PETROLEUM AND GAS (PRODUCTION AND SAFETY) BILL 2004

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The Act will be known as the *Petroleum and Gas (Production and Safety) Act 2004*.

Policy Objectives of the Bill

The purpose of the Bill is to:

- establish a new competitive petroleum tenure regime;
- encourage responsible land and resource management (including identifying and addressing potential conflict issues);
- establish and maintain best practice management regimes covering safety and other technical activities on tenures and licences, within industry and in the general community; and
- provide affected parties with rights of consultation, review and appeal, and where applicable compensation.

The Bill regulates petroleum exploration and production activities, pipeline licensing other than distribution, and manages safety and technical matters for the upstream and downstream petroleum industries, and gas consumers. This Bill is prospective in its application.

The Bill also implements a new coal seam gas regime that provide mechanisms for the efficient and effective management of the State's coal seam gas resources. The objectives of the regime are to provide clarity of rights and tenure, to deal with safety issues associated with exploring and producing coal seam gas, particularly where the interests of coal explorers and miners need to be considered, and to ensure the future safe and efficient mining of coal seams is not compromised by petroleum exploration and production activities. Within the context of these

objectives, it is desired to optimise the utilisation of the State's coal seam gas and coal resources.

During the development of the Bill, it became apparent that any interference with the rights enjoyed by holders of petroleum exploration and production tenure over land affected by native title, would trigger the right to negotiate provisions under the *Native Title Act 1993* (Cwlth). Without the retention of the *Petroleum Act 1923*, exploration and production on these tenures would cease until the native title issues were resolved. The consequences of this would have been a major disruption of supply to domestic and industrial consumers and a potential loss of over $50 million in royalty annually, until native title was resolved. Accordingly, a decision has been taken to retain the *Petroleum Act 1923*, albeit subject to amendment.

A Bill which deals with amendments to the *Petroleum Act 1923* and transitional provisions, will be introduced by 30 June 2004 with a view to both the Petroleum and Gas (Production and Safety) Bill 2004 and the Bill containing amendments to the *Petroleum Act 1923* and transitional provisions being considered together by Parliament in a cognate debate later this year.

Reasons for the Bill

The *Petroleum Act 1923* and the *Gas (Residual Provisions) Act 1965* are both old Acts that do not effectively take into account, current Government competitive reforms, new policy approaches to managing safety (for example, outcome focussed over prescriptive regulations) and community expectations with respect to greater legislative transparency and accountability (for example, clear rights of review and appeal).

Both Acts are antiquated in the legislative drafting style and in addition, some concepts and processes no longer accord with best practice principles. Consequently, the Department of Natural Resources, Mines and Energy made the decision to develop new legislation.

Achievement of Policy Objectives

The objectives will be achieved by:

- Establishing a competitive tender process for exploration tenure. Assessment of tenders is based on capability to undertake exploration rather than a cash bid system. Accordingly, the

successful tenderer will be the one that submits the most effective work program for the area.

- Requiring authority to prospect holders to regularly report on their work activities.
- Prescribing mandatory relinquishment of land.
- Allowing an authority to prospect holder to apply for a petroleum lease when a commercial discovery is confirmed.
- Establishing a competitive tender process for exploration on land not covered by an authority to prospect tenure. Assessment of tenders is based on capability to undertake exploration rather than a cash bid system.
- Requiring a petroleum lease holder to have an approved development plan and report regularly on development activities
- Providing for upstream pipeline licensing (that is transmission and gathering pipelines), petroleum facility licensing (for example, processing plants) and enabling third-party storage of petroleum in depleted reservoirs. These activities assist the production of petroleum and its transport to the market. In particular, it is expected that third party access to storage could be utilised by various companies in the gas supply chain to ensure that gas is readily available to customers and also as insurance against unforseen supply disruptions.
- Providing for consultation and negotiation between overlapping petroleum and coal or oil shale tenure holders, with a view to reaching commercial agreements about coordinated development of the two resources. Where agreements cannot be reached the Bill puts in place processes to ensure that the best resource management decision is made before any production lease is granted.
- Providing a statutory right to petroleum explorers and producers to take and use water, that is balanced by various obligations to restore water supplies.
- Allowing the supply of water to third parties in certain circumstances.
- Encouraging early and regular consultation between the parties. The overall outcome will minimise land conflicts.

