

Mineral Resources and Other Legislation Amendment Bill 2004

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Mineral Resources and Other Legislation Amendment Bill 2004*.

Policy Objectives of the Legislation

The policy objectives of the Bill are to:

- improve the operational efficiencies of various Acts by removing anomalies and inconsistencies, and making improvements that will contribute to increased mineral exploration and development and geothermal exploration in Queensland; and
- give effect to the merger of the Queensland Coal and Oil Shale Mining Industry Superannuation Fund with the COALSUPER Retirement Income Fund in New South Wales to form AUSCOAL Superannuation Fund.

Reasons for the Bill

The Bill is required to:

- make amendments to the *Mineral Resources Act 1989* as part of a continuous improvement strategy and are predominantly of an administrative/housekeeping nature;
- provide for the merger of the Queensland Coal and Oil Shale Mining Industry Superannuation Fund with the COALSUPER Retirement Income Fund in New South Wales to form AUSCOAL Superannuation Fund through altering the definition of the term, *superannuation fund*, inserting a transitional provision to allow the merger to commence on 1 January 2005 and updating the title of a

federal award referred to in sections 3(3)(b) and (4)(b) of the *Coal and Oil Shale Mine Workers' Superannuation Act 1989*;

- create the title of deputy mining registrar within the *Fossicking Act 1994* following a review of mining registrar and field officer positions conducted in April 2000, that recommended the title of field officer be replaced with the title of deputy mining registrar to better reflect the duties of those positions. The title of field officer has also been retained to ensure that officers who have been given this title separate to their substantive position, may continue to exercise the same rights. These changes are also replicated in the amendments to the *Mineral Resources Act 1989*;
- address issues regarding specific clauses in the then *Geothermal Exploration Bill 2004* in the Alert Digest No. 2 of 2004;
- address issues raised in the development of the Geothermal Exploration Regulation and the administrative procedures which identified some minor errors and inconsistencies in terminology and processes that require amendment;
- improve the safety provisions of the *Geothermal Exploration Act 2004*;
- ensure that commitments and undertakings arising from the Cape York Heads of Agreement are taken into account in tenure allocation decisions under the *Land Act 1994*; and
- enable grantees of land transferred under the *Aboriginal Land Act 1991* to enter into conservation agreements under the *Nature Conservation Act 1992*.

Achieving the Objectives

The objectives will be achieved by:

- making several minor amendments to the *Mineral Resources Act 1989* to improve its operation, thus contributing to increased mineral exploration and development in Queensland;
- altering the definition of *superannuation fund* and updating the title of a federal award referred to in the *Coal and Oil Shale Mine Workers' Superannuation Act 1989*;
- creating the title of deputy mining registrar within the *Fossicking Act 1994*; addressing issues raised by the Scrutiny of Legislation

Committee and minor errors and inconsistencies in terminology and processes within the *Geothermal Exploration Act 2004*; and

- providing for offences against relevant safety provisions in the *Petroleum and Gas (Production and Safety) Act 2004* to also apply to geothermal exploration.

Administrative costs

No additional administrative costs will result from these amendments.

Fundamental Legislation Principles

Clause 13 of the Bill may be perceived as breaching the fundamental legislative principle in section 4(3)(g) of the *Legislative Standards Act 1992* because it may affect obligations retrospectively.

Clause 13 of the Bill proposes a new section 138 in the *Mineral Resources Act 1989* that seeks to resolve uncertainties regarding when rent for an exploration permit should be paid. The current section 138 does not specify when rent for an exploration permit should be paid. A holder may comply with the section by paying the rent at any time during the rental year. This situation imposes on the Department administrative burdens in monitoring and enforcing compliance. It should be noted that the proposed amendment only changes the timing of rental payments. There is no change in the amount of rent being paid. The amendment gives legislative effect to a condition, requiring payment of rent by a certain time that has been imposed on exploration permits granted or renewed since October 2001. There are a significant number of other exploration permits that are not subject to a condition requiring payment of rent by a certain time but it is argued that, as the adverse effect is likely to be minor, the provision should be allowed to stand.

Consultation

The Department of Natural Resources and Mines (NR&M) has consulted with all relevant Queensland Government agencies with regard to the proposed amendments. The agencies consulted support the proposed amendments.

In relation to the *Mineral Resources Act 1989*, NR&M consulted with various internal and external stakeholders. The Land and Resources Tribunal were consulted and advised NR&M that the proposed

amendments are positive and will improve the administration of the *Mineral Resources Act 1989*.

The following organisations were consulted on the *Mineral Resources Act 1989*:

- The Queensland Resources Council (QRC)
- The North Queensland Miners Association
- The Queensland Opal Miners Association
- The Queensland Sapphire Producers Association
- The Queensland Farmers Federation
- AgForce

As a result of external consultation, some proposed amendments to the *Mineral Resources Act 1989* were removed from the current Bill and will be addressed as part of the major review of the *Mineral Resources Act 1989*, which is currently underway.

