim, particularly as they relate to exploration tenures.

Amendment of s 31 (Operation of div 1)

Clause 80 inserts a note under section 31(1) that carrying out of particular activities on particular land in an authority to prospect's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 33 (Incidental activities)

Clause 81 amends section 33(1) to provide for incidental activities across adjoining petroleum tenures.

Amendment of s 41 (Deciding whether to grant authority to prospect)

Clause 82 inserts a note under section 41(2) referring to section 30AC if the tender relates to acquired land.

Amendment of s 84 (Deciding application)

Clause 83 inserts a note under section 84(2) referring to section 30AC if the application relates to acquired land.

Amendment of s 85 (Provisions and term of renewed authority)

Clause 84 inserts a note under section 85(3) referring to section 30AC(3) in relation to acquired land that was previously in the area of the authority to prospect's area.

Amendment of s 98 (Area of authority to prospect)

Clause 85 inserts a note under section 98(2) and (6) that for the purpose of that section land in the geothermal tenure's area taken under a resumption law is taken to be same as excluded land.

Amendment of s 108 (Operation of pt 1)

Clause 86 inserts a note under section 108(1) that carrying out of particular activities on particular land in a petroleum lease's may not be authorised following the taking of the land under a resumption law.

Replacement of s 110 (Petroleum pipeline and water pipeline construction and operation)

'110 Construction and operation of petroleum pipelines

Clause 87 omits section 110 and inserts new section 110 to remove coordination arrangements to authorise water pipelines on other petroleum leases. This provision is no longer required as the same authority is provided under the amended section 112 and under the expanded pipeline licence instrument. There is a transitional arrangement in place for any existing coordination arrangements for water pipelines, refer proposed section 958.

Insertion of new s 111A

Clause 88 inserts new section 111A after section 111

'111A Processing produced water

Section 111A provides for the construction and operation of facilities for the treatment, storage, or processing of produced water on land covered by a petroleum lease. These facilities which will be operated by the petroleum lease holder are able to be used to treat, store or process produced water produced on the petroleum lease, or on another petroleum lease either by the petroleum lease holder or another petroleum lease holder.

These facilities are only authorised if they are constructed on land which the petroleum lease holder owns, within the petroleum lease.

Amendment of s 112 (Incidental activities)

Deleted: Clause 34 omits section 98(6) and replaces it with new 98(6) which sets out that the area within a residual block does not include land that is within an URA

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Insertion of new ch 2, ... [83]

Clause 89 amends section 112(1) to provide for incidental activities across adjoining petroleum tenures.

Amendment of s 117 (Who may apply)

Clause 90 inserts a note under section 117(1) referring to section 30AC(3) for inclusion of acquired land that was previously in the authority to prospect's area or 1923 Act ATP's area.

Amendment of s 120 (Right to grant if requirements for grant met)

Clause 91 inserts a note under section 120 referring to section 30AC if the application relates to acquired land that was previously in the relevant authority to prospect's area or 1923 Act ATP's.

Amendment of s 132 (Deciding whether to grant petroleum lease)

Clause 92 inserts a note under section 132(2) referring to section 30AC if the tender relates to acquired land.

Amendment of s 164 (Deciding application)

Clause 93 inserts a note under section 164(2) referring to section 30AC if the application relates to acquired land.

Amendment of s 165 (Provision and term of renewed lease)

Clause 94 inserts a note under section 165(3) referring to section 30AC(3) in relation to acquired land that was previously in the area of the petroleum lease being renewed.

Amendment of s 168 (Area of petroleum lease)

Clause 95 inserts a note under section 168(2) and (7) referring to section 30AB(3) in relation to land in a petroleum lease's area that is taken under a resumption law.

Amendment of s 178 (Deciding application for data

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'175AA When a holder

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Deleted: Section 175AA provides that the holder of a petroleum lease can apply for approval to amend the production commencement of a petroleum lease. However, the holder may only make the application if the holder has a relevant arrangement in place; production under the lease is set to commencement more the two years after the day the lease takes effect; and the application is made no later than one year before the day by which petroleum production under the lease is set to start. . These restrictions prevent last minute applications by a lease holder and ensure that only lease holders who had a relevant arrangement in place at the time the lease was granted can apply to amend the production commencement day

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¶
<sp>Section 175AB outlines the requirement for making an application to amend the production commencement day, including that the application is made to the Minister and that it states the grounds by which an amendment¶
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is required. . The applicant will also be required to provide material detailing . the . . petroleum . production . required . under . all . relevant arrangements relating to the lease as well as material detailing the reserves, resources and reservoir characteristics of all petroleum authorities required to supply production under the relevant arrangement.¶
¶
... [84]

acquisition authority)

Clause 96 inserts a note under section 178(2) referring to section 30AC if the application relates to acquired land.

Amendment of s 180 (Key authorised activities)

Clause 97 inserts a note under section 180(3) that carrying out of particular activities on particular land in the data acquisition authority's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 192 (Deciding application for water monitoring authority)

Clause 98 inserts a note under section 192(2) referring to section 30AC if the application relates to acquired land.

Amendment of s 193 (Operation of div 2)

Clause 99 inserts a note under section 193(1) that carrying out of particular activities on particular land in a water monitoring authority's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 394 (Surveying activities)

Clause 100 inserts a note under section 394(2) that carrying out of particular activities on particular land in a survey licence's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 396 (Deciding application)

Clause 101 inserts a note under section 396(2) referring to section 30AC if the application relates to acquired land.

Amendment of s 398 (Operation of div 1)

Clause 102 inserts a note under section 398(1) that carrying out of particular activities on particular land in a pipeline licences' area may not be authorised following the taking of the land under a resumption law.

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Deleted: Section 175AC provides that the Minister must decided to approve or refuse the application. In making this decision, the Minister must consider: whether the holder has substantially complied with the lease; whether petroleum production under the lease will be optimised in the best interests of the State; and the public interest. If the Minister decides to approve the application, the Minister must substitute a new production commencement day for the lease

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'175AD Information notice about decision¶
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Section 175AD which provides that, if the Minister decides to refuse the application, an information notice must be provided to the applicant.¶
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399A

Clause 103 inserts section 399A in Chapter 4, part 2, division 1, subdivision 1.

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'399A Written permission binds owner's successors and assigns

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Section 399A to provide that an owner's written permission to construct and operate a pipeline constructed and operated under a pipeline licence will survive a land transaction. As such, future owners will be bound by the consent provided by the initial owner's permission, including the terms and conditions of the permission. The holder of the pipeline licence or their assigns benefits from this survivorship of owner's permission. This arrangement provides that 'pipeline land' under the Act that is achieved through a written permission, can be maintained beyond a land transaction, for a certain period of time.

This provision only applies until the easement is registered or up until 9 months after the pipeline licence holder provides the notice of completion of the pipeline under section 420 of the Act. The survivorship of the written permission is not intended to replace a registered easement; hence the arrangement expires within a responsible period of time.

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This section does not affect the survivorship of a conduct and compensation agreement under section 537E (1).

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Amendment of s 401 (Construction and operation of pipeline)

Clause 104 amends section 401 to clarify that the taking, interfering with or using produced water is not authorised under the pipeline licence. Such an authority rests with the *Water Act 2000*.

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Amendment of s 410 (Deciding whether to grant licence)

Clause 105 inserts a note under to section 410(1) if the application relates to acquired land under section 30AC.

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Amendment of s 419A (Notice to chief inspector before construction starts)

Clause 106 amends section 419A to remove the requirement on pipeline licence holders constructing and operating a produced water pipeline from providing a notice to the chief inspector before construction commences.

Amendment of s 422 (Obligations in operating pipeline)

Clause 107 omits the words 'or fuel gas' from section 422(1)(a) and inserts the words 'fuel gas or produced water'.

Insertion of new s 422A

Clause 108 inserts a new section 422A after section 422

'422A Obligation to hold relevant environmental authority and water licence

Section 422A provides an obligation to hold relevant environmental authority and water licence which places a clear obligation on the licence holder to obtain and hold a relevant environmental authority and water licence for the duration of the licence.

Insertion of a new s 437A

Clause 109 inserts section 437A in Chapter 4, part 12, division 8.

'437A Creation of easement by registration

Section 437A provides the ability for a pipeline licence holder to perfect an agreement for easement for a pipeline by registration of an easement under the *Land Act 1994* or *Land Title Act 1994*. Despite the provisions of the *Land Act 1994* or *Land Title Act 1994*, the easement may be registered even though there is no land benefited by the easement. Such an arrangement is normally reserved for public utility easements however, practically it is difficult to secure an easement at common law for any linear infrastructure which crosses many cadastral lot boundaries and may benefit an entity rather than another parcel of land. To ensure appropriate consideration of State land management requirements, the creation of an easement over a lease under the *Land Act 1994* on forest land may only be created following the consent of the Chief Executive responsible administering Part 4 of the *Forestry Act 1959*.

Whilst the easement provided for in this section is like a public utility easement, in that it can be registered without being attached to, or used or enjoyed with, other land, it is not a public utility easement. Nevertheless, to

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provide for the effective administrative of the easement it is taken to be a public utility easement and the pipeline licence holder is taken to be a public utility provider for the purposes of the *Land Act 1994* and the *Land Title Act 1994*. This will provide for a clear framework for, amongst other things, amending the easement, surrendering the easement, transferring the easement, and continuation of the easement, including where there is a change in the type of tenure of the burdened land.

This section also allows for the creation of easements through land administered under the *Forestry Act 1959*, being State Forest and Timber Reserve. The Minister's consent is required for the easement and the Minister is able to condition the easement. The owner of forest land is the chief executive administering part 4 of the *Forestry Act 1959*. Also that for the purposes of this section the Forest Lands will be treated as reserves under the *Land Act 1994*.

Furthermore, to administer the easements the section provides that certain references to the Minister in the *Land Act 1994* is taken to be the Minister administering the *Forestry Act 1954*. Practically, this will allow the Minister administering the *Forestry Act 1954*, part 4 to:

- approve the registration of the easement; and
- approve the transfer of the easement to another pipeline licence holder or public utility provider.

If an easement is registered over Forest Lands and the lands are surrendered and become unallocated state land, then the Minister administering the *Land Act 1994*, is the appropriate Minister to determine whether the easement should end or be continued.

Amendment of s 438 (Operation of div 1)

Clause 110 inserts a note under section 438(1) that carrying out of particular activities on particular land in a petroleum facility licence's area may not be authorised following the taking of the land under a resumption law.

Amendment of s 446 (Deciding whether to grant licence)

Clause 111 inserts a note under section 446(1) referring to section 30AC if the application relates to acquired land under section 30AC.

Amendment of s 482 (Deciding application)

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451 (Obligation to consult with particular owners and occupiers)¶
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Clause 46 omits section 451(4) Chapter 5, part 2 or 3 and inserts Chapter 5, part 1A, 2, or 3.¶
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<sp>Clause 46 inserts new Chapter 5, part 1A.¶
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Clause 112 inserts a note under section 482(2) referring to section 30AC in relation to acquired land that was previously in the area of the licence being renewed.

Amendment of s 564 (Petroleum register)

Clause 113 amends section 564 to insert 'acquired land' as a matter that can be included on the petroleum register.

Amendment of s 670 (What is an operating plant)

Clause 114 amends section 670 to exclude pipelines transporting produced water under a pipeline licence from the definition of operating plant. This is to reflect that the safety and health aspects associated with the operation of the produced water pipelines are not regulated under the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 672 (What is a *stage* of an operating plant)

Clause 115 ensures that the process of rigging up and down of a drill rig and the associated plant or equipment necessary for the operation of the rig is captured as a stage under the *Petroleum and Gas (Production and Safety) Act 2004* and therefore subject to relevant safety management plan requirements under the Act.

Amendment of s 802 (Restriction on pipeline construction or operation)

Clause 116 amends section 802(1) to exclude pipelines transporting produced water under a pipeline licence from the definition of operating plant. This is to reflect that pipelines carrying produced water may be authorised under other legislation.

Amendment of s 809 (Unlawful taking of petroleum or fuel gas prohibited)

Clause 117 omits the words 'or fuel gas' and inserts the words 'fuel gas or produced water' to section 809 to make the taking of produced waste from a pipeline constructed and operated under a pipeline licence, an offence under the Act.

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'494H Minister decides whether to approve activities in URA¶
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<sp>Section 494H provides that the Minister must decide applications to approve authorised activities in the URA following the referral to the Land Court and its associated recommendation. The Minister must decide to either approve activity with or without conditions or to refuse the undertaking of authorised activities URA.¶
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¶
For clarity, the Minister can only decide to approve authorised activities in the URA following the referral process to the Land Court. Applications cannot be provided directly to the Minister.¶
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The decision by the Minister on whether to approve authorised activities in the URA must be made with regard to the Land Court's recommendation and also the overall State interest. Approval by the Minister can only be made if it is considered that the activity is in the overall State interest.¶ ... [92]

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Section 552A provides an ... [93]

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Amendment of s 889 (Other applications made before introduction of Petroleum and Other Legislation Amendment Bill 2004)

Clause 118 inserts section 889(2) to provide the closing time for the tender is taken to be the day when this amendment takes effect. This will allow any outstanding tenders that have transitioned to the *Petroleum and Gas (Production and Safety) Act 2004* to be decided.

Amendment of s 910 (Renewal application provisions apply for making and deciding grant application)

Clause 119 inserts a reference to 165(4) to section 910(1)(b)(i) to exclude the operation of section 165(4), which provides that a petroleum lease is taken to be renewed from the date the previous lease expired.

Amendment of s 912 (Renewal on term and renewed terms)

Clause 120 omits section 912(5)(b) and replaces it with "a day to be decided by the Minister". This effectively limits the term of a 1923 Act petroleum lease to 30 years. It gives the Minister discretion to change the end date for a petroleum lease.

Insertion of new ch 15, pt 13

Clause 121 inserts a new chapter 15, part 13.

'Part 13 Transitional provisions for Mines Legislation (Streamlining) Amendment Bill 2012

'Division 1 Preliminary

'957 Definition for pt 13

Section 957 defines some of the terms used in part 13, chapter 15.

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‘Division 2 Provision for amendments commencing on assent of amending act

‘958 Land in a petroleum authority’s area taken before the commencement

Section 958 applies to land in a petroleum authority’s area taken before the commencement.

Subsections (1) and (2) provide that prior to the commencement of this section petroleum interests were not extinguished by taking of land unless the entity taking the land has taken action indicating the petroleum authority was extinguished (wholly or partly) when the land was taken. Examples of the type of actions are outlined in subsection 1(b).

Subsection (3) provides that subsection (2) does not affect the ending of a petroleum interest (wholly or partly) in any other way. For example, if the petroleum interest holder surrendering the interest (wholly or partly) under the *Petroleum and Gas (Production and Safety) Act 2004*.

‘959 Land in a petroleum authority’s area for which notice of intention to resume given before the commencement

Section 959 applies to land in a petroleum authority’s area for which notice of intention to resume given before the commencement.

Subsection (1) states that this section applies if before commencement, an entity gave a notice of intention to resume for a proposed taking of land in a petroleum tenure’s area under a resumption law, and at the date of commencement the land had not been taken under the resumption law.

Subjection (2) declares that if the land is taken other than by taking or otherwise creating an easement, sections 30AA to 30AD apply, except that the resumption notice for the taking may provide for the extinguishment of a petroleum interest on the taking even if the notice of intention to resume does not comply with section 30AA(8).

Subsection (3) declares that if the land is taken by taking or otherwise creating an easement, section 30AD applies in relation to the taking.

‘960 Existing water pipeline for petroleum lease

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Section 958 provides for definitions for ‘commencement’ and ‘former’.¶
<sp>‘Former’ are the provisions in place

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‘959 Existing water pipeline for petroleum lease¶
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Section 959 provides transitional arrangements for any coordination arrangements which authorise the construction of water pipelines for the benefactor of the coordination arrangement to utilise the amended provisions for incidental activities or pipeline licences to authorise produced water pipelines.¶
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Section 960 declares that this section applies after one year from the commencement of this section, if, before the commencement, the holder of a petroleum lease had started constructing or operating a water pipeline under former section 110.

'961 Existing written permission to enter land to construct and operate pipeline

Section 961 clarifies that the survivorship of the owner's written permission to enter to construct or operate pipeline does not apply to an owner's written permission provided before the commencement date of section 399A.

'962 Authority to prospect taken to be properly granted

Section 962 provides that an authority to prospect mentioned in section 889, is taken to be properly granted as if the closing time for tenders was the day before the authority was granted.

'963 Grant applications

Section 963 provides that the amendments to section 910 and 912 apply to applications for grant made, but not decided, before the commencement of amendments to those sections.

Amendment of sch 2 (Dictionary)

Clause 122 amends the dictionary in schedule 2 to provide new definitions including *acquired land*, *ALA*, *CSG water*, *notice of intention to resume*, *occupier*, *petroleum interest*, *produced water*, *resumption law*, *resumption notice*, and *take*.

Part 8 Amendment of Work Health and Safety Act 2011

Act amended

Clause 123 provides that part 7 amends the *Work Health and Safety Act 2011*.

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'961 Existing petroleum authorities¶
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Section 961 exempts certain existing petroleum authorities from the requirement provided in section 494B.¶
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¶
Section 962 provide an obligation on existing petroleum lease holders to detail in the first infrastructure report required under s522A in addition to the requirements of s522A, to detail the authorised activities for the lease carried out since the lease was granted; and detail the infrastructure an ... [98]

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Amendment of sch 1 (Application of Act)

Clause 124 replaces part 2, division 1 of schedule 1 to clarify the application of the *Work Health and Safety Act 2011* at petroleum and gas operating plants and mines.

The new section 2 in division 1 confirms the *Work Health and Safety Act 2011* will not apply to coal mines under the *Coal Mining Safety and Health Act 1999* or mines under the *Mining and Quarrying Safety and Health Act 1999* and ensures there will be no regulatory overlap or interaction in relation to the respective Acts and Regulations.

The *Work Health and Safety Act 2011* will also not apply to specific individual operating plant identified in sections 670(2) and (5) of the *Petroleum and Gas (Production and Safety) Act 2004* on particular authorities, tenures or tenements defined within the *Petroleum and Gas (Production and Safety) Act 2004*. The *Work Health and Safety Act 2011* applies to "specified *Petroleum and Gas (Production and Safety) Act 2004* authorised activity". These are authorized activities on an authority or tenure that are not operating plant in their own right because they are not mentioned in section 670(2) and (5) of the *Petroleum and Gas (Production and Safety) Act 2004*, such as activities at a camp and driving of vehicles. The operator of the authority must still have a safety management plan for all authorized activities as a whole.

The amendments clarify that the *Work Health and Safety Act 2011* applies to all construction work on operating plant or proposed operating plant other than the commissioning of operating plant and rigging up and down of drilling rigs.

The new section 2(4) clarifies that if there is a conflict between the *Work Health and Safety Act 2011* and the *Petroleum and Gas (Production and Safety) Act 2004* over a health and safety matter, the *Petroleum and Gas (Production and Safety) Act 2004* prevails to the extent of the inconsistency.

New section 3 removes the reference to the repealed *Geothermal Exploration Act 2004*.

Part 9 Amendment of other Acts

Acts amended

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Clause 125 declares that schedule 1 amends other Acts.

Chapter 3 Amendments commencing by proclamation other than amendments for the restructure of the Mineral Resources Act 1989

Part 1 Amendment of Environmental Protection Act 1994

Act Amended

Clause 126 provides that this part of the Bill amends the *Environmental Protection Act 1994*.

Insertion of new s 309A

Clause 127 inserts a new section 309A in Chapter 5, part 12, division 3, subdivision 1.

'309A Particular requirement for annual return for existing petroleum tenure under P&G Act

Section 309A places an obligation on existing authority to prospect and petroleum lease holders to undertake incidental activities on an authority to prospect or petroleum lease to support an authorised activity for another authority to prospect or petroleum lease to provide the administering authority with an annual return under section 308(3)(a).

This obligation ensure that the environmental impacts of incidental activities which may not have been contemplated at the time when the authority to prospect or petroleum lease were issued are disclosed to the administering authority.

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Part 2 Amendment of Geothermal Energy Act 2010

Act Amended

Clause 128 provides that this part of the Bill amends the *Geothermal Energy Act 2010*.

Amendment of s 35 (Who may apply)

Clause 129 omits section 35(1)(d) and inserts new provisions that align the two month moratorium on land subject of a granted, or application for, a geothermal tenure, with the moratorium for exploration permits under the *Mineral Resources Act 1989*.

Amendment of s 39 (Deciding whether to grant geothermal permit)

Clause 130 replaces subsections 39(3) and (4) with new provisions to align with the comparative process in the *Mineral Resources Act 1989* for when deciding to grant a geothermal permit.

Amendment of s 190 (Relinquishment report for partial relinquishment)

Clause 131 omits section 190(3) and inserts new provisions that maintain the requirement for reports to be made under this section and adds the option of these reports being lodged in a way prescribed under a regulation. The new provision enables use of new online lodgement facility in the future for these reports.

Replacement of ch 6, pt 11 (Dealings)

Clause 132 replaces the Dealings chapter. New Part 11 comprises of Division 1 (Preliminary), Division 2 (Registration of dealings generally), and Division 3 (Approval of assessable transfers). Generally a reference to a geothermal tenure includes a reference to a share in a geothermal tenure.

'Part 11 Dealings

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Clause 64 inserts in section 274(1)(b) to provide a pe ... [104]

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‘Division 1 Preliminary

‘277 Definitions for pt 11

Section 277 provides definition references for “assessable transfer” and “non-assessable transfer”.

‘278 What is a *dealing* with a geothermal tenure

Section 278 defines that a “dealing” with a geothermal tenure includes a transfer, mortgage, release of a mortgage (including the transfer or surrender of a mortgage) and sublease (including the transfer of a sublease) and a change in a geothermal tenure holder’s name.

Subsection (2) removes any doubt that a dealing with a geothermal tenure only applies to transactions mentioned in subsection (1) and not other transactions or agreements not mentioned.

‘279 Prohibited dealings

Section 279 prohibits dealings with a geothermal tenure that have the effect of transferring a divided part of the area of a geothermal tenure. This maintains the geothermal tenure’s cohesion; however the section does not apply to subleases or transfer of subleases. For subleases, the principal holder is still responsible for meeting obligations under the geothermal lease, not the sublessee.

This section only applies to dealings with a geothermal tenure as defined in section 278. It does not apply to other commercial agreements made between holders of geothermal tenures or other authorities about parts of the area of the geothermal tenure.

‘280 Types of transfers

Section 280(1) defines non-assessable transfers and provides that non-assessable transfers do not require assessment before being registered.

An example of when a transferee may have the same Australian Business Number as the transferor is if a company changes its legal structure, such as

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280 Types of transfers¶
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Section 280(1) provides that non-assessable transfers do not require approval

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Section 280(1) lists non-assessable transfers to include a transmission by death of a geothermal tenure, transfer by operation of law and

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Section 280(2) defines assessable transfers to include all transfers not mentioned in subsection 280(1). It also provides that assessable transfers must be approved by the Minister before they can be registered.

'Division 2 Registration of dealings generally

'281 Registration required for all dealings

Section 281 provides that a "dealing" with a geothermal tenure will have no effect until it has been registered.

Section 281(2) provides that assessable transfers take effect on the day the transfer was approved and for any other dealing, the day the notice of the dealing was given to the chief executive for registration.

'282 Obtaining registration

Section 282 provides that registration of a dealing that is not prohibited or an assessable transfer may be sought by giving the chief executive notice in the approved form and the prescribed fee. The chief executive must register an assessable dealing after the transfer is approved by the Minister.

'283 Effect of approval and registration

Section 283 provides that registration of a dealing (or approval of an assessable transfer) does not, of itself, give the dealing any more validity than it otherwise would have had.

'Division 3 Approval of assessable transfers

'284 Indicative approval

Section 284 provides that a holder of a geothermal tenure may apply for an indicative approval of an assessable transfer. The indication is to provide

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whether the transfer is likely to be approved and what the likely conditions are to be imposed. In deciding to give the indication, the Minister is to consider the criteria in section 286(2) as if the request were an application for an assessable transfer.

'285 Applying for approval of assessable transfer

Section 285(1) provides the holder of a geothermal tenure may apply for approval of an assessable transfer. Section 285(2) provides that an application can not be made if the proposed transferee is not an eligible person. Section 285(3) provides requirements for making an application. The proposed transferee must consent to the proposed transfer, as do affected mortgagees and each other person who holds a share of the geothermal tenure.

'286 Deciding application

Section 286 requires that the Minister must decide whether to approve the assessable transfer. The application and any additional information given with the application must be considered and the relevant criteria for obtaining the type of geothermal tenure. The public interest must also be considered.