- Requiring the holder of each petroleum authority to compensate each owner or occupier of land for any reasonable compensable effects caused by the holder's activities. The parties enter into a compensation agreement, which may include monetary or non-monetary compensation. For example, the parties may agree on the petroleum authority holder constructing and grading an access road for the landholder. If the parties are unable to agree about compensation, the Land and Resources Tribunal may make a compensation decision.
- Aligning, to an appropriate extent, the heads of compensation available with those in the *Mineral Resources Act 1989*. The adoption of the same principles will ensure a uniform compensation regime for both the petroleum and mining industries in this State.
- Aligning safety and technical requirements with the nation wide trend towards performance based, rather than prescriptive based, legislative regimes.
- Providing an efficient and integrated safety regime for both the coal mining and petroleum industries where their activities overlap or may impact on each other, by creating specific coal seam gas safety provisions, and linking the petroleum safety provisions with the *Coal Mining Safety and Health Act 1999*.
- Providing that the operator of an operating plant must have a current safety management plan in place. The Bill prescribes what must be addressed in a safety management plan. The safety management plan is not a static document. It must be revised as circumstances change. For example, a new safety standard or changes in technologies to deal with hazard assessment and management would require a revision of the safety management plan.

Alternatives to the Bill

Because of the scope of the legislation (that is, covering a petroleum exploration and production company, a transmission pipeline, an "affected" landholder, a large industrial user through to a small consumer), there are no alternative policy approaches available which can provide the necessary assurances that the objectives of the legislation will be observed.

While alternative policy instruments will be employed in the effective administration of the legislation, (for example, guidelines, information booklets, safety fact sheets) regulation remains the primary means of ensuring adequate outcomes which do not compromise the public interest.

Estimated Cost of Implementation to Government

The Bill sets the regulatory framework for an industry that attracts significant investment and revenue to Queensland. Approximately $98 million dollars was spent on exploration activities in the 2002-03 financial year, which resulted in royalty revenue to the State of some $50 million.

It is expected that the overall net cost to Government of implementing the Bill will be small, since the costs will largely be recovered in revenue generated under the Bill.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles, as defined in the *Legislative Standards Act 1992*. The Bill includes a number of provisions that may be regarded as breaching fundamental legislative principles. However, any such breach can be justified on grounds of meeting the overall policy intent of the legislation and complying with community expectations for appropriate resource management and clear and accountable decision making that ensures a safe, economically sustainable petroleum industry and effective safety regime benefiting all Queenslanders,

The clauses in which a fundamental legislative principle issue arises, together with the justification for the breach, is dealt with in the explanation of the relevant clauses.

Consultation

The proposed legislation was prepared following extensive consultation through various working groups, Discussion Papers, Position Papers, industry forums, information sessions and the release of two drafts of the Bill. Specific site visits were made to assist departmental officers in understanding landholder concerns. Separate extensive consultation was held on the development of the coal seam gas provisions through various position papers and expert panels.

The Department of Natural Resources, Mines and Energy also met with interested parties and utilised various industry conferences and seminars to highlight policy development and discuss potential issues.

NOTES ON PROVISIONS

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

Clause 1 specifies the short title of the Bill.

Clause 2 provides for some clauses of the Bill to commence on the date of assent and the remainder of the Bill to commence on a date to be proclaimed. The commencement of those clauses, by proclamation, is to enable all the associated administrative procedures and policies to be completed, enabling a seamless transition to the new legislation.

PART 2—PURPOSE AND APPLICATION OF ACT

Clause 3 provides for the purpose of the Bill, which is to ensure a modern administrative regime for the upstream petroleum and pipeline industries and to provide a modern and effective safety regime for the production, transportation and use of petroleum.

Clause 4 indicates that the legislation is to apply to all persons, including the State and the Commonwealth, as far as the Queensland Parliament has the power to do so. However, neither the Commonwealth nor a State can be prosecuted for an offence under this Bill. The protection from prosecution is because it would be inappropriate for the State to prosecute itself.

Clause 5 applies to all land in Queensland to the mean low-water mark. Land below the mean low-water mark and out to the 3 nautical mile limit is administered under the *Petroleum (Submerged Lands) Act 1982*.

Clause 6 provides for the relationship with the *Mineral Resources Act 1989*. The clause provides some simple mechanisms to deal with any overlap issues for non-coal seam gas tenures that might arise. The intent is that petroleum lease and mining lease activities will always have "right of way" and the consent of an existing petroleum or mining lease holder is needed before any authorised activity can be undertaken by an exploration tenement holder.

Where a petroleum or mining leases are not involved, the activities are to be undertaken only if agreement has been reached between the parties.

Relationships with coal seam gas regime tenures (coal and oil shale mining leases and exploration tenements) are dealt with later in this Bill, as are relationships between mining tenements overlapping pipeline licences and petroleum facility licences.

Clause 7 indicates that the legislation in no way affects or limits a civil right or the application of other Acts.

Subclause 7(1) counters the argument that because a person is required to do something under the Bill, the statutory requirement overrides a civil right or remedy existing outside the Bill. It preserves such civil rights and remedies.

