Resources Legislation (Balance, Certainty and Efficiency) Amendment Bill 2011

Explanatory Notes

Short Title of the Bill

The short title of the Bill is the *Resources Legislation (Balance, Certainty and Efficiency) Amendment Bill 2011*(the Bill).

Policy objectives and the reasons for them

The purpose of the Bill is to make changes to 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

The Bill implements the Government's initiative to resolve community concerns about resource exploration and activities in and close to urban areas – the Urban Restricted Areas (URA) policy.

The significant growth in Queensland's resources sector has brought exploration activities closer to urban areas. Residents across Queensland have expressed concern about coal exploration permits being granted near urban centres. Public information sessions designed to inform residents about the environmental requirements and the low probability (about one per cent) of a mine being developed following exploration have not allayed community concerns.

A key factor causing conflict between resource activities and urban living has been the absence of a systematic framework for tenure officers to reference local planning schemes and, conversely, for town planners to reference key resource areas (other than extractive industries).

While economic benefits from the resources sector is considered vital to the ongoing prosperity of Queensland, consideration also needs to be given to the amenity and liveability enjoyed by the people living in towns near to resources rich areas.

Interim restrictions were introduced on 16 August 2011 to prevent new exploration applications being made in certain urban areas. The restrictions included land within SEQ regional area plus a two kilometre buffer. Outside of SEQ, restrictions were applied to town areas plus a two kilometre buffer area for towns with a population of 1,000 or more. This Bill will amend resources acts to put in place more permanent arrangements to maintain restrictions for carrying out resources activities in close proximity to urban communities.

The URA policy forms part of a broad suite of Queensland Government initiatives designed to support a viable, sustainable resources sector in Queensland with clear boundaries and assessment rigour to limit its impacts on the environment and Queensland's communities. Other initiatives include the Strategic Cropping Land framework, the Land Access framework; the CSG Water Management Policy, Protection of Groundwater Resources regime, the Surat Basin Future Directions Statement and the creation of the LNG Enforcement Unit.

Streamlining

The Streamlining Approvals Project commenced in January 2009 with the focus of decreasing the time taken to process a new application for a resources permit without compromising the rigour of the assessment process. In parallel, the Greentape Reduction Project sought to reform assessment processes required under the *Environmental Protection Act 1994* (EP Act) for environmental assessment of resources activities.

To date the project has produced three reports, the *Streamlining Approvals Project Mining and Petroleum Tenure Approval Process* report, (the Government report), November 2009, the *Supporting Resource Sector Growth* report, (the industry report), April 2010, and in 2011 *On the right track* provided a progress report for the Streamlining Approvals Project. The amendments included in the Bill will put in place recommendations made in industry and Government reports aimed at improving the efficiency of the regulatory framework for the resources sector.

A key outcome for the Streamlining Approvals Project is the introduction of an online service delivery platform, where industry can transact with Government in a seamless online environment. Authenticated customer access will provide additional transparency for the assessment processes, reducing enquiries and providing certainty on the assessment status. The Bill proposes amendments to provide the legislative framework for migrating to an electronic service delivery model. The proposed electronic

service delivery model *My mines online* 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*. This will enable greater flexibility in departmental responses to the significant increases in applications for resources activities.

CSG/LNG Industry

Queensland's coal seam gas (CSG) to liquefied natural gas (LNG) industry is an emerging industry that is regulated by petroleum acts. The petroleum legislative framework was established to facilitate petroleum production. Adjustments were made soon after to resolve potential for resource conflict between coal and coal seam gas. The regulatory framework requires further adjustment to reflect specific requirements for this emerging industry.

There is no flexibility for petroleum lease holders to adjust commencement dates where scheduling of production needs to respond to unexpected production success or failure and conflicting schedules for resources (coal and gas) production.

The Government's CSG Water Management Policy has a hierarchy of management options for CSG water and brine. Under the policy, the preferred management option for CSG water is injection, being both aquifer and virtual injection (substitution). The policy prescribes the preferred management option for brine is waste reuse or recycling.

The current legislative framework does not facilitate efficient transportation and treatment of CSG water and brine both between permit areas and off permit areas. Neither does it support development of common user water treatment and brine processing facilities on permit areas. Amendments to 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 the pipeline route (about 400km in length) 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;
- ensuring the easement will remain with the land in the event that ownership of the underlying land changes;
- ensuring integrity of the land register; and
- establishing an important safety record.

Safety and Health

The Bill includes amendments to ensure existing jurisdictional arrangements for safety and health at mines is maintained following the enactment of national work safety law.

Additional Amendments

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.

Achievement of policy objectives

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,

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.

Streamlining

Streamlining reforms to resources acts to improve their efficiency in processing and managing resources permits and applications will be achieved by the following amendments:

- Transferring the power to grant and renew mining lease and petroleum lease applications (under the PA and MRA) from Governor-in-Council to the Minister;
- Providing for electronic lodgement of documents for assessment and management of all resources permits;
- Reducing the initial term of a mining claim from 10 years to five years to align with other reforms to support small scale mining;
- Streamlining administrative processes and requirements for managing mineral and coal exploration permits;
- Providing a single process for all resources permits to deal with business transactions and changes of ownership;
- Providing a single process to request additional information for assessing any resources permit application;
- 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.

CSG/LNG Industry

The policy objective to provide regulatory certainty for the emerging CSG/LNG industry will be achieved by amending the P&G Act to:

- Enable the registration of pipeline easements;
- Allow lease holders to seek Ministerial consent for changing 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 holder to submit an annual infrastructure report for incidental activities; and
- 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.

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

Safety and Health

Maintaining existing jurisdictional arrangements for safety and health on mining and petroleum work sites will be achieved by amending the WHS Act to clarify the application of this Act and subordinate legislation 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 is 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 the *Petroleum and Gas (Production and Safety) Act 2004* prevails to the extent of any inconsistency except in relation to safety obligations applying to a major hazard facility.

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.

Alternative ways of achieving policy objectives

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

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.

Streamlining

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

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.

Safety and Health

There is no option apart from legislative amendment to confirm current jurisdictional arrangements.

Additional Amendments

There is no option apart from legislative amendment to improve the efficiency and workability of the resources acts.

Estimated costs for government implementation

Urban Restricted Areas

Costs to Government for implementing the amendments to establish the Urban Restricted Areas policy will be met within existing Departmental resources.

Streamlining

The upfront costs to develop the resources assessment online system, a key element of the Streamlining Approvals Project, have already been allocated by the 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.

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 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.

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.

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.

Additional Amendments

No costs are anticipated.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* and is generally consistent with these provisions. Potential breaches are:

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.

Streamlining

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.

CSG/LNG Industry

The Queensland Resources Council and the Australia Petroleum Production and Exploration Association were consulted on the proposed changes to commencement of production in the P&G Act. 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.

There has been extensive consultation with the Department of Environment and Resource Management 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.

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

The Queensland Resources Council and the Australia Petroleum Production and Exploration Association were consulted on changes to support transition of permits under the PA to the P&G Act. A briefing session was held by the Department 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.

Consistency with legislation of other jurisdictions

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.

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 MRA with mining legislation in other jurisdictions. While the amendments made in this Bill reduce the number of relinquishment milestones to achieve administration 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 New South Wales *Mining Act 1992*, these matters are dealt with sections providing for renewal, transfer and cancellation for the different types of tenure and is therefore similar to what is proposed 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.

The amendment for Chief Executive Powers under the MRA is unique as other jurisdictions currently maintain a separation of the power of the Chief Executive and Mining Registrar or identify specifically where they may share powers through sections and delegations.

The amendments to enable refusal and rejection of applications where action is not taken to supply the required information will also 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

which are committed to removing the inefficiency and delay that can occur when a tenement holder does not undertake the necessary steps for grant.

The MRA 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.

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.