If the applicant has a valid indicative approval, the matters the Minister must consider in deciding the application are not required to be reassessed. The approval may then be given if the proposed transferee is an eligible person, is a registered suitable operator under the *Environmental Protection Act 1994*, holder of a relevant *Water Act 2000* authorisation and there are no outstanding royalty payments.

The application may be refused if the transferor has not substantially complied with the conditions of the geothermal tenure.

Approval is taken to be given if an indicative approval has been given, subsection (4) is satisfied, conditions of the indication have been complied with and the application for assessable transfer has been lodged within 3 months of the indication being given. An indication will remain valid for 6 months if a notice has been given under the *Foreign Acquisitions and Takeovers Act 1975* (Cwlth) and the chief executive has been notified and evidence provided.

An approval will not be taken to be given if the application contained incorrect, or omitted material information, and if the Minister had been

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aware of the discrepancy would not have given the indicative approval.

'287 Security may be required

Section 287 provides that the Minister may require security from the transferee as a condition of deciding to give the approval. If the transferee does not comply with this requirement, the application may be refused.

'288 Notice of decision

Section 288(1) provides that if the Minister decides to approve the transfer, the Minister must give notice of the decision to the applicant. Subsection (2) provides that if the Minister decides not to give approval, the Minister must give the applicant an information notice about the decision.

'Part 11A Recording associated agreements

'289 Definition for pt 11A

Section 289 defines "associated agreement" for a geothermal tenure to mean an agreement relating to the geothermal tenure, other than a dealing with a geothermal tenure, a prohibited dealing, or an agreement prescribed under a regulation as unsuitable to be recorded in the register.

'289A Recording associated agreements

Section 289A provides that associated agreements may be recorded in the register and this may be sought by giving the chief executive notice of the agreement in the approved form and the prescribed fee.

The chief executive will not examine the agreement before it is registered. The purpose of this facility is to provide a register for other agreements as a fee-for-service to industry and other parties.

'289B Effect of recording associated agreements

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Section 289B provides that the recording of an associated agreement does not give the associated agreement any more validity than what it otherwise would have had. An associated agreement does not create an interest in the geothermal tenure against which it is recorded.

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'Part 11B Caveats

'289C Requirements of caveats

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Section 289C provides that a caveat must be in the approved form, be signed by the caveator, the caveator's solicitor, or another person authorised in writing by the caveator. The caveat must also state the name and address for service of one person upon whom any notice may be served on behalf of the caveator or caveators. The caveat must also identify the geothermal tenure concerned and state the nature of the right or interest claimed by the caveator, how long it will remain in force and endorsement if any person consents to the lodging of the caveat and be accompanied by the prescribed fee. Subsection (2) provides that caveats that do not comply with these requirements are of no effect.

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'289D Lodging of caveat

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Section 289D provides that a caveat may be lodged by a person claiming an interest in the geothermal tenure, the registered holder of the geothermal tenure, a person to whom an Australian court has ordered that an interest in a geothermal tenure be transferred and a person who has the benefit of an order from an Australian court in restraining a registered holder from dealing with a geothermal tenure.

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If a caveat is lodged, it cannot be registered if it applies to an application lodged for an indicative approval, an indication given, an application for assessable transfer or a notice given to register a dealing.

'289E Chief executive's functions on receipt of caveat

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Section 289E provides that after the chief executive receives a caveat, they must notify the holder or holders of the affected geothermal tenure, all other

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persons that have an interest in the geothermal tenure recorded in the register and record the caveat in the register. However, subsection (1) does not apply to an associated agreement.

'289F Effect of lodging caveat

Section 289F(1) provides that a caveat prevents registration of a dealing with the geothermal tenure, over which the caveat is lodged, from the date and time of lodgement endorsed by the chief executive on the caveat. That is, until the caveat lapses or is withdrawn or removed. Subsection (2) provides that lodging a caveat does not prevent registration of an instrument to which the caveat does not apply or an instrument to which the caveator has provided their consent to the chief executive. It also does not prevent registration of an instrument executed by the mortgagee whose interest was registered before lodgement of the caveat if the mortgagee has power under the mortgage to execute that instrument and the caveator claims an interest in the geothermal tenure as security for the payment of money or money's worth. It also does not prevent registration of an instrument of transfer of mortgage executed by a mortgagee before the caveat (except if lodged by the geothermal tenure holder according to subsection (3)). Subsection (4) provides that lodging a caveat does not create an interest in the geothermal tenure affected by the caveat.

'289G Lapsing, withdrawal or removal of a caveat

Section 289G provides provisions for the lapsing, withdrawal or removal of a caveat. Section 289G(1) provides that a caveat lapses at the end of the term stated in the caveat or if no term is stated, the caveat endures until it is withdrawn or removed. Subsection (2) provides that where the holders of the geothermal tenure have not consented to the lodgement of the caveat, the caveat lapses after 3 months (or shorter term stated in the caveat) or at any expiry of any order of the Land Court in force relating to the caveat.

Section 289G(3) provides that a caveat may be withdrawn by the caveator providing notice in writing to the chief executive. Section 289G(4) provides that an affected person may apply to the Land Court for an order that a caveat be removed. Section 289G(5) provides that the Land Court may make the order whether or not the caveator has served with the application, and may make the order on terms it considers appropriate.

Section 289G(6) provides that if the caveat is withdrawn, lapses or is ordered to be removed, the chief executive must record this in the register.

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Section 289H(2) provides that a caveat … if each holder of geothermal tenure consents to the caveat and lodges that consent, on the expiration…. If …ex ... [127]

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Section 289G(7) provides that an "affected person" means a person who has a right or interest in a geothermal tenure affected by the caveat, or a person whose right to deal with the geothermal tenure is affected by the caveat lodged. An "agreed caveat" is also defined as a caveat where each holder of the tenure has lodged their consent with the caveat.

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'289H Further caveat not available to the same person

Section 289H provides that the section applies if a previous caveat has been lodged. Subsection (2) provides a person who has already lodged a caveat on an interest (or substantially the same interest) may not lodge another caveat on the same grounds as the original caveat unless the holders agree to the caveat or a court provides their permission for the caveat to be lodged.

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'289I Compensation for lodging caveat without reasonable cause

Section 289I provides that a person who lodges a caveat in relation to a geothermal tenure without reasonable cause must compensate anyone who suffers loss or damage as a result.

Amendment of s 351 (Joint holders of a geothermal tenure)

Clause 133 amends section 351 to ensure this section is in line with the distinction between assessable transfers and non-assessable transfers in new dealings provisions.

Amendment of s 363 (Place for making applications, lodging documents or making submissions)

Clause 134 amends section 363 to reflect that applications, documents and submissions may be made or given at an office of the department or in a way that is stated on an approved form, notified on the department's website, or that is prescribed under a regulation. The regulations will provide the detail of lodgement and acceptance procedures and will enable the use of the online lodgement system.

Traditional methods for giving these documents will still be available. Where someone cannot or does not wish to take advantage of the online facility, they can still submit at the place detailed on the approved form. If no address is provided on the approved form, or there is no approved form for the purpose, the department's website shall provide the relevant information.

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This section specifically excludes processes that are controlled by the Land Court or the Office of State Revenue. The giving of documents in the 'required way' is also excluded because this is a provision for lodging specific electronic reports that needs to be maintained.

Amendment of s 364 (Requirements for making an application)

Clause 135 amends section 364 to provide that if the Minister refuses to receive or process a purported application, other than one made to the Land Court, the Minister must give the applicant written notice of the decision and the reason for it and the chief executive must refund the application fee. This is to make this section consistent with those being introduced throughout the resources Acts.

There is no appeal process for this decision and there may be FLP concerns that there is not an appropriate review of the administrative power available. This assessment is exercised at the preliminary stage of the application on whether the application is properly made; therefore, no rights or interests are being removed as the decider would not be able to assess the application. Applicants are still entitled to judicial review of the department's decision if they are dissatisfied.

There may also be concerns that this administrative power is not sufficiently defined in terms of the criteria the Minister is considering when deciding to refuse to receive the application or whether it is substantially compliant. This section identifies that the requirements of the Act must be considered, and in terms of making an application, these criteria are adequately addressed in those relevant sections of the Act. It would not be practicable to attempt to define criteria for substantial compliance as this could cover significant variations in circumstances where the application of discretion is appropriate.

Replacement of s 365 (Request to applicant about application)

Clause 136 replaces section 365 to give the chief executive, rather than the Minister, the power to require an applicant to, within a stated reasonable period to provide additional information (which includes a document) relating to an application other than one made to the Land Court.

'365 Request to applicant about application

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The new section 365 will give the chief executive, rather than the Minister, the power to require an applicant to, within a stated reasonable period to provide additional information (which includes a document) relating to an application other than one made to the Land Court. Section 365 will align with a standard section being adopted across all resources Acts (with minor differences where necessary to make them relevant for each Act). Section 365 of the *Geothermal Energy Act 2010* was used as a model framework for the common resources Act sections.

The power includes the ability to request that an applicant:

- complete or correct the application if it appears to be incorrect, incomplete or defective; and
- give additional information about, or relevant to, the application, or give the department an independent report by an appropriately qualified person or a statement or statutory declaration verifying information included in the application, such as any additional information requested or verifying that the application meets the capability criteria.

The section specifies that if the application is for a geothermal tenure that a document may include a survey or resurvey of the area of the proposed tenure carried out by a person who is a surveyor under the *Surveyors Act 2003*. The section also requires that where a notice requires a statement or statutory declaration, that they be made by an appropriately qualified independent person or by the applicant, and if the applicant is a corporation, be made for the applicant by an executive officer of the applicant. The purpose of providing that a statement can be made in addition to a statutory declaration is so that information can be given in a statement online.

Section 365(4) states that the applicant must bear any costs in complying with the notice. Section 365(5) provides that the chief executive may extend the period for complying with the notice.

Amendment of s 366 (Refusing application for failure to comply with request)

Clause 137 maintains the power to refuse an application for failure to comply with an information request by the Minister, if the applicant has not complied with the notice given, to the chief executive's satisfaction.

Insertion of new 366A (Notice to progress geothermal tenure or renewal application)

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It also amends subsection 366(c) so that the consideration of the Chief Executive's satisfaction of the response to the section 365 notice is considered by the Minister. This is consistent across all the Resources Acts and allows the Chief Executive to issue and receive the information and¶
<sp>make a recommendation to the Minister for consideration.¶
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Amendment of s 383 (Practice Manual)¶
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Clause 71 omits section 383(4) and inserts the provision that information given as a result of a practice manual is to be made in accordance with the requirements of section 363.¶
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Clause 138 inserts new section 366A to give the Minister the power to require an applicant by notice, to progress a geothermal tenure or renewal application.

'366A Notice to progress geothermal tenure or renewal application

Section 366A provides that the Minister may require an applicant for grant or renewal of a geothermal tenure to do any thing required (under this Act or another Act), within a reasonable period of time, to allow the application to be granted, renewed or decided. The Minister must give notice of the requirement and can refuse the application if the applicant fails to comply.

To provide certainty that an unreasonable period for compliance cannot be set, subsection (2) requires that the minimum period for complying with the notice must be at least 20 business days. The Minister also has the discretion of extending the period for complying with the notice.

Amendment of s 383 (Practice manual)

Clause 139 amends section 383 to provide that information required to be given by the Practice manual can be given in accordance with the manual or pursuant to section 363.

Amendment of s 385 (Regulation-making power)

Clause 140 inserts new subsection 385(2)(aa) that provides a regulation making power to define procedures for consistent lodgement practices for documents or information lodged under section 363(2)(b). The clause also inserts new subsection (f) that provides the regulation making power to require lodgement of a hard copy of a document. This will support the transition to online lodgement so that the original document can be obtained in the event it is later required.

Insertion of new ch 9, pt 3 div 3

Clause 141 inserts a new part into chapter 9 that details transitional provisions for amendments that are commencing by proclamation.

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‘Division 3 Transitional provisions for amendments in amending Act commencing by proclamation

‘407 Undecided applications for approval of particular dealing

Section 407 provides that for applications for approval of a third party transfer or sublease made before commencement of this chapter and not decided before commencement, the Minister may continue to deal with the application under the former chapter 6, part 11, division 3 before they were amended by the *Mines Legislation (Streamlining) Amendment Act 2012*.

Section 407(3) provides that a third party transfer has the meaning given by former section 280.

‘408 Deciding applications for approval of assessable transfers until commencement of particular provisions

Section 408 applies until the commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, chapter 5A, part 4. This is because the concept of a ‘registered suitable operator’ will not exist until that Act commences.

Former section 287(2)(a)(ii) continues in force instead of section 286(4)(a)(ii) and (iii), as inserted by the amending Act, for deciding whether to give an approval of an assessable transfer. This means that, until the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* commences, the environmental authority must be transferred before the transfer of the tenure can be approved.

‘409 Uncommenced appeals about refusal to approve particular dealing

Section 409 provides that if before commencement of the *Mines Legislation (Streamlining) Amendment Act 2012*, a person could appeal to the Land Court under section 335 in relation to a refusal to approve and register a third party transfer or sublease under former section 287 and the person had not started the appeal before commencement, the person may still appeal under section 335, subject to sections 336 and 337.

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404 Definitions for pt 3¶
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‘410 Unfinished appeals about refusal to approve particular dealing

Section 410 provides that unfinished appeals may be granted a stay by the Land Court under chapter 7, part 4 and hear and decide the appeal if the appeal was started before commencement.

Amendment of sch 1 (Decisions subject to appeal)

Clause 142 amends Schedule 1 to make section 286 for the ‘refusal to approve an assessable transfer’, appealable and removes the entry in Schedule 1 for current section 287 for the ‘refusal to approve and register third party transfer or sublease’.

Amendment of sch 2 (Dictionary)

Clause 143 amends Schedule 2 to omit the definition of “third party transfer” and insert definitions of “apply” “assessable transfer”, “associated agreement”, “dealing with a geothermal tenure”, “give”, “make submissions”, “non-assessable transfer”, and updates the definition of “made”.

Part 3 Amendment of Greenhouse Gas Storage Act 2009

Act Amended

Clause 144 provides that this part of the Bill amends the *Greenhouse Gas Storage Act 2009*.

Amendment of s 255 (Relinquishment report by GHG permit holder)

Clause 145 omits section 255(2) and inserts new provisions that maintain the requirement for reports to be made under this section and adds the option of these reports being lodged in a way prescribed under a regulation (enables use of new online lodgement facility in the future).

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Amendment of s 341 (Access to register)¶
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Clause 79 inserts in section 341(1)(b) to provide a person other that a person accessing the register on the departments website may be required to pay a fee to search and take extracts from the register.¶
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The clause also inserts new subsection (1)(d) that requires the register to be available to be accessed, free of change, on the department’s website.¶
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(Dealings)

Clause 146 omits chapter 5, part 14 of the *Greenhouse Gas Storage Act 2009* and replaces it with Part 14 Dealings. Part 14 comprises of Division 1 (Preliminary), Division 2 (Registration of dealings generally), Division 3 (Approval of assessable transfers). Generally a reference to a GHG authority includes a share in a GHG authority.

'Part 14 Dealings

'Division 1 Preliminary

'345 Definitions for pt 14

Section 345 provides definition references for "assessable transfer" and "non-assessable transfer".

'346 What is a *dealing* with a GHG authority

Section 346 defines a "dealing with a GHG authority" to include a transfer, mortgage, release of a mortgage (including the transfer or surrender of a mortgage) and sublease (including the transfer of a sublease) and a change in a GHG authority holder's name.

Subsection (2) removes any doubt that a dealing with a GHG authority only applies to transactions mentioned in subsection (1) and not other transactions or agreements not mentioned.

'347 Prohibited dealings

Section 347 prohibits dealings with a GHG authority that have the effect of transferring a divided part of the area of a GHG authority or are a transfer of a pipeline constructed or operated under section 31 or 11 or a transfer of a GHG data acquisition authority other than a transfer by operation of law under section 240. This maintains the GHG authority's cohesion; however the section does not apply to subleases or transfer of sublease. For subleases, the principal holder is still responsible for the GHG lease, not the

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sublessee.

This section only applies to dealings with a GHG authority as defined in section 346. It does not apply to other commercial agreements made between holders of GHG authorities or other authorities about parts of the area of the GHG authority that are not defined as a dealing with a GHG authority by section 346.

'348 Types of transfers

Section 348(1) defines non-assessable transfers and provides that non-assessable transfers do not require approval to be registered.

An example of when a transferee may have the same Australian Business Number as the transferor is if a company changes its legal structure, such as "Proprietary Limited" to "Limited".

Section 348(2) defines assessable transfers to include all transfers not mentioned in section 348(1). It also provides that assessable transfers must be approved by the Minister before they can be registered.

'Division 2 Registration of dealings generally

'349 Registration required for all dealings

Section 349(1) provides that a dealing will have no effect until it has been registered.

Section 349(2) provides that assessable transfers take effect on the day the transfer was approved and for any other dealing the day the notice of the dealing was given to the chief executive for registration.

'350 Obtaining registration

Section 350 provides that registration of a dealing that is not prohibited or an assessable transfer may be sought by giving the chief executive notice in the approved form and the prescribed fee. The chief executive must register an assessable dealing after the transfer is approved by the Minister.

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Section 350(4) provides that the

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‘351 Effect of approval and registration

Section 351 provides that registration of a dealing (or approval of an assessable transfer) does not, of itself, give the dealing any more validity than it otherwise would have had.

‘Division 3 Approval of assessable transfers

‘352 Indicative approval

Section 352 provides that a holder of a GHG authority may apply for an indicative approval of an assessable transfer. The indication is to provide whether the transfer is likely to be approved and what the likely conditions are to be imposed. In deciding to give the indication, the Minister is to consider the criteria in section 352(2) as if the request were an application for an assessable transfer.

‘353 Applying for approval of assessable transfer

Section 353(1) provides the holder of a GHG authority may apply for approval of an assessable transfer. Section 353(2) provides that the holder of a GHG authority cannot apply to transfer the GHG authority to a person that is not an eligible person. Section 353(3) provides requirements for making an application. The proposed transferee must consent to the proposed transfer, as do affected mortgagees and each other person who holds a share of the GHG authority.

‘354 Deciding application

Section 354 requires that the Minister must decide whether to approve the assessable transfer. The application and any additional information given with the application must be considered and the relevant criteria for obtaining the type of GHG authority.

If the applicant has a valid indicative approval, the matters the Minister must consider in deciding the application are not required to be reassessed. The approval may then be given if the proposed transferee is a registered

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suitable operator under the *Environmental Protection Act 1994* and an eligible person. The application may be refused if the transferor has not substantially complied with the conditions of the GHG authority.

Approval is taken to be given if an indicative approval has been given, subsection (4) is satisfied, conditions of the indication have been complied with and the application for assessable transfer has been lodged within 3 months of the indication being given. An indication will remain valid for 6 months if a notice has been given under the *Foreign Acquisitions and Takeovers Act 1975* (Cwlth) and the chief executive has been notified and evidence provided.

An approval will not be taken to be given if the application contained incorrect, or omitted material information, and if the Minister had been aware of the discrepancy would not have give the indicative approval.

'355 Security may be required

Section 355 provides that the Minister may require security from the transferee as a condition of deciding to give the approval. If the proposed transferee does not comply with this requirement, the application may be refused.

'355A Notice of decision

Section 355A(1) provides that if the Minister decides to approve the transfer, the Minister must give notice of the decision to the applicant. Subsection (2) provides that if the Minister decides not to give approval, the Minister must give the applicant an information notice about the decision. Section 355A(2) provides that if the Minister decides not to give approval, the Minister must give the applicant an information notice about the decision.

'Part 14A Recording associated agreements

'355B Definition for pt 14A

Section 355B provides the definition of an associated agreement to be an agreement relating to the GHG authority other than a dealing, a prohibited

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Clause 81 inserts Part 14A on recording associated agreements and Part¶
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dealing or another agreement prescribed under a regulation as unsuitable to be recorded in the register.

‘355C Recording associated agreements

Section 355C provides that associated agreements may be recorded in the register and this may be sought by giving the chief executive notice of the agreement in the approved form and the prescribed fee.

The chief executive will not examine the agreement before it is registered. The purpose of this facility is to provide a register for other agreements as a fee-for-service to industry and other parties.

‘355D Effect of recording associated agreements

Section 355D provides that the recording of an associated agreement does not give the agreement any more validity than what it otherwise would have had. An associated agreement does not create an interest in the GHG authority against which it is recorded.

‘Part 14B Caveats

‘355E Requirements of caveats

Section 355E provides that a caveat must be in the approved form, be signed by the caveator, the caveator’s solicitor or another person authorised in writing by the caveator. The caveat must also state the name and address for service of one person upon whom any notice may be served on behalf of the caveator or caveators. The caveat must also identify the GHG authority concerned and state the nature of the right or interest claimed by the caveator, how long it will remain in force and endorsement if any person consents to the lodging of the caveat and be accompanied by the prescribed fee. Subsection (2) provides that caveats that do not comply with these requirements are of no effect.

‘355F Lodging of caveat

Section 355F provides that a caveat may be lodged by a person claiming an

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interest in the GHG authority, the registered holder of the GHG authority, a person to whom an Australian court has ordered that an interest in a GHG authority be transferred and a person who has the benefit of an order from an Australian court in restraining a registered holder from dealing with a GHG authority.

If a caveat is lodged, it can not be registered if it applies to an application lodged for an indicative approval, an indication given, an application for an assessable transfer or a notice given to register a dealing.

'355G Chief executive's functions upon receipt of caveat

Section 355G provides that after the chief executive receives a caveat, they must notify the holder or holders of the affected GHG authority, all other persons that have an interest in the GHG authority recorded in the register and record the caveat in the register. However subsection (1) does not apply to an associated agreement.

'355H Effect of lodging caveat

Section 355H(1) provides that a caveat prevents registration of a dealing with the GHG authority over which the caveat is lodged from the date and time of lodgement endorsed by the chief executive on the caveat. That is, until the caveat lapses or is withdrawn or removed. Subsection (2) provides that lodging a caveat does not prevent registration of an instrument to which the caveat does not apply or any instrument to which the caveator has provided their consent to the chief executive. It also does not prevent registration of an instrument executed by the mortgagee whose interest was registered before lodgement of the caveat if the mortgagee has power under the mortgage to execute that instrument and the caveator claims an interest in the GHG authority as security for the payment of money or money's worth. It also does not prevent registration of an instrument of transfer of mortgage executed by a mortgagee before the caveat (except if lodged by the GHG authority holder according to subsection (3)). Subsection (4) provides that lodging a caveat does not create an interest in the GHG authority affected by the caveat.

'355I Lapsing, withdrawal or removal of caveat

Section 355I provides provisions for the lapsing, withdrawal or removal of a caveat. Section 355I(1) provides that a caveat lapses at the end of the term

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stated in the caveat or if no term is stated, the caveat endures until it is withdrawn or removed. Subsection (2) provides that where the holders of the GHG authority have not consented to the lodgement of the caveat, the caveat lapses after 3 months (or shorter stated term in the caveat) or at expiry of any order of the Land Court in force relating to the caveat.

Section 355I(3) provides that a caveat may be withdrawn by the caveator providing notice in writing to the chief executive. Section 355I(4) provides that an affected person may apply to the Land Court for an order that a caveat be removed. Section 355I(5) provides that the Land Court may make the order whether or not the caveator has been served with the application, and may make the order on terms it considers appropriate.

Section 355I(6) provides that if the caveat is withdrawn, lapses or is ordered to be removed, the chief executive must record this in the register. Section 355I(7) provides that an "affected person" means a person who has a right or interest in a GHG authority affected by the caveat, or a person whose right to deal with the GHG authority is affected by the caveat lodged. An "agreed caveat" is also defined as a caveat where each holder of the authority has lodged their consent with the caveat.

'355J Further caveat not available to same person

Section 355J provides that the section applies if a previous caveat has been lodged. Subsection (2) provides a person who has already lodged a caveat on an interest (or substantially the same interest) may not lodge another caveat on the same grounds as the original caveat unless the holders agree to the caveat or a court provides their permission for the caveat to be lodged.

'355K Compensation for lodging caveat without reasonable cause

Section 355K provides that a person who lodges a caveat in relation to a GHG authority without reasonable cause must compensate anyone who suffers loss or damage as a result.

Amendment of s 370 (Joint holders of a GHG authority)

Clause 147 amends section 370 to align with the distinction between assessable and non-assessable transfers in the new dealings provisions.

Amendment of s 411 (Place for making applications, lodging documents or making submissions)

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Clause 148 amends this section to reflect that applications, documents, submissions that are required to be given to the department, may also be provided in the prescribed way under the regulations. The regulations will provide the detail of lodgement and acceptance procedures and will enable the use of the online lodgement system.