Subclause 7(2) confirms that, for example, compliance with a standard under the Bill is not taken to be compliance with an obligation existing outside the Bill, which requires a higher standard.

Subclause 7(3) prevents others from taking action for breach of statutory duty created under the Bill. For example, a failure to comply with conditions of a lease cannot be redressed by a person in the civil courts (unless the breach is constituted by some other breach such as negligence) but is addressed by the Minister taking disciplinary action under this Bill.

Subclause 7(4) ensures that the Bill, being later legislation, does not override the *Penalties and Sentences Act 1992*.

Clause 8 states that where native title exists then the *Native Title Act 1993* (Cwlth) is to apply. The *Native Title Act 1993* (Cwlth) is the legislation for addressing native title issues relevant to the petroleum industry.

PART 3—INTERPRETATION

Division 1—Dictionary

Clause 9 provides for the dictionary in the schedule to define particular words in the Bill.

Division 2—Key definitions

Clause 10 gives a definition of petroleum that reflects the presence of other substances normally found in association with natural occurring hydrocarbons. Gasification products produced by underground coal gasification process or shale oil produced from retorting of oil shale are considered to be petroleum and administered under this Bill. However the exploration and mining of such products are not authorised activities for petroleum tenures and such activities are administered under the *Mineral Resources Act 1989.*

Subclause 10(4) provides for petroleum that is produced and reinjected into a natural underground reservoir to still be defined as petroleum. This subclause enables the effective administration of petroleum storage in this State.

Subclause 10(5) ensures that coal seam gas continues to be administered under the relevant petroleum legislation as was the case in the *Petroleum Act 1923*.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The provision has been drafted to ensure that the exploration for and production of other substances, occurring naturally with those substances defined as “petroleum”, are covered by this legislation. It is impossible to predict what other naturally occurring substances, beside “petroleum”, are produced during the extraction of substances from a natural underground reservoir, although this definition has attempted to identify those most likely to occur. To attempt to list all of the substances that may occur when extracting substances from a natural underground reservoir would take many pages of the Bill; some of these substances listed would likely never be produced and however complete the listing, there would still be some substances that would have been

missed. However, the clause details what is not considered petroleum, clearly prohibiting these from being prescribed as "petroleum".

Also, some of the substances which are to be prescribed, can be as potentially as dangerous as "petroleum" to explore for, produce, refine and transport. It is therefore imperative that the provisions of this Bill apply, particularly in relation to safety issues. This legislation is the best place to regulate these prescribed substances, as the techniques and procedures for the exploration, production, refining and transport of these substances are similar to those for "petroleum" as defined.

Clause 11 provides for the definition of liquid petroleum gas (LPG), fuel gas and processed natural gas. Fuel gas is a general term for gas commonly used by consumers and includes processed natural gas, LPG and gas from other sources for example, waste gas from refuse tips. The inclusion of this type of gas under fuel gas ensures that the safety provisions will apply to the use of this gas.

Clause 12 provides for a definition of a prescribed storage gas. This is gas that is associated with or produced as part of petroleum production or may be another gas prescribed under a regulation that may be stored in a natural underground reservoir.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. Gases associated with or resulting from the production of petroleum are defined as "petroleum" under this Bill. There is a need to prescribe certain other gases, other than those defined as "petroleum", that may be stored in natural underground reservoirs. One example is that as listed "gas produced from waste disposal tips". Also note that this clause clearly limits the gas that can be prescribed as being "a gas prescribed by regulation as being suitable for storage in a natural underground reservoir".

Also, some of the gases which are to be prescribed, can be as potentially as dangerous as "prescribed storage gases" to store in natural underground reservoirs. It is therefore imperative that the provisions of this Bill apply, particularly in relation to safety issues. This legislation is the best place to regulate these prescribed gases, as the techniques and procedures for storage in natural underground reservoirs are similar to those for "petroleum" as defined.

Clause 13 provides for a definition of a natural underground reservoir. This definition relates only to a reservoir that has accumulated petroleum or is suitable for the storage of petroleum. Modification does not include the

excavation of a man-made cavity in a geological formation for the production or storage of petroleum.

Clause 14 provides for a definition of exploring for petroleum or natural underground reservoirs to be used for the storage of petroleum. The examples list the most commonly used techniques including geophysical (mainly seismic), geological and geochemical surveying, which are techniques commonly used to determine the potential of an area to contain petroleum. Testing a well for the potential of petroleum production is considered to be an exploration activity.

Clause 15 provides for a definition of when petroleum is produced. The petroleum is produced when either flowing under its own pressure, or through pumping, the petroleum passes ground level.

Clause 16 provides for a definition of a pipeline and includes all the equipment necessary for its operation and not just the pipe itself.