The following stakeholders were consulted on the proposed amendments to the *Coal and Oil Shale Mine Workers' Superannuation Act 1989*:

- Queensland Coal and Oil Shale Mining Industry Superannuation Fund
- Queensland Resources Council (QRC)
- Anglo Coal Australia Pty Ltd
- Rio Tinto Coal Australia Pty Limited
- Peabody Energy Australia Coal Pty Limited
- The Electrical Trades Union
- The Australian Manufacturing Workers' Union
- The Construction, Forestry, Mining and Energy Union
- The Association of Professional Engineers, Scientists and Managers, Australia

Notes on Provisions

Part 1 Preliminary

1 Short title

Clause 1 sets out the short title of the Act as the *Mineral Resources and Other Legislation Amendment Act 2004*.

Part 2 Amendment of Mineral Resources Act 1989

2 Act amended in pt 2 and schedule

Clause 2 provides for this part and the schedule to amend the *Mineral Resources Act 1989*.

3 Replacement of s 72 (Mining registrar to fix hearing date)

Clause 3 replaces section 72 in the *Mineral Resources Act 1989*.

'72 Referral to tribunal of application and objections

Clause 3, section '72 sets out the process of referring mining claim applications and objections to the Land and Resources Tribunal, the fixing of a hearing date and giving written notice to affected parties.

4 Replacement of ss 75 and 76

Clause 4 replaces sections 75 and 76 in the *Mineral Resources Act 1989*.

‘75 Referral to tribunal of application to which no objection lodged

Clause 4, section ‘75 sets out the process for referring mining claim applications to the Land and Resources Tribunal when no objections have been lodged.

‘76 Referral to tribunal of issue of reserve owner’s consent

Clause 4, section ‘76 sets out the process for referring mining claim applications over reserve land to the Land and Resources Tribunal if the mining registrar is not satisfied that an owner of a reserve has consented to the mining claim application.

5 Amendment of s 81 (Conditions of mining claim)

Clause 5 expands the condition in section 81(1)(m) to require compliance with other mining legislation which is defined in the dictionary and is limited only to those Acts administered by the Department of Natural Resources and Mines.

6 Amendment of s 85 (Compensation to be settled before granting of mining claim)

Clause 6 amends section 85 to clarify the requirement that the holder of a mining claim must settle compensation with a land owner before the claim can be renewed.

7 Insertion of new s 85A

Clause 7 inserts a new section 85A in the *Mineral Resources Act 1989*.

‘85A Referral to tribunal of issue of compensation if not settled within 3 months after term of claim ends

Clause 7, section ‘85A provides that, in the case of an application for renewal of a mining claim, if the issue of compensation has not been settled within 3 months after the date on which the mining claim would otherwise have expired, the mining registrar must refer the issue of compensation to the Land and Resources Tribunal for determination. The tribunal must fix a hearing date and give written notice of the date to affected parties.

8 Amendment of s 93 (Renewal of mining claim)

Clause 8 amends section 93(3)(c) to expand compliance to include other mining legislation which is defined in the dictionary and is limited only to those Acts administered by the Department of Natural Resources and Mines. Sections 93(6) and (7) are omitted and days are changed to business days in section 93(9).

9 Insertion of new ss 93A-93D

Clause 9 inserts new sections 93A-93D in the *Mineral Resources Act 1989*.

‘93A Continuation of claim while application being dealt with

Clause 9, section ‘93A states that, where an application for renewal has been lodged but not dealt with by the date when the mining claim would otherwise expire, the mining claim is deemed to continue in effect after the expiry date until the application for renewal is determined.

‘93B When term of renewed claim starts

Clause 9, section ‘93B states when the term of a renewed mining claim starts.

‘93C When new conditions of renewed claim start

Clause 9, section ‘93C states when the new conditions of a renewed mining claim commence.

‘93D Renewal of claim must be in name of last recorded assignee

Clause 9, section ‘93D addresses the issue of an assignment, which has been lodged after an application for renewal of a mining claim. The section provides that the mining claim may be renewed in the name of the assignee rather than requiring the mining claim to be renewed before the assignment is processed.

10 Amendment of s 125 (Variation of access to mining claim land)

Clause 10 amends section 125 by providing that if the mining registrar is not satisfied that the owner of land has consented to a variation of access

over that land, the issue may be referred to the Land and Resources Tribunal. The amendment clarifies the process of referral, the fixing of a hearing date and giving written notice to affected parties.

11 Amendment of s 133 (Application for exploration permit)

Clause 11 amends section 133 by clarifying that financial resources include the financial resources necessary to comply with any native title requirements under an exploration permit.

12 Amendment of s 137 (Grant of exploration permit)

Clause 12 amends section 137(3) to clarify that the exploration permit specifies the program of works or studies to be performed. Section 137(4) is amended by removing the reference to the *Fossicking Act 1994* and replacing it with a reference to Acts or other mining legislation which is defined in the dictionary to include only those Acts administered by the Department of Natural Resources and Mines.

13 Replacement of s 138 (Rental payable under exploration permit)

Clause 13 replaces section 138 in the *Mineral Resources Act 1989*.

‘138 Rental payable on exploration permit

Clause 13, section ‘138 seeks to resolve uncertainties regarding payment of rent. In particular, when rent must be paid. The current section 138 does not specify when rent for an exploration permit should be paid and a holder may comply with the section by paying the rent due at any time during the rental year. This situation imposes on the Department administrative burdens in monitoring and enforcing compliance. The requirement to pay rent by a certain time has been imposed on holders only through the conditions attaching to exploration permits granted or renewed since October 2001. It is now proposed to give legislative effect to when rental must be paid. It should be noted that the proposed amendment only changes the timing of rental payments. There is no change in the amount of rent being paid.