Traditional methods for giving these documents will still be available. Where someone cannot or does not wish to take advantage of the online facility, they can still submit at the place detailed on the approved form. If no address is provided on the approved form, or there is no approved form for the purpose, the department's website shall provide the relevant information.

This section specifically excludes processes that are controlled by the Land Court. The giving of documents in the 'required way' is also excluded because this is a provision for lodging specific electronic reports that needs to be maintained.

Replacement of ss 412 and 413

Clause 149 replaces sections 412 and 413.

'412 Requirements for making an application

Section 412 provides that if the Minister refuses to receive or process a purported application, other than one made to the Land Court, the Minister must give the applicant written notice of the decision and the reason for it and the chief executive must refund the application fee.

There is no appeal process for this decision and there may be FLP concerns that there is not an appropriate review of the administrative power available. This assessment is exercised at the preliminary stage of the application on whether the application is properly made; therefore, no rights or interests are being removed as the decider would not be able to assess the application. Applicants are still entitled to judicial review of the department's decision if they are dissatisfied.

There may also be concerns that this administrative power is not sufficiently defined in terms of the criteria the Minister is considering when deciding to refuse to receive the application or whether it is substantially compliant. This section identifies that the requirements of the Act must be considered, and in terms of making an application, these criteria are adequately addressed in those relevant sections of the Act. It would not be practicable to attempt to define criteria for substantial compliance as this could cover significant variations in circumstances where the application of discretion is

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Replacement of s 413 (Additional information may be required about the application)¶
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Clause 85 replaces the current request to applicant section to align it with the standard section being adopted across all Resources Acts (with minor differences where necessary to make them relevant for each Act).¶
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New sections 413A and 413B are also inserted under this clause.¶
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appropriate.

‘413 Request to applicant about application

Section 413 will give the chief executive, rather than the Minister, the power to require an applicant to, within a stated reasonable period to provide additional information (which includes a document) relating to an application other than one made to the Land Court. Section 413 will align with a standard section being adopted across all resources Acts (with minor differences where necessary to make them relevant for each Act). Section 365 of the *Geothermal Energy Act 2010* was used as a model framework for the common resources Act sections.

The power includes the ability to request that an applicant:

- complete or correct the application if it appears to be incorrect, incomplete or defective; and
- give additional information about, or relevant to, the application, or give the department an independent report by an appropriately qualified person or a statement or statutory declaration verifying information included in the application, such as any additional information requested or verifying that the application meets the capability criteria.

The section specifies that if the application is for a GHG authority that a document may include a survey or resurvey of the area of the proposed authority carried out by a person who is a surveyor under the Surveyors Act 2003. The section also requires that where a notice requires a statement or statutory declaration, that they be made by an appropriately qualified independent person or by the applicant, and if the applicant is a corporation, be made for the applicant by an executive officer of the applicant. The purpose of providing that a statement can be made in addition to a statutory declaration is so that information can be given in a statement online.

Section 413(4) states that the applicant must bear any costs in complying with the notice.

Section 413(5) provides that the chief executive may extend the period for complying with the notice.

‘413A Refusing application for failure to comply with request

Section 413A is a new section that allows the Minister to refuse an

Deleted: is replaced with the new section 413 to provide a common section to all resources cts titled ‘Request to applicant about application’. This section allows the Chief Executive to

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application if a notice given under section 413 has not been complied with within the stated period to the satisfaction of the chief executive. This is consistent across all the resources Acts and allows the chief executive to issue the notice; receive the response and make a recommendation to the Minister for consideration.

'413B Notice to progress GHG authority or renewal applications

Section 413B provides that the Minister may require an applicant for grant or renewal of a GHG authority to do any thing required (under this Act or another Act), within a reasonable period of time, to allow the application to be granted, renewed or decided. The Minister must give notice of the requirement and can refuse the application if the applicant fails to comply.

To provide certainty that an unreasonable period for compliance cannot be set, subsection (2) requires that the minimum period for complying with the notice must be at least 20 business days. The Minister also has the discretion of extending the period for complying with the notice.

Amendment of s 427 (Practice manual)

Clause 150 amends section 427 to provide that information required to be given by the Practice manual can be given in accordance with the manual or pursuant to section 411.

Amendment of s 429 (Regulation-making power)

Clause 151 inserts new subsection 429(2)(c) that provides a regulation making power to define procedures for consistent lodgement practices for documents or information lodged under section 411(2)(b). The clause also inserts new subsection (d) that provides the regulation making power to require lodgement of a hard copy of the document. This will support the transition to online lodgement so that the original document can be obtained in the event it is later required.

Insertion of new ch 8, pt 3, div 3

Clause 152 inserts a new chapter 8, part 3, division 3 on transitional provisions.

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‘Division 3 Transitional provisions for amendments in amending Act commencing by proclamation

‘444 Undecided applications for approval of particular dealing

Section 444 provides that for applications for approval of a third party transfer or sublease made before commencement of this chapter and not decided before commencement, the Minister may continue to deal with the application under the previous provisions before they were amended by the Bill.

Section 444(3) provides that a third party transfer has the meaning given by the former section.

‘445 Deciding applications for approval of assessable transfers until commencement of particular provisions

Section 445 applies until the commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, chapter 5A, part 4. This is because the concept of a ‘registered suitable operator’ will not exist until that Act commences.

Former section 353(2)(a) continues in force instead of section 354(4)(b), as inserted by the amending Act, for deciding whether to give an approval of an assessable transfer. This means that, until the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* commences, the environmental authority must be transferred before the transfer of the tenure can be approved.

‘446 Uncommenced appeals about refusal to approve particular dealing

Section 446 provides that if before commencement of this chapter of the *Mines Legislation (Streamlining) Amendment Act 2012*, a person could appeal to the Land Court under the relevant section in relation to a refusal to approve an assessable transfer under the former relevant section and the person had not started the appeal before commencement, the person may still appeal.

‘447 Unfinished appeals about refusal to approve

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particular dealing

Section 447 provides that unfinished appeals may be granted a stay by the Land Court under chapter 6 part 3 and the Land Court may hear and decide the appeal if the appeal was started before commencement.

Amendment of sch 1 (Decisions subject to appeal)

Section 153 inserts the words "353 refusal to approve an assessable transfer" in schedule 1, which makes the decision an appealable decision.

Amendment of sch 2 (Dictionary)

Section 154 omits the definition of "third party transfer" from the dictionary and inserts definitions for "apply, "assessable transfer", "associated agreement", "dealing with a GHG authority", "give", "make submissions" and "non-assessable transfer".

Part 4 Amendment of Mineral Resources Act 1989

Act Amended

Clause 155 indicates that this part of the Bill amends the *Mineral Resources Act 1989*.

Insertion of new s 6D

Clause 156 inserts section 6D.

'6D Types of authority under Act

New section 6D defines the types of authorities that are available under the Act. This definition was added for consistency with the other resources legislation.

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Amendment of s 10AA (Joint holders of mining tenement)

Clause 157 amends section 10AA to align with the distinction between assessable and non-assessable transfers in the new dealings provisions.

Section 10AA(2) replaces "assignees" with "transferees".

Amendment to s 10A (Extension of certain entitlements to registered native title bodies corporate and registered native title claimants

Clause 158 omits sections 34, 96(11), 125, 198(10), 231(6), 300(13) and 317 and inserts sections 34, 125, 231(6) and 317. The new dealings provisions do not require the transferee to notify the land owner. The sections omitted by this clause remove the requirement for the transferee to notify any registered native title party. These changes are to align dealings administration across the resources legislation.

Replacement of s 63 (Priority of applications for grant of mining claims)

Clause 159 omits section 63 and replaces with a new section.

'63 Priority of mining claim applications

Section 63 provides for the priority of mining claim applications. If they are lodged on the same day, priority will be determined by the mining registrar after considering the relative merits of each application. The mining registrar is to notify the applicants that the applications will be competing for priority.

Changes to the determination of application priority from the time on which they lodged or ballot for simultaneous lodgement, to determination to a merit based assessment (for applications received on the same day) may raise FLP concerns that this has resulted in the limited definition of the power. This change is required to facilitate fairness between applications lodged online (at anytime of the day), and paper applications that can only be lodged during office hours. Priority determined by time would disadvantage paper based applicants. These changes will only impact very few applications and merit based assessment of applications is already a common assessment framework for many applications made under the resources Acts.

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Clause 93 also inserts subsection (4) which provides Section 318AAY on notice about decision to approve a transfer includes a reference to an applicant is taken to include a reference to any registered native title body corporate or registered native title claimant.¶
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Insertion of new ss 71A

Clause 160 inserts section 71A to provide for the withdrawal of an objection to a mining claim.

'71A Objection may be withdrawn

Section 71A provides that an objection to a mining claim application may be withdrawn if written notice is given to the mining registrar, and if the objection has been referred to the Land Court, the Land Court and the applicant. The withdrawal cannot be revoked.

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

Clause 161 omits subsection (6) and replaces the definition of a properly made objection to include that it has not been withdrawn.

Amendment of s 81 (Conditions of mining claim)

Clause 162 omits the condition prescribed in section 81(1)(b) that will now be covered by the new dealings provisions.

Amendment of s 91 (Initial term of mining claim)

Clause 163 amends the maximum term of a mining claim from 10 years to 5 years.

Amendment of s 93 (Renewal of mining claim)

Clause 164 rewords section 93 to reflect new maximum term of a mining claim of 5 years and to modernise the section using current drafting principles.

Amendment of section 93D (Renewal of claim must be in name of last recorded assignee)

Clause 165 amends section 93D to omit the word "assignee" and insert the word "transferee" in order to achieve consistent dealings terminology across all resource Acts.

Omission of ss 96–102

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Clause 97 updates section 78(5) to refer to new section 71B.¶
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Clause 166 omits sections 96 to 102, which dealt with assignment or mortgage of mining claims, lodgement of caveat, mining registrar's functions upon receipt of caveat, effect of caveat, second caveat not available to same person, removal or withdrawal of caveat, and compensation for lodging caveat without reasonable cause.

These sections are now replaced by the new dealings provisions.

Amendment of s 105 (Mining other minerals)

Clause 167 amends section 105 to provide that an application for a mining claim for specified minerals not specified in the mining claim, will take priority according to the day on which they are lodged. If they are lodged on the same day, the take priority decided by the Minister based on merit. The mining registrar is to notify the applicants that the applications will be competing for priority.

Changes to the determination of application priority from the time and date on which they lodged to determination by a merit based assessment (for applications received on the same day) may raise FLP concerns that this has resulted in the limited definition of the power. This change is required to facilitate fairness between applications lodged online (at anytime of the day), and paper applications that can only be lodged during office hours. Priority determined by time would disadvantage paper based applicants. These changes will only impact very few applications and merit based assessment of applications is already a common assessment framework for many applications made under the resources Acts.

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

Clause 168 inserts a new requirement for an applicant for a mining claim to also notify the Land Court, if the application has been referred to the Land Court.

Amendment of s 129 (Entitlements under exploration permit)

Clause 169 amends section 129(1)(b) to provide clarification that the holder of an exploration permit has the authority to access land subject to the permit, to do all acts necessary to comply with the *Environmental Protection Act 1994* in support of making an environmental authority application or preparing an EIS and the *State Development and Public*

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Works Organisation Act 1971 for an EIS. This would include environmental studies in support of making an application for an environmental authority or the preparation of an EIS required for the grant of mining lease or mineral development licence. This amendment was required to remove any doubt that the holder of an exploration permit is authorised to access land subject to the permit to conduct environmental studies.

Replacement of s 131 (Restriction on grant of exploration permits over same sub-block)

Clause 170 replaces section 131 with a new section.

'131 Who may apply

Section 131(1) provides that an application for an exploration permit over a sub-block subject to an existing exploration permit or application will not be accepted, except where the applicant is the holder of the current exploration permit and is surrendering the exploration permit. Previous section 135 has been added under subsection (1)(b), and sub-blocks the subject of an abandoned or refused application shall also go into a two month moratorium on new applications.

The intent of section 131(2) is that where an applicant that is surrendering a current exploration permit, they may apply for a permit that relates to land including a sub-block the subject of the applicant's current exploration permit.

Section 131(3) adds the provision provided in previous section 135 where an applicant may apply for an exploration permit over sub-blocks that have been surrendered by the applicant, within the 2 month moratorium period.

Omission of s 133A (Minister may request information)

Clause 171 omits section 133A that allows the Minister to give an exploration permit applicant a notice requiring information to be given. This power and the power to refuse the application are replaced under new provisions in the general part of the Act.

Omission of s 135 (No application for exploration permit within 2 months of land ceasing to be subject to exploration permit)

Clause 172 omits section 135. This section provided for a holder of an

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exploration permit to reapply during the two month moratorium period for an exploration permit over land that they had surrendered. This is now provided in section 131.

Amendment of s 139 (Periodic reduction in land covered by exploration permit)

Clause 173 amends section 139 by replacing the existing land relinquishment requirements. The new requirement applies to both coal and mineral exploration permits, and requires 40 percent of the original area to be relinquished at the end of the first three years after the permit is granted. A further 50 percent of the remaining area is to be relinquished by the end of the first five years after the permit is granted.

If the exploration permit is renewed, during each renewal period, a further 40 per cent of the remaining area is to be relinquished by the end of the first three years after the day the renewed permit started. A further 50 per cent of the remaining area is be relinquished by the end of the first five years after the day the renewed permit started.

Amendment of s 141 (Conditions of exploration permit)

Clause 174 omits the condition prescribed in section 141(1)(e) that will now be covered by the new dealings provisions.

Omission of s 147AA (Minister may request information)

Clause 175 omits section 147AA that allows the Minister to give an exploration permit renewal applicant a notice requiring information to be given. This power, and the power to refuse the application, will be replaced under new sections in the general part of the Act.

Amendment of s 147C (Continuation of permit while application being dealt with)

Clause 176 amends section 147C(3)(b) to update the section to refer to the new information request provisions.

Amendment of s 147F (Renewal of permit must be in name of last recorded assignee)

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Clause 177 replaces the terminology in section 147F in order to align with new dealings terminology introduced to achieve consistency in dealings provisions across all resources Acts.

Omission of ss 151–158

Clause 178 omits sections 151 to 158 which dealt with assignment of exploration permits and caveats on exploration permits. These sections are now replaced by the new dealings provisions.

Amendment of s 160 (Contravention by holder of exploration permit)

Clause 179 omits a reference to section 158 and replaces with part 7AAAC to refer to associated agreements.

Omission of s 183A (Minister may request information)

Clause 180 omits section 183A that allows the Minister to give a mineral development licence applicant a notice requiring information to be given. This power and the power to refuse the application are replaced under new sections in the general part of the Act.

Amendment of s 193 (Rental payable on mineral development licence)

Clause 181 omits the words 'recorded pursuant to section 205' from section 193(5)(a) and replaces with part 7AAAC to refer to associated agreements.

Amendment of s 194 (Conditions of mineral development licence)

Clause 182 omits the condition prescribed in section 194(1)(e) that will now be covered by the new dealings provisions.

Omission of s 197AA (Minister may request information)

Clause 183 omits section 197AA that allows the Minister to give a mineral development licence applicant a notice requiring information to be given. This power and the power to refuse the application are replaced under new sections in the general part of the Act.

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Amendment of s 197C (Continuation of licence while application being dealt with)

Clause 184 amends section 197C to update references to information request sections that are now provided in sections 386J and 386K.

Amendment of s 197F (Renewal of licence must be in the name of last recorded assignee)

Clause 185 replaces the terminology in section 197F in order to align with new dealings terminology introduced to achieve consistency in dealings provisions across all resources Acts.

Omission of ss 198–205

Clause 186 omits sections 198 to 205 which dealt with the assignment of mineral development licences and caveats. These sections are replaced by the new dealings provisions.

Amendment of s 209 (Contravention by holder of mineral development licence)

Clause 187 omits reference to 205 and replaces with part 7AAAC to refer to associated agreements.

Amendment of s 231G (Conditions of mineral development licence (194))

Clause 188 changes 'assign' to 'transfer' to align with new dealings provisions.

The clause omits the words 'and in the way' from section 231G(1)(f) to remove any potential confusion with new common lodgement provisions.

Amendment of s 231I (Requirements for assigning or mortgaging mineral development licences (198))

Clause 189 replaces the terminology in section 231I in order to align with new dealings terminology introduced to achieve consistency in dealings provisions across all resources Acts.

Amendment of s 234 (Governor-in-Council may grant mining lease)

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Clause 123 omits references to section 198 and replaces with part 7AAAB Divisions 2 and 3.¶
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Clause 190 omits the words 'Governor-in-Council' and inserts 'Minister' to provide the Minister with the power to grant a mining lease.

Replacement of s 238 (Mining lease over surface of reserve or land near a dwelling house)

Clause 191 replaces section 238 to only provide for when mining leases can be granted over restricted land. Provisions about the grant of a mining lease over the surface of a reserve have been moved to new section 271A.

'238 Mining lease over surface of restricted land

Section 238 provides that a mining lease may be granted over the surface of land that was restricted land when the application for the lease was lodged if the owner of the land consents in writing to the application and the applicant lodges the consent with the mining registrar before the last objection day ends.

Section 238(2) provides that a consent given can not be withdrawn.

Omission of s 245A and 247

Clause 192 omits sections 245A that allows the mining registrar to give a mining lease applicant a notice requiring information to be given. This power and the power to refuse the application are replaced under new sections in the general part of the Act.

This clause also omits section 247 to remove the requirement to lodge an application personally. This is to support online lodgement service delivery.

Replacement of s 251 (Priority of applications for grant of mining lease)

Clause 193 replaces section 251.

'251 Priority of mining lease applications

Section 251 provides that applications for a mining lease will take priority according to the day on which they are lodged. If they are lodged on the same day, they will take priority decided by the Minister decides based on merit. The mining registrar is to notify the applicants that the applications will be competing for priority.

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Clause 126 omits prescriptive wording that requires a document to be lodged at a specific place.¶
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Changes to the determination of application priority from the time on which it is lodged or by ballot for simultaneous lodgements, to determination by a merit based assessment (for applications received on the same day) may raise FLP concerns that this has resulted in the limited definition of the power. This change is required to facilitate fairness between applications lodged online (at anytime of the day), and paper applications that can only be lodged during office hours. Priority determined by time would disadvantage paper based applicants. These changes will only impact very few applications and merit based assessment of applications is already a common assessment framework for many applications made under the resources Acts.

Insertion of new s 261

Clause 194 inserts new section 261.

'261 Objection may be withdrawn

Section 261 provides that an objection to a mining lease application may be withdrawn if written notice is given to the mining registrar. If the objection has already been referred to the Land Court, the written notice is also to be given to the Land Court and the applicant. The withdrawal cannot be revoked.

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

Clause 195 inserts new subsection (5) that provides that the Land Court may remit a matter back to the mining registrar, if the hearing hasn't commenced and all properly made objection have been withdrawn.

A definition of properly made objection is also added in subsection (8) to state that it is an objection that has not been withdrawn. This serves the purpose of not requiring the mining registrar to refer objections to the Land Court that have been withdrawn.

Amendment of s 269 (Land Court's recommendation on hearing)

Clause 196 amends section 269 to a note directing that further information about forwarding documents is provided under section 386M.

Subsection (2) is updated to provide a modern version of this section to reflect current drafting principles.

Replacement of s 271 (Minister to consider application

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260B Effect of withdrawal of objection¶
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Section 260B seeks to provide clarity on what happens if a situation arises where all objections referred to the Land Court are subsequently withdrawn before the Court has given an instruction or recommendation. If this occurs, the hearing before the Land Court is cancelled. However, within 15 days, the applicant may apply to the Land Court for costs against the objector to the application.¶ ... [178]

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for grant of mining lease)

Clause 197 replaces section 271 and restructures the content of this section into two additional sections 217A and 271B to reflect current drafting principles and for the Minister to approve mining leases.

'271 Criteria for deciding mining lease application

Section 271 provides the criteria for the Minister in deciding mining lease applications.

'271A Deciding mining lease application

Section 271A(1) provides the Minister the power to decide a mining lease application.

Subsection (2) provides that a mining lease cannot be granted over a reserve without the consent of the reserve owner or the Governor-in-Council.

'271B Steps to be taken after application decided

Section 271B provides that the Minister must notify the applicant as soon as practicable if the Minister decides to reject the application or refer it to the Land Court.

Amendment of s 276 (General conditions of mining lease)

Clause 198 omits Governor-in-Council and inserts the Minister for the power to determine conditions of a mining lease.

Amendment of s 284 (Initial term of mining lease)

Clause 199 amends section 284 to remove the requirement for the Governor-in-Council to approve the initial term of a mining lease (and gives this power to the Minister). It also removes the condition prescribed by subsection (1)(e) that is now provided for under new dealings provisions.

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

Clause 200 amends section 285 so that the Minister (rather than the Governor-in-Council) may grant or renew a mining lease subject to a condition that the holder is not entitled to have the mining lease renewed or

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further renewed.

Omission of s 286AA (Mining registrar may request information)

Clause 201 omits section 286AA that allows the mining registrar to give a mining lease renewal applicant a notice requiring information to be given. This power and the power to refuse the application are replaced under new sections in the general part of the Act.

Amendment of s 286A (Decision on application)

Clause 202 amends section 286A so that the Minister (rather than the Governor-in-Council) may grant an application for the renewal of a mining lease. If the application relates to reserve land and the Governor-in-Council's consent was required to grant, the Governor-in-Council's consent is required to renew the lease if the reserve owner has not consented to the renewal.

Amendment of s 286F (Renewal of lease must be in name of last recorded assignee)

Clause 203 amends the section to reflect the "transfer" terminology rather than the term "assignment" to align with new dealings provisions.

Amendment of s 289 (Mining registrar may issue instrument of mining lease)

Clause 204 omits the Governor-in-Council and inserts the Minister in referring to who grants or renews a mining lease.

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

Clause 205 amends section 294 to provide that the conditions of a mining lease may be varied by the Minister rather than the Governor-in-Council.

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

Clause 206 amends section 295 to provide that the Minister may vary a mining lease (instead of the Governor-in-Council) for the reasons stated in the section.

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

Clause 207 amends section 298 to provide that applications will take priority according to the day on which they are lodged. If they are lodged on the same day, they will take priority decided by the Minister decides based on merit. The mining registrar is to notify the applicants that the applications will be competing for priority.

Changes to the determination of application priority from the time and date on which it is lodged, to determination by a merit based assessment (for applications received on the same day) may raise FLP concerns that this has resulted in the limited definition of the power. This change is required to facilitate fairness between applications lodged online (at anytime of the day), and paper applications that can only be lodged during office hours. Priority determined by time would disadvantage paper based applicants. These changes will only impact very few applications and merit based assessment of applications is already a common assessment framework for many applications made under the resources Acts.

Clause 144 also amends section 298 to provide that the Minister may impose conditions on approval (rather than the Governor-in-Council) for an application from a holder of a mining lease to mine specified minerals, being minerals not specified in the mining lease.

Amendment of s 299 (Consolidation of mining leases)

Clause 208 amends the sections listed in subsection (8) to ensure new section 271A is not omitted by the list. Also replaces the Governor-in-Council with the Minister, for powers related to the consolidation of mining leases.

Omission of ss 300–306

Clause 209 omits sections 300 to 306. These sections are now replaced with the new dealings provisions. The old sections dealt with assignment and mortgages of mining leases and caveats.

Amendment of s 307 (Abandonment of application for the grant of a mining lease)

Clause 210 amends section 307(3) to require an applicant for the grant of mining lease that abandons the application, to notify the Land Court, if the

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application had been referred to the Land Court.

Amendment of s 316 (Mining lease for transportation through land)

Clause 211 amends section 316 to provide that the Minister may (rather than the Governor-in-Council) grant a person a mining lease for the transportation of a thing, over or under the land covered by the application for the lease.

Amendment of s 318AAD (Application for grant of mining lease (245))

Clause 212 omits subsection 318AAD(f) to remove prescriptive wording that requires a document to be lodged at a specific place.

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

Clause 213 aligns terminology with new dealings provisions by replacing the term "assign" with "transfer".

Clause 149 also omits the Governor-in-Council and inserts the Minister in subsections 318AAH(1)(n) and (2) for the power to determine conditions for a mining lease for Aurukun project.

Amendment of s 318AAI (Initial term of mining lease (284))

Clause 214 omits the Governor-in-Council and inserts the Minister in subsection 318AAI(1) for the power to determine initial term of a mining lease for Aurukun project.

Amendment of s 318AAK (Requirements for assigning, mortgaging or subleasing mining leases (300))

Clause 215 amends the section to reflect the "transfer" terminology rather than "assignment" to align with new dealings provisions.