Notes on Provisions

Chapter 1 Preliminary

Short title

Clause 1 sets out the short title of the Bill

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 Amendments relating to Work Health and Safety 2011

Division 1 Amendment of Geothermal Energy Act 2010

Act Amended

Clause 3 provides 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, part 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 amends the *Work Health and Safety Act 2011.*

‘584 Amendment of sch 1 (Application of Act)

Section 584 amends schedule 1, section 2 to clarify that the *Work Health and Safety Act 2011* does not apply to specific individual operating plant on particular authorities, tenures or tenements defined within the *Petroleum and Gas (Production and Safety) Act 2004*. The exception is that the *Work Health and Safety Act 2011* does apply to parts of an ‘authority operating

plant' as defined under section 670(6) (a) and (7) other than the individual operating plant defined in section 670(2) and (5). This means that for those non individual operating plant activities on an "authority operating plant" (eg activities at a camp) both acts apply. It is also clarified that the *Work Health and Safety Act 2011* does apply to all construction work on operating plant or proposed operating plant other than the commissioning of operating plant, and the moving, and rigging up and down of drilling rigs.

Division 2 Amendment of Work Health and Safety Act 2011

Act amended

Clause 5 states that this division amends the *Work Health and Safety Act 2011*.

Amendment of sch 1 (Application of Act)

Clause 6 amends schedule 1, part 2, division 1, section 2 to confirm and clarify the relationship of the WHS Act to the *Coal Mining Safety and Health Act 1999, Mining and Quarrying Safety and Health Act 1999*, and *Petroleum and Gas (Production and Safety) Act 2004*. Clause 4 confirms that the WHS Act does not apply to a coal mine to which the *Coal Mining Safety and Health Act 1999* applies or to a mine to which the *Mining and Quarrying Safety and Health Act 1999* applies and ensures there will be no regulatory overlap or interaction, in relation to the respective Acts and Regulations. Clause 4 also clarifies that the *Petroleum and Gas (Production and Safety) Act 2004* prevails over the WHS Act (whether in regard to operating plant or otherwise) to the extent of any inconsistency except in relation to safety obligations applying to a major hazard facility.

Part 2 Amendment of Greenhouse Gas Storage Act 2009

Act amended

Clause 7 provides amendments to the *Greenhouse Gas Storage Act 2009*.

Amendment of s 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 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.

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 may 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 be provided to the chief executive.

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, existing permit or authority holders at the

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 under section 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(5) 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.

'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'.

Amendment of s 20 (Provisions about consent to enter land)

Clause 15 provides for amendments to section 20(1) to insert the words '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.

‘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 (Operation of sdiv 2)

Clause 26 omits section 75WD(3)(b), 'parts 6H'and inserts section 6GA, 6H to include the conditions of Urban Restricted Areas as conditions to which the carrying out of activities will be subject.

Insertion of new pt 6GA

Clause 27 inserts a new part 6GA after section 78K.

Part 6GA Restricted land 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 in 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 not be 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 authorised 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

following the declaration of a URA which impacts its tenure, it will be subject to the restriction on activity in the URA.

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.

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.

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.

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.

Amendment of s 79M (Application of pt 6J)

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.

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 Petroleum and Gas (Production and Safety) Act 2004

Act amended

Clause 30 provides amendments to the *Petroleum and Gas (Production and Safety Act 2004*.

Insertion of new s 15A

Clause 31 inserts new 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 CSG water in its natural state, CSG 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 32 amends section 16 to include produced water in the list of substances which can be transported under a pipeline.

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.

Amendment of s 98 (Area of authority to prospect)

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.

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

Clause 35 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 36 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.

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 of a petroleum lease.

'175AA When a 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 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.

'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

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 Deciding application

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.

'175AD Information notice about decision

Section 175AD which provides that, if the Minister decides to refuse the application, an information notice must be provided to the applicant.

Insertion of new s 399A

Clause 38 inserts Chapter 4, part 2, division 1, subdivision 1.

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

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.

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

Amendment of s 401 (Construction and operation of pipeline)

Clause 39 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*.

Amendment of s 418 (Obligation to consult with particular owners and occupiers)

Clause 40 omits section 418(4) chapter 5, part 2 or 3 and inserts chapter 5, part 1A, 2 or 3.

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

Clause 41 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 42 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 43 inserts new section 422A after section 422.

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

Section 422A provided 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 new s 437A

Clause 44 inserts new s 437A in Chapter 4, part 2, 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 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 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 of new ch 5, pt 1A

Clause 46 inserts new Chapter 5, part 1A.

‘Part 1A Restricted land and urban restricted areas

‘Division 1 Restricted land

‘494A Definitions for div 1

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 under 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 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.

‘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 carrying out authorised 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 following the declaration of a URA which impacts its tenure, it will be subject to the 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 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.

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.

Consent given by the local government or the Minister (following a decision under section 494H) 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.

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 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.

'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 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.

'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

Clause 47 inserts a new sections 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 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.

Amendment of s 670 (What is an operating plant)

Clause 48 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 P&G Act.

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

Clause 49 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 50 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.

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

Clause 51 inserts section 889(2) to provide the closing time for the tender call is taken to be the day 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.

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

Clause 52 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 (Restrictions on term and renewed terms)

Clause 53 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 petroleum lease.

Insertion of new ch 15, pt 13

Clause 54 inserts a new Chapter 15, part 13.

'Part 13 Transitional provision for Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011

Division 1 Premlinary

'957 Definition for pt 13

Section 957 defines amending Act to mean the *Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011.*

Division 2 Provisions for amendments commencing on assent of amending Act

'958 Definitions for div2

Section 958 provides for definitions for 'commencement' and 'former'. 'Former' are the provisions in place before the commencement of the new provisions. Unamended Act means this Act as in force from time to time before the commencement.

‘959 Existing water pipeline for petroleum lease

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.

‘960 Existing written permission to enter land to construct and operate pipeline

Section 960 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.

‘961 Existing petroleum authorities

Section 961 exempts certain existing petroleum authorities from the requirement provided in section 494B.

‘962 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.

‘963 Authority to prospect taken to be properly granted

Section 963 provides that an authority to prospect is taken to be properly granted, which provides that the amendment to section 889 applies to existing grant applications made, but not decided, before the commencement of the *Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011*.

'964 Grant applications

Section 964 which provides that the amendments to section 910 and 912 apply to grant applications made, but not decided, before the commencement of the *Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011*.

Amendment of sch 1 (Reviews and appeals)

Clause 55 inserts section 175AC(1) to provide that a decision to refuse an application to amend the production commencement day is appealable to the Land Court.

Amendment of sch 2 (Dictionary)

Clause 56 amends the dictionary in schedule 2 to provide new definitions.

Part 6 Amendment of other Acts

Acts amended

Clause 57 provides that Schedule 1 amends the Acts it mentions.

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

Part 1 Amendment of Environmental Protection Act 1994

Act amended

Clause 58 provides for the amendment of the *Environmental Protection Act 1994*.

Insert a new s 309A

Clause 59 inserts new section 309A.

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

Part 2 Amendment of Geothermal Energy Act 2010

Act Amended

Clause 60 provides for the direction to amend the *Geothermal Energy Act 2010.*

Amendment of s 35 (Who may apply)

Clause 61 omits section 35(1)(d) and inserts new provisions that align the 2 month moratorium on land subject of an existing or application for, a geothermal tenure, with the *Mineral Resources Act 1989* moratorium for exploration permits.

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

Clause 62 omits section 39(3) and (4) and inserts new provisions to remove the power to refuse a geothermal permit application under this section that is now provided under the new notice to progress application section.

Amendment of s 190 (Relinquishment report for partial relinquishment)

Clause 63 omits section 190(3) and inserts new provisions that maintains 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).

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.

Replacement of ch 6, pt 11 (Dealings)

Clause 65 replaces the Dealings chapter. New Part 11 comprises of Division 1 (Preliminary), Division 2 (Registration of dealing generally), Division 3 (Approval of assessable transfers). Generally a reference to a geothermal tenure includes a share in a geothermal tenure.