14 Amendment of s 139 (Periodic reduction in land covered by exploration permit for mineral other than coal)

Clause 14 amends section 139 to cover both exploration permits for minerals and exploration permits for coal. The rights of holders of exploration permits for coal have not been affected.

15 Replacement of s 140 (Periodic reduction in land covered by exploration permit for coal)

Clause 15 replaces section 140 in the *Mineral Resources Act 1989*.

‘140 Voluntary reduction in land covered by exploration permit

Clause 15, section ‘140 clarifies the right of a holder to voluntarily relinquish sub-blocks at any time.

16 Amendment of s 141 (Conditions of exploration permit)

Clause 16 expands the condition in section 141(1)(h) to require compliance to include other mining legislation which is defined in the dictionary and is limited only to those Acts administered by the Department of Natural Resources and Mines.

17 Amendment of s 144 (Provision of security)

Clause 17 amends section 144(1) to clarify a reference to section 133(1)(g)(i). References to ‘days’ are also amended to references to ‘business days’.

18 Replacement of s 147 (Renewal of exploration permit)

Clause 18 replaces section 147 and adds new sections 147A-147F in the *Mineral Resources Act 1989*.

‘147 Application for renewal of exploration permit

Clause 18, section ‘147 sets out the process for applying for renewal of an exploration permit.

‘147A Decision on application

Clause 18, section ‘147A sets out the matters related to a decision to renew an exploration permit, including a list of those matters of which the Minister must be satisfied before granting a renewal.

‘147B Chief executive must give copy of application to EPA administering authority

Clause 18, section ‘147B provides that the chief executive must give a copy of the renewal application to the EPA administering authority.

‘147C Continuation of permit while application being dealt with

Clause 18, section ‘147C provides that, where an application for renewal has been made but not dealt with by the day the permit would otherwise expire, the exploration permit is deemed to continue until the application is determined.

‘147D When term of renewed permit starts

Clause 18, section ‘147D states when the term of a renewed exploration permit will commence whether or not it has been deemed to continue after its expiry day.

‘147E When new conditions of renewed permit start

Clause 18, section ‘147E sets out when the new conditions of the renewed exploration permit shall start.

‘147F Renewal of permit must be in name of last recorded assignee

Clause 18, section ‘147F provides that where an application for assignment is received after a renewal application, if the assignment is approved, then the permit may be renewed in the name of the assignee.

19 Amendment of s 159 (Abandonment of application for exploration permit)

Clause 19 amends section 159 to provide for the partial abandonment of applications for exploration permits by the dropping of specified sub-blocks.

20 Amendment of s 163 (Notice of entry to be given)

Clause 20 amends section 163(8) to provide that the chief executive must make an appropriate note in the register. The section is also amended to change references to ‘days’ to ‘business days’.

21 Amendment of s 187 (Holder to notify owners of land of grant)

Clause 21 amends section 187 to require holders to notify the owners of land of the renewal of a mineral development licence. The provision is also amended to change references to ‘days’ to ‘business days’.

22 Amendment of s 189 (Abandonment of application for mineral development licence)

Clause 22 amends section 189 to allow for the partial abandonment of an application for a mineral development licence by the dropping of specified land.

23 Amendment of s 194 (Conditions of mineral development licence)

Clause 23 expands the condition in section 194(1)(h) to require the holder to comply with other mining legislation which is defined in the dictionary and limited to only those Acts administered by the Department of Natural Resources and Mines.

24 Replacement of s 197 (Renewal of mineral development licence)

Clause 24 replaces section 197 and adds new sections 197A-197F in the *Mineral Resources Act 1989*.

‘197 Application for renewal of mineral development licence

Clause 24, section ‘197 sets out the process for applying for renewal of a mineral development licence.

‘197A Decision on application

Clause 24, section ‘197A sets out the matters relating to the decision to renew a mineral development licence, including a list of matters of which the Minister must be satisfied before a licence may be renewed.

‘197B Chief executive must give copy of application to EPA administering authority

Clause 24, section ‘197B provides that the chief executive must give a copy of the application for renewal to the EPA administering authority.

‘197C Continuation of licence while application being dealt with

Clause 24, section ‘197C provides that, where an application for renewal has been lodged but not dealt with by the day the licence would otherwise expire, the licence is deemed to continue in force until the application is determined.

‘197D When term of renewed licence starts

Clause 24, section ‘197D sets out when the renewed term of the mineral development licence will commence whether or not it has been continued in force after its expiry day.

‘197E When new conditions of renewed licence start

Clause 24, section ‘197E sets out when new conditions attached to a renewed mineral development licence will commence.

‘197F Renewal of licence must be in name of last recorded assignee

Clause 24, section ‘197F provides that, where an application for assignment is lodged after an application for renewal of a licence, and the assignment would be approved, the licence may be renewed in the name of the assignee.

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

Clause 25 omits section 245(1)(n) as these provisions are dealt with in section 248.

26 Replacement of ss 248 and 249

Clause 26 replaces sections 248 and 249 in the *Mineral Resources Act 1989*.