Insertion of new pts 7AAAB–7AAAE

Clause 216 inserts new parts 7AAAB to 7AAAE.

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‘Part 7AAAB Dealings and transfers affecting applications for mining leases

‘Division 1 Preliminary

‘318AAN Application of pt 7AAAB

Section 318AAN provides that this part applies to mining claims, exploration permits, mineral development licences, mining leases and application transfers. Application transfers are the transfer of an application for a mining lease or the transfer of an interest in an application for a mining lease.

‘318AAO Definitions for pt 7AAAB

Section 318AAO provides a definition reference for “non-assessable transfers” and “assessable transfers”.

‘318AAP What is a *dealing* with a mining tenement

Section 318AAP defines a “dealing with a mining tenement” to include a transfer, mortgage, release of a mortgage (including the transfer or surrender of a mortgage) and sublease (including the transfer of a sublease) and a change in a mining tenement holder’s name.

Subsection (2) removes any doubt that a dealing with a mining tenement only applies to transactions mentioned in subsection (1) and not other transactions or agreements not mentioned.

‘318AAQ Prohibited dealings

Section 318AAQ prohibits dealings with a mining tenement that have the effect of transferring a divided part of the area of a mining tenement. This maintains the mining tenement’s cohesion; however the section does not apply to subleases or transfers of subleases. For subleases, the principal holder is still responsible for the mining tenement.

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318AAR . Types of transfers¶
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Section 318AAR provides that non-assessable transfers do not require approval to be registered and lists non-assessable transfers to include a transfer of a mining tenement where

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Deleted: transferee has the same Australian Business Number to any transferor or where part of one holder’s share in a mining tenement will be transferred to another holder of the

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This section only applies to dealings with a mining tenement as defined in section 318AAP. It is does not apply to other commercial agreements made between holders of mining tenements or other authorities about parts of the area of the mining tenement, that are not defined as a dealing with a mining tenement by section 318AAP.

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‘318AAR Types of transfers

Section 318AAR(1) defines non-assessable transfers and provides that non-assessable transfers do not require approval to be registered.

An example of when a transferee may have the same Australian Business Number as the transferor is if a company changes its legal structure, such as “Proprietary Limited” to “Limited”.

Section 318AAR(2) defines assessable transfers to include all transfers not mentioned in subsection (1). It also provides that assessable transfers must be approved by the Minister or mining registrar as appropriate before they can be registered.

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‘Division 2 Registration generally

‘318AAS Registration required for all dealings and application transfers

Section 318AAS(1) provides that a dealing will have no effect until it has been registered.

Section 318AAS(2) provides that assessable transfers take effect on the day the transfer was approved and for any other dealing the day the notice of the dealing was given to the chief executive for registration.

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‘318AAT Obtaining registration

Section 318AAT provides that registration of a dealing that is not prohibited or an assessable transfer may be sought by giving the chief executive notice in the approved form and the prescribed fee. The chief executive must register an assessable dealing after the transfer is approved by the Minister or mining registrar.

‘318AAU Effect of approval and

registration

Section 318AAU provides that registration of a dealing (or approval of an assessable transfer) does not, of itself, give the dealing any more validity than it otherwise would have had.

'Division 3 Approval of assessable transfers

'318AAV Indicative approval

Section 318AAV provides that a holder of a mining tenement, an applicant for a mining lease or holder of an interest in an application for a mining lease, may apply for an indicative approval of an assessable transfer. The indication is to provide whether the transfer is likely to be approved and what the likely conditions are to be imposed.

In deciding to give the indication, the Minister or mining registrar is to consider the criteria in section 318AAX(2) as if the request were an application for an assessable transfer.

'318AAW Applying for approval of assessable transfer

Section 318AAW(1) provides the holder of a mining tenement may apply for approval of an assessable transfer.

Subsection (2) provides that the requirement for making the application to the Minister or mining registrar as appropriate. The proposed transferee must consent to the proposed transfer, as do affected mortgagees and each person who holds a share in the mining tenement.

Subsection (3) and (4) provide the requirements for an applicant to a mining lease or a holder of an interest in the application, to apply for an assessable transfer.

Subsection (4) provides that an application cannot be made if the proposed transferee is not an eligible person.

'318AAX Deciding application

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Section 318AAX requires that the Minister or mining registrar must decide whether to approve the assessable transfer. The application and any additional information given with the application must be considered and, other than for a mining claim, whether the transferee has the human, technical and financial resources to comply with the conditions of holding the relevant tenement. The public interest must also be considered.

If the applicant has a valid indicative approval, these criteria are not required to be reassessed. The approval may then be given if the proposed transferee is an eligible person, is a registered suitable operator under the *Environmental Protection Act 1994* and there are no outstanding royalty payments.

The application may be refused if the transferor has not substantially complied with the conditions of the mining tenement.

Approval is taken to be given if an indicative approval has been given, subsection (4) is satisfied, conditions of the indication have been complied with and the application for assessable transfer has been lodged within 3 months of the indication being given. An indication will remain valid for 6 months if a notice has been given under the *Foreign Acquisitions and Takeovers Act 1975* (Cwlth) and the chief executive has been notified and evidence provided.

An approval will not be taken to be given if the application contained incorrect, or omitted material information, and if the Minister or mining registrar had been aware of the discrepancy would not have given the indicative approval.

'318AAY Security may be required

Section 318AAY provides that the Minister may require security from the transferee as a condition of deciding to give the approval. If the transferee does not comply with this requirement, the application may be refused.

'318AAZ Written notice about decision

Section 318AAZ provides that if the Minister or mining registrar decides to approve the transfer, they must give notice of the decision to the applicant. Subsection (2) provides that if the Minister or mining registrar decides not to give approval, they must give the applicant written notice about the decision. Rights of appeal are also to be covered in the notice.

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‘Part 7AAAC Recording associated agreements

‘318AAZA Application of pt 7AAAC

Section 318AAZA provides that this part applies to mining claims, exploration permits, mineral development licences and mining leases.

‘318AAZB Definition for pt 7AAAC

Section 318AAZB provides the definition of an associated agreement to be an agreement relating to the mining tenement other than a dealing, a prohibited dealing or an agreement prescribed under a regulation as unsuitable to be recorded in the register.

‘318AAZC Recording associated agreements

Section 318AAZC provides that associated agreements may be recorded in the register and this may be sought by giving the chief executive notice of the agreement in the approved form and the prescribed fee.

The chief executive will not examine the agreement before it is registered. The purpose of this facility is to provide a register for other agreements as a fee-for-service to industry and other parties.

‘318AAZD Effect of recording associated agreements

Section 318AAZD provides that the recording of an associated agreement does not give the associated agreement any more validity than what it otherwise would have had. An associated agreement does not create an interest in the mining tenement against which it is recorded.

‘Part 7AAAD Caveats

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‘318AAZE Application of pt 7AAAD

Section 318AAZE provides that this part applies to mining claims, exploration permits, mineral development licences and mining leases. It also applies to application transfers.

‘318AAZF Requirements of caveats

Section 318AAZF provides that a caveat must be in the approved form, be signed by the caveator, the caveator’s solicitor or another person authorised in writing by the caveator. The caveat must also state the name and address for service of one person upon whom any notice may be served on behalf of the caveator or caveators. The caveat must also identify the mining tenement or application for a mining lease concerned and state the nature of the right or interest claimed by the caveator, how long it will remain in force and endorsement if any person consents to the lodging of the caveat and be accompanied by the prescribed fee. Subsection (2) provides that caveats that do not comply with these requirements are of no effect.

‘318AAZG Lodging of caveat

Section 318AAZG provides that a caveat may be lodged by a person claiming an interest in the mining tenement or application for a mining lease, the registered holder of the mining tenement or an applicant for a mining lease, a person to whom an Australian court has ordered that an interest in a mining tenement or application for a mining lease be transferred and a person who has the benefit of an order from an Australian court in restraining a registered holder from dealing with a mining tenement or application for a mining lease.

If a caveat is lodged, it cannot be registered if it applies to an application lodged for an indicative approval, an indicative approval given, an application for an assessable transfer or a notice given to register a dealing.

‘318AAZH Chief executive’s functions on receipt of caveat

Section 318AAZH provides that after the chief executive receives a caveat, they must notify the holder or holders of the affected mining tenement or

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applicants of the mining lease, all other persons that have an interest in the mining tenement or application recorded in the register and record the caveat in the register. However subsection (1) does not apply to an associated agreement.

'318AAZI Effect of lodging caveat

Section 318AAZI provides that a caveat prevents registration of a dealing with the mining tenement, or the transfer of an application for a mining lease, over which the caveat is lodged from the date and time of lodgement endorsed by the chief executive on the caveat. That is, until the caveat lapses or is withdrawn or removed. Subsection (2) provides that lodging a caveat does not prevent registration of an instrument to which the caveat does not apply or any instrument to which the caveator has provided their consent to the chief executive. It also does not prevent registration of an instrument executed by the mortgagee whose interest was registered before lodgement of the caveat if the mortgagee has power under the mortgage to execute that instrument and the caveator claims an interest in the mining tenement as security for the payment of money or money's worth. It also does not prevent registration of an instrument of transfer of mortgage executed by a mortgagee before the caveat (except if lodged by the mining tenement holder according to subsection (3)). Subsection (4) provides that lodging a caveat does not create an interest in the mining tenement or application affected by the caveat.

'318AAZJ Lapsing, withdrawal or removal of caveat

Section 318AAZJ provides provisions for the lapsing, withdrawal or removal of a caveat. Section 318AAZJ(1) provides that a caveat lapses at the end of the term stated in the caveat or if no term is stated, the caveat endures until it is withdrawn or removed. Subsection (2) provides that where the holders of the mining tenement or applicants for a mining lease, have not consented to the lodgement of the caveat, the caveat lapses after 3 months (or shorted stated term in the caveat) or at any expiry of any order of the Land Court in force relating to the caveat.

Section 318AAZJ(3) provides that a caveat may be withdrawn by the caveator providing notice in writing to the chief executive. Section 318AAZJ (4) provides that an affected person may apply to the Land Court for an order that a caveat be removed. Section 318AAZJ (5) provides that the Land Court may make the order whether or not the caveator has been served with the application, and may make the order on terms it considers appropriate.

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Section 318AAZJ(6) provides that if the caveat is withdrawn, lapses or is ordered to be removed, the chief executive must record this in the register. Section 318AAZJ (7) provides that an "affected person" means a person who has a right or interest in a mining tenement or application for a mining lease affected by the caveat, or a person whose right to deal with the mining tenement or application for a mining lease is affected by the caveat lodged. An "agreed caveat" is also defined as a caveat where each holder of the tenement or applicant for the mining lease application, has lodged their consent with the caveat.

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'318AAZK Further caveat not available to same person

Section 318AAZK provides that the section applies if a previous caveat has been lodged. Subsection (2) provides a person who has already lodged a caveat on an interest (or substantially the same interest) may not lodge another caveat on the same grounds as the original caveat unless the holders agree to the caveat or a court provides their permission for the caveat to be lodged.

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'318AAZL Compensation for lodging caveat without reasonable cause

Section 318AAZL provides that a person who lodges a caveat in relation to a mining tenement or application for a mining lease, without reasonable cause must compensate anyone who suffers loss or damage as a result.

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'Part 7AAAE Appeals about approvals of assessable transfers

'318AAZM Who may appeal

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Section 318AAZM provides that a person whose interests are affected by a decision of the Minister or mining registrar to refuse to approve an assessable transfer may appeal against the decision in the Land Court. Subsection (2) provides that a person who is entitled to be given a notice under section 318AAZ is affected by the decision.

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'318AAZN Period to appeal

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Section 318AAZN provides that the appeal must be started within 20 business days after the person has been given a notice or the day the person became aware of the notice.

'318AAZO Starting appeal

Section 318AAZO provides that a person may start an appeal by filing a written notice of appeal in the Land Court and give the chief executive a copy of the notice.

'318AAZP Stay of operation of decision

Section 318AAZP provides that the Land Court may grant a stay of the decision to secure the effectiveness of the appeal. It provides that a stay may be given on conditions, may operate for a period fixed by the Land Court and may be amended or cancelled by the Land Court. However, the section provides that such a stay should not exceed the point in time when the Land Court decides the appeal. It provides the appeal only affects the decision or carrying out of the decision only if it is stayed.

'318AAZQ Hearing procedures

Section 318AAZQ provides hearing procedures for appeals, which provides that the Land Court has the same powers as the Minister or mining registrar, is not bound by the rules of evidence, must comply with natural justice and may hear the appeal in court or in chambers.

Subsection 318AAZQ(2) provides that an appeal by way of rehearing is unaffected by the decision.

Section 318AAZQ(3) provides that the procedure for the appeal is in accordance with the rules for the Land Court, and in absence of such rules, as directed by the Land Court. The section provides that a power under the Act to make rules fro the Land Court includes power to make rules for appeals under this part.

'318AAZR Land Court's powers on appeal

Section 318AAZR provides the Land Court's powers on appeal, which

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include the power to confirm or set aside the decision and substitute another decision or return the issue to the Minister or mining registrar with directions the Land Court considers appropriate.

Amendment of section 318AB (Relationships with pts 5–7)

Clause 217 amends the section to reflect the "transfer" terminology rather than "assignment".

Amendment of s 318BN (Publication of outcome of application)

Clause 218 omits the Governor-in-Council and inserts the Minister in referring to when an application for a mining lease is decided.

Amendment of s 318CI (Restriction)

Clause 219 omits subsection 318CI(1)(b) to remove prescriptive wording that requires a document to be lodged at a specific place.

Amendment of pt 7AA, div 8, sdiv 8, hdg (Restriction on assignment or subletting)

Clause 220 amends the section to reflect the "transfer" terminology rather than "assignment".

Amendment of s 318DO (Requirement for coordination arrangement to assign or sublet mining lease in area of petroleum lease)

Clause 221 amends the section to reflect the "transfer" terminology rather than "assignment".

Amendment of s 318ELAJ (Assignments)

Clause 222 amends the section to reflect the "transfer" terminology rather than "assignment".

Amendment of s 318ELBH (Publication of outcome of application)

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Clause 223 omits the Governor-in-Council and inserts the Minister in referring to when an application for a mining lease is decided.

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Replacement of s 318ELBM (Minister may refuse application)

Clause 224 replaces section 318ELBM.

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'318ELBM Minister may refuse application

Section 318ELBM is restructured to reflect that the Minister decides mining lease applications without making recommendations to the Governor-in-Council.

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Amendment of s 318ELBT (Requirement to continue geothermal or GHG coordination arrangement after renewal or dealing with mining lease)

Clause 225 amends the section to reflect the "transfer" terminology rather than "assignment".

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Amendment of s 325 (Royalty return and payment upon assignment or surrender of mining claim or mining lease)

Clause 226 amends the section to reflect the "transfer" terminology rather than "assignment".

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Insertion of new pt 10, div 2AAA

Clause 227 inserts new section 343A in Part 10 after section 343.

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'Division 2AAA Chief executive

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'343A Chief executive has functions and powers of mining registrars

Section 343A provides for the chief executive to exercise the same powers as a mining registrar.

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Replacement of s 387 and 387A

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Clause 228 inserts new sections 387 and 387A.

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'386J Request to applicant about application

Section 386J is the common section being introduced in all resources Acts titled 'Request to applicant about application'. This section allows the chief executive, or mining registrar for mining claims, to give an applicant a notice requiring them to do all or any of the following within a stated reasonable period: complete or correct an application; submit additional information about the application; obtain an independent report or make a statement or statutory declaration to verify information provided; or obtain a survey of the tenement area. The response may be sent directly to an officer of the department stated in the notice.

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A statement or statutory declaration may be required to be made by an independent person, the applicant, or an executive officer if the applicant is a corporation. The purpose of providing a statement is so that information can be given online, where online lodgement of statutory declarations is limited by the *Oaths Act 1867*. If the statement provides false or misleading information, the *Mineral Resources Act 1989* provides a penalty under section 404D. The option of requiring a statutory declaration to be given is still available to the chief executive or mining registrar.

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The applicant must bear any cost incurred in complying with the notice. This section does not apply to an application made to a court or tribunal or the internal review application process. The internal review process provides adequate recourse for the reviewer to seek further information, and it would not be appropriate to use this section in this process. For example, the chief executive could be giving a request notice about a decision being reviewed that was made by the chief executive.

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Deleted: Chief Executive. The term relevant application is used in this section and is defined as applications other than prospecting permits or mining claims. Existing information request powers provided to the Mining Registrars in these sections have been retained.

'386K Refusing application for failure to comply with request

Section 386K allows the Minister, or mining registrar, as appropriate; to refuse an application if a notice given under section 386J has not been complied with within the stated period to the satisfaction of the person who gave the notice. This is consistent across all the resources Acts and allows the mining registrar or chief executive to issue the notice, receive the information response and make a recommendation or decide the application. Section 386K(3) removes any doubt that the application may be refused under subsection (2) despite where an applicant has complied with the requirements made under another provision or if an application must be granted in particular circumstances. This insertion has been derived from the previous section 843(5) of the *Petroleum and Gas (Production*

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and Safety) Act 2004.

'386L Notice to progress relevant applications

Section 386L provides that the relevant person may require an applicant for grant or renewal of a mining tenement to do any thing required (under this Act or another Act), within a reasonable period of time, to allow the mining tenement application to be granted, renewed or decided. The relevant person must give notice of the requirement and can reject the application if the applicant fails to comply.

This section does not include prospecting permits, and for mining claims, the relevant person is the mining registrar, otherwise it is the Minister.

To provide certainty that an unreasonable period for compliance cannot be set, subsection (2) requires that the minimum period for complying with the notice must be at least 20 business days. The relevant person also has the discretion of extending the period for complying with the notice.

'386M Particular criteria generally not exhaustive

New section 386M provides that the Minister or mining registrar where the Minister or mining registrar has to consider particular criteria in making a decision about an application, may not only consider the particular criteria, but may also take into consideration any other criteria the Minister or mining registrar considers relevant.

'386N Particular grounds for refusal generally not exhaustive

Section 386N provides that the Minister or mining registrar may, where particular grounds exist for which the Minister or mining registrar may refuse an application, refuse the application on another reasonable and relevant ground.

'386O Place or way for making applications, giving, filing, forwarding or lodging documents or making submissions

Section 386O is inserted titled, 'Place or way for making applications, giving, forwarding, filing, or lodging documents or making applications'. This section provides for applications, documents, submissions etc. that are

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required to be given to the Department, may also be provided in the prescribed way under the regulations. The regulations will provide the detail of lodgement and acceptance procedures and will enable the use of the online lodgement system.

Traditional methods for giving these documents will still be available. Where someone cannot or does not wish to take advantage of the online facility, they can still submit at the place detailed on the approved form. If no address is provided on the approved form, or there is no approved form for the purpose, the department's website shall provide the relevant information.

This section specifically excludes processes that are controlled by the Land Court or transitional sections.

'386P Requirements for making application

Section 386P provides that if an application is submitted and not all requirements for making the application have been met, the Minister or mining registrar may allow the application to proceed if the Minister or mining registrar is satisfied that the application substantially complies with the requirements.

If the application is not received, the Minister or mining registrar must inform the applicant and give reasons for the decision and refund the application fee. Applications for grant of mining claims and mining leases have been excluded as the certificate of application process already provides a process for application requirements. Applications for the grant of prospecting permits have also been excluded due to the relative straightforward requirements of making an application. However, other types of applications related to prospecting permits, mining claims and mining leases are not excluded e.g. renewal.

There is no appeal process for this decision and there may be FLP concerns that there is not an appropriate review of the administrative power available. This assessment is exercised at the preliminary stage of the application on whether the application is properly made; therefore, no rights or interests are being removed as the decider would not be able to assess the application. Applicants are still entitled to judicial review of the department's decision if they are dissatisfied.

There may also be concerns that this administrative power is not sufficiently

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defined in terms of the criteria the Minister or mining registrar is considering when deciding to refuse to receive the application or whether it is substantially compliant. This section identifies that the requirements of the Act must be considered, and in terms of making an application, these criteria are adequately addressed in those relevant sections of the Act. It would not be practicable to attempt to define criteria for substantial compliance as this could cover significant variations in circumstances where the application of discretion is appropriate.

'387 Register to be kept

Section 387 is also updated so that the chief executive maintains the register. This is to correctly reflect how registers are maintained and to facilitate the online system.

'387A Access to register

Section 387A reflects changes where reference is only made to the one register.

Insertion of new s 387D

Clause 229 inserts new section 387D.

'387D Chief executive may correct register

Section 387D provides the power to the chief executive to correct the register if it is incorrect as long as in doing so, the rights recorded in the register will not be prejudiced. This is common in all other resources Acts.

Amendment of s 391A (Restriction on decisions or recommendations about mining tenements)

Clause 230 provides the correct "transfer" terminology replacing the "assignment" terminology. It also removes the general restriction on assigning without the assignee having a relevant environmental authority. This is replaced by the 'registered suitable operator' framework in the new common dealings provisions.

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Amendment of s 392 (Substantial compliance with Act may be accepted as compliance)

Clause 231 insert subsection (2) and links this section to the new section on the acceptance of purported applications.

Replacement of s 398 (Delegation)

Clause 232 replaces section 398 with a new section.

'398 Delegation by Minister and chief executive

Section 398 replaces the section and updates the previous delegations section to reflect that the definition of appropriately qualified has been moved to the dictionary. A restriction on delegating the Minister's power to grant or renew a mining lease has been added to reflect restrictions provided by previous section 271(6).

Amendment of s 401A (Protection against liability as condition of approval)

Clause 233 amends section 401A to align with new dealings provisions.

Amendment of s 416B (Practice manual)

Clause 234 omits section 416B(b) and (c) and inserts the provision that information given as a result of a Practice manual is to be made in accordance with the Practice manual or pursuant to new section 386O.

Amendment of s 417 (Regulation-making power)

Clause 235 inserts new subsection 417(2)(r) that provides a regulation making power to define procedures for consistent lodgement practices for documents or information lodged under section 386M(2)(b). The clause also inserts new subsection (s) that provides the regulation making power to require lodgement of hard copies of documents. This will support the transition to online lodgement so that the original document can be obtained in the event it is later required.

Amendment of s 653 (Content of written notice)

Clause 236 omits the Governor-in-Council and inserts Minister in referring to granting of a mining lease.

Amendment of s 657 (Ending of additional

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Amendment is also made to subsection 417(2)(r) to reflect that only one register is kept.¶
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requirements)

Clause 237 omits the Governor-in-Council and inserts Minister in referring to granting of a mining lease.

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Amendment of s 666 (Process for consultation and negotiation—negotiated agreement with or without conditions attached)

Clause 238 omits the Governor-in-Council and inserts Minister in referring to granting of a mining lease.

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Amendment of s 687 (Contract conditions)

Clause 239 replaces the Governor-in-Council with Minister.

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Amendment of s 688 (Notice of grant to registered native title parties)

Clause 240 replaces the Governor-in-Council with Minister.

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Amendment of s 708 (Agreement for compensation)

Clause 241 omits prescriptive wording that requires a document to be lodged at a specific place.

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Amendment of s 745 (Application of pt 7AA)

Clause 242 amends section 745 to provide that the application of part 7AA (Provisions for coal seam) applies if immediately before the commencement: a coal or oil shale mining lease application was made; and a recommendation to the Governor-in-Council had not been made; and the land subject of the application is in the area of the petroleum tenure. This allows the Minister to deal with these applications under part 7AA.

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Insertion of new pt 19, div 17

Clause 243 introduces transitional provisions to provide for changes made under this Bill.

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'Division 17 Transitional provisions for Mines Legislation (Streamlining)

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Amendment Act 2012 - amendments commencing by proclamation

‘Subdivision 1 Preliminary

‘791 Definitions for div 17

Section 791 introduces definitions applicable to this division.

‘Subdivision 2 Provisions relating to exploration permits

‘792 Particular applications for exploration permits

Section 792 provides transitional arrangements for secondary applications for exploration permits that have been made but had not been decided upon commencement. These applications will remain current and will be determined under previous provisions.

‘793 Periodic reduction in land covered by existing exploration permit

Section 793 provides that existing exploration permits upon commencement will apply the previous relinquishment requirements for the remainder of the current term.

‘Subdivision 3 Provisions relating to mining claims

‘794 Existing applications for mining claim of no referral to Land Court

Section 794 provides transitional arrangements for applications for a mining claim that had not been referred to the Land Court upon commencement, and there are no objections, all objections are withdrawn, or the application abandoned, the mining registrar is not required to refer the matter to the Land Court. The purpose of this transitional is to make this process clear in light of other changes made regarding the withdrawal of

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791 Particular applications to renew exploration permits¶
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Section 791 applies to applications for renewal of exploration permits that had been made and not decided prior to commencement. The new 15 year limit will not be applied to these applications.¶
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792

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Section 793 provides transitional arrangements for applications for a mining . claim . that . has . been . referred . to . the . Land . Court . upon commencement, and where no instruction or recommendation has yet been made. Under these circumstances, new section 71B applies if all objections are withdrawn.¶
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objections to mining claims and mining leases.