Part 11 Dealings

Division 1 Preliminary

278AA Definitions for pt 11

Section 278AA provides new definitions for the part for "assessable transfers" and "non-assessable transfers".

278 What is a *dealing* with a geothermal tenure

Section 278 defines dealing with a geothermal 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 geothermal tenure holder's name to be "dealings".

279 Prohibited dealings

Section 279 prohibits dealings that have the effect of transferring a divided part of the area of a geothermal tenure. This ensures that all geothermal tenures retain their cohesion.

280 Types of transfers

Section 280(1) provides that non-assessable transfers do not require approval to be registered and lists non-assessable transfers to include a transfer of a geothermal tenure where the proposed transferee has the same Australian Business Number to any proposed transferor or where part of one holder's share in a geothermal tenure will be transferred to another holder of the geothermal tenure.

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

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

Subsection 280(3) confirms that a change to a geothermal tenure holder's name is not an assessable transfer if the holder continues to be the same person after the change.

Division 2 Registration of dealings generally

281 Registration required for all dealings

Section 281 provides that a dealing will have no effect until it has been registered. Subsection (2) provides that non-assessable transfers take effect on the day the dealing is registered, 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 (excluding assessable transfers) may be sought by giving the chief executive notice in approved form and the prescribed fee. That is, as long as the dealing is not prohibited.

Section 282(4) provides that the chief executive must register an assessable dealing after receiving notice about the approval of the transfer from the Minister.

284 Effect of approval and registration

Section 284 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

286 Applying for approval

Section 286 provides the holder of a geothermal tenure may apply for approval of an assessable transfer, but cannot apply to transfer the geothermal tenure to a person that is not an eligible person.

Section 286(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 geothermal 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 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 if the proposed transferee is an eligible person 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.

288 Security may be required

Section 288 provides that the Minister may require security from the proposed 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.

289 Notice of decision

Section 289(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 289(2) provides that if the Minister decides not to give approval, they must give the applicant an information notice about the decision.

Insertion of new ch 6, pts 11A and 11B

Clause 66 inserts Part 11A on recording associated agreements and Part 11B caveats to Chapter 6.

Part 11A Recording associated agreements

289A Definition for pt 11A

Section 289A provides the definition of an associated agreement to be an agreement relating to the geothermal tenure other than a prohibited dealing or agreement prescribed under a regulation as unsuitable to be recorded in the register.

289B Recording of associated agreements

Section 289B 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.

289C Effect of recording associated agreements

Section 289C provides that the recording of an associated agreement does not give the associated agreement any more validity than what it otherwise would have had.

Part 11B Caveats

289D Requirements of caveats

Section 289D provides that caveats 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 ceaveators. 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.

Section 289D(2) provides that caveats that do not comply with these requirements are of no effect.

289E Lodging of caveat

Section 289E 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.

289F Chief executive's functions upon receipt of caveat

Section 289F provides that after the chief executive receives a caveat, they must notify the holder or holders of the affected geothermal tenure, all other persons that have an interest in the geothermal tenure recorded in the register and record the caveat in the register. However a person does not have an interest because the person is a party to an associated agreement recorded in the register.

289G Effect of lodging caveat

Section 289G(1) provides that a caveat prevents registration of an instrument affecting the geothermal tenure over which the caveat is lodged from the date and time endorsed by the chief executive on the caveat. That is, until the caveat lapses or is withdrawn or removed.

Section 289G(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 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 Section 289G(3)).

Section 289G(4) provides that lodging a caveat does not create a registrable interest in the geothermal tenure affected by the caveat.

289H Lapsing, withdrawal or removal of a caveat

Section 289H provides that a caveator may withdraw a caveat by notifying the chief executive in writing.

Section 289H(2) provides that a caveat lapses if each holder of the geothermal 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.

Section 289H(3) provides that a caveat may be withdrawn by the caveator providing notice in writing to the chief executive.

Section 289H(4) provides that an affected person may apply to the Land Court for an order that a caveat be removed.

Section 289H(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 289H(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 289H(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.

289I Further caveat not available to the same person

Section 289I(1) provides that the section applies if a previous caveat has been lodged.

Section 289I(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.

289J Compensation for lodging caveat without reasonable cause

Section 289J 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 363 (Place for making applications, lodging documents or making submissions)

Clause 67 amends section 363 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 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 68 inserts section 364 purported application to the Land Court that is excluded by this section that provides the power to receive or process an application that is not made under the requirements under the Act. This is

to make this section consistent with the same sections being introduced throughout the Resources Acts.

Replacement of s 365 (Request to applicant about application)

Clause 69 replace section 365.

365 Request to applicant about application

Section 365 provides the Chief Executive rather than the Minister the power to provide a request to 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), within a reasonable period of time, to allow the geothermal tenure application to be decided. The Minister must give notice of the requirement.

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

Clause 70 amends section 366 to provide that the Minister can refuse an application if the applicant refuses to comply with a notice made under section 365 or 365A.

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 make a recommendation to the Minister for consideration.

Amendment of s 383 (Practice Manual)

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.

Amendment of s 385 (Regulation-making power)

Clause 72 inserts new section 385(e) that provides a regulation making power to define procedures for consistent lodgement practices for documents or information lodged under sections 363(2)(b) and 190(3)(b).

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

Clause 73 inserts a new heading to Chapter 9, Part 2 Transitional provisions for Act 2010 No.31"

Part 2 Transitional provisions for Act No. 31 of 2010

Insertion of new ch 9, pt 3

Clause 74 inserts a Part 3 into Chapter 9 that relates to transitional provisions.

Part 3 Transitional provisions for Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011

404 Definitions for pt 3

Section 404 provides definition references of "commencement", "former" and *Resources Legislation (Balance, Certainty and Efficiency) Act 2011*".

405 Undecided applications for approval of particular dealing

Section 405 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 *Resources Legislation (Balance, Certainty and Efficiency) Act 2011*.

Section 405(3) provides that a third party transfer has the meaning given by former section 347.

406 Uncommenced appeals about refusal to approve particular dealing

Section 406 provides that if before commencement of this chapter of the *Resources Legislation (Balance, Certainty and Efficiency) Act 2011*, a person could appeal to the Land Court under section 335 in relation to a refusal to approve and register 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.

407 Unfinished appeals about refusal to approve particular dealing

Section 407 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 75 inserts section "287 refusal to approve an assessable transfer" in schedule 1, which means this decision is appealable.

Amendment of sch 3 (Dictionary)

Clause 76 omits the definition of "third party transfer" and inserts definitions of "apply" "assessable transfer", "give", "make submissions", "non-assessable transfer" and updates the definition of "made".

Part 3 Amendment of Greenhouse Gas Storage Act 2009

Act Amended

Clause 77 provides for the direction to amend the *Greenhouse Gas Storage Act 2009*.

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

Clause 78 omits section 255(2) and inserts new provisions that maintains 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).

Amendment of s 341 (Access to register)

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.

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.

Replacement of ch 5, pt 14 (Dealings)

Clause 80 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

345AA Definitions for pt 14

Section 345AA provides definitions for "assessable transfers" and "non-assessable transfers".

345 What is a *dealing* with a GHG authority

Section 345 defines 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 to be "dealings".

346 Prohibited dealings

Section 346 prohibits dealings 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.

347 Types of transfers

Section 347(1) provides that non-assessable transfers do not require approval to be registered and lists non-assessable transfers to include a transfer of a GHG authority where the proposed transferee has the same Australian Business Number to any proposed transferor or where part of one holder's share in a GHG authority will be transferred to another holder of the GHG authority.

Section 347(1) lists non-assessable transfers to include a transmission by death of a GHG authority, transfer by operation of law and transfer of a mortgage or a sublease. Section 347(2) defines assessable transfers to include all transfers not mentioned in Section 347(1). It also provides that assessable transfers must be approved by the Minister before they can be registered.

Division 2 Registration of dealings generally

348 Registration required for all dealings

Section 348 provides that a dealing will have no effect until it has been registered.