‘248 Applicant must obtain consent or views of existing authority holders

Clause 26, section ‘248 includes applications for mining leases for purposes other than mining. This amendment was prompted by the decision of the Land and Resources Tribunal in *Re Australian Diatomaceous Earth Pty Ltd & Ors* [2004] QLRT 86. The new section also anticipates the existence of exploration permits granted under the new *Geothermal Exploration Act 2004*.

‘249 Later applicant must obtain consent or views of earlier applicant if same land affected

Clause 26, section ‘249 has been amended to make it consistent with section 248, by including applications for mining leases for purposes other than mining and exploration permits granted under the *Geothermal Exploration Act 2004*.

27 Replacement of s 265 (Mining registrar to fix hearing date)

Clause 27 replaces section 265 in the *Mineral Resources Act 1989*.

‘265 Referral of application and objections to tribunal

Clause 27, section ‘265 clarifies the process of referring mining lease applications and objections to the Land and Resources Tribunal, the fixing of hearing dates and giving written notice to affected parties.

28 Amendment of s 269 (Tribunal’s recommendation on hearing)

Clause 28 amends section 269(4)(d) to allow the Land and Resources Tribunal to take into account certain matters related to the surface of the land. In particular, the type and location of activities to be carried out and their likely impact on the surface of the land. This amendment should be read in conjunction with the amendment to section 273.

29 Replacement of s 272 (Minister may remit to tribunal for additional evidence)

Clause 29 replaces section 272 in the *Mineral Resources Act 1989*.

‘272 Minister may remit to tribunal for additional evidence

Clause 29, section ‘272 sets out the process when the Minister remits a mining lease application to the Land and Resources Tribunal to consider additional evidence.

30 Amendment of s 276 (Conditions of mining lease)

Clause 30 amends section 276 by expanding the condition in section 276(1)(l) to require compliance to include other mining legislation which is defined in the dictionary and is limited only to those Acts administered by the Department of Natural Resources and Mines.

31 Insertion of new s 279A

Clause 31 inserts a new section 279A in the *Mineral Resources Act 1989*.

‘279A Referral to tribunal of issue of compensation if not settled within 3 months after term of lease ends

Clause 31, section ‘279A provides that where an application for renewal has been lodged but compensation has not been settled 3 months after the day the mining lease would have otherwise expired, the mining registrar must refer the matter to the Land and Resources Tribunal for determination. This amendment is to deal with those cases where applications for renewal are not determined because compensation has not been settled, causing the mining lease to be deemed to continue for many months after the day on which it would have otherwise expired.

32 Replacement of s 286 (Renewal of mining lease)

Clause 32 replaces section 286 and adds new sections 286A-286F in the *Mineral Resources Act 1989*.

‘286 Application for renewal of mining lease

Clause 32, section ‘286 sets out the process of application for renewal of a mining lease.

‘286A Decision on application

Clause 32, section ‘286A sets out the matters related to a decision to renew a mining lease, including those matters of which the Minister must be satisfied when granting a renewal.

‘286B Chief executive must give copy of application to EPA administering authority

Clause 32, section ‘286B provides that the chief executive must give a copy of the renewal application to the EPA administering authority.

‘286C Continuation of lease while application being dealt with

Clause 32, section ‘286C provides that, where an application for renewal has been lodged but not determined by the day when the mining lease would have otherwise expired, the mining lease shall continue in effect until the application has been determined.

‘286D When term of renewed lease starts

Clause 32, section ‘286D sets out when the term of a renewed mining lease commences whether or not it has been continued in effect after the day on which it would otherwise have expired.

‘286E When new conditions of renewed lease start

Clause 32, section ‘286E sets out when the conditions attached to a renewed mining lease take effect.

‘286F Renewal of lease must be in name of last recorded assignee

Clause 32, section ‘286F provides that, where an application for assignment is lodged after an application for renewal of a mining lease has been lodged, and the assignment would be approved, the mining lease may be renewed in the name of the assignee.

33 Amendment of s 288 (Holder to notify owner of grant or renewal of mining lease)

Clause 33 amends section 288 to clarify that the holder must notify the owner of land, which includes the holder of an exploration permit, mineral

development licence or mining lease over the land covered by the mining lease when the lease has been granted or renewed.

34 Omission of s 315 (Approval of additional activities upon mining lease application)

Clause 34 omits section 315 as it is recognised that an application under that section is unlikely to be granted within a significant period of time before the Minister's recommendation to the Governor in Council. The preferable solution would be to expedite the grant of the mining lease. There is also a view that the granting of an application under section 315 would pre-empt the decision of the Governor in Council to grant the mining lease.

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

Clause 35 amends section 316 to provide that an applicant for a mining lease may apply for a mining lease to transport through adjacent land. The section is also amended to add 'road' to the list of transport purposes.

36 Amendment of s 317 (Variation of access to mining lease land)

Clause 36 amends section 317 to provide that, if the mining registrar believes that the owner of land has not consented to the variation of access, the mining registrar may refer the matter to the Land and Resources Tribunal. The amendment also clarifies the process for fixing a hearing date and giving written notice to affected parties.

37 Replacement of pt 8 (Effect on planning provisions)

Clause 37 replaces part 8 in the *Mineral Resources Act 1989*.