'795 Existing applications for mining claim or renewal of mining claim—term of claim

Section 795 provides for applications for grant or renewal of mining claims that had been made, but not decided, before commencement, shall be determined under the new provisions (sections 91and 93), however, a 10 year term may be granted.

'Subdivision 4 Provisions relating to mining leases

'796 Existing applications for mining lease if no referral to Land Court

Section 796 provides that if an application for a mining lease that has not been referred to the Land Court upon commencement, and there are no objections, all objections have been withdrawn or the applicant abandons the application, the application may be decided or dealt with, and not referred to the Land Court. The purpose of this transitional is to make this process clear in light of amendments about how an objection is withdrawn.

'797 Existing referral of mining lease to Land Court

Section 797 provides the transitional provision for applications referred to the Land Court, and before the Land Court hearing has started, all objections are withdrawn or the application is abandoned, the matter is remitted to the mining registrar.

'798 Minister to decide particular applications for or about mining leases

Section 798 provides that a mining lease application or an application about mining leases that has not been decided on commencement will be decided by the Minister rather than the Governor-in-Council.

'Subdivision 5 Provisions common to mining tenements

'799 Unfinished actions under former s 96, 151, 198 or 300

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Section 799 provides that if a person had an obligation under former sections 98, 151, 198 or 300 and the person has not discharged the obligation before commencement, the obligation continues to be in effect.

'800 Deciding applications for approval of assessable transfers until commencement of particular provisions

Former section 391A continues to have effect in relation to the person until the commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Act 2012*, chapter 5A, part 4. This effectively overrides the new section 318AAX(4)(a)(ii) until after the commencement of that Act.

This means that, until the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* commences, the environmental authority must be transferred before the transfer of the tenure can be approved.

After commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, transfers will be approved under the new section 318AAX(4)(a)(ii).

'801 Continued functions for caveats received before the commencement

Section 801 provides that despite the repeal of the former caveat provisions (sections 98, 153, 200 and 302) they will continue to apply for caveats received before commencement.

'802 Continued functions for removal or withdrawal of caveat

Section 802 provides that despite the repeal of certain caveat provisions (sections 101,156, 203 and 305), they will continue to apply to an order of the Land Court that a caveat be removed, a notice about withdrawal of a caveat if it is provided before commencement.

'Subdivision 6 Other provisions

'803 Existing requests for information

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Section 803 provides that where existing information requests have not been complied with upon commencement shall be taken to have been given under the new section 386J(1).

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Amendment of sch 2 (Dictionary)

Clause 244 includes definitions to the dictionary relevant to the amendments.

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Part 5 Amendment of Petroleum Act 1923

Act Amended

Clause 245 provides for this part to amend the *Petroleum Act 1923*

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Amendment of s 2 (Definitions)

Clause 246 provides and amends definitions relevant to the amendments.

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Amendment of s 40 (Lease to holder of authority to prospect)

Clause 247 amends section 40 by transferring the power of the Governor-in-Council to the Minister to: grant a lease; approve an irregular shaped lease; and approve land not contiguous to be included in one lease.

Amendment of s 44 (Form etc. of lease)

Clause 248 amends section 44 to provide that the Minister (instead of the Governor-in-Council) may approve in special cases, variations from the prescribed form of the lease.

Amendment of s 45 (Entitlement to renewal of lease)

Clause 249 amends section 45 to provide that the Minister (instead of the Governor-in-Council) may approve renewal of a lease.

Amendment of s 65 (Reservations in favour of State)

Clause 250 amends section 65 to provide that the Minister (instead of the

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Governor-in-Council) may consider it desirable for the grant of an easement or right of way over land covered by a lease or authority.

Omission of s 75AA (Notice of change of holder's name)

Clause 251 deletes section 75AA, the situation that deals with a change to the holder's name because this situation is now provided for by the definition of a dealing.

Amendment of s 75WN (Amending water monitoring authority by application)

Clause 252 omits prescriptive wording that requires a document to be lodged at a specific place.

Amendment of s 75X (Requirement to report outcome of testing)

Clause 253 omits prescriptive wording that requires a document to be lodged at a specific place.

Amendment of s 76B (Requirement to lodge records and samples)

Clause 254 omits section 76B(2) and inserts new provisions that maintains the requirement for records to be lodged under this section and adds the option of these records being lodged in a way prescribed under a regulation (enables use of new online lodgement facility in the future).

Amendment of s 79X (General provision about ownership while tenure is in force for pipeline)

Clause 255 renumbers a reference to from 80G to 80I.

Replacement of pt 6N (Dealings)

Clause 256 replaces pt 6N.

'Part 6N Dealings

'Division 1 Preliminary

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Amendment of s 80C (Access to register)¶

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The clause also inserts new subsection (2)(d) that requires the register to be available to be accessed, free of change, on the department's website.¶
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Insertion of new

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‘80E Definitions for pt 6N

Section 80E provides definition references for “assessable transfers” and “non-assessable transfers”.

‘80F What is a *dealing* with a 1923 petroleum tenure

Section 80F defines a “dealing with a 1923 Act petroleum tenure" to include a transfer, mortgage, release of a mortgage (including the transfer or surrender of a mortgage) and sublease (including the transfer of a sublease) and a change in a 1923 Act petroleum tenure holder’s name.

Subsection (2) removes any doubt that a dealing with a 1923 Act petroleum tenure only applies to transactions mentioned in subsection (1) and not other transactions or agreements not mentioned.

‘80G Prohibited dealings

Section 80G prohibits dealings with a 1923 Act petroleum tenure that have the effect of transferring a divided part of the area of a 1923 Act petroleum tenure. This means that such tenures retain their cohesion; however, the section does not apply to subleases or transfers of subleases. For subleases, the principal holder is still responsible for the petroleum lease, not the sublessee.

‘80H Types of transfers

Section 80H defines non-assessable transfers and provides that non-assessable transfers do not require approval to be registered.

An example of when a transferee may have the same Australian Business Number as the transferor is if a company changes its legal structure, such as “Proprietary Limited” to “Limited”.

Section 80H(2) defines assessable transfers to include all transfers not mentioned in subsection 80H(1). It also provides that assessable transfers must be approved by the Minister before they can be registered.

‘Division 2 Registration of dealings generally

‘80I Registration required for all dealings

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Section 80I provides that a dealing will have no effect until it has been registered.

Section 80I(2) provides that assessable transfers take effect on the day the transfer was approved and for any other dealing the day the notice of the dealing was given to the chief executive for registration.

‘80J Obtaining registration

Section 80J provides that registration of a dealing that is not prohibited or an assessable transfer may be sought by giving the chief executive notice in the approved form and the prescribed fee. The chief executive must register an assessable dealing after the transfer is approved by the Minister.

‘80K Effect of approval and registration

Section 80K provides that registration of a dealing (or approval of an assessable transfer) does not, of itself, give the dealing any more validity than it otherwise would have had.

‘Division 3 Approval of assessable transfers

80KA Indicative approval

Section 80KA provides that a holder of a 1923 Act petroleum tenure may apply for an indicative approval of an assessable transfer. The indication is to provide whether the transfer is likely to be approved and what the likely conditions are to be imposed. In deciding to give the indication, the Minister is to consider the criteria in section 80KA(2) as if the request were an application for an assessable transfer.

‘80KB Applying for approval of assessable transfer

Section 80KB(1) provides the holder of a 1923 Act petroleum tenure may apply for approval of an assessable transfer. Section 80KB(2) provides requirements for making an application. The proposed transferee must consent to the proposed transfer, as do affected mortgagees and each other person who holds a share of the 1923 Act petroleum tenure.

‘80KC Deciding application

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Section 80I(4) provides that the

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Section 80K(3) provides that the application must be made to the Minister, be in the approved form and be accompanied with the instrument to the dealing signed by the parties to the dealing and the prescribed fee. If the transfer relates to a share of a 1923 Act petroleum tenure, the application must also include a statement of consent from each person who also holds that interest or each person that is a person who also holds a share of that¶
1923 Act petroleum tenure. If the interest is subject to a mortgage the application must be accompanied by the written consent to ... [220]

Section 80KC requires that the Minister must decide whether to approve the assessable transfer. The application and any additional information given with the application must be considered and the relevant criteria for obtaining the type of 1923 Act petroleum tenure. The public interest must also be considered.

If the applicant has a valid indicative approval, the matters the Minister must consider in deciding the application, are not required to be reassessed. The approval may then be given if the proposed transferee is a registered suitable operator under the *Environmental Protection Act 1994* and there are no outstanding royalty payments.

The application may be refused if the transferor has not substantially complied with the conditions of the 1923 Act petroleum tenure.

Approval is taken to be given if an indicative approval has been given, subsection (4) is satisfied, conditions of the indication have been complied with and the application for assessable transfer has been lodged within 3 months of the indication being given. An indication will remain valid for 6 months if a notice has been given under the *Foreign Acquisitions and Takeovers act 1975* (Cwlth) and the chief executive has been notified and evidence provided.

An approval will not be taken to be given if the application contained incorrect, or omitted material information and if the Minister had been aware of the discrepancy would not have give the indicative approval.

'80KD Security may be required

Section 80KD provides that the Minister may require security from the transferee as a condition of deciding to give the approval. If the transferee does not comply with this requirement, the application may be refused.

'80KE Notice of decision

Section 80KE(1) provides that if the Minister decides to approve the transfer, the Minister must give notice of the decision to the applicant. Subsection (2) provides that if the Minister decides not to give approval, the Minister must give the applicant an information notice about the decision.

'Part 6NA Recording

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associated agreements

‘80KF Definition of pt 6NA

Section 80KF provides the definition of an associated agreement to be an agreement relating to the 1923 Act petroleum tenure other than a dealing, a prohibited dealing or an agreement prescribed under a regulation as unsuitable to be recorded in the register.

‘80KG Recording associated agreements

Section 80KG provides that associated agreements may be recorded in the register and this may be sought by giving the chief executive notice of the agreement in the approved form and the prescribed fee.

The chief executive will not examine the agreement before it is registered. The purpose of this facility is to provide a register for other agreements as a fee-for-service to industry and other parties.

‘80KH Effect of recording associated agreements

Section 80KH provides that the recording of an associated agreement does not give the associated agreement any more validity than what it otherwise would have had. An associated agreement does not create an interest in the mining tenement against which it is recorded.

‘Part 6NB Caveats

‘80KI Requirements for caveats

Section 80KI provides that a caveat must be in the approved form, be signed by the caveator, the caveator’s solicitor or another person authorised in writing by the caveator. The caveat must also state the name and address for service of one person upon whom any notice may be served on behalf of the caveator or caveators. The caveat must also identify the 1923 Act petroleum tenure concerned and state the nature of the right or interest claimed by the caveator, how long it will remain in force and endorsement if any person consents to the lodging of the caveat and be accompanied by the prescribed

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fee. Subsection (2) provides that caveats that do not comply with these requirements are of no effect.

'80KJ Lodging of caveat

Section 80KJ provides that a caveat may be lodged by a person claiming an interest in the 1923 Act petroleum tenure, the registered holder of the 1923 Act petroleum tenure, a person to whom an Australian court has ordered that an interest in a 1923 Act petroleum tenure be transferred and a person who has the benefit of an order from an Australian court in restraining a registered holder from dealing with a 1923 Act petroleum tenure.

If a caveat is lodged, it cannot be registered if it applies to an application lodged for an indicative approval, an indicative approval given, or an application for an assessable transfer or a notice give to register a dealing.

'80KK Chief executive's functions on receipt of caveat

Section 80KK provides that after the chief executive receives a caveat, they must notify the holder or holders of the affected 1923 Act petroleum tenure, all other persons that have an interest in the 1923 Act petroleum tenure recorded in the register and record the caveat in the register. However subsection (1) does not apply to an associated agreement.

'80KL Effect of lodging caveat

Section 80KL(1) provides that a caveat prevents registration of a dealing with the 1923 Act petroleum tenure over which the caveat is lodged from the date and time of lodgement endorsed by the chief executive on the caveat. That is, until the caveat lapses or is withdrawn or removed. Subsection (2) provides that lodging a caveat does not prevent registration of an instrument to which the caveat does not apply or any instrument to which the caveator has provided their consent to the chief executive. It also does not prevent registration of an instrument executed by the mortgagee whose interest was registered before lodgement of the caveat if the mortgagee has power under the mortgage to execute that instrument and the caveator claims an interest in the 1923 Act petroleum tenure as security for the payment of money or money's worth. It also does not prevent registration of an instrument of transfer of mortgage executed by a mortgagee before the caveat (except if lodged by the 1923 Act petroleum tenure holder according to subsection (3)). Subsection (4) provides that lodging a caveat does not create a registrable interest in the 1923 Act petroleum tenure affected by the caveat.

'80KM Lapsing, withdrawal or removal of a

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caveat

Section 80KM provides provisions for the lapsing, withdrawal or removal of a caveat. Section 80KM(1) provides that a caveat lapses at the end of the term stated in the caveat or if no term is stated, the caveat endures until it is withdrawn or removed. Subsection (2) provides that where the holders of the 1923 Act petroleum tenure have not consented to the lodgement of the caveat, the caveat lapses after 3 months (or shorted stated term in the caveat) or at any expiry of any order of the Land Court in force relating to the caveat.

Section 80KM(3) provides that a caveat may be withdrawn by the caveator providing notice in writing to the chief executive. Section 80KM(4) provides that an affected person may apply to the Land Court for an order that a caveat be removed. Section 80KM(5) provides that the Land Court may make the order whether or not the caveator has been served with the application, and may make the order on terms it considers appropriate.

Section 80KM(6) provides that if the caveat is withdrawn, lapses or is ordered to be removed, the chief executive must record this in the register. Section 80KM(7) provides that an "affected person" means a person who has a right or interest in a 1923 Act petroleum tenure affected by the caveat, or a person whose right to deal with the 1923 Act petroleum tenure is affected by the caveat lodged. An "agreed caveat" is also defined as a caveat where each holder of the tenure has lodged their consent with the caveat.

'80KN Further caveat not available to same person

Section 80KN provides that the section applies if a previous caveat has been lodged. Subsection (2) provides a person who has already lodged a caveat on an interest (or substantially the same interest) may not lodge another caveat on the same grounds as the original caveat unless the holders agree to the caveat or a court provides their permission for the caveat to be lodged.

'80KO Compensation for lodging caveat without reasonable cause

Section 80KO provides that a person who lodges a caveat in relation to a 1923 Act petroleum tenure without reasonable cause must compensate anyone who suffers loss or damage as a result.

Replacement of ss 120 and 121

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1923 Act petroleum tenure consents to the caveat and lodges that consent, on the expiration of the term. If no expiration date is provided in any holder's consent, the caveat will remain. The subsection also provides that a caveat lapses if the Land Court orders so or three months after the date it was lodged.¶
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Clause 257 replaces sections 120 and 121 and inserts new sections 121A, 121B and 121C.

'120 Requirements for making an application

Section 120 provides that if the Minister refuses to receive or process a purported application, other than one made to the Land Court, the Minister must give the applicant written notice of the decision and the reason for it and the chief executive must refund the application fee. This is to make this section consistent with the same sections being introduced throughout the resources Acts.

There is no appeal process for this decision and there may be FLP concerns that there is not an appropriate review of the administrative power available. This assessment is exercised at the preliminary stage of the application on whether the application is properly made; therefore, no rights or interests are being removed as the decider would not be able to assess the application. Applicants are still entitled to judicial review of the department's decision if they are dissatisfied.

There may also be concerns that this administrative power is not sufficiently defined in terms of the criteria the Minister is considering when deciding to refuse to receive the application or whether it is substantially compliant. This section identifies that the requirements of the Act must be considered, and in terms of making an application, these criteria are adequately addressed in those relevant sections of the Act. It would not be practicable to attempt to define criteria for substantial compliance as this could cover significant variations in circumstances where the application of discretion is appropriate.

'121 Request to applicant about application

New section 121 will give the chief executive the power to require an applicant to, within a stated reasonable period to provide additional information (which includes a document) relating to an application other than one made to the Land Court. Section 121 will align with a standard section being adopted across all resources Acts (with minor differences where necessary to make them relevant for each Act). Section 365 of the *Geothermal Energy Act 2010* was used as a model framework for the common resources Act sections.

The power includes the ability to request that an applicant:

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Deleted: <sp>Section 121 being included in all Resources Acts titled 'Request to applicant about application'. This section allows the Chief Executive to give an applicant a notice requiring them to do all or any of the following within a stated reasonable period: complete or correct an application; submit additional information about the application; obtain an independent

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- complete or correct the application if it appears to be incorrect, incomplete or defective; and
- give additional information about, or relevant to, the application, or give the department an independent report by an appropriately qualified person or a statement or statutory declaration verifying information included in the application, such as any additional information requested or verifying that the application meets the capability criteria.

The section specifies that if the application is for a lease, that a document may include a survey or resurvey of the area of the proposed tenure carried out by a person who is a surveyor under the *Surveyors Act 2003*. The section also requires that where a notice requires a statement or statutory declaration, that they be made by an appropriately qualified independent person or by the applicant, and if the applicant is a corporation, be made for the applicant by an executive officer of the applicant. The purpose of providing that a statement can be made in addition to a statutory declaration is so that information can be given in a statement online.

Section 121(4) states that the applicant must bear any costs in complying with the notice. Section 121(5) provides that the chief executive may extend the period for complying with the notice.

'121A Refusing application for failure to comply with request

Section 121A titled 'Refusing application for failure to comply with request'. This section allows the Minister to refuse an application if a notice given under section 121 has not been complied with within the stated period to the satisfaction of the chief executive. This is consistent across all the resources Acts and allows the chief executive to issue the notice, receive the information response and make a recommendation to the Minister for consideration.

Section 121A(2) removes any doubt that the Minister may refuse an application under subsection (1) despite where an applicant has complied with the requirements made under another provision or if an application must be granted in particular circumstances. This insertion has been derived from the previous section 843(5) of the *Petroleum and Gas (Production and Safety) Act 2004*.

'121B Particular criteria generally not exhaustive

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Section 121B provides that the Minister where the Minister has to consider particular criteria in making a decision about an application, may not only consider the particular criteria, but may also take into consideration any other criteria the Minister considers relevant.

'121C Particular grounds for refusal generally not exhaustive

Section 121C provides that the Minister may, where particular grounds exist for which the Minister may refuse an application, refuse the application on another reasonable and relevant ground.

Insertion of new pt 9, div 1A

Clause 258 inserts the new Part 9.

'Division 1A How to lodge or give particular documents, make particular applications or make submissions

'124AA Place or way for making applications, giving or lodging documents or making submissions

Section 124AA provides for applications, documents, submissions etc. that are required to be given to the department, may also be provided in the prescribed way under the regulations. The regulations will provide the detail of procedures that will enable the use of the online lodgement system.

Traditional methods for giving these documents will still be available. Where someone cannot or does not wish to take advantage of the online facility, they can still submit at the place detailed on the approved form. If no address is provided on the approved form, or there is no approved form for the purpose, the department's website shall provide the relevant information.

This section specifically excludes processes that are controlled by the Land Court or where documents are to given electronically using a system for submission of reports required elsewhere in the Act. Transitional provisions are also excluded.

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These sections are being added to this Act and the *Petroleum and Gas (Production and Safety) Act 2004* to make these Acts consistent with the modern Resources Acts (*Greenhouse Gas Storage Act 2009* and *Geothermal Energy Act 2010*). ... [226]

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Amendment of s 142 (Practice manual)

Clause 259 section 142(3)(b) and (c) to provide that information required to be given by the Practice manual can be given in accordance with the manual or pursuant to section 124AA.

Amendment of s 149 (Regulation-making power)

Clause 260 inserts new subsection 149(2)(c) that provides a regulation making power to define procedures for consistent lodgement practices for documents or information lodged under section 124AA(2)(b). The clause also inserts new subsection (d) that provides the regulation making power to require lodgement of hard copies of documents. This will support the transition to online lodgement so that the original document can be obtained in the event it is later required.

Amendment of s 150 (Declaration about certain 1923 Act petroleum tenures)

Clause 261 amends section 150 to provide that the Minister is also stated to have always had the power to grant an authority to prospect or petroleum lease for coal seam gas.

Insertion of new pt 14, div 3

Clause 262 inserts new part 14, division 3. This new part provides for transitional provisions for amendments made under this Bill.

'Division 3 Transitional provisions for amendments in amending Act commencing by proclamation

'193 Minister to decide particular applications for or about leases

Section 193 requires that any application for the grant or renewal of a petroleum lease that has not been decided by the Governor-in-Council on commencement will be decided by the Minister.

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'194 Unfinished indications about approval of dealing

Section 194 provides transitional provisions for an assignment indication that was made under section 80H and is undecided. The Minister may continue to consider the application under the former 80H.

'195 Undecided applications for approval of dealing

Section 195 provides transitional provisions that will apply to an application made under the former section 80I and is undecided. It provides that the Minister may continue to deal with the application under former sections 80J and 80K.

'196 Deciding applications for approval of assessable transfers until commencement of particular provisions

Section 196 applies until the commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, chapter 5A, part 4. This is because the concept of a 'registered suitable operator' will not exist until that Act commences.

Former section 80J(2)(a) continues in force instead of section 80KC(4)(a), as inserted by the amending Act, for deciding whether to give an approval of an assessable transfer. This means that, until the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* commences, the environmental authority must be transferred before the transfer of the tenure can be approved.

'197 Uncommenced appeals about refusal to approve particular dealing

Section 197 provides that if before commencement a person could have appealed to the Land Court under section 104 in relation to refusal to approve a dealing and the person had not started the appeal, the person continues to be a person who may start an appeal under section 104.

'198 Unfinished appeals about refusal to approve particular dealing

Section 198 provides that unfinished appeals may be granted a stay by the Land Court under the relevant parts and hear and the Land Court may decide the appeal if the appeal was started before commencement.

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Amendment of schedule (Decisions subject to appeal)

Clause 263 inserts "refusal to approve an assessable transfer" in section 80J(1) and also adds "decisions to require security" to the schedule.

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

Act Amended

Clause 264 provides for this part to amend the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 30A (Joint holders of a petroleum authority)

Clause 265 amends section 30A to ensure this section is consistent with the distinction between assessable transfers and non-assessable transfers in new dealings provisions.

Amendment of s 59 (Restrictions on amending work program)

Clause 266 amends section 59(2)(d) as a result of new dealings provisions. It clarifies that subject to the other requirements of section 59, a holder may apply to amend a work program for an authority to prospect within 3 months of an approval given for an assessable transfer application relating to a share in the authority.

Amendment of s 60 (Applying for approval to amend)

Clause 267 amends section 60 to provide that an application must be accompanied by a fee and adds a note that raises awareness of the provisions dealing with making applications. The statutory power to charge a fee has

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Clause 205 amends section 33 to authorise incidental activities on

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been transferred from section 61 that has been omitted.

Amendment of s 118 (Requirements for making ATP-related application)

Clause 268 omits subsections (2) and (3) and removes duplication in grounds to refuse receipt of an application that is now covered under new common section titled: 'Requirements for making an application'.

Insertion of new ch 2, pt 2, div 7, sdiv 3

Clause 269 inserts new Subdivision 3 Changing production commencement day after section 175 to provide the Minister with the power to amend the production commencement day of a petroleum lease.

'Subdivision 3 Changing production commencement day

'175AA When holder may apply to change production commencement day

Section 175AA provides that the holder of a petroleum lease can apply for approval to amend the production commencement day of a petroleum lease. However, the holder may only make the application if the holder has a relevant arrangement in place; production under the lease is set to commence more than two years after the day the lease takes effect; and the application is made no later than one year before the day by which petroleum production under the lease is set to start. These restrictions prevent last minute applications by a lease holder and ensure that only lease holders who had a relevant arrangement in place at the time the lease was granted can apply to amend the production commencement day.

'175AB Requirements for making application

Section 175AB outlines the requirements for making an application to amend the production commencement day, including that the application is made to the Minister and that it states the grounds by which an amendment is required. The applicant will also be required to provide material detailing the petroleum production required under all relevant arrangements relating to the lease as well as material detailing the reserves, resources and reservoir characteristics of all petroleum authorities required to supply production under the relevant arrangement. The application is to be accompanied by a

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Amendment of s 112 (Incidental Activities)¶
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Clause 208 amends section 112 to authorise incidental activities on a petroleum lease which supports authorised activities on another petroleum lease which may or may not held by the same entity.¶
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fee prescribed under a regulation.