Section 348(2) provides that non-assessable transfers take effect on the day the dealing is registered, 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 (excluding assessable transfers) may be sought by giving the chief executive notice in approved form and the prescribed fee. That is, as long as the dealing is not prohibited.

Section 350(4) provides that the chief executive must register an assessable dealing after receiving notice about the approval of the transfer from the Minister.

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 Applying for approval

Section 352 provides the holder of a GHG authority may apply for approval of an assessable transfer, but cannot apply to transfer the GHG authority to a person that is not an eligible person.

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.

353 Deciding application

Section 353 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 GHG authority and whether any royalty is payable under this Act by the holder of the GHG authority remains unpaid.

Section 353(3) provides that the approval may only be given if the proposed transferee is an eligible person and a registered suitable operator under the *Environment Protection Act 1994*. 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.

354 Security may be required

Section 354 provides that the Minister may require security from the proposed 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.

355 Notice of decision

Section 355(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 355(2) provides that if the Minister decides not to give approval, they must give the applicant an information notice about the decision.

Insertion of new ch 5, pts 14A and 14B

Clause 81 inserts Part 14A on recording associated agreements and Part 14B on caveats into chapter 5.

Part 14A Recording associated agreements

355A Definition for pt 14A

Section 355A provides the definition of an associated agreement to be an agreement relating to the GHG authority other than a prohibited dealing, a prohibited dealing or another agreement prescribed under a regulation as unsuitable to be recorded in the register.

355B Recording of associated agreements

Section 355B 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.

355C Effect of recording associated agreements

Section 355C provides that the recording of an associated agreement does not give the associated agreement any more validity than what it otherwise would have had.

Part 14B Caveats

355D Requirements of caveats

Section 355D provides that caveats 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.

Section 355D(2) provides that caveats that do not comply with these requirements are of no effect.

355E Lodging of caveat

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

355F Chief executive's functions upon receipt of caveat

Section 355F 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 for the purposes of this part, a person does not have an interest because the person is a party to an associated agreement recorded in the register

355G Effect of lodging caveat

Section 355G(1) provides that a caveat prevents registration of an instrument affecting the GHG authority over which the caveat is lodged from the date and time endorsed by the chief executive on the caveat. That is, until the caveat lapses or is withdrawn or removed.

Section 355G(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)).

Section 355G(4) provides that lodging a caveat does not create a registrable interest in the GHG authority affected by the caveat.

355H Lapsing, withdrawal or removal of caveat

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.

Section 355H(3) provides that a caveat may be withdrawn by the caveator providing notice in writing to the chief executive.

Section 355H(4) provides that an affected person may apply to the Land Court for an order that a caveat be removed.

Section 355H(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 355H(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 355H(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.

355I Further caveat not available to same person

Section 355I(1) provides that the section applies if a previous caveat has been lodged.

Section 355I(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.

355J Compensation for lodging caveat without reasonable cause

Section 355J 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 82 omits the words "to transfer" and inserts the words "of an assessable transfer of" to ensure this section is consistent with the distinction between assessable transfers and non-assessable transfers.

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

Clause 83 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 s 412 (Substantial compliance with application requirements may be accepted)

Clause 84 replaces this section.

412 Requirements for making an application

Section 412 is replaced with new section 412 makes these provisions consistent with similar sections being introduced into all the resources acts. Lodgement of purported applications 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 413 (Additional information may be required about the application)

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).

New sections 413A and 413B are also inserted under this clause.

413 Request to applicant about application

Section 413 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 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". Also, the power to issue the notice now rests with the Chief Executive rather than the Minister.

The 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 to the Land Court are excluded from this provision.

413A Refusing application for failure to comply with request

Section 413A a new section to allows the Minister to refuse an 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 GHG authority application to be decided. The Minister must give notice of the requirement and may refuse the application if the notice is not complied with.

Amendment of s 427 (Practice Manual)

Clause 86 omits section 427(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 411.

Amendment of s 429 (Regulation-making power)

Clause 87 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 sections 411(2)(b) and 255(2)(b).

Insertion of new ch 8, pt 3

Clause 88 inserts a new chapter 8 part 3 on transitional provisions.

Part 3 Transitional provisions for Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011

441 Definitions for pt 3

Section 441 provides definitions relevant to this new part.

442 Undecided applications for approval of particular dealing

Section 442 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 *Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011*. Subsection (3) provides that a third party transfer has the meaning given by the former section.

443 Uncommenced appeals about refusal to approve particular dealing

Section 443 provides that if before commencement of this chapter of the *Resources Legislation (Balance, Certainty and Efficiency) Act 2011*, 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.

444 Unfinished appeals about refusal to approve particular dealing

Section 444 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 89 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 90 omits the definition of "third party transfer" from the dictionary and inserts definitions for "apply, "assessable transfer", "give", "make submissions" and "non-assessable transfer".

Part 4 Amendment of Mineral Resources Act 1989

Act Amended

Clause 91 provides for this part to amend the *Mineral Resources Act 1989.*

Insertion of new s 6D

Clause 92 inserts Section 6D.

6D Types of authority under Act

New section 6D provides the types of authority under the Acts. Detailing the types of authority under this Act makes it consistent with the other Resources Acts

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

Clause 93 omits sections 34, 96(11), 125, 198(10), 231(6), 300(13) and 317 and inserts sections 34, 125, 231(6) and 317.

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.

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

Clause 94 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.

Insertion of new ss 71A–71B

Clause 95 inserts section 71A and 71B to provides for the withdrawal of the objection.

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, or Land Court and applicant. The withdrawal cannot be revoked.

71B Effect of withdrawal of objection

Section 71B provides clarity on what happens if the situation arises where all objections referred to the Land Court are subsequently withdrawn before the Land Court has given an instruction or recommendation.

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

Clause 96 omits subsection (5) and (6) to provide for a properly made objection application.

Amendment of s 78 (Land Court's determination on hearing)

Clause 97 updates section 78(5) to refer to new section 71B.

Amendment of s 91 (Initial term of mining claim)

Clause 98 amends the maximum term of a mining claim from 10 years to 5 years.

Amendment of s 93 (Renewal of mining claim)

Clause 99 rewords section 93 to reflect new maximum term of a mining claim of 5 years and to modernise the section using current drafting principles. Renumbering takes into account of omission of subsection (6) made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2011*.

Amendment of section 93D – Renewal of claim

Clause 100 amends Section 93D to omit the word "assignee" and insert the word "transferee" in order to achieve consistent terminology across all Resource Acts.

Omission of sections 96–102

Clause 101 omits sections 96 to 102. These sections are now replaced by the new dealings parts. The old sections dealt with assignment or mortgage of mining claim, 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.

Amendment of s 105 (Mining other minerals)

Clause 102 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 Mining Registrar based on merit.

Amendment of s 129 (Entitlements under exploration permit)

Clause 103 amends section 129(1)(b) to provide clarification that the holder of 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*. This would include environmental studies in support of making a purported application for an environmental authority required for a purported mining lease or mineral development licence application. This amendment was required to remove any doubt that this authority to access land was provided in the *Mineral Resources Act 1989.*

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

Clause 104 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 105 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 sections.

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

Clause 106 omits section 135. This section provided for a holder of an 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 107 amends section 139 to require that an exploration permit area must be reduced by 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 the holder has reasons to retain the land for longer. This change is not intended to reform relinquishment requirements, but reduce the administrational burden associated with current requirements and generally maintain current reduction in land over the term of the tenure.

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 discretion to approve a relinquishment amount other than 50 per cent where the Minister decides that is appropriate.

Insertion of new s 146A

Clause 108 inserts a new section.

146A Continuation of permit while relevant application being dealt with

Section 146A provides that an exploration permit 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.

Omission of s 147AA (Minister may request information)

Clause 109 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 are replaced under new sections.