‘Part 8 Relationship with Integrated Planning Act 1997

‘319 Effect on development

Clause 37, section ‘319 has been replaced to clarify the application of certain Acts related to planning and development. The new section 319 provides that the *Integrated Planning Act 1997* does not apply to development authorised by the *Mineral Resources Act 1989* unless the land is part of a ‘registered place’ under the *Queensland Heritage Act 1992*.

‘319A Effect on planning schemes

Clause 37, section ‘319A provides that a mining registrar shall notify the local government authority and the chief executive of the Department administering the *Integrated Planning Act 1997* of the grant or renewal of a mining claim, mineral development licence or mining lease and provides that details of the mining claim, mineral development licence or mining lease shall be noted on the relevant maps held by those entities.

38 Amendment of s 322 (Minister may request audit)

Clause 38 amends section 322 to clarify who may be appointed to carry out audits.

39 Replacement of s 388 (Notification of change of address etc.)

Clause 39 replaces section 388 in the *Mineral Resources Act 1989*.

‘388 Notice of change of address for service

Clause 39, section ‘388 sets out the provision for address for service in a more readable form.

40 Amendment of s 391 (Restriction on grants etc.)

Clause 40 amends section 391(e) to clarify that a State Government Department may also be a nominated referral entity.

41 Insertion of new s 391B

Clause 41 inserts a new section in the *Mineral Resources Act 1989*.

'391B Right of access for authorised activities includes access for rehabilitation and environmental management'

Clause 41, section '391B provides that the holder of a geothermal exploration permit has the right to enter private land to conduct authorised activities. The holder also has the right to enter land for the purpose of conducting rehabilitation and environmental management related to the authorised activities. This ensures that the holder does not require the rights to enter as obligations in relation to rehabilitation and environmental management provided for under the *Environmental Protection Act 1994*. This right only applies during the currency of a geothermal exploration permit.

42 Amendment of s 399 (Mode of service of documents)

Clause 42 amends section 399(2) to include the reference to 'deputy mining registrar'. Section 399(2)(c) is amended by changing 'post' to 'registered post'. A new section has been added to clarify that 'registered post' is a type of postage that requires the recipient's signature as proof of receipt.

43 Insertion of new ss 404A-404D

Clause 43 inserts new sections 404A-404D to ensure the *Mineral Resources Act 1989* complies with the current drafting practice that penalties prescribed by Regulation shall not exceed 20 penalty units. These provisions are being inserted into the *Mineral Resources Act 1989* as they prescribe penalties of 200 penalty units.

'404A Distance of excavation from railway works'

Clause 43, section '404A is the provision currently appearing in part 12, division 1 of the *Mineral Resources Regulation 2003* and there is no change to the effect of the provisions.

'404B Interference with particular things'

Clause 43, section '404B is the provision currently appearing in part 12, division 1 of the *Mineral Resources Regulation 2003* and there is no change to the effect of the provisions.

‘404C Information requirements for holders of mining tenements

Clause 43, section ‘404C is the provision currently appearing in part 12, division 1 of the *Mineral Resources Regulation 2003* and there is no change to the effect of the provisions.

‘404D False or misleading document

Clause 43, section ‘404D is the provision currently appearing in part 12, division 1 of the *Mineral Resources Regulation 2003* and there is no change to the effect of the provisions.

44 Insertion of new pt 19, div 6

Clause 44 inserts a new part in the *Mineral Resources Act 1989*.

‘Division 6 Transitional provisions for Mineral Resources and Other Legislation Amendment Act 2004

‘739 Application of particular provisions

Clause 44 has been inserted to outline the transitional provisions that will apply.

45 Amendment of schedule (Dictionary)

Clause 45 amends the dictionary in the *Mineral Resources Act 1989* to add new definitions or to clarify existing definitions.

Part 3 Amendment of Aboriginal Land Act 1991

46 Act amended in pt 3

Clause 46 provides for this part to amend the *Aboriginal Land Act 1991*.

47 Amendment of s 39 (Permitted dealings with transferred land)

Clause 47 inserts an authority for grantees of transferred land to enter into conservation agreements under the *Nature Conservation Act 1992*.

48 Insertion of new pt 10

Clause 48 inserts a new part 10 in the *Aboriginal Land Act 1991*.

‘Part 10 Validation provision

‘139 Existing conservation agreements

Clause 48, section ‘139 validates agreements entered into before the commencement of clause 47 where the intention of the parties to the agreements was that these agreements be conservation agreements under the *Nature Conservation Act 1992*.

Part 4 Amendment of Coal and Oil Shale Mine Workers’ Superannuation Act 1989

49 Act amended in pt 4

Clause 49 provides for this part to amend the *Coal and Oil Shale Mine Workers’ Superannuation Act 1989*.

50 Amendment of s 2 (Definitions)

Clause 50 amends the definition of *superannuation fund* to provide that until the merger day, the superannuation fund means the Queensland Coal and Oil Shale Mining Industry Superannuation Fund. From the merger day, the superannuation fund means AUSCOAL Superannuation Fund.

A definition of *merger day* is inserted, which specifies that the merger day is the day the Queensland Coal and Oil Shale Mining Industry Superannuation Fund and the COALSUPER Retirement Income Fund merge to form the AUSCOAL Superannuation Fund.