For relevant arrangements, petroleum holders operate under an integrated field development plan. This means that changes in production on one lease can have flow-on effects to other leases that form part of the integrated plan. To make a decision on whether to grant the application, the Minister needs to understand the implications of this decision on production from other leases that form part of the integrated plan. The Minister will also need to take account of the company's commitments under a relevant arrangement, as this was the original rationale for granting delayed production.

'175AC Deciding application

Section 175AC provides that the Minister must decide to approve or refuse the application. In making this decision, the Minister must consider: whether the holder has substantially complied with the lease; whether petroleum production under the lease will be optimised in the best interests of the State; and the public interest. If the Minister decides to approve the application, the Minister must substitute a new production commencement day for the lease.

'175AD Information notice about decision

Section 175AD provides that, if the Minister decides to refuse the application, an information notice must be provided to the applicant.

Amendment of s 548 (Requirement to lodge records and samples)

Clause 270 omits section 548(2) and inserts new provisions that maintains the requirement for records to be lodged under this section and adds the option of these records being lodged in a way prescribed under a regulation (enables use of new online lodgement facility in the future).

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Insertion of new ss 552A and 552B

Clause 271 inserts new ss 552A and 552B after section 552.

'552A Obligation to lodge infrastructure report for petroleum lease

Section 552A provides an obligation on a petroleum lease holder to lodge an infrastructure annual report by a certain date, which addresses all those matters contained in section 552B.

‘552B Content requirements for infrastructure report for petroleum lease

Section 552B inserts a new section which outlines the contents of the infrastructure annual report introduced in the proposed section 552A. These report requirements includes:

- details of the authorised activities undertaken on the petroleum lease;
- details of the infrastructure and works constructed on the petroleum lease in support of these authorised activities; and
- the location of the infrastructure and works undertaken.

Omission of s 558A (Notice of change of holder’s name)

Clause 272 omits section 558A, which deals with the situation where a petroleum authority holder changes their name. This section is now redundant as the name change situation is now provided for by the definition of a ‘dealing’.

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Replacement of ch 5, pt 10 (Dealings)

Clause 273 inserts new chapter 5 part 10 on post-grant dealings.

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Part 10 comprises of Division 1 (Preliminary), Division 2 (Registration of dealings generally), Division 3 (Approval of assessable transfers). Generally a reference to a petroleum authority includes a reference to a share in a petroleum authority.

‘Part 10 Dealings

‘Division 1 Preliminary

‘568 Definitions for pt 10

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Section 568 provides definitions for “assessable transfers” and “non-assessable transfers”.

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‘569 What is a *dealing* with a petroleum authority

Section 569 defines a “dealing with a petroleum authority” to include a transfer, mortgage, release of a mortgage (including the transfer or surrender of a mortgage) and sublease (including the transfer of a sublease) and a change in a petroleum authority holder’s name.

Subsection (2) removes any doubt that a dealing with a petroleum authority only applies to transactions mentioned in subsection (1) and not other transactions or agreements not mentioned.

‘570 Prohibited dealings

Section 570 prohibits dealings with a petroleum authority that have the effect of transferring a divided part of the area of a petroleum authority. This maintains the petroleum authority’s cohesion; however the section does not apply to subleases or transfers of subleases. For subleases, the principal holder is still responsible for the petroleum authority, not the sublessee.

This section only applies to dealings with a petroleum authority as defined in section 569. It does not apply to other commercial agreements made between holders of petroleum authorities or other authorities about parts of the area of the petroleum authority, that are not defined as a dealing with a petroleum authority by section 569.

‘571 Types of transfers

Section 571(1) defines non-assessable transfers and provides that non-assessable transfers do not require approval to be registered.

An example of when a transferee may have the same Australian Business Number as the transferor is if a company changes its legal structure, such as “Proprietary Limited” to “Limited”.

Section 571(2) defines assessable transfers to include all transfers not mentioned in subsection (1). It also provides that assessable transfers must be approved by the Minister before they can be registered.

‘Division 2 Registration of dealings generally

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‘572 Registration required for all dealings

Section 572(1) provides that a dealing will have no effect until it has been registered.

Subsection (2) provides that assessable transfers take effect on the day the transfer was approved and for any other dealing the day the notice of the dealing was given to the chief executive for registration.

‘573 Obtaining registration

Section 573 provides that registration of a dealing that is not prohibited or an assessable transfer may be sought by giving the chief executive notice in the approved form and the prescribed fee. The chief executive must register an assessable dealing after the transfer is approved by the Minister.

‘573A Effect of approval and registration

Section 573A provides that registration of a dealing (or approval of an assessable transfer) does not, of itself, give the dealing any more validity than it otherwise would have had.

‘Division 3 Approval of assessable transfers

‘573B Indicative approval

Section 573B provides that a holder of a petroleum authority may apply for an indicative approval of an assessable transfer. The indication is to provide whether the transfer is likely to be approved and what the likely conditions are to be imposed.

In deciding to give the indication, the Minister is to consider the criteria in section 573D(2) as if the request were an application for an assessable transfer.

‘573C Applying for approval of assessable transfer

Section 573C(1) provides the holder of a petroleum authority may apply for approval of an assessable transfer. Section 573C(2) provides that an

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application can not be made if the proposed transferee is not an eligible person. Section 573C(3) provides the requirements for a petroleum authority holder to apply for an assessable transfer. The proposed transferee must consent to the proposed transfer, as do affected mortgagees and each other person who holds a share of the petroleum authority.

'573D Deciding application

Section 573D requires that the Minister must decide whether to approve the assessable transfer. The application and any additional information given with the application must be considered and of the relevant criteria for obtaining the relevant authority. The public interest must also be considered.

If the applicant has a valid indicative approval, the matters the Minister must consider in deciding the application are not required to be reassessed. The approval may then be given if the proposed transferee is an eligible person, is a registered suitable operator under the *Environmental Protection Act 1994* and there are no outstanding royalty payments.

The application may be refused if the transferor has not substantially complied with the conditions of the petroleum authority.

Approval is taken to be given if an indicative approval has been given, subsection (4) is satisfied, conditions of the indication have been complied with and the application for assessable transfer has been lodged within 3 months of the indication being given. An indication will remain valid for 6 months if a notice has been given under the *Foreign Acquisitions and Takeovers act 1975* (Cwlth) and the chief executive has been notified and evidence provided.

An approval will not be taken to be given if the application contained incorrect, or omitted material information, and if the Minister had been aware of the discrepancy would not have give the indicative approval.

'573E Security may be required

Section 573E provides that if the Minister decides to approve the transfer, the Minister must give notice of the decision to the applicant. Subsection (2) provides that if the Minister decides not to give the approval, they must give the applicant an information notice about the decision.

'573F Notice of decision

Section 573F(1) provides that if the Minister decides to approve the

transfer, the Minister must give notice of the decision to the applicant. Section (2) provides that if the Minister decides not to give approval, the Minister must give the applicant an information notice about the decision.

'Part 10A Recording associated agreements

'573G Definition for pt 10A

Section 573G provides the definition of an associated agreement to be an agreement relating to the petroleum authority other than a dealing, a prohibited dealing or an agreement prescribed under a regulation as unsuitable to be recorded in the register.

'573H Recording associated agreements

Section 573H provides that associated agreements may be recorded in the register and this may be sought by giving the chief executive notice of the agreement in the approved form and the prescribed fee.

The chief executive will not examine the agreement before it is registered. The purpose of this facility is to provide a register for other agreements as a fee-for-service to industry and other parties.

'573I Effect of recording associated agreements

Section 573I provides that the recording of an associated agreement does not give the associated agreement any more validity than what it otherwise would have had. An associated agreement does not create an interest in the petroleum authority against which it is recorded.

'Part 10B Caveats

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‘573J Requirements of caveats

Section 573J provides that a caveat must be in the approved form, be signed by the caveator, the caveator’s solicitor or another person authorised in writing by the caveator. The caveat must also state the name and address for service of one person upon whom any notice may be served on behalf of the caveator or caveators. The caveat must also identify the petroleum authority concerned and state the nature of the right or interest claimed by the caveator, how long it will remain in force and endorsement if any person consents to the lodging of the caveat and be accompanied by the prescribed fee. Subsection (2) provides that caveats that do not comply with these requirements are of no effect.

‘573K Lodging of caveat

Section 573K provides that a caveat may be lodged by a person claiming an interest in the petroleum authority, the registered holder of the petroleum authority, a person to whom an Australian court has ordered that an interest in a petroleum authority be transferred and a person who has the benefit of an order from an Australian court in restraining a registered holder from dealing with a petroleum authority.

If a caveat is lodged, it cannot be registered if it applies to an application lodged for an indicative approval, an indicative approval given, or an application for an assessable transfer or a notice give to register a dealing.

‘573L Chief executive’s functions upon receipt of caveat

Section 573L provides that after the chief executive receives a caveat, they must notify the holder or holders of the affected petroleum authority, all other persons that have an interest in the petroleum authority recorded in the register and record the caveat in the register. However section 573L(1) does not apply to an associated agreement.

‘573M Effect of lodging caveat

Section 573M provides that a caveat prevents registration of a dealing with the petroleum authority, over which the caveat is lodged from the date and time of lodgement endorsed by the chief executive on the caveat. That is, until the caveat lapses or is withdrawn or removed. Subsection (2) provides that lodging a caveat does not prevent registration of an instrument to which

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the caveat does not apply or any instrument to which the caveator has provided their consent to the chief executive. It also does not prevent registration of an instrument executed by the mortgagee whose interest was registered before lodgement of the caveat if the mortgagee has power under the mortgage to execute that instrument and the caveator claims an interest in the mining tenement as security for the payment of money or money's worth. It also does not prevent registration of an instrument of transfer of mortgage executed by a mortgagee before the caveat (except if lodged by the petroleum authority holder according to subsection (3)). Subsection (4) provides that lodging a caveat does not create a registrable interest in the mining tenement affected by the caveat.

'573N Lapsing, withdrawal or removal of a caveat

Section 573N provides provisions for the lapsing, withdrawal or removal of a caveat. Section 573N(1) provides that a caveat lapses at the end of the term stated in the caveat or if no term is stated, the caveat endures until it is withdrawn or removed. Subsection (2) provides that where the holders of the petroleum authority have not consented to the lodgement of the caveat, the caveat lapses after 3 months (or shorted stated term in the caveat) or at any expiry of any order of the Land Court in force relating to the caveat.

Section 573N(3) provides that a caveat may be withdrawn by the caveator providing notice in writing to the chief executive. Section 573N(4) provides that an affected person may apply to the Land Court for an order that a caveat be removed. Section 573N(5) provides that the Land Court may make the order whether or not the caveator has been served with the application, and may make the order on terms it considers appropriate.

Section 573N(6) provides that if the caveat is withdrawn, lapses or is ordered to be removed, the chief executive must record this in the register. Section 573N(7) provides that an "affected person" means a person who has a right or interest in a petroleum authority affected by the caveat, or a person whose right to deal with the petroleum authority is affected by the caveat lodged. A "agreed caveat" is also defined as a caveat where each holder of the tenure has lodged their consent with the caveat.

'573O Further caveat not available to same person

Section 573O(1) provides that the section applies if a previous caveat has been lodged. Subsection (2) provides a person who has already lodged a caveat on an interest (or substantially the same interest) may not lodge

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another caveat on the same grounds as the original caveat unless the holders agree to the caveat or a court provides their permission for the caveat to be lodged.

‘573P Compensation for lodging caveat without reasonable cause

Section 573P provides that a person who lodges a caveat in relation to a petroleum authority without reasonable cause must compensate anyone who suffers loss or damage as a result.

Replacement of s 842 and 843

Clause 274 replaces section 842.

‘842 Requirements for making an application

Section 842 provides that if the Minister refuses to receive or process a purported application other than one made to the Land Court, the Minister must give the applicant written notice of the decision and the reason for it and the relevant person must refund the application fee. This is to make this section consistent with the same sections being introduced throughout the resources Acts.

There is no appeal process for this decision and there may be FLP concerns that there is not an appropriate review of the administrative power available. This assessment is exercised at the preliminary stage of the application on whether the application is properly made; therefore, no rights or interests are being removed as the decider would not be able to assess the application. Applicants are still entitled to judicial review of the department’s decision if they are dissatisfied.

There may also be concerns that this administrative power is not sufficiently defined in terms of the criteria the Minister is considering when deciding to refuse to receive the application or whether it is substantially compliant. This section identifies that the requirements of the Act must be considered, and in terms of making an application, these criteria are adequately addressed in those relevant sections of the Act. It would not be practicable to attempt to define criteria for substantial compliance as this could cover significant variations in circumstances where the application of discretion is appropriate.

‘843 Request to applicant about

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application

Section 843 gives the chief executive, or chief inspector where appropriate, the power to require an applicant to, within a stated reasonable period to provide additional information (which includes a document) relating to an application other than one made to the Land Court. Section 843 will align with a standard section being adopted across all resources Acts (with minor differences where necessary to make them relevant for each Act). Section 365 of the *Geothermal Energy Act 2010* was used as a model framework for the common resources Act sections.

The power includes the ability to request that an applicant:

- complete or correct the application if it appears to be incorrect, incomplete or defective; and
- give additional information about, or relevant to, the application, or give the department an independent report by an appropriately qualified person or a statement or statutory declaration verifying information included in the application, such as any additional information requested or verifying that the application meets the capability criteria.

The section specifies that if the application is for a petroleum authority that a document may include a survey or resurvey of the area of the proposed tenure carried out by a person who is a surveyor under the *Surveyors Act 2003*. The section also requires that where a notice requires a statement or statutory declaration, that they be made by an appropriately qualified independent person or by the applicant, and if the applicant is a corporation, be made for the applicant by an executive officer of the applicant. The purpose of providing that a statement can be made in addition to a statutory declaration is so that information can be given in a statement online.

Section 843(4) states that the applicant must bear any costs in complying with the notice. Section 843(5) provides that the chief executive, or chief inspector where appropriate, may extend the period for complying with the notice.

'843A Refusing application for failure to comply with request

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Section 843A allows the Minister to refuse an application (or the chief inspector for relevant applications) if a notice given under s 843 has not been complied with within the stated period to the satisfaction of the executive (or chief inspector as appropriate). This is consistent across all the resources Acts and allows the chief executive to issue the notice,

receive the response and make a recommendation to the Minister for consideration (or the chief inspector for relevant applications).

Section 843A(2) removes any doubt that the Minister (or chief inspector) may refuse an application under section 843A(1) despite where an applicant has complied with the requirements made under another provision or if an application must be granted in particular circumstances. This insertion has been derived from the previous section 843A(5) of the *Petroleum and Gas (Production and Safety) Act 2004*.

'843B Notice to progress petroleum authority or renewal applications

Section 843B provides that the Minister may require an applicant for grant or renewal of a petroleum authority to do any thing required (under this Act or another Act), within a reasonable period of time, to allow the application to be granted, renewed or decided. The Minister must give notice of the requirement and can refuse the application if the applicant fails to comply.

To provide certainty that an unreasonable period for compliance cannot be set, subsection (2) requires that the minimum period for complying with the notice must be at least 20 business days. The Minister also has the discretion of extending the period for complying with the notice.

'843C Particular criteria generally not exhaustive

Section 843C provides that the Minister where the Minister has to consider particular criteria in making a decision about an application, may not only consider the particular criteria, but may also take into consideration any other criteria the Minister considers relevant.

'843D Particular grounds for refusal generally not exhaustive

Section 843D provides that the Minister may, where particular grounds exist for which the Minister may refuse an application, refuse the application on another reasonable and relevant ground.

Insertion of new s 851AA

Clause 275 inserts the new section 851AA.

'851AA Place or way for making applications or giving or lodging documents

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Section 851AA provides for applications, documents, submissions etc. that are required to be given to the department, may also be provided in the prescribed way under the regulations. The regulations will provide the detail of procedures that will enable the use of the online lodgement system.

Traditional methods for giving these documents will still be available. Where someone cannot or does not wish to take advantage of the online facility, they can still submit at the place detailed on the approved form. If no address is provided on the approved form, or there is no approved form for the purpose, the department's website shall provide the relevant information.

This section specifically excludes: processes that are controlled by another agency (e.g. Land Court, Treasury, Main Roads); transitional provisions; or where documents are to given electronically using a system for submission of reports required elsewhere in the Act.

Amendment of s 858A (Practice **manual**)

Clause 276 amends section 858A(3)(b) and (c) to provide that information required to be given by the Practice manual can be given in accordance with the manual or pursuant to section 851AA.

Amendment of s 859 (Regulation-making power)

Clause 277 inserts new subsection 859(2)(c) that provides a regulation making power to define procedures for consistent lodgement practices for documents or information lodged under section 851AA(2)(b). The clause also inserts new subsection (d) that provides the regulation making power to require lodgement of hard copies of documents. This will support the transition to online lodgement so that the original document can be obtained in the event it is later required.

Insertion of new ch 15, pt 13, div 3

Clause 278 inserts new Chapter 15, Part 13, Division 3

'Division 3 Transitional provisions for amendments in amending Act commencing by proclamation

'964 Definition for div 3

Section 964 provides the definition for "existing petroleum lease".

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Deleted: 965 Definitions

‘965 When holder of an existing petroleum lease may apply to change production commencement day

Section 965 provides that on commencement, the holder of an existing petroleum lease may apply to change the production commencement date under section 175AA, if the production commencement day for the lease is before 1 February 2014.

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Subsection (2) provides that the holder can apply under section 175AA only if the application is made no later than 6 months before the day which petroleum production under the lease is to start.

‘966 Particular requirements for infrastructure reports under s 552A for existing petroleum leases

Section 966 applies to the holder of an existing petroleum lease that is in effect immediately before the commencement. The first infrastructure report lodged after the commencement by the holder under section 552A for an existing petroleum lease must, in addition to the requirements mentioned in section 552B, also state the details of the authorised activities for the lease carried out since the lease was granted and details of infrastructure and works constructed in the area of the lease since the lease was granted, including the location of the infrastructure and works.

‘967 Unfinished indications about approval of dealing

Section 967 provides that for applications for indications about approval of a dealing made before commencement of this chapter and not decided before commencement, the, Minister may continue to consider the request and give an indication under former section 571.

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‘968 Continuing indications about approval of dealing

Section 968 provides that where the Minister gave an indication of approval of a proposed dealing under former section 571 and the indication is still current, that the indication of approval continues to have effect as if former section 571 had not been repealed.

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‘969 Undecided applications for approval of dealing

Section 969 provides for undecided applications for approval of a dealing that were made under former section 572 and have not be granted or refused before commencement, then the Minister may continue to deal with the application and former sections 573 and 574 apply to the Minister's decision about the application.

'970 Deciding applications for approval of assessable transfers until commencement of particular provisions

Section 970 applies until the commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, chapter 5A, part 4. This is because the concept of a 'registered suitable operator' will not exist until that Act commences.

Former section 573(2)(a) continues in force instead of section 573D(4)(a), as inserted by the amending Act, for deciding whether to give an approval of an assessable transfer. This means that, until the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* commences, the environmental authority must be transferred before the transfer of the tenure can be approved.

'971 Uncommenced review of refusal to approve particular dealing

Section 971 provides that if before commencement of this chapter of the Mines Legislation (Streamlining) Amendment Bill 2012, a person could appeal to the Land Court under the relevant section in relation to a refusal to approve and register a dealing under the former section and the person had not started the appeal before commencement, the person may still appeal under the relevant sections.

'972 Unfinished review of refusal to approve particular dealing

Section 972 applies if, before the commencement, a person applied for an internal review about a refusal to approve a dealing under former section 573(1) and the reviewer had not yet decided the review. Subsection (2) provides that the reviewer may continue to grant a stay of the decision being reviewed and decide the review.

'973 Amending work programs

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Section 973 applies if before commencement, an authority to prospect holder has become a holder after having a transfer application for a share in the authority approved under section 573 or an application for transfer relating to a share in the authority has been made under section 572 that has not been decided. The holder may apply to amend the work program under section 59 despite amendments to section 59(2)(d) in that references to applications and approvals for assessable transfers in new dealings sections 573C and 573D are to be taken to be references to applications and approvals of transfers under former sections 572 and 573. The intent of this transitional is so that existing holders or transfer applications on commencement, are not prevented from applying to amend their work program after amendment to section 59(2)(d).

Amendment of sch 1 (Reviews and appeals)

Clause 279 inserts "refusal to approve an assessable transfer" and "decision not to change production commencement day for a petroleum lease" in Schedule 1, table 2 for petroleum leases.

Amendment of sch 2 (Dictionary)

Clause 280 includes definitions to the dictionary relevant to the amendments.

Part 7 Amendment of other Acts

Acts amended

Clause 281 states that Schedule 2 amends the Act it mentions.

Chapter 4 Amendments **for the** restructure of the Mineral Resources Act 1989

Part 1 Amendment of Mineral Resources Act 1989

"Act amended" to "insertion of new sch **1A**"

Clauses 282 to Clause 322 relate to the restructuring of the Mineral Resources Act 1989 to convert the parts into chapters, divisions into parts and subdivisions into divisions. In addition, these clauses provide for the relocation and renumbering of provisions relating to the McFarlane Oil Shale Deposit (chapter 12, part 1) Collingwood Park State Guarantee (chapter 12, part 2), Wild Rivers (chapter 12, part 3), Cherwell Creek (chapter 12, part 4) and particular mining tenements (chapter 12, part 5).

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Part 2 Amendment of other Acts

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Acts amended

Clause 323 states that schedule 3 amends the Acts it mentions. Schedule 3 makes consequential amendments to other Acts as result of restructuring the *Mineral Resources Act 1989*.

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Schedule 1 Minor amendments commencing on assent

Schedule 1 makes minor amendments to the *Geothermal Energy Act 2010*, the *Greenhouse* Gas Storage Act 2009, the *Mineral Resources Act 1989*, the *Petroleum Act 1923* andand the Petroleum and Gas (Production and Safety) Act 2004.

Schedule 2 **Minor and consequential**Consequential amendments commencing by proclamation other than amendments **relating to restructure offor** the

Schedule 2 provides minor and consequential amendments to *Geothermal Energy Act 2010*, *Greenhouse Gas Storage Act 2009*, *Land and Resources Tribunal Act 1999*, *Mineral Resources Act 1989*, *Petroleum Act 1923*, *Petroleum and Gas (Production and Safety) Act 2004*.

Schedule 3 Minor and consequential amendments relating to restructure of the Mineral Resources Act 1989

Schedule 3 provides minor and 2 makes consequential amendments to the *Aboriginal Cultural Heritage Environmental Protection* Act *2003*, *City of Brisbane Act 2010*, *1994*, the Geothermal Energy Act 2010, the Greenhouse Gas Storage Act 2009, *Land and Resources Tribunal Act 1999*, *Land Court Act 2000*, *Local Government Act 2009*,the Mineral Resources Act 1989,, the Petroleum Act 1923, and the *Petroleum and Gas (Production and Safety) Act 2004*, arising from the amendments made in chapter 3.

Schedule 3 Consequential amendments for the restructure of the Mineral Resources Act 1989

Schedule 3 makes consequential amendments to the *Aboriginal Cultural Heritage Act 2003*, the *City of Brisbane Act 2010*, the *Coal Mining Safety and Health Act 1999*, the *Environmental Protection Act 1994*, the *Geothermal Energy Act 2010*, the *Greenhouse Gas Storage Act 2009*, the *Land Court Act 2000*, the *Local Government Act 2009*, the *Mineral Resources Acts 1989*, the *Petroleum Act* 1923, the Petroleum and Gas (Production and Safety) Act 2004, the State Development and Public Works Organisation Act 1971, the Torres Strait Islander Cultural Heritage Act 2003 and the Wild Rivers Act 2005 in response to the restructure of as result of the amendments restructuring the Mineral Resources Act 1989.

The Bill amends the *Mineral Resources Act 1989* (MRA); *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act); *Petroleum Act 1923* (PA); *Greenhouse Gas Storage Act 2010* (GHG); and the *Geothermal Energy Act 2010* (GEA) (collectively referred to as the resources acts), the *Environmental Protection Act 1994* (EP Act) and the *Work Health and Safety Act 2011* (WHS Act) to enable Queensland's resources acts to provide balance, certainty and efficiency for affected parties in response to the significant growth of the resources sector in the State.