Amendment of s 147A (Decision on application)

Clause 110 inserts subsection 147A(1)(e) to provide that unless the Minister decides there are special circumstances, a renewal of an exploration permit shall not be granted if the cumulative term of the tenure has reached 15 years.

The cumulative term has been defined as the sum total of years that the permit has been issued including the initial term and renewed terms.

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

Clause 111 inserts the word 'renewal' into the heading of this section to specify it refers to renewal applications. This is to distinguish this section from new section 146A.

Subsections (2) and (3) are also updated to refer to new information request sections 386J and 386K.

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

Clause 112 replaces the words 'assignee, assignment approved and recorded' and replaces in section 147F with the words 'transferee, and transfer registered' in order to achieve consistency in terminology across all resources Acts.

Omission of s 151–158

Clause 113 omits sections 151 to 158. These sections are now replaced by the new dealings parts. The old sections dealt with assignment of exploration permits and caveats on exploration permits.

Amendment of s 160 Contravention by holder of exploration permit

Clause 114 omits a reference to section 158 and replaces with part 7AAAB.

Omission of s 183A (Minister may request information)

Clause 115 omits section 183A that allows the Minister to give an 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.

Amendment of s 193 Rental payable on mineral development licence

Clause 116 omits the words 'recorded pursuant to section 205' from section 193(5)(a) and replaces with registered under part 7AAAB.

Omission of s 197AA (Minister may request information)

Clause 117 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.

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

Clause 118 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 119 replaces the words 'assignee, assignment approved and recorded' in section 197F and replaces with the words 'transferee, and transfer registered' in order to achieve consistency in terminology across all resources Acts.

Omission of ss 198–205

Clause 120 omits sections 198 to 205.

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

Clause 121 omits reference to 205 and replaces with part 7AAAB.

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

Clause 122 omits the words 'and in the way' from section 231G(1)(f).

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

Clause 123 omit the words 'assigning, assigned and assignment' from section 231I and 231I(1) and inserts the words 'transferring, transferred and transfer'.

Clause 123 omits references to section 198 and replaces with part 7AAAB Divisions 2 and 3.

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

Clause 124 omits the words 'Governor in Council' and inserts 'Minister' to provide the Minister with the power to grant a mining lease.

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

Clause 125 omits section 238.

This section provided provision for the grant of mining leases of the surface of a reserve or restricted land that has been moved to section 271A.

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

Clause 126 omits prescriptive wording that requires a document to be lodged at a specific place.

Omission of s 245A (Mining registrar may request information)

Clause 127 omits section 245A that allows the Mining Registrar to give a mining licence applicant a notice requiring information to be given. This power and the power to refuse the application are replaced under new sections.

Amendment of s 250 (Rejection of application by mining registrar)

Clause 128 provides for the amendment of section 250(1) to reflect a new drafting style. The intent of this section has not been changed.

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

Clause 129 replaces section 251.

251 Priority of mining lease application

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 Mining Registrar based on merit.

Insertion of new ss 260A–260B

Clause 130 inserts section 260A and 260B to provide for the withdrawal of the objections.

260A Objection may be withdrawn

Section 260A 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.

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.

Amendment of s 265 (Referral of application and objections to 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.*

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).

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

Clause 133 amends section 269 to a note directing that further information about forwarding documents is provided under section 386ZF.

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 for grant of mining lease)

Clause 134 replaces section 271 and restructures the content of this section into two additional sections 217A and 271B to reflect current drafting principles and that the Minister now approves 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 applications.

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

Subsection (3) provides that a mining lease cannot be granted over restricted land without consent of the land owner.

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 135 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 136 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).

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

Clause 137 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 further renewed.

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

Clause 138 omits section 286AA that allows the Mining Registrar to give a mining licence renewal applicant a notice requiring information to be given. This power and the power to refuse the application are replaced under new sections.

Amendment of s 286A (Decision on application)

Clause 139 amends section 286A so that the Minister (rather than the Governor in Council) may grant an application for the renewal of a mining lease.

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

Clause 140 amends the section to reflect the "transfer" terminology rather than "assignment".

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

Clause 141 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 142 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 143 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.

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

Clause 144 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 145 amends the sections listed in subsection (8) to ensure new sections 271A and 271B are 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 s 300–306

Clause 146 omits sections 300 to 306. These sections are now replaced with the new dealings parts. The old sections dealt with assignment and mortgage of mining leases and caveats.

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

Clause 147 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 148 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 149 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 150 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 151 amends the section to reflect the “transfer” terminology rather than “assignment” and renumbers subsections.

Insertion of new part 7AAAB–7AAAE

Clause 152 inserts new parts 7AAAB to 7AAAE.

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.

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 leases 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".

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

Section 318AAP defines 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 to be "dealings".

318AAQ Prohibited dealings

Section 318AAQ prohibits dealings that have the effect of transferring a divided part of the area of a mining tenement. This maintains the mining tenement's cohesion.

318AAR Types of transfers

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 the 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 mining tenement.

Section 318AAR(1) lists non-assessable transfers to include a transmission by death of a mining tenement, transfer by operation of law and transfer of a mortgage or a sublease.

Section 318AAR defines assessable transfers to include all transfers not mentioned in subsection 318AAR(1). It also provides that assessable transfers must be approved by the Minister before they can be registered.

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 non-assessable transfers take effect on the day the dealing is registered, 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.

318AAT Obtaining registration

Section 318AAT provides that registration of a dealing (excluding assessable transfers) may be sought by giving the chief executive notice in approved form and the prescribed fee. That is, as long as the dealing is not prohibited.

Subsection 318AAT(4) provides that the chief executive must register an assessable dealing after receiving notice about the approval of the transfer from the Minister.

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.

The new division 3 provides the process for approval of assessable transfers.

Division 3 Approval of assessable transfers

318AAV Applying for approval

Section 318AAV provides the holder of a mining tenement may apply for approval of an assessable transfer, but cannot apply to transfer the mining tenement to a person that 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 a share of a mining tenement, 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 for a mining lease may be transferred by the applicant or the holder of an interest in an application 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 for a mining lease may only be transferred to an eligible person.

318AAW Deciding application

Section 318AAW 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 whether any royalty is payable under this Act by the holder of the mining tenement remains unpaid. The Minister must also consider whether the transfer is in the public interest.

Section 318AAW(3) 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 1994*. 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.

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 mining tenement.

318AAX Security may be required

Section 318AAX 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.

318AAY Written notice about decision

Section 318AAY provides that if the Minister or mining registrar decides to approve the transfer, they must give notice of the decision to the applicant. Section (2) provides that if the Minister decides not to give approval, they must give the applicant an information notice about the decision.

Part 7AAAC Recording associated agreements

318AAZ Application of part 7AAAC

Section 318AAZ provides that this part applies to mining claims, exploration permits, mineral development licences and mining leases.

318AAZA Definitions for part 7AAAC

Section 318AAZA provides the definition of an associated agreement to be an agreement relating to the mining tenement other than a prohibited dealing or an agreement prescribed under a regulation as unsuitable to be recorded in the register.

318AAZB Recording of associated agreements

Section 318AAZB 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.

318AAZC Effect of recording associated agreements

Section 318AAZC provides that the recording of an associated agreement does not give the associated agreement any more validity than what it otherwise would have had.

Part 7AAAD Caveats

318AAZD Application of pt 7AAAD

Section 318AAZD provides that this part applies to mining claims, exploration permits, mineral development licences and mining leases. It also applies to application transfers.

318AAZE Requirements of caveats

Section 318AAZE provides that caveats 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 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.

318AAZF Lodging of caveat

Section 318AAZF provides that a caveat may be lodged by a person claiming an interest in the mining tenement, the registered holder of the mining tenement, a person to whom an Australian court has ordered that an interest in a mining tenement 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.

318AAZG Chief executive's functions upon receipt of caveat

Section 318AAZG provides that after the chief executive receives a caveat, they must notify the holder or holders of the affected mining tenement, all other persons that have an interest in the mining tenement recorded in the register and record the caveat in the register. However subsection (1) does not apply to an associated agreement.