51 Amendment of s 3 (Meaning of “mine worker”)

Clause 51 amends section 3(3)(b)(ii) and (4)(b)(ii) to replace a superseded title of a federal award with the current award of Coal Mining Industry (Staff) Award, 2004.

52 Replacement of pt 3 heading

Clause 52 replaces the heading to reflect the transitional provision inserted.

‘Part 3 Transitional provisions

‘Division 1 Transitional provision for Mining and Other Legislation Amendment Act 2000’.

53 Insertion of new pt 3, div 2

‘Division 2 Transitional provision for Mineral Resources and Other Legislation Amendment Act 2004

Clause 53 inserts a new part 3, division 2 in the *Coal and Oil Shale Mine Workers’ Superannuation Act 1989* to reflect the transitional provision inserted.

‘6 References to superannuation fund from merger day until the commencement

Clause 53, section ‘6 provides how the superannuation fund will be referred to from the merger day until the commencement of the legislation.

Part 5 Amendment of Fossicking Act 1994

54 Act amended in pt 5

Clause 54 provides for this part to amend the *Fossicking Act 1994*.

55 Amendment of s 3 (Definitions)

Clause 55 amends section 3 by creating the title of *deputy mining registrar* within the definitions, following a review of mining registrar and field officer positions conducted in April 2000, that recommended the title of field officer be replaced with the title of deputy mining registrar to better reflect the duties of those positions. The title of field officer has also been retained to ensure that officers who have been given this title separate to their substantive position, may continue to exercise the same rights.

56 Amendment of s 8 (Meaning of expressions used in this and other Acts)

Clause 56 amends section 8 by inserting the title of *deputy mining registrar* into the list of expressions that have the meaning given by the *Mineral Resources Act 1989*.

Part 6 Amendment of Geothermal Exploration Act 2004

57 Act amended in pt 6

Clause 57 provides for this part to amend the *Geothermal Exploration Act 2004*.

58 Amendment of s 10 (Graticulation of earth's surface into "blocks" and "sub-blocks")

Clause 58 amends section 10 and provides that each block and sub-block must be identified in the way approved by the chief executive. This amendment improves consistency with other mining tenures.

59 Omission of s 14 (Prohibition on geothermal extraction)

Clause 59 omits section 14 from the Principal Act. This matter is to be dealt with in proposed legislation for the production of energy from geothermal sources. Work on this legislation is due to commence in 2005. In the interim it is intended that existing low-level use may continue.

60 Amendment of s 33 (Term of permit)

Clause 60 amends section 33(2) so that the term of a geothermal exploration permit must not be more than 5 years after it is granted. This clause is intended to ensure that geothermal exploration permits do not expire before production legislation is developed.

61 Amendment of s 39 (Taking, interfering with and using water for geothermal exploration)

Clause 61 amends section 39(1) to further restrict the taking, interference and use of water to circumstances where it is *reasonably unavoidable* rather than *necessarily taken*.

This amendment also expands section 39 to allow access to water to undertake an activity under section 97 of the Act (Entry authority to comply with requirement after permit ceases). This amendment is necessary to ensure that a former permit holder can also take, interfere or use water to comply with a requirement under the Act or a condition of a former permit.

62 Insertion of new ss 39A and 39B

Clause 62 inserts new sections 39A and 39B in the *Geothermal Exploration Act 2004*.

‘39A Taking samples in geothermal exploration

Clause 62, section ‘39A provides the permit holder or an authorised person for the permit may take samples of materials from any part of the area of the permit in which geothermal exploration, may be carried out. This section only applies to the extent that the taking of the samples is necessary for geothermal exploration in the area of the permit.

‘39B Ownership of samples taken in geothermal exploration

Clause 62, section ‘39B provides that, subject to section 107, the samples become the property of the permit holder when they are taken. These sections clarify ownership of samples.

63 Insertion of new ss 49A and 49B

Clause 63 inserts new sections 49A and 49B in the *Geothermal Exploration Act 2004*.

‘49A Public release of required information

Clause 63, section ‘49A provides for the chief executive to release any required information to the public, after the end of a confidentiality period (prescribed by regulation) has passed, irrespective of whether the

geothermal exploration permit the required information relates to has ended or not. Any confidentiality period, prescribed under a regulation, ceases if the required information relates to an authorised activity conducted on the area of a geothermal exploration permit that is no longer within the area of the tenure.

'49B Chief executive may use required information

Clause 63, section '49B provides that the chief executive may use any required information for the purposes related to the Act, irrespective of whether the geothermal exploration permit the required information relates to has ended or not. This is for the betterment of the geoscientific information available about the State.

64 Amendment of s 53 (Power to use security)

Clause 64 amends section 53(1) by inserting 'by the State' after 'used'. This amendment clarifies on whose behalf security may be used.

65 Amendment of s 55 (Replenishment of security)

Clause 65 amends section 55(2)(b) by inserting 'in the form and' after 'permit'. This amendment improves internal consistency to similar references in the Act.

66 Insertion of new ss 55A and 55B

Clause 66 inserts new sections 55A and 55B in the *Geothermal Exploration Act 2004*.