Urban Restricted Areas

This Bill together with a proposed state planning policy will implement the URA policy to achieve an ongoing framework to restrict resources activities in close proximity to urban centres. A state planning policy will be developed to provide a consistent approach to recognising key coal,

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mineral and petroleum resources alongside mapping of URAs in the land use planning framework. Supporting amendments to resources acts are:

- the Minister will be provided a power to declare, amend or remove URAs under all resources acts (excluding geothermal and industrial minerals);
- in the first instance, URAs will be declared for towns with a population over 1000 plus a 2 kilometre buffer;
- the conditions applied to URAs are an extension of existing restricted land provisions;
- the default position in URAs will be no activity unless written consent from the relevant local government is provided;
- a proponent dissatisfied with the response from local government can appeal to the Land Court and the Minister can consider the Land Court's recommendation;
- the Minister can overrule a Land Court decision (either to give consent or remove it) in the public interest;
- existing mining and petroleum lease holders will be subject to a clause that allows activities approved under their environmental authority to proceed without the need for local government consent (this recognises the extensive approval processes already undertaken for grant of production leases);
- if there is an amendment to the approved development plan or approved plan of operations for a mining or petroleum lease, local government consent for new activities will be required;
- on commencement of the amendments, existing EPs and mineral development licences will need to cease activities immediately until local government consent is granted;
- progression to open cut mining is prohibited within URA (apart from mining for industrial minerals such as dolomite, sandstone and limestone);
- the P&G Act, PA and GHG will all be amended to be consistent with the MRA to allow land holders to require consent for resources activities within a 100 metres of a permanent building or within 50 metres from infrastructure such as principal stockyards, bore or dam; and

- the PGA will be amended to provide that where relinquishment is voluntary and is over or around URA or a town, the Minister may determine that relinquishment requirements may be less than those prescribed (i.e. in sub-blocks).

The *Geothermal Energy Act 2010* is excluded from the urban restricted area policy as close proximity to end-users is required. Industrial minerals are also excluded to prevent impacts on the building industry.

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Consequential amendments to the *Geothermal Energy Act 2010* ensure that this Act refers to the W*ork Health and Safety Act 2011* instead of the *Workplace Health and Safety Act 1995* which is expected to be repealed through the proposed commencement of the *Work Health and Safety Act 2011* on 1 January 2012.

Additional Amendments

Improvements to the efficiency and workability of resources acts will be achieved by:

- Amending the P&G Act to provide a closing date for applications transitioning from the PA will enable the Minister to decide these applications;
- Amending the P&G Act to empower the Minister to decide an appropriate term for a lease transitioning from the PA whether it is granted before or after the end of the term under the PA;
- Amending the MRA to make clear that environmental studies are an entitlement under an exploration permit;
- Amending the resources acts to empower the Minister to reject or refuse a resources application where the applicant fails to take all reasonable steps to progress the application to the point where the decision-maker can make a decision on the application within a reasonable time;
- Amending the MRA to clarify that a written objection to the grant of a mining lease may be withdrawn by giving written notice to the Mining Registrar and the Land Court (if the objection has been referred to the Land Court);
- Amending the MRA to change the definition of *properly made objection* under section 265 to include an objection made under section 260 that has not been withdrawn; and
- Restructuring to simplify the MRA and make it more consistent with other resources acts.

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Urban Restricted Areas

The Bill establishes a framework to provide an ongoing measure to resolve and manage land use conflicts arising from resources activities in close

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proximity to urban areas. The granting and conditioning of resources permits that allow exploration and production of resources is established by the resources acts. Administrative arrangements and policies would not provide sufficient certainty for affected parties therefore the creation of URAs to provide certainty in restricting resource related activities can not be achieved effectively through other means.

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CSG/LNG Industry

Regulatory certainty is essential for the resources sector as it is the means of licensing exploration and production of State owned resources. There are no non-legislative options capable of achieving the policy objectives. The policy objective may have been achieved by amending other legislation including the *Land Act 1994*, *Land Title Act 1994, State Development and Public Works Organisation Act 1971,* and the *Forestry Act 1959* however, the proposed amendments to the P&G Act were simpler and more direct.

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Additional Amendments

There is no option apart from legislative amendment to improve

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Urban Restricted Areas

Costs to Government for implementing the amendments to establish the Urban Restricted Areas policy will be met within existing Departmental resources.

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The amendments creating the framework for Urban Restricted Areas may breach the fundamental legislative principle requiring sufficient regard to the rights and liberties of individuals. The proposed amendments will diminish existing 'rights' of exploration permit holders to undertake

resources activities in URAs that the holder was entitled to at the time the permit was granted.

The purpose of the URA policy amendments is to make clear that in specific land use conflict situations characterised by resources activities in close proximity to urban centres, the optimum outcome is to prevent exploration and potential high impact surface mining activities.

The Bill transfers the power to grant and renew mining leases and petroleum leases under the MRA and the PA from the Governor-In-Council to the Minister. The lack of an appeal provision has raised the possible breach of the FLP requiring sufficient regard to the rights and liberties of individuals.

Section 267 of the MRA allows the Minister to reject a mining lease application at anytime if the Minister is not satisfied that the applicant has complied with the Act, or if the Minister considers granting of the lease is not in the public interest. The Minister may also reject the application under section 271(1) after considering the application. The Minister can exercise these powers autonomously without Governor in Council approval and decisions made by the Minister under these sections are not currently subject to an appeals process. Governor in Council approval is only required to grant or renew a lease. Transferring the power to grant, or renew as proposed by the Bill, does not change the existing power of a Minister to reject applications without being subject to an appeals process.

The PA is silent on the grounds of refusing a petroleum lease application. Therefore the likelihood of an appeal on a refused application is considered limited under this Act. It is only until the later development plan is considered for renewal of a petroleum lease, that grounds for the Minister to refuse are defined (this is appealable).

Applicants aggrieved by decisions have are entitled to judicial review and in general aggrieved parties of the Resources Act do make use of this review mechanism. In addition, there has been overwhelming support for the proposed amendment by industry representatives without any request for an appeal mechanism.

Appeal rights for mining and petroleum lease decisions under these Acts will not benefit the State's stewardship responsibilities. Appeals on a refusal decision by the applicant would either significantly delay the State progressing alternate arrangements for development of the resource leading to impacts on social, economic and employment benefits, or further protract community uncertainty regarding significant social impacts where

the Minister has decided that the grant or renewal is not in the public interest. An appeal right for a decision made in the public interest would put at risk the Minister's prerogative to make this judgement.

Imposing the requirement for annual infrastructure reports on existing lease holders does impose a new obligation and may breach the FLP requiring consideration of whether the amendments adversely affect rights and liberties, or impose obligations, retrospectively. The requirement will apply retrospectively to existing lease holders however it is balanced with a new entitlement for incidental activities, such as roads, electricity lines, and fibre optic cables to be constructed across adjacent petroleum permit areas. The intention of the new requirement will provide a public benefit through by way of the Department holding and maintaining a comprehensive record of the authorised activities and incidental activities undertaken on petroleum lease areas.

Consultation

Urban Restricted Areas

DEEDI undertook a one month public consultation process which involved the release of a consultation paper and on-line questionnaire. A total of 414 survey responses were received. The majority of respondents self-identified as members of the community. Around 50 industry submissions were received either as part of this process or in response to the voluntary relinquishment request. Local Governments also responded in relation to the Minister's offer to allow towns to be opted into or out of the restrictions.

Community responses were primarily concerned with the impacts of open cut coal mining such as dust, noise, amenity, vibration and traffic – not exploration and the size of the buffer. Local governments' views differed on the issue. A number of rural local governments favour exploration activities continuing due to the economic benefits they bring to the community. South East Queensland local governments strongly objected to open-cut coal mining and CSG. The industry peak bodies: the Queensland Resources Council and the Australian Petroleum Producers and Explorers Association and the Association of Mining and Exploration Companies; expressed the view that no changes to the existing legislation and regulatory processes are necessary.

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Consultation commenced for the proposed amendments when the Premier released the *Streamlining Approvals Project: mining and petroleum tenures approval process* (Streamlining Report) in November 2009. This report made 13 recommendations to improve the efficiency of regulatory and other approvals processes and initiated a collaborative program of work with industry. In April 2010, industry reviewed and endorsed the Streamlining Report, and made further recommendations in the *Supporting resource sector growth: industry proposals for streamlining Queensland's approval processes*. Subsequently, industry was invited to participate in a joint government and industry implementation group.

The Government and Industry Implementation Group met between October 2010 and April 2011, establishing five specialist working groups to facilitate implementation of agreed streamlining measures. These working groups developed proposals policy and legislative amendments.

Internal stakeholders have been actively consulted both during policy development and on the draft legislation. Discussion papers on policy development and draft sections of the Bill were distributed to mining and petroleum tenures officers throughout Queensland. The Streamlining Approvals project is linked to the Greentape Reduction Project and the Department has worked closely with the Department of Environment and Resource Management to ensure alignment between reforms to the EP Act and the resources acts.

Presentations at the policy development stage were delivered to industry representatives where questions and concerns were discussed. There was general support for the policy direction taken by the Department with some concerns raised regarding proposals for post-grant dealings and exploration permit renewal restrictions.

Following drafting of the proposed amendments, industry associations including Queensland Resources Council, Association of Mining and Exploration Companies and Australian Petroleum Production and Exploration Association were forwarded the draft sections for review and comment. Four briefing sessions were held by the Department for these associations and their members to discuss the proposed amendments. Feedback was generally supportive and some proposed changes were included when the amendments were finalised.

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Safety and Health

There has been extensive consultation with the Department of Justice and Attorney-General for the amendments to the WHS Act.

Additional Amendments

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. A briefing session was held by the Department for these associations and their members to discuss the proposed amendments.

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Urban Restricted Areas

Other Australian States with resource activity comparable to Queensland have in place equivalent legislation to exclude land from exploration and to manage potential urban impacts.

In Western Australia, the responsible Minister has the power to exempt land from exploration and/or mining. Land classified as a town site under the *Land Administration Act 1997* may only be granted an exploration licence over it with the consent of the Minister. Before consenting, the Minister must consult the Minister responsible for administering the *Land Administration Act* 1997 and the relevant local government to obtain recommendations.

New South Wales has recently introduced additional measures, including placing a 60 day moratorium on the granting of all new coal, coal seam gas and petroleum exploration licences, and requiring that all new licences be exhibited for public comment.

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MRA

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New South Wales

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, these matters are dealt with sections providing for

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which

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a tenement holder does not undertake the necessary steps for grant

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The amendments relating to Land Court objection referrals are specific to Queensland and will align the processes relating to mining lease application between the Department for Employment, Economic Development and Innovation and the Department Environmental and Resources Management.

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2 division 12 of the *Geothermal Energy Act 2010* with the amended Chapter 10, part 3, division 12 which refers to the *Work Health and Safety Act 2011* instead of the *Workplace Health and Safety Act 1995.*

'Division 12 Amendment of Work Health and Safety Act 2011

'583 Act Amended

Section 583

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78 (Relinquishment must be by blocks)

Clause 8 provides that section 78 be amended to allow relinquishment by sub-block if the sub-block is in, or includes, an URA. This means that permit holderscan, where relinquishment is required under the relinquishment condition, relinquish sub-blocks instead of whole blocks, where a sub-block is fully or partially in

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designated URA.

Insertion of new ch 5, pt 6A

Clause 9 inserts new part 6A in chapter 5.

'Part 6A Restricted land and urban restricted areas

‘Division 1 Restricted land

‘277A Definitions for div 1

277A provides a definition for a permanent building other than of a temporary nature and defines restricted land.

‘277B Restriction on entry to restricted land

Section 277B(1) provides the circumstances under which a person undertaking authorised activities under a GHG authority

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enter restricted land. It requires the person to give a notice of proposed entry to the property owner and occupier where the permanent building is situated, and that the owner and occupier must consent in writing to the entry. Copies of the notice and consent must

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Section 277B(2) sets out that consent given by the owner or occupier must state what the period of consent is; any conditions associated with the consent and that once consent is provided by the owner and occupier it can not be withdrawn.

Section 277B(3) provides where a person who enters restricted land with consent must comply with any conditions of that consent. There a maximum 10 penalty units for non compliance.

'277C Requirements for notice

Section 277C provides that a notice must be in the approved form. Any consent given by the owner or occupier must state period of consent and any conditions and consent cannot be withdrawn. The form must be accompanied by the relevant GHG authority and relevant environmental authority.

'Division 2 Urban restricted areas

'277D Declaration of urban restricted area

Section 277D provides that the Minister can declare any part of the State to be an urban restricted area. The Minister must consider the public interest when making an urban restricted area declaration. The Minister can also amend or remove an URA.

'277E Restriction on carrying out authorised activities in URA

Section 277E provides that for GHG authorities captured by this clause, the process an authority holder must follow to obtain consent to undertake activity in the URA and that the relevant local government is responsible for providing this consent in relation to URA activity.

Relevant GHG authorities for the purposes of the restriction regarding URA activity are; an authority given after the URA is declared (i.e. new applications and authorities), for GHG permits or GHG data acquisition authorities where the permit or authority was given before the URA was declared and for GHG leases that were given before URA was declared but do not have a granted environmental authority or the lease is amended after the URA is declared. Therefore,

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permit or authority holders at the

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time of proclamation that have an approved environmental authority are not subject to the restrictions in the URA. For clarity, should an existing permit or authority holder with an approved development plan seek to amend the development plan following the declaration of a URA which impacts its tenure, the new activities under the development plan or later development plan will be subject to the restriction on activity in the URA. However, consent to undertake an authorised activity in the URA can be sought from the relevant local government by providing it with a notice regarding the proposed activity. Consent must be provided in writing from the local government. For clarity, the Minister can approve authorised activities in URA if the processes

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277G and 277H have been satisfied.

If consent is provided by the local government, a copy of the notice and consent must be provided by the GHG permit holder and lodged with the chief executive of the relevant government department responsible for resource tenure administration and management, using an approved method. Consent given by the local government or the Minister (following a decision under section 277H) must state what the period of consent is; any conditions associated with the consent and that once consent is provided by the owner and occupier it can not be withdrawn. Section 277E(

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) provides where a person who enters restricted land with consent must comply with any conditions of that consent.

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'277F Requirements for notice

Section 277F requires that the notice provided to the local government must be in the approved form and specifically cover what activity is proposed, the location of the proposed activity and when (including for how long the proposed will take place) and why the proposed activity is necessary in the URA. Undertaking authorised activities in the URA is not permitted unless written consent has been provided by the local government. Local government consent can be provided with conditions, but it can not be withdrawn.

'277G Application to Land Court

Section 277G provides that the Land Court can consider the issue of undertaking authorised activities in the URA if a local government has not

provided consent within 40 business days. For clarity, this includes the following situations where a local government:

- has not responded to a request within the 40 business day period; or
- has not provided the consent request.

In both these situations, the holder of the GHG authority can refer the matter to the Land Court. Once referred, the Land Court must fix a date for the hearing and notify the stated parties. After hearing the application, the Land Court must make a recommendation to the Minister on whether it considers that the Minister should approve the authorised activity in the URA.

'277H Minister decides whether to approve authorised activities in URA

Section 277H provides that the Minister must decide applications to approve authorised activities in the URA following the referral to the Land Court and its associated recommendation. The Minister must decide to either approve activity with or without conditions or to refuse the undertaking of authorised activities URA.

For clarity, the Minister can only decide to approve authorised activities in the URA following the referral process to the Land Court. Applications cannot be provided directly to the Minister.

The decision by the Minister on whether to approve authorised activities in the URA must be made with regard to the Land Court's recommendation and also the overall State interest. Approval by the Minister can only be made if it is considered that the activity is in the overall State interest.

If the Minister considers the activity to be in the overall State interest and provides the holder of the GHG authority with consent, any conditions associated with the consent are considered to be conditions imposed on the authority. After the Minister decides the application, a notice of the decision must be provided to the holder of the GHG authority and the relevant local government.

Section 277H(6) provides where a person who enters restricted land with approval by given by the Minister must comply with any conditions of that approval. There a maximum 10 penalty units for non compliance.

Section 277H(7) provides the definition for the overall State Interest.

Amendment of s 316 (Application of pt 9)

Clause 10 omits section 316 (2) and inserts new section 316(2) to provide part 6A, 7 or 8 is not limited if land is also private land, public land, restricted land or in a URA.

Insertion of new ch 8, pt 3

Clause 11 inserts a new chapter 8, part 3.

'Part 3 Transitional provision for Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011

'441 Existing GHG leases

Section 441 provides that section 277B does not apply to a lease in effect immediately before the commencement of this section, where a development plan is in effect for the lease and is not amended after the commencement and a proposed later development plan is not approved after the commencement.

Amendment of sch 2 (Dictionary)

Clause 12 provides the additional definitions regarding restricted land as applied to this Act. This provides consistent definitions for restricted land across the resources acts.

Part 3 Amendment of Mineral Resources Act 1989

Act amended

Clause 13 provides amendments to the *Mineral Resources Act 1989*.

Amendment of s 19 (Consent required to enter certain land)

Clause 14 omits the section 19(4) and renumbers 19(5) as 19(4) and replaces the word 'further' with the words 'in addition'.

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'under section 19' after the word 'consents' which requires the a proponent to obtain consent prior to entry to land.

Amendment of s 129 (Entitlements under exploration permit)

Clause 16 omits section 129(3) and (4) which relate to obtaining consent when entering restricted land. The removal of these provisions is to ensure consistency in consent requirements with the amended framework for access to restricted land.

This clause also renumbers and makes minor amendments to references within this section to take account of the removal of section 129 (3) and (4).

Amendment of s 181 (Obligations and entitlement under mineral development licence)

Clause 17 removes section 181 (8) and (9) which relate to consent provisions. The removal of these provisions is to align and ensure consistency in consent requirements with the amended framework for access to restricted land.

This clause also renumbers and makes minor amendments to references within this section to take account of the removal of section 181 (8) and (9).

Amendment of s 232 (Land subject to mining lease)

Clause 18 amends section 232 to sets out restrictions within the URA for applications for mining leases over the surface of land for open cut mining by an eligible person in respect of contiguous land comprised in relevant exploration permit or permits. An application may not be made if the land is within an URA.

However, this restriction does not apply to open cut mining for industrial mineral applications as prescribed in the attached list.

This section is only applicable if the URA has been declared prior to the application being made.

Insertion of new s235A

Clause 19 inserts section 235A.

'235A Mining lease relating to URA

Section 235A establishes a new section that addresses mining leases that have been granted after an URA was declared. In this situation, it sets out that authorised activities that are for the purposes of an open cut mine may not occur within the URA.

Insertion of new pt 10B

Clause 20 inserts new Part 10B after section 386A.

Part 10B Restricted land and urban restricted areas

Division 1 Restricted land

386B Definitions for div 1

Section 386B provides the standard definition for *prescribed tenement* in this division.

386C Restriction on entry to restricted land

Section 386C provides the circumstances under which a resource tenement holder may enter restricted land. It requires the resource tenement holder to give a notice of proposed entry to the property owner and occupier where the permanent building is situated and that the owner and occupier must consent in writing to the entry.

Copies of the notice and consent must be provided to the chief executive for the relevant government department responsible for resource tenure administration and management.

This section also sets out that consent given by the owner or occupier must state what the period of consent is; any conditions associated with the consent and that once consent is provided by the owner and occupier it can not be withdrawn.

386D Requirements for notice

Section 386D requires the entry notice to be in the approved format covering key information concerning the proposed entry including that once consent (including any established conditions) is provided by the owner or occupier it can not be withdrawn.

Division 2 Urban restricted areas

386E Declaration of urban restricted area

Section 386E provides that the Minister can declare any part of the State to be an urban restricted area. The Minister must consider the public interest when making an urban restricted area declaration.

386F Restriction on carrying out authorised activities in URA

Section 386F provides a list of the mining tenement holders (referred to as 'relevant mining tenement') captured by the clause, the process a tenement holder must follow to obtain consent to undertake activity in the URA and that the relevant local government is responsible for providing that consent.

Relevant mining tenements for the purposes of the restriction regarding URA activity are; a tenement given after the URA is declared (i.e. new applications and tenements), for exploration permits and mineral development licences given before the URA was declared and for any other tenement that were given before URA was declared but do not have a granted environmental authority or the tenement is amended after the URA is declared. Therefore, existing mining tenement holders at the time of the Act coming into force, that have activities approved under a current environmental authority are not subject to the restrictions in the URA. For clarity, should an existing mining tenement holder with an approved

environmental authority apply for an amended environmental authority following the declaration of a URA which impacts its tenure, it will be subject to the restriction on activity in the URA.

However, the mining tenement holder can request consent to undertake an authorised activity in the URA from the relevant local government by providing it with a notice regarding the proposed activity. Consent must be provided in writing from the local government. For clarity, the Minister can approve authorised activities in URA if the processes under sections 386G and 386H has been satisfied.

If consent is provided by the local government, a copy of the notice and consent must be provided by the mining tenement holder and lodged with the chief executive of the relevant government department responsible for resource tenure administration and management, using an approved method.

Consent given by the local government or the Minister (following a decision under section 386H) must state what the period of consent is; any conditions associated with the consent and that once consent is provided by the owner and occupier it can not be withdrawn.

386G Requirements for notice

Section 386G requires that the notice provided to the local government must be in the approved form and specifically cover what activity is proposed, the location of the proposed activity and when (including for how long the proposed will take place) and why the proposed activity is necessary in the URA. Undertaking authorised activities in the URA is not permitted unless written consent has been provided by the local government. Local government consent can be provided with conditions, but it can not be withdrawn.

386H Application to Land Court

Section 386H provides that the Land Court can consider the issue of undertaking authorised activities in the URA if a local government has not provided consent within 40 business days. For clarity, this includes the following situations where a local government:

- has not responded to a request within the 40 business day period; or
- has not approved the consent request.

In both these situations, the holder of the mining tenement can refer the matter to the Land Court. Once referred, the Land Court must fix a date for the hearing and notify the stated parties. After hearing the application, the Land Court must make a recommendation to the Minister on whether it considers that the Minister should approve the authorised activity in the URA.

386I Minister decides whether to approve authorised activities in URA

Section 386I provides that the Minister must decide applications to approve authorised activities in the URA following the referral to the Land Court and its associated recommendation. The Minister must decide to either approve activity with or without conditions or to refuse the undertaking of authorised activities URA.

For clarity, the Minister can only decide to approve authorised activities in the URA following the referral process to the Land Court. Applications cannot be provided directly to the Minister.

The decision by the Minister on whether to approve authorised activities in the URA must be made with regard to the Land Court's recommendation and also the overall State interest. Approval by the Minister can only be made if it is considered that the activity is in the overall State interest.

If the Minister considers the activity to be in the overall State interest and provides the relevant mining tenement holder with consent, any conditions associated with the consent are considered to be conditions imposed on the mining tenement. The Minister must provide the relevant mining tenement holder with either a notice of consent or a notice outlining why consent has not been provided.

Insertion of new pt 19, div 16

Clause 21 inserts a new part 19 to Division 16.

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‘Division 16 Transitional provisions for Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011 — amendments commencing on assent

‘788 Existing mining tenements

Section 788 provides that existing mining tenement holders at the time the Act comes into force, that have an approved environmental authority are not subject to the restrictions on URA. However, should an existing tenement holder with an approved environmental authority apply for an amended environmental authority following the declaration of a URA which impacts its tenement, it will be subject to the restriction on activity on URA.

Amendment to sch 2 (Dictionary)

Clause 22 provides the additional definitions regarding restricted land that will be referred to in this Division. This provides consistent definitions for restricted land across the resources legislation.

Part 4 Amendment of Petroleum Act 1923

Act amended

Clause 23 provides amendments to the *Petroleum Act 1923.*

Amendment of s 2 (Definitions)

Clause 24 provides the additional definitions (or the location of the additional definitions) that will be referred to in this division. This provides consistent definitions for key terms in relation to URA across the resources legislation.

Amendment of s 74F (Relinquishment must be by blocks)

Clause 25 provides amendments to section 74F to allow relinquishment by sub-block if the sub-block is in, or includes, an URA. This means that permit holders can, where relinquishment is required under the relinquishment condition, relinquish sub-blocks instead of whole blocks, where a sub-block is fully or partially in land designated URA.

Amendment of s 75WD

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and urban restricted areas

Division 1 Restricted land

78KA Definitions for div 1

Section 78KA provides the additional definitions regarding restricted land that will be referred to

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this Division. This provides consistent definitions for restricted land across the resources legislation.

78KB Restriction on entry to restricted land

Section 78KB provides the circumstances under which a petroleum tenure holder may enter restricted land. It requires the petroleum tenure holder to give a notice of proposed entry to the property owner and occupier where the permanent building is situated and that the owner and occupier must consent in writing to the entry. Copies of the notice and consent must be provided to the chief executive for the relevant government department

responsible for resource tenure administration and management using an approved method of submission.

The section also sets out that consent given by the owner or occupier must state what the period of consent is; any conditions associated with the consent and that once consent is provided by the owner and occupier it can

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withdrawn.