318AAZH Effect of lodging caveat

Section 318AAZH provides that a caveat prevents registration of an instrument affecting the mining tenement, or the application for a mining lease, over which the caveat is lodged from the date and time 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 a registrable interest in the mining tenement affected by the caveat.

318AAZI Lapsing, withdrawal or removal of a caveat

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.

Subsection 318AAZI(3) provides that a caveat may be withdrawn by the caveator providing notice in writing to the chief executive.

Subsection 318AAZI(4) provides that an affected person may apply to the Land Court for an order that a caveat be removed.

Subsection 318AAZI(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.

Subsection 318AAZI(6) provides that if the caveat is withdrawn, lapses or is ordered to be removed, the chief executive must record this in the register.

Subsection 318AAZI(7) provides that an affected person means a person who has a right or interest in a mining tenement affected by the caveat, or a person whose right to deal with the mining tenement is affected by the caveat lodged.

318AAZJ Further caveat not available to same person

Section 318AAZJ 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.

318AAZK Compensation for lodging caveat without reasonable cause

Section 318AAZK provides that a person who lodges a caveat in relation to a mining tenement without reasonable cause must compensate anyone who suffers loss or damage as a result.

Part 7AAAE Appeals about approvals of assessable transfers

318AAZL Who may appeal

Section 318AAZL provides that a person whose interests are affected by a decision of the Minister or mining registrar may 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 386M is affected by the decision.

318AAZM Period to appeal

Section 318AAZM 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.

318AAZN Starting appeal

Section 318AAZN 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.

318AAZO Stay of operation of decision

Section 318AAZO 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.

318AAZP Hearing procedures

Section 318AAZP 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 318AAZP(2) provides that an appeal by way of rehearing is unaffected by the decision.

Section 318AAZP(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.

318AAZQ Land Court's powers on appeal

Section 318AAZQ provides the Land Court's powers on appeal, which 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 153 amends the section to reflect the "transfer" terminology rather than "assignment" and renumbers subsections.

Amendment of s 318BN (Publication of outcome of application)

Clause 154 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 155 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 156 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 157 amends the section to reflect the "transfer" terminology rather than "assignment".

Amendment of s 318ELAJ (Assignments)

Clause 158 amends the section to reflect the "transfer" terminology rather than "assignment".

Amendment of s 318ELBH (Publication of outcome of application)

Clause 159 omits the Governor in Council and inserts the Minister in referring to when an application for a mining lease is decided. This clause takes into account amendment made by the *Geothermal Energy Act 2010* that commences in March 2012.

Replacement of s 318ELBM (Minister may refuse application)

Clause 160 replaces section 318ELBM.

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. This clause takes into account amendment made by the *Geothermal Energy Act 2010* that commences in March 2012.

Amendment of s 318ELBT (Requirement to continue geothermal or GHG coordination arrangement after renewal or dealing with mining lease)

Clause 161 amends the section to reflect the "transfer" terminology rather than "assignment".

Amendment of s 325 (Royalty return and payment upon assignment or surrender of mining claim or mining lease)

Clause 162 amends the section to reflect the "transfer" terminology rather than "assignment".

Insertion of new pt 10, div 2AAA

Clause 163 inserts new section 343A in Part 10 after section 343.

Division 2AAA Chief executive

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.

Replacement of s 387 (Registers to be maintained)

Clause 146 replaces section 387 with six sections.

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 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 tenement area. The response may be sent directly to an officer of the department stated in the notice.

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. 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. 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 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 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 386K(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*.

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 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.

386M Place or way for making applications, giving, filing, forwarding or lodging documents or making submissions

Section 386M 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 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.

386N Requirements for making an application

Section 386N is also inserted to make this Act consistent with similar sections being introduced into all the Resources Acts. Lodgement of purported applications 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.

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.

Replacement of s 387A (Access to registers)

Clause 165 replaces section 387A.

387A Access to register

Section 387A reflects changes where reference is only made to the one register. The new section provides that the chief executive must keep the register open for inspection, allow a person to search and take extracts from the register on payment of a fee (other than a person accessing the register on the internet) and make the register available to be accessed, free of charge, on the department's website.

Insertion of new s 387D

Clause 166 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 167 provides the correct "transfer" terminology replacing the "assignment" terminology and renumbers the provisions.

Amendment of s 392 (Substantial compliance with Act may be accepted as compliance)

Clause 168 insert subsection (2) and links this section to the new section on the acceptance of purported applications.

Replacement of s 398 (Delegation)

Clause 169 replaces section 398 with a new section.

398 Delegation by Minister and chief executive

Section 398 replaces section 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 170 provides renumbering corrections for the provisions.

Amendment of s 416B (Practice Manual)

Clause 171 omits section 416(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 386M.

Amendment of s 417 (Regulation-making power)

Clause 172 inserts new subsection 417(2) that provides a regulation making power to define procedures for consistent lodgement practices for documents or information lodged under section 386M(2)(b).

Amendment is also made to subsection 417(2)(r) to reflect that only one register is kept.

Amendment of s 653 (Content of written notice)

Clause 173 omits the Governor in Council and inserts Minister in referring to granting of a mining lease.

Amendment of s 657 (Ending of additional requirements)

Clause 174 omits the Governor in Council and inserts Minister in referring to granting of a mining lease.

Amendment of s 666 (Process for consultation and negotiation—negotiated agreement with or without conditions attached)

Clause 175 omits the Governor in Council and inserts Minister in referring to granting of a mining lease.

Amendment of s 687 (Contract conditions)

Clause 176 replaces the Governor in Council with Minister.

Amendment of s 688 (Notice of grant to registered native title parties)

Clause 177 replaces the Governor in Council with Minister.

Amendment of s 708 (Agreement for compensation)

Clause 178 omits prescriptive wording that requires a document to be lodged at a specific place.

Amendment of s 745 (Application of pt 7AA)

Clause 179 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.

Insertion of new pt 19, div 17

Clause 180 inserts new part 19, division 17 to provide transitional provisions.

Division 17 Transitional provisions for Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011—amendments commencing by proclamation

Subdivision 1 Preliminary

789 Definitions for div 17

Section 789 introduces definitions applicable to this division.

Subdivision 2 Provisions relating to exploration permits

790 Particular applications for exploration permits

Section 790 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.

791 Particular applications to renew exploration permits

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.

792 Periodic reduction in land covered by existing exploration permit

Section 792 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

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.

794 Existing applications for mining claim or renewal of mining claim

Section 794 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).

Subdivision 4 Provisions relating to mining leases

795 Existing referral of mining lease to the Land Court

Section 795 provides that if an application for a mining lease that has been referred to the Land Court upon commencement, and no instruction or recommendation has yet been made, new section 260B applies if all objections are withdrawn.

796 Minister to decide particular applications for or about mining leases

Section 796 provides that a mining lease applications 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

797 Unfinished actions under former s 96, 151, 198 or 300

Section 797 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.

798 Continued functions for caveats received before the commencement

Section 798 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.

799 Continued functions for removal or withdrawal of caveat

Section 799 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

800 Existing requests for information

Section 800 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.

Amendment of sch 2 (Dictionary)

Clause 181 includes definitions to the dictionary relevant to the amendments.

Part 5 Amendment of Petroleum Act 1923

Act Amended

Clause 182 provides for this part to amend the *Petroleum Act 1923.*

Amendment of s 2 (Definitions)

Clause 183 provides and amends definitions relevant to the amendments.

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

Clause 184 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 (Forms etc of lease)

Clause 185 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 186 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 187 amends section 65 to provide that the Minister (instead of the 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 188 deletes section 75AA, the situation that deals with a change to the holder's name because this situation is now caught by the definition of a dealing.

Amendment of s 75WN (Amending water monitoring authority by application)

Clause 189 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 190 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 191 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 192 renumbers a reference to from 80G to 80H.