'55A Replacement of security

Clause 66, section '55A provides that if an external security provider becomes subject to any action taken by or against it, or any holding company of it, that may result in the external security provider becoming an externally-administered body corporate, that the Minister may, by written notice, direct the holder to replace the security. This amendment seeks to ensure that the State maintains a viable security for a permit at any point in time.

'55B Security not affected by change in permit holder

Clause 66, section '55B provides that any security held for a geothermal exploration permit remains as security for the permit and may be used by the State, irrespective of whether there has been a transfer of, or any change in, percentage holdings of the geothermal exploration permit. The name of the holder of any unconditional financial institution security, or similar instrument, given as security for a geothermal exploration permit, is taken to have changed as a consequence of the change in the holder. If and when the security is to be refunded, it will be refunded to that holder of the geothermal exploration permit that was noted in the register as being the last holder of the authority before it ended.

67 Amendment of s 56 (Retention of security)

Clause 67 amends section 56 by inserting two new sections 56(3) and 56(4), which clarify that security provided by an external security provider must be refunded to the external security provider and not the permit holder.

68 Amendment of s 58 (Deciding application)

Clause 67 amends section 58(1) by clarifying that an application must meet any additional requirements outlined under subdivisions 2 to 6 and is subject to the application having been properly made. Section 133A deals with applications that are not properly made.

69 Amendment of s 61 (Making application)

Clause 69 amends section 61 by inserting that an application to defer the time provided for achievement of an agreed specific objective can not be made if the time for achievement of the objective has ended or unless deferred, ends within 20 days after the application is made. The purpose of this amendment is to avoid late applications for deferral and encourage better management of work programs.

70 Amendment of s 63 (Making application)

Clause 70 amends section 63 by inserting that an application to defer the giving of reports and samples can not be made if the time for the giving of the report or sample has ended or unless deferred, ends within 20 days after the application is made. The purpose of this amendment is to avoid late applications for deferral.

71 Amendment of s 65 (Making application)

Clause 71 amends section 65 by clarifying that an application to surrender a geothermal exploration permit may be to surrender all of the permit or part of the permit.

72 Amendment of s 82 (Power of and procedure for immediate suspension)

Clause 72 amends section 82 to improve internal consistency within the section with reference to an immediate suspension.

73 Amendment of s 92 (Waiver by chief executive of requirement)

Clause 73 amends section 92 to improve internal consistency within the Act.

74 Insertion of a new ch 5, pt 5

Clause 74 inserts a new part 5 in chapter 5 in the *Geothermal Exploration Act 2004*.

‘Part 5 – Public roads

‘Division 1 – Preliminary

‘97A Significant projects excluded from div 1

Clause 74, section ‘97A provides that this division does not apply to a geothermal exploration permit that is, or is included in, a project declared under the *State Development and Public Works Organisation Act 1971*, to be a significant project. However, this does not limit, or otherwise affect, the conditions the Coordinator-General may recommend for the geothermal exploration permit pursuant to part 4, division 7 of the *State Development and Public Works Organisation Act 1971*.

‘97B What is a *notifiable road use*

Clause 74, section ‘97B defines the meaning of *notifiable road use* for geothermal exploration permit holders and details *threshold rates*.

‘Division 2 – Notifiable road uses

‘97C Notice of notifiable road use

Clause 74, section ‘97C provides for a notice to be given to a public road authority, by a geothermal exploration permit holder, where the geothermal exploration permit holder proposes to use the road for a notifiable road use. This clause also details when the notice is to be given, and what contents the notice must contain.

‘97D Directions about notifiable road use

Clause 74, section ‘97D provides for a *road use direction* to be given to the geothermal exploration permit holder by the public road authority. This road use direction is to contain details about the way the notifiable road use is to be carried out, or is proposed to be carried out. Besides stating that the road use direction must be reasonable, it also states what the road use direction must be about.

‘97E Obligation to comply with road use directions

Clause 74, section ‘97E provides for it to be a condition of the geothermal exploration permit that the authority holder comply with the road use directions, unless there is a reasonable excuse.

‘Division 3 – Compensation for notifiable road uses

‘97F Liability to compensate public road authority

Clause 74, section ‘97F provides for compensation to be paid by a geothermal exploration permit holder, to a public road authority, for damage caused, or that may be caused, by notifiable road uses. This liability is called the holder’s *compensation liability* to the public road authority.

‘97G Compensation agreement

Clause 74, section ‘97G provides for the geothermal exploration permit holder and the public road authority to enter into an agreement (called a *compensation agreement*). This clause also outlines what the compensation agreement relates to, what it must detail, and lists other matters that may be addressed by the agreement.

‘97H Deciding compensation through tribunal

Clause 74, section ‘97H provides for the public road authority or the geothermal exploration permit holder to apply to the Land and Resources Tribunal to decide compensation liability. The Land and Resources Tribunal may only decide compensation that is not subject to a compensation agreement. This clause also details what the Land and Resources Tribunal must have regard to when deciding the compensation application.

‘97I Criteria for decision

Clause 74, section ‘97I provides details about what the Land and Resources Tribunal must take into account when deciding a compensation liability.

‘97J Tribunal review of compensation

Clause 74, section ‘97J provides for the public road authority or geothermal exploration permit holder to apply to the Land and Resources Tribunal to review the original compensation agreement between the public road authority and the geothermal exploration permit holder. However, there must have been a material change in circumstances since the agreement of decision.