78KC Requirements for notice

Section 78KC requires the entry notice to be in the approved format covering key information concerning the proposed entry including that once consent (including any established conditions) is provided by the owner or occupier it can not be withdrawn.

Division 2 Urban restricted areas

78KD Declaration of urban restricted area

Section 78KD provides that the Minister can declare any part of the State to be an urban restricted area. The Minister must consider the public interest when making an urban restricted area declaration.

78KE Restriction on carrying out

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activities in URA

Section 78KE provides a list of the petroleum tenures captured by the clause, the process a holder of petroleum tenure must follow to obtain approval to undertake activity in the URA and that the relevant local government is responsible for providing consent in relation to URA activity.

Relevant petroleum tenure for the purposes of the restriction regarding URA activity are; a tenure given after the URA is declared (i.e. new applications and tenures), where the tenure were given before URA was declared but do not have a granted environmental authority or the tenure is amended after the URA is declared. Therefore, existing petroleum tenure holders at the time the Act comes into force that have an approved environmental authority are not subject to the restrictions in the URA. For

clarity, should an existing permit or authority holder with an approved environmental authority apply for an amended environmental authority

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declaration of a URA which impacts its tenure, it will be subject to the restriction on activity in the URA

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However, a holder of petroleum tenure can request consent to undertake an authorised activity in the URA from the relevant local government by providing it with a notice regarding the proposed activity. Consent must be provided by either the local government or approved by the Minister under section 386H. For clarity, consent can only be provided by the Minister if it has been the process under section 386G and 386H has been satisfied.

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If consent is provided by the local government, a copy of the notice and consent must be provided by the holder of the petroleum tenure and lodged with the chief executive of the relevant government department responsible for resource tenure administration and management, using an approved method

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Consent given by the local government or the Minister (following a decision under section 78KH) must state what the period of consent is; any conditions associated with the consent and that once consent is provided by the owner and occupier it can not be withdrawn.

78KF Requirements for notice

Section 78KF requires that the notice provided to the local government must be in the approved form and specifically cover what activity is proposed, the location of the proposed activity and when (including for how long the proposed will take place) and why the proposed activity is necessary in the URA. Undertaking authorised activities in the URA is not permitted unless written consent has been provided by the local government. Local government consent can be provided with conditions, but it can not be withdrawn.

78KG Application to Land Court

Section 78KG provides that the Land Court can consider the issue of undertaking authorised activities in the URA if a local government has not decided to provide consent within 40 business days. For clarity, this includes the following situations where a local government:

- has not responded to a request within the 40 business day period; or
- has not approved the consent request.

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In both these situations, a petroleum tenure holder undertaking activities under a relevant tenure can refer the matter to the Land Court. Once referred, the Land Court must fix a date for the hearing and notify the stated parties. After hearing the application, the Land Court must make a recommendation to the Minister on whether it considers that the Minister should approve the authorised activity in the URA.

78KH Minister decides whether to approve activities to URA

Section 78KH provides that the Minister must decide applications to approve authorised activities in the URA following the referral to the Land Court and its associated recommendation. The Minister must decide to either approve activity with or without conditions or to refuse the undertaking of authorised activities URA.

For clarity, the Minister can only decide to approve authorised activities in the URA following the referral process to the Land Court. Applications cannot be provided directly to the Minister.

The decision by the Minister on whether to approve authorised activities in the URA must be made with regard to the Land Court's recommendation and also the overall State interest. Approval by the Minister can only be made if it is considered that the activity is in the overall State interest.

If the Minister considers the activity to be in the overall State interest and provides the petroleum tenure holder with consent, any conditions associated with the consent are considered to be conditions imposed on the relevant tenure. The Minister must provide the person with either a notice of consent or a notice outlining why consent has not been provided.

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Clause 28 amends section 79M to provide part 6A, 7 or 8 is not limited if land is also private land, public land, restricted land or in a URA

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Insertion of new pt 14

Clause 29 inserts a new part 14 after section 189.

‘Part 14 Transitional provisions for Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011

Division 1 Provision for amendments commencing on assent

190 Existing petroleum leases and water monitoring authorities

Section 190 provides that existing tenure holders at the time of the Act comes into force, that have an approved environmental authority are not subject to the restrictions on URA. However, should an existing tenure holder with an approved environmental authority apply for an amended environmental authority following the declaration of a URA which impacts its tenure, it will be subject to the restriction on activity on URA.

Part 5 Amendment of

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Amendment of s 70 (Relinquishment must be by blocks)

Clause 33 amends section70 to allow relinquishment by sub-block if the sub-block is in, or includes, an URA. This means that permit holders can, where relinquishment is required under the relinquishment condition, relinquish sub-blocks instead of whole blocks, where a sub-block is fully or partially in land designated URA.

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Insertion of new ch 2, pt 2, div 7, sdiv 3

Subdivision 3 Changing production commencement day

Clause 37 inserts a new, Subdivision 3 Changing production commencement day after section 175 to provide the Minister with the power to amend the production commencement

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'175AB Requirements for making application

Section 175AB outlines the requirement for making an application to amend the production commencement day, including that the application is made to the Minister and that it states the grounds by which an amendment

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is required. The applicant will also be required to provide material detailing the petroleum production required under all relevant arrangements relating to the lease as well as material detailing the reserves, resources and reservoir characteristics of all petroleum authorities required to supply production under the relevant arrangement.

For relevant arrangements, petroleum holders operate under an integrated field development plan. This means that changes in production on one lease can have flow-on effects to other leases that form part of the integrated plan. To make a decision on whether to grant the application, the Minister needs to understand the implications of this decision on production from other leases that form part of the integrated plan. The Minister will also need to take account of the company's commitments under a relevant arrangement, as this was the original rationale for granting delayed production.

This amendment ensures that the information required by the Minister to make this assessment is provided at the time the application is made. This amendment also provides the Minister with the ability to refuse to receive an application if the required information is not provided. In the event that the Minister refuses to receive an application, an information notice is provided to the applicant.

'175AC

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451 (Obligation to consult with particular owners and occupiers)

Clause 46 omits section 451(4) Chapter 5, part 2 or 3 and inserts Chapter 5, part 1A, 2, or 3.

Insertion

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new ch 5, pt 1A

Clause 46 inserts new Chapter 5, part 1A.

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‘Part 1A Restricted land and urban restricted areas

‘Division 1 Restricted land

‘494A Definitions for

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Section 494A provides the additional definitions regarding restricted land that will be referred to in this Division. This provides consistent definitions for restricted land across the resources legislation.

‘494B Restriction on entry to restricted land

Section 494B provides the circumstances

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which a petroleum authority holder may enter restricted land. It requires the petroleum authority holder to give a notice of proposed entry to the property owner and occupier where the permanent building is situated and that the owner and occupier must consent in writing to the entry. Copies of the notice and consent must be provided to the chief executive for the relevant government department responsible for resource tenure administration and management using an approved method of submission.

The

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also sets out

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consent given by the owner or occupier must state what the period of consent is; any conditions associated with the consent and that once consent is provided by the owner and occupier it can not be withdrawn.

‘494C Requirements for notice

Section 494C provides for requirements for the entry notice to be in the approved format covering key information concerning the proposed entry including that once consent (including any established conditions) is provided by the owner or occupier it can not be withdrawn.

‘Division 2 Urban restricted areas

‘494D Declaration of urban restricted area

Section 494D provides that the Minister can declare any part of the State to be an urban restricted area. The Minister must consider the public interest when making an urban restricted area declaration.

‘494E Restriction on

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activities URA

Section 494E provides that for petroleum authorities captured by this clause, the process an authority holder must follow to obtain consent to undertake activity in the URA and that the relevant local government is responsible for providing consent in relation to URA activity.

Relevant petroleum authorities for the purposes of the restriction regarding URA activity are; an authority given after the URA is declared (i.e. new applications and authorities), and an authority that was given before URA was declared but does not have a granted environmental authority or the authority is amended after the URA is declared. Therefore, existing authority holders at the time the Act comes into force, that have an approved environmental authority are not subject to the restrictions in the URA. For clarity, should an existing authority holder with an approved environmental authority apply for an amended environmental authority

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declaration

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a URA which impacts its tenure, it will be subject to

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restriction on activity in the URA.

However, a petroleum authority holder can request consent to undertake an authorised activity in the URA from the relevant local government by providing it with a notice regarding the proposed entry and activity. Consent must be provided by either the local government or approved by the Minister

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section 386H. For clarity, consent can only be provided by the Minister if it has been the process under section 386G and 386H has been satisfied

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If consent is provided by the local government, a copy of the notice and consent must be provided by the person and lodged with the chief executive of the relevant government department responsible for resource tenure administration and management, using an approved method.

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conditions associated with the consent and that once consent is provided by the owner and occupier it can not be withdrawn.

There a maximum 10 penalty units for non compliance.

'494F Requirements for notice

Section 494F provides that the notice provided to the local government must be in the approved form and specifically cover what activity is proposed, the location

the proposed activity and when (including for how long the proposed will take place) and why the proposed activity is necessary in the URA. Undertaking authorised activities in the URA is not permitted unless written consent has been provided by the local government. Local government consent can be provided with conditions, but it can not be withdrawn.

'494G Application to Land Court

Section 494G provides that the Land Court can consider the issue of undertaking authorised activities in the URA if a local government has not decided to provide consent within 40 business days. For clarity, this includes the following situations where a local government:

- has not responded to a request within the 40 business day period; or
- has not approved the consent request.

In both these situations, a person undertaking activities under a relevant petroleum tenure can refer the matter to the Land Court. Once referred, the Land Court must fix a date for the hearing and notify the stated parties. After hearingthe

, the Land Court must make a recommendation to the Minister on whether it considers that the Minister should approve the authorised activity in the URA.

'494H Minister decides whether to approve activities in URA

Section 494H provides that the Minister must decide applications to approve authorised activities in the URA following the referral to the Land Court and its associated recommendation. The Minister must decide to either approve activity with or without conditions or to refuse the undertaking of authorised activities URA.

For clarity, the Minister can only decide to approve authorised activities in the URA following the referral process to the Land Court. Applications cannot be provided directly to the Minister.

The decision by the Minister on whether to approve authorised activities in the URA must be made with regard to the Land Court's recommendation and also the overall State interest. Approval by the Minister can only be made if it is considered that the activity is in the overall State interest.

If the Minister considers the activity to be in the overall State interest and provides the person undertaking activities within a relevant tenure with consent, any conditions associated with the consent are considered to be conditions imposed on the relevant petroleum tenure. The Minister must provide the person with either a notice of consent or a notice outlining why consent has not been provided.

Insertion of new ss552A and 552B

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'552A Obligation to lodge infrastructure report for petroleum lease

Section 552A provides an obligation on a petroleum lease holder to lodge an infrastructure annual report by a certain date, which address all those matters contained in section 552B.

'552B Content requirements for infrastructure report for petroleum leases

Section 552B inserts a new section which outlines the contents of the infrastructure annual report introduced in the proposed section 552A. These report requirements includes:

- Details of the authorised activities undertaken on the petroleum lease;
- Details of the infrastructure and works constructed on the petroleum lease in support of these authorised activities; and
- The location of the infrastructure and works undertaken.

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on which the *Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011* commences, which is expected to be 1 July 2012. This provides a closing date for transitional tenures, allowing a decision to be made

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Balance, Certainty and Efficiency

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Section 957 defines amending Act to mean the *Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011.*

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Particular requirements for infrastructure reports under s 522A for existing petroleum leases

Section 962 provide an obligation on existing petroleum lease holders to detail in the first infrastructure report required under s522A in addition to the requirements of s522A, to detail the authorised activities for the lease carried out since the lease was granted; and detail the infrastructure and works constructed in the area of the lease since the lease was granted, including the location of the infrastructure and works.

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amendment to section 889 applies to existing grant applications made, but not decided,

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Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011.

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the *Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011*.

Amendment of sch 1 (Reviews and appeals)

Clause 55 inserts section 175AC(1)

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provide that a decision to refuse an application to amend the production commencement day is appealable to the Land Court

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Amendment of s 274 (Access to register)

Clause 64 inserts in section 274(1)(b) to provide a person other that a person accessing the register on the departments website may be required to pay a fee to search and take extracts from the register.

The clause also inserts new subsection (1)(d) that requires the register to be available to be accessed, free of change, on the department's website.

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non-assessable transfers take effect on the day the dealing is registered,

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That is, as long as the dealing is not prohibited.

Section 282(4) provides that the

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receiving notice about the approval of

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must also include a statement of consent from each person who also holds that interest or each person that is a person who also holds a share of that geothermal tenure. If the interest is subject to a mortgage the application must be accompanied by the written consent to the transfer from the mortgagee.

Section 286(4) provides that if the application is about a sublease, it must also be accompanied with a plan of survey and state the authorised activities and information that addresses the capability criteria for authorised activities.

287 Deciding application

Section 287 provides that the Minister must decide to approve or not approve the application. It provides that the Minister must consider the transferor and the transferee's history of compliance with the Act, the application and the relevant criteria for obtaining that type of geothermal tenure and whether any royalty is payable under this Act by the holder of the geothermal tenure remains unpaid. The Minister must also consider whether the transfer is in the public interest.

Section 287(3) provides that the approval may only be given

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and a registered suitable operator under the Environment Protection Act

and also holds any relevant Water Act authorisation. The Minister may only approve an application for transfer if financial assurance required under the *Environment Protection Act 1994* has been given or the administering authority under that Act has given the Minister notice that financial assurance is not required

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an instrument affecting

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Section 289G

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Section 289G(3))

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Section

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(4) provides that lodging a caveat does not create a registrable interest in the geothermal tenure affected by the caveat.

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289H

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caveator may withdraw a

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by notifying the chief executive in writing.

Section 289H(2) provides that a caveat

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if each holder of

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geothermal tenure consents to the caveat and lodges that consent, on the expiration

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. If

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expiration date

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provided in any holder's consent

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will remain. The subsection also provides that a caveat lapses if the Land Court orders so or three months after the date it was lodged

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365 Request to applicant about application

Section 365 provides the Chief Executive

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an applicant about an application. Other changes include: allow a stated officer of the department to be sent the response; rewording of some sections for improved drafting quality and consistency; removal of the subsection that allows the Minister to refuse to decide an application; and to exclude applications made to the Land Court.

365A Notice to progress geothermal tenure or renewal application

Section 365 provides that the Minister may require an applicant for grant or renewal of a geothermal tenure to do any thing required (under this Act or another Act)

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of time, to allow the geothermal tenure application to be decided. The Minister must give notice of the requirement

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Section 352(3) provides that the application must be made to the Minister, be in the approved form and be accompanied with the instrument to the dealing signed by the parties to the dealing and the prescribed fee. If the transfer relates to a share of a GHG authority, the application must also

include a statement of consent from each person who also holds that interest or each person that is a person who also holds a share of that GHG authority. If the interest is subject to a mortgage the application must be accompanied by the written consent to the transfer from the mortgagee.

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. It provides that the Minister must consider the transferor

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and whether any royalty is payable under this Act by the holder of the GHG authority remains unpaid.

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355H

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Section 355H provides that a caveator may withdraw a caveat by notifying the chief executive in writing. Subsection (2) provides that a caveat lapses if each holder of the GHG authority consents to the caveat and lodges that consent, on the expiration of the term. If no expiration date is provided in any holder's consent, the caveat will remain. The subsection also provides that a caveat lapses if the Land Court orders so or three months after the date it was lodged

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notice is not complied with

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(4) and inserts the provision

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given as a result of a practice

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50 per cent every three years since the exploration permit was first granted. This will apply to both mineral and coal exploration permits.

The purpose of this change is to remove the requirement of annual relinquishments, where a variation application is required if

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holder has reasons to retain the

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for longer. This change is not intended to reform

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, but reduce the administrational burden associated with current requirements and generally maintain current reduction in land over the term of the tenure

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The new relinquishment rates seek to strike a balance between the current different reduction rates (50 per cent for minerals and 20 per cent for coal every year). This is to provide a simplified regime for administrative purposes. The Minister still retains the discretionto approve a relinquishment amount other than 50 per cent where the Minister decides that is appropriate.

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146A

Clause 108 inserts a new section.

146A Continuation

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permit while relevant application being dealt with

Section 146A provides that an

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continues to be in force while an application for a mineral development licence or mining lease is being decided relating to land subject of the permit. This addresses situations where a permit is approaching or has exceeded its 15 year term limit while an application for a higher form of tenure is being processed.

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Minister decides there are special circumstances, a renewal of an exploration permit shall not be granted if

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cumulative term of the tenure has reached 15 years

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111 inserts the word ‘renewal’ into the heading of this

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specify it refers to renewal applications. This is to distinguish this

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from new section 146A.

Subsections (2) and (3) are also updated

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sections 386J and 386K.

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260B Effect of withdrawal of objection

Section 260B seeks to provide clarity on what happens if a situation arises where all objections referred to the Land Court are subsequently withdrawn before the Court has given an instruction or recommendation. If this occurs, the hearing before the Land Court is cancelled. However, within 15 days, the applicant may apply to the Land Court for costs against the objector to the application.

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Land Court)

Clause 131 omits sections 265(1) and 265(2) and new subsection are provided to align the referral to the Land Court of objections to a mining lease application received under the *Mineral Resources Act 1989* with referral of objections to the Land Court for a related environmental authority application under the *Environmental Protection Act 1994*.

Section Break (Next Page)

Referral of objections to the Land Court for a mining lease application under this Act (when there is a related environmental authority application) will be referred by the Mining Registrar within 10 business days of the last objection notice received under section 182 of the *Environmental Protection Act 1994* or the receipt of request from the environmental authority applicant to refer the application to the Land Court (whichever is later).

When there is no related environmental authority application, the Mining Registrar must refer all objections to the Land Court within 10 business days of the last objection day.

This amendment to section 265 made by this Bill must commence after the amendments to this section made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011*.

Amendment of s 268 (Hearing of application for grant of mining lease)

Clause 132 updates section 268(9) to refer to new section 260B(3).

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Subsection (3) provides that a mining lease cannot be granted over restricted land without consent of the land owner.

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Part 7AAAB comprises of Division 1 (Preliminary), Division 2 (Registration of dealings generally), Division 3 (Approval of assessable transfers). Generally a reference to a mining tenement includes a share in a mining tenement.

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is not an eligible person.

Subsection 318AAV(2) provides that the application must be made to the Minister, be in the approved form and be accompanied with the instrument to the dealing signed by the parties to the dealing and the prescribed fee. If the transfer relates to

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the application must also include a statement of consent from each person who also holds that interest or each person that is a person who also holds a share of that mining tenement. If the interest is subject to a

mortgage the application must be accompanied by the written consent to the transfer from the mortgagee.

Subsection 318AAV(3) provides that an application

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may transfer the application or their interest in the application. Subsection (4) provides that the application must be made to the Minister, be in the approved form and be accompanied with the instrument to the dealing signed by the parties to the dealing and the prescribed fee. If the transfer relates to a share of an interest, the application must also include a statement of consent from each person who also holds that interest or each person that is a person who also holds a share of that interest

Section 318AAV(5) provides that an application

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that the Minister must decide to approve or not approve the application. It provides that the Minister must consider the transferor and the transferee's history of compliance with the Act, the application and whether any royalty is payable under this Act by

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remains unpaid. The Minister must also consider whether the transfer is in the public interest.

Section 318AAW(3) provides that the approval

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Section 318AAW(5) provides that the Minister may only give approval of a transfer if they are satisfied the transferee satisfies the relevant criteria for obtaining that type of mining tenement and the conditions of that

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Section 318AAZI provides that a caveator may withdraw a caveat by notifying the chief executive in writing. Subsection (2) provides that a caveat lapses if each holder of the mining tenement consents to the caveat and lodges that consent, on the expiration of the term. If no expiration date is provided in any holder's consent, the caveat will remain. The subsection also provides that a caveat lapses if the Land Court orders so or three months after the date it was lodged

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Subsection 318AAZI

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793 Existing referral of mining claim to the Land Court

Section 793 provides transitional arrangements for applications for a mining claim that has been referred to the Land Court upon commencement, and where no instruction or recommendation has yet been made. Under these circumstances, new section 71B applies if all objections are withdrawn.

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1923 Act petroleum tenure.

Part 6N Dealings

80DA

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Act petroleum tenure to a person that is not an eligible person.

Section 80K(3) provides that the application must be made to the Minister, be in the approved form and be accompanied with the instrument to the dealing signed by the parties to the dealing and the prescribed fee. If the transfer relates to a share of a 1923 Act petroleum tenure, the application must also include a statement of consent from each person who also holds that interest or each person that is a person who also holds a share of that 1923 Act petroleum tenure. If the interest is subject to a mortgage the application must be accompanied by the written consent to the transfer from the mortgagee.

80KA

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80KB

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Insertion of new pts 6NA and 6NB

Clause 195 inserts new parts NA and NB.

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, unless a provision otherwise provides,

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may

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the Minister is not limited to considering only

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also

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These sections are being added to this Act and the *Petroleum and Gas (Production and Safety) Act 2004* to make these Acts consistent with the modern Resources Acts (*Greenhouse Gas Storage Act 2009* and *Geothermal Energy Act 2010*).

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Section 191 provides definitions for this part.

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Section 573A(3) provides that the application must be made to the Minister, be in the approved form and be accompanied with the instrument to the dealing signed by the parties to the dealing and the prescribed fee. If the transfer relates to a share of a petroleum authority, the application must also include a statement of consent from each person who also holds that

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interest or each person that is a person who also holds a share of that petroleum authority. . If the interest is subject to a mortgage the application must be accompanied by the written consent to the transfer from the mortgagee.

573B Deciding application

Section 573B provides that the Minister must decide to approve or not approve the application. It provides that the Minister must consider the transferor and the transferee's history of compliance with the Act, the application and the relevant criteria for obtaining that type of petroleum authority and whether any petroleum royalty is payable under this Act by the holder of the petroleum authority remains unpaid. The Minister must also consider whether the transfer is in the public interest.

Section 573B provides that the approval may only be given if the transferee is an eligible person and a registered suitable operator under the Environmental Protection Act. The Minister may only approve an application for transfer if financial assurance required under the *Environmental Protection Act 1994* has been given or the administering authority under that Act has given the Minister notice that financial assurance is not required.

573C Security may be required

Section 573C provides that the Minister may require security from the transferee as a condition of deciding to give the approval. If the transferee does not comply with this requirement, the application may be refused.

573D Notice of decision

Section 573D(1) provides that if the Minister decides to approve the transfer, they must give notice of the decision to the chief executive and the applicant. Section (2)

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Section 573L(1) provides that a caveator may withdraw a caveat by notifying the chief executive in writing

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Section 573L(2) provides that a caveat lapses if each holder of the petroleum authority consents to the caveat and lodges that consent, on the expiration of the term. If no expiration date is provided in any holder's consent, the caveat will remain. The subsection also provides that a caveat lapses if the Land Court orders so or three months after the date it was lodged.

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is replaced to make it consistent with similar sections being introduced into all the Resources Acts. Lodgement of

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s that are incomplete or do not comply with the requirements of the Act for making the application, will not be accepted. However, such purported applications may be accepted if they are substantially compliant.

Replacement of s 843 (Additional information may be required about application)

Clause 216 replaces section 843 with five sections.

843 Request to applicant about application

Section 843 is replaced with the new common section to all Resources Acts titled 'Request to applicant about application'. This section allows the relevant person (Chief Executive or Chief Inspector for applicable applications) to give an applicant a notice requiring them to do all or any of the following within a stated reasonable period: complete or correct an application; submit additional information about the application; obtain an independent report or make a statutory declaration to verify information provided; or obtain a survey of the authority area. The response may be sent directly back to an officer of the department stated in the notice. One of the major changes is the removal of the "decider" wording which has been replaced by "an application under this Act".

A statutory declaration may be required to be made by an independent person, the applicant, or an executive officer if the applicant is a corporation. The applicant must bear any cost incurred in complying with the notice. Applications

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and internal review are excluded from this provision. The internal review process provides adequate recourse for

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reviewer to seek further information, and it would not be appropriate to use this section in this process. For example,

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Chief Executive could be giving a request notice about a

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Chief Executive.

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Efficiency) Amendment Bill 2011

843A Refusing application for failure to comply with request

Section 843A allows

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Minister to refuse an application (or the Chief Inspector for

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applications) if a notice given under s 843 has not been complied with within the stated period to the satisfaction of the executive (or Chief Inspector as appropriate). This is consistent across all the Resources Acts and allows the Chief Executive to issue the notice, receive the response and make a recommendation to the Minister for consideration (or the Chief Inspector for relevant applications)

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These sections are being added to this Act and the *Petroleum Act 1923* to make these Acts consistent with the modern Resources Acts (*Greenhouse Gas Storage Act 2009 and Geothermal Energy Act 2010*).

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Provisions for amendments commencing after assent of amending Act