Amendment of s 80C (Access to register)

Clause 193 inserts in section 80C(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 (2)(d) that requires the register to be available to be accessed, free of change, on the department's website.

Insertion of new pt 6N

Clause 194 inserts chapter new part 6N.

Part 6N comprises of Division 1 (Preliminary), Division 2 (Registration of dealings generally), Division 3 (Approval of assessable transfers). Generally a reference to a 1923 Act petroleum tenure includes a share in a 1923 Act petroleum tenure.

Part 6N Dealings

80DA Definitions for pt 6N

Section 80DA provides definitions for "assessable transfers" and "non-assessable transfers".

80E What is a *dealing* with a 1923 petroleum tenure

Section 80E defines 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 to be "dealings".

80F Prohibited dealings

Section 80F prohibits dealings 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.

80G Types of transfers

Section 80G(1) provides that non-assessable transfers do not require approval to be registered and lists non-assessable transfers to include a transfer of a 1923 Act petroleum tenure where the transferee has the same Australian Business Number to any transferor or where part of one holder's share in a 1923 Act petroleum tenure will be transferred to another holder of the 1923 Act petroleum tenure.

Section 80G(1) lists non-assessable transfers to include a transmission by death of a 1923 Act petroleum tenure, transfer by operation of law and transfer of a mortgage or a sublease. Section 80G(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

80H Registration required for all dealings

Section 80H provides that a dealing will have no effect until it has been registered. Section 80H(2) provides that non-assessable transfers take effect on the day the dealing is registered, 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.

80I Obtaining registration

Section 80I provides that registration of a dealing (excluding assessable transfers) may be sought by giving the chief executive notice in approved form and the prescribed fee. That is, as long as the dealing is not prohibited.

Section 80I(4) provides that the chief executive must register an assessable dealing after receiving notice about the approval of the transfer from the Minister.

80J Effect of approval and registration

Section 80J 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

80K Applying for approval

Section 80K provides the holder of a 1923 Act petroleum tenure may apply for approval of an assessable transfer, but cannot apply to transfer the 1923 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 Deciding application

Section 80KA 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 1923 Act petroleum tenure and whether any royalty is payable under this Act by the holder of the 1923 Act petroleum tenure remains unpaid. The Minister must also consider whether the transfer is in the public interest.

Section 80KA(3) 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 1994*. 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.

80KB Security may be required

Section 80KB 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.

80KC Notice of decision

Section 80KC(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) provides that if the Minister decides not to give approval, they must give the applicant an information notice about the decision.

Insertion of new pts 6NA and 6NB

Clause 195 inserts new parts NA and NB.

Part 6NA Recording associated agreements

80KD Definition of pt 6NA

Section 80KD provides the definition of an associated agreement to be an agreement relating to the 1923 Act petroleum tenure other than a prohibited dealing or an agreement prescribed under a regulation as unsuitable to be recorded in the register.

80KE Recording associated agreements

Section 80KE 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.

80KF Effect of recording associated agreements

Section 80KF provides that the recording of an associated agreement does not give the associated agreement any more validity than what it otherwise would have had.

Part 6NB Caveats

80KG Requirements for caveats

Section 80KG provides that caveats 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 fee. Subsection (2) provides that caveats that do not comply with these requirements are of no effect.

80KH Lodging of caveat

Section 80KH provides that a caveat may be lodged by a person claiming an interest in the 1923 Act petroleum tenure, the registered holder of the 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.

80KI Chief executive's functions upon receipt of caveat

Section 80KI 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.

80KJ Effect of lodging caveat

Section 80KJ(1) provides that a caveat prevents registration of an instrument affecting the 1923 Act petroleum tenure over which the caveat is lodged from the date and time 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.

80KK Lapsing, withdrawal or removal of a caveat

Section 80KK(1) provides that a caveator may withdraw a caveat by notifying the chief executive in writing.

Subsection 80KK(2) provides that a caveat lapses if each holder of the 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.

Subsection 80KK(3) provides that a caveat may be withdrawn by the caveator providing notice in writing to the chief executive.

Subsection 80KK(4) provides that an affected person may apply to the Land Court for an order that a caveat be removed.

Subsection 80KK(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.

Subsection 80KK(6) provides that if the caveat is withdrawn, lapses or is ordered to be removed, the chief executive must record this in the register.

Subsection 80KK(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.

80KL Further caveat not available to same person

Section 80KL(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 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.

80KM Compensation for lodging caveat without reasonable cause

Section 80KM 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 s 120 (Substantial compliance with application requirements may be accepted)

Clause 196 replaces section 120.

120 Requirements for making an application

Section 120 is made consistent with similar sections being introduced into all the Resources Acts. Lodgement of purported applications 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 121 (Additional information may be required about application)

Clause 197 replaces section 121and inserts new section 121A, 121B and 121C.

121 Request to applicant about application

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

report or make a statutory declaration to verify information provided; obtain a survey of the tenement area. The response may be sent directly 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". Also, the power to issue the notice now rests with the Chief Executive rather than the Minister.

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. This section does not apply to an application made to the Land Court.

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

Section 121B provides that, unless a provision otherwise provides, where the Minister may consider particular criteria in making a decision about an application, the Minister is not limited to considering only 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, unless a provision otherwise provides, the Minister may, where particular grounds exist upon which the Minister may

also refuse an application, refuse the application on another reasonable and relevant ground.

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*).

Insertion of new pt 9, div 1A

Clause 198 inserts the new Part 9.

Division 1A How to lodge or give particular documents, make particular applications or make submissions

124A Place or way for making applications, giving or lodging documents or making submissions

Section 124A 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.

Amendment of s 142 (Practice Manual)

Clause 199 amends section 142 to provide that information given as a result of a practice manual is to be made in accordance with the requirements of section 124A.

Amendment of s 149 (Regulation-making power)

Clause 200 inserts new subsection 149(2) that provides a regulation making power to define procedures for consistent lodgement practices for documents or information lodged under sections 124A(2)(b) and 76(2)(b).

Amendment of s 150 (Declaration about certain 1923 Act petroleum tenures)

Clause 201 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 2—

Clause 202 inserts new part 14, division 2 after section 189. This new part provides for transitional provisions for amendments made under this Bill.

Division 2 Provisions for amendments commencing by proclamation

191 Definitions for div 2

Section 191 provides definitions for this part.

192 Minister to decide particular applications for or about leases

Section 192 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.

193 Unfinished indications about approval of dealing

Section 193 provides transitional provisions for an assignment indication that was made under 80H and is undecided. The Minister may continue to consider the application under the former 80H.

194 Undecided applications for approval of dealing

Section 194 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.

195 Uncommenced appeals about refusal to approve particular dealing

Section 195 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.

196 Unfinished appeals about refusal to approve particular dealing

Section 196 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.

Amendment of schedule (Decisions subject to appeal)

Clause 203 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 204 provides for this part to amend the *Petroleum and Gas (Production and Safety) Act 1923.*

Amendment of s 33 (Incidental Activities)

Clause 205 amends section 33 to authorise incidental activities on a authority to prospect which supports authorised activities on another authority to prospect which may or may not held by the same entity.

Amendment of s 59 (Restrictions on amending work program)

Clause 206 adds "or" to section 59(2)(d)(ii) to clarify that the section is disjunctive.

Amendment of s 60 (Applying for approval to amend)

Clause 207 amends section 60 by adding a note that raises awareness of the provisions dealing with making applications.

Amendment of s 112 (Incidental Activities)

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.

Amendment of s 118 (Requirements for making ATP-related application)

Clause 209 omits subsection (2) and (3) and removes duplication in grounds to refuse receipt of an application that is now covered under new common titled: 'Requirements for making an application'.

Amendment of s 548 (Requirement to lodge records and samples)

Clause 210 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).

Omission of s 558A (Notice of change of holder's name)

Clause 211 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 caught by the definition of a dealing below.

Amendment of s 566 (Access to register)

Clause 212 inserts in section 566(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 (2)(d) that requires the register to be available to be accessed, free of change, on the department's website.