This clause also outlines the details the Land and Resources Tribunal must have regard to in making the review decision, and provides for the Land and Resources Tribunal to either confirm the original agreement or decision, or amend it in a way that the Land and Resources Tribunal sees fit.

‘97K Compensation to be addressed before carrying out notifiable road use

Clause 74, section ‘97K provides for it to be a condition of a geothermal exploration permit that no notifiable road use may be carried out on a public road, unless a compensation agreement is in place, the public road authority has given written authorisation to the geothermal exploration permit holder to conduct the notifiable road use, or that an application has been made to the Land and Resources Tribunal to make a decision about compensation.

‘97L Compensation not affected by change in administration or holder

Clause 74, section ‘97L provides that a compensation agreement or decision binds all parties to it and each of their personal representatives. The agreement also binds all successors and all assigns.

75 Amendment of s 107 (Direction to give samples)

Clause 75 inserts section 107(2), which clarifies that a sample given by way of a notice becomes the property of the State.

76 Amendment of s 108 (Direction to give additional information for requirement under Act)

Clause 76 inserts a grammatical correction in section 108 of the *Geothermal Exploration Act 2004*.

77 Amendment of s 109 (Who may appeal)

Clause 77 amends section 109 to include that an appeal can be made against a decision by a public road authority. This amendment was necessary as a result of the new chapter 5, part 5 relating to public roads.

78 Amendment of s 126 (Transfer of bore to permit holder)

Clause 78 amends section 126 to provide that an application to transfer a bore to a permit holder must be properly made. Section 133A deals with applications that are not properly made.

Section 126 is also amended through deletion of section 126(5), which was an unnecessary provision.

79 Amendment of s 127 (Transfer of exploration bore from permit holder to landholder or mining interest holder)

Clause 79 amends section 127 to provide that an application to transfer an exploration bore to a landholder or mining interest holder must be properly made. Section 133A deals with applications that are not properly made.

Section 127 is also amended through deletion of section 127(3)(b)(ii) which was an unnecessary provision.

80 Amendment of s 128 (Transfer of exploration bores from permit holder or former permit holder to the State)

Clause 80 amends section 128 to provide that an application to transfer exploration bores from a permit holder or former permit holder to the State must be properly made. Section 133A deals with applications that are not properly made.

81 Insertion of new s 133A

Clause 81 inserts new section 133A in the *Geothermal Exploration Act 2004*.

‘133A Dealing with application that is not a properly made application

Clause 81, section ‘133A deals with applications that are not properly made. This section also provides that a fee may be deducted from the application fee for checking whether the application is a properly made application.

82 Amendment of s 139 (Regulation-making power)

Clause 82 amends section 139 by not limiting the regulation-making power to only those matters outlined in section 139(2).

83 Replacement of s 144 and ch 8, pt 3

Clause 83 amends section 144 and chapter 8, part 3 in the *Geothermal Exploration Act 2004*.

‘144 Amendment of sch 9 (Development that is exempt from assessment against a planning scheme)

Clause 83, section ‘144 is amended as a result of the *Integrated Planning and Other Legislation Amendment Act 2003* expiring.

‘145 Amendment of sch 10 (Dictionary)

Clause 83, section ‘145 is amended as a result of the *Integrated Planning and Other Legislation Amendment Act 2003* expiring.

84 Amendment of schedule (Dictionary)

Clause 84 inserts definitions in the schedule (Dictionary). The majority of the new definitions arise from the inclusion of the new chapter 5, part 5 relating to public roads.

Part 7 Amendment of Land Act 1994

85 Act amended in pt 7

Clause 85 provides for this part to amend the *Land Act 1994*.

86 Amendment of s 16 (Deciding appropriate tenure)

Clause 86 inserts additional requirements into section 16.

Clause 86, section 16(3) is expanded to enable an evaluation of most appropriate tenure to take into account commitments and undertakings given by persons under, or arising from, a Cape York Agreement.

Clause 86, section 16(4) places a ten year time limit on section 16(3).

Clause 86, section 16(5) provides a definition of ‘Cape York Agreement’ and ‘Cape York Agreement land’.

Part 8 Amendment of Nature Conservation Act 1992

87 Act amended in pt 8

Clause 87 provides for this part to amend the *Nature Conservation Act 1992*.

88 Amendment of schedule (Dictionary)

Clause 88 inserts an expanded definition of landholder for a conservation agreement under section 45 to include grantees of transferred land under the *Aboriginal Land Act 1991*.

Part 9 Amendment of Petroleum and Gas (Production and Safety) Act 2004

89 Act amended in pt 9

Clause 89 provides for this part to amend the *Petroleum and Gas (Production and Safety) Act 2004*.

90 Amendment of s 993A (Insertion of new s 132A of Act No. 12 of 2004)

Clause 90 amends section “132A of the *Geothermal Exploration Act 2004* to provide that offences against relevant safety provisions of the *Petroleum and Gas (Production and Safety) Act 2004* will apply to geothermal exploration.

Schedule – Minor amendments of Mineral Resources Act 1989

The schedule provides uncontroversial corrections and other minor changes of a drafting nature for the *Mineral Resources Act 1989*. These amendments are for clarity, cross-referencing, relocation and renumbering reasons.