Replacement of ch 5, pt 10 (Dealings)

Clause 213 inserts chapter 5 part 10 on post-grant dealings.

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 share in a petroleum authority.

Part 10 Dealings

Division 1 Preliminary

567A Definitions for pt 10

Section 567A provides definitions for "assessable transfers" and "non-assessable transfers".

568 What is a *dealing* with a petroleum authority

Section 568 defines 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 to be "dealings".

569 Prohibited dealings

Section 569 prohibits dealings that have the effect of transferring a divided part of the area of a petroleum authority. It also includes prohibited dealings that were previously prohibited under this Act.

570 Types of transfers

Section 570(1) provides that non-assessable transfers do not require approval to be registered and lists non-assessable transfers to include a transfer of a petroleum authority where the transferee has the same Australian Business Number to any transferor or where part of one holder's share in a petroleum authority will be transferred to another holder of the petroleum authority.

Section 570(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

571 Registration required for all dealings

Section 571(1) provides that a dealing will have no effect until it has been registered. Subsection (2) provides that non-assessable transfers take effect on the day the dealing is registered, 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.

572 Obtaining registration

Section 572 provides that registration of a dealing (excluding assessable transfers) may be sought by giving the chief executive notice in approved form and the prescribed fee. That is, as long as the dealing is not prohibited.

Subsection (4) provides that the chief executive must register an assessable dealing after receiving notice about the approval of the transfer from the Minister.

573 Effect of approval and registration

Section 573 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

573A Applying for approval

Section 573A provides the holder of a petroleum authority may apply for approval of an assessable transfer, but cannot apply to transfer the petroleum authority to a person that is not an eligible person.

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

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) provides that if the Minister decides not to give approval, they must give the applicant an information notice about the decision.

Insertion of new ch 5, pts 10A and 10B

Clause 214 inserts new chapter 5, parts 10A and 10B.

Part 10A Recording associated agreements

573E Definition for pt 10A

Section 573E provides the definition of an associated agreement to be an agreement relating to the petroleum authority other than a prohibited dealing or an agreement prescribed under a regulation as unsuitable to be recorded in the register.

573F Recording associated agreements

Section 573F 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.

573G Effect of recording associated agreements

Section 573G provides that the recording of an associated agreement does not give the associated agreement any more validity than what it otherwise would have had.

Part 10B Caveats

573H Requirements of caveats

Section 573H provides that caveats 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.

573I Lodging of caveat

Section 573I provides that a caveat may be lodged by a person claiming an interest in the petroleum authority, the registered holder of the 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.

573J Chief executive's functions upon receipt of caveat

Section 573J 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 573J(1) does not apply to an associated agreement.

573K Effect of lodging caveat

Section 573K(1) provides that a caveat prevents registration of an instrument affecting the petroleum authority over which the caveat is lodged from the date and time endorsed by the chief executive on the caveat. That is, until the caveat lapses or is withdrawn or removed.

Section 573K(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 petroleum 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 petroleum authority holder according to section 573K(3)). Section 573(4) provides that lodging a caveat does not create a registrable interest in the petroleum authority affected by the caveat.

573L Lapsing, withdrawal or removal of a caveat

Section 573L(1) provides that a caveator may withdraw a caveat by notifying the chief executive in writing.

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.

Section 573L(3) provides that a caveat may be withdrawn by the caveator providing notice in writing to the chief executive

Section 573L(4) provides that an affected person may apply to the Land Court for an order that a caveat be removed.

Section 573L(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 573L(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 573L(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.

573M Further caveat not available to same person

Section 573M(1) provides that the section applies if a previous caveat has been lodged.

Section 573M(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.

573N Compensation for lodging caveat without reasonable cause

Section 573N 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 (Substantial compliance with application requirements may be accepted)

Clause 215 replaces section 842.

842 Requirements for making an application

Section 842 is replaced to make it consistent with similar sections being introduced into all the Resources Acts. Lodgement of purported applications 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 to the Land Court and internal review are excluded from this provision. 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.

843A Refusing application for failure to comply with request

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 petroleum authority application to be decided. The Minister must give notice of the requirement and can refuse the application if the applicant fails to comply.

843C Particular criteria generally not exhaustive

Section 843C provides that, unless a provision otherwise provides, where the Minister may consider particular criteria in making a decision about an application, the Minister is not limited to considering only 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, unless a provision otherwise provides, the Minister may, where particular grounds exist upon which the Minister may also refuse an application, refuse the application on another reasonable and relevant ground.

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*).

Insertion of new s 851AA

Clause 217 inserts the new section 851AA.

851AA Place or way for making applications or giving or lodging documents

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 Department (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 218 amends section 858A to provide that information given as a result of a practice manual is to be made in accordance with the requirements of section 851AA.

Amendment of s 859 (Regulation-making power)

Clause 219 inserts new subsection 859(2) that provides a regulation making power to define procedures for consistent lodgement practices for documents or information lodged under sections 851AA(2)(b) and 548(2)(b).

Insertion of new ch 15, pt 13, div 3

Clause 220 inserts new Chapter 15.

Division 3 Provisions for amendments commencing after assent of amending Act

965 Definitions for div 3

Section 965 provides definitions for this division.

966 Unfinished indications about approval of dealing

Section 966 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.

967 Undecided applications for approval of dealing

Section 967 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 575 and 574 apply to the Minister's decision about the application.

968 Uncommenced review of refusal to approve particular dealing

Section 968 provides that if before commencement of this chapter of the *Resources Legislation (Balance, Certainty and Efficiency) Amendment Act 2011*, 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.

969 Unfinished review of refusal to approve particular dealing

Section 969 provides that unfinished appeals may be granted a stay by the Land Court under the relevant parts and the Land Court may hear and decide the appeal if the appeal was started before commencement.

Amendment of sch 1 (Reviews and appeals)

Clause 221 inserts "refusal to approve an assessable transfer" in schedule 1, table 2.

Amendment of sch 2 (Dictionary)

Clause 222 includes definitions to the dictionary relevant to the amendments.

Part 7 Amendment of other Acts

Acts amended

Clause 223 provides direction to amend the Acts stated in this part.

Chapter 4 Amendments relating to restructure of the Mineral Resources Act 1989

Part 1 Amendment of Mineral Resources Act 1989

"Act amended" to "insertion of new sch 2"

Clause 224 to Clause 265 relate to the restructuring of the *Mineral Resources Act 1989* from particular headings to covert the parts into a chapters, divisions into parts and subdivisions into divisions.

In addition, these clauses provide for the relocation and renumbering of provisions relating to the MacFarlane Oil Shale Deposit (chapter 12, part 1) Collingwood Part State Guarantee (chapter 12, part 2), Wild Rivers (chapter 12, part 3), relocation and renumber of restricted land and urban restricted areas (chapter 12, part 4) and Cherwell Creek (chapter 12, part 5).

Native title provisions have been relocated to schedule 2.

Part 2 Amendment of other Acts

266 Acts amended

Schedule 1 Minor and consequential amendments commencing on assent

Schedule 1 provides minor and consequential amendments to *Greenhouse Gas Storage Act 2009* and *Petroleum and Gas (Production and Safety) Act 2004*.

Schedule 2 Minor and consequential amendments commencing by proclamation other than amendments relating to restructure of 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 consequential amendments to the *Aboriginal Cultural Heritage Act 2003*, *City of Brisbane Act 2010*, *Geothermal Energy Act 2010*, *Greenhouse Gas Storage Act 2009*, *Land and Resources Tribunal Act 1999*, *Land Court Act 2000*, *Local Government Act 2009*, *Mineral Resources Act 1989*, *Petroleum Act 1923*, *Petroleum and Gas (Production and Safety) Act 2004*, *State Development and Public Works Organisation Act 1971*, *Torres Strait Islander Cultural Heritage Act 2003* and *Wild Rivers Act 2005* in response to the restructure of the *Mineral Resources Act 1989.*