Clause 17 provides for a definition of a petroleum facility and includes all the plant and equipment associated with the production, storage, refining and distillation of petroleum. The definition also provides for the storage and transport of petroleum, but this is intended to be only within the petroleum facility. Many facilities relate to authorised activities under a petroleum lease. This definition provides for the types of facilities on land not covered by a petroleum lease.

Subclause 17(2)(a) exempts the oil refineries at Bulwer Island and Lytton in Brisbane from this Bill as they are covered by their own legislation.

Subclause 17(2)(b) exempts a petroleum facility authorised under a petroleum lease or pipeline licence under this Bill or an authority to prospect or petroleum lease under the *Petroleum Act 1923*.

Clause 18 provides for the different types of authorities that are administered and regulated under this Bill. *Clauses 18(2), (3)* and *(4)* provide definitions of groups of authorities enabling a simplified way of referring to these authorities throughout the Bill.

Clause 19 defines an eligible person as an adult, a company or registered body under the *Corporations Act 2001* (Cwlth) or a government owned corporation. This definition does not restrict a foreign company that is not registered under the *Corporations Act 2001* (Cwlth) from applying for an authority. However, the company must be registered before an authority can be granted.

Clause 20 lists and defines petroleum authority conditions as the conditions stated within the authority from time to time, the authority holder's obligations under specified chapters of the Bill, any condition of the authority under specified chapters of the Bill, and a condition that all persons acting for the holder and carrying out authorised activities under the authority, must comply with the conditions to the extent that they apply to the activity.

Clause 21 states that a reference in this Bill to an authority includes a reference to its mandatory and other conditions, and a reference to the provisions of an authority, is a reference to its conditions and anything written in it.

Clause 22 states that authorised activities for a petroleum authority are those authorised under this Bill and authorised activities for a coal or oil shale mining tenement are those activities authorised under the *Mineral Resources Act 1989*.

Clause 23 states that a work program for an authority to prospect is the approved initial or later work program, or amended work program.

Clause 24 states that a development plan for a petroleum lease is the approved initial or later development plan.

Division 3—Other matters relating to interpretation

Clause 25 ensures that a note in the Bill is part of the Bill.

PART 4—PROPERTY IN PETROLEUM

Clause 26 addresses ownership of petroleum in the State.

Subclause 26(2) allows a person to bring petroleum into the State and as the petroleum has not been produced in the State, the petroleum remains the property of the person, even if the petroleum is stored in a natural underground reservoir in this State.

Subclause 26(3) states that the owner of freehold or other land does not acquire any rights to petroleum that occurs in a natural underground reservoir below their land.

Clause 27 confirms that the petroleum reservation to the State in land grants to ensure that the holder and others authorised under this Bill can enter land to undertake authorised activities and regulates petroleum-related activities carried out under this Bill or any other Act. The reservation also applies to the ability to cross other land for the purpose of carrying out authorised activities on land covered by a petroleum authority. The clause does not apply to grants made under the *Petroleum Act 1923*.

Clause 28 provides for the transfer of ownership of petroleum, including incidental coal seam gas mined under the *Mineral Resources Act 1989*, from the State to a person, if that person lawfully produces that petroleum. The person retains ownership of the petroleum even if the petroleum is injected into a natural underground reservoir for storage. Specific provisions in the Bill relate to ownership of petroleum being stored in a natural underground reservoir when the petroleum lease covering the reservoir ends.

PART 5—GENERAL PROVISIONS FOR PETROLEUM AUTHORITIES

Clause 29 provides for the subdivision of the earth's surface into blocks and sub-blocks, which forms the basis for administering the area subject to some petroleum authorities.

Clause 30 provides that a petroleum authority does not create an interest in the land. That is, the petroleum authority holder only has the rights of using the land for the purposes as prescribed in this Bill.

CHAPTER 2—PETROLEUM TENURES AND RELATED MATTERS

PART 1—AUTHORITIES TO PROSPECT

Division 1—Key authorised activities

Note 1 highlights restrictions on or in carrying out petroleum tenure activities only if the activity is conducted under a relevant tenure or to preserve life or property because of dangerous or emergent situation.

Note 2 refers to the chapter in the Bill that imposes requirement and restrictions of granting petroleum tenures and restrictions on conducting authorised activities where there is an overlap with a coal or oil shale mining lease.

Clause 31 provides the activities that can be undertaken under an authority to prospect and provisions and conditions that regulate these activities. The carrying out of authorised activities is also subject to compliance with the other provisions of the Bill.

Clause 32 provides for the type of exploration and testing activities that the authority to prospect holder can undertake. The exploration and production of gasification products produced by underground coal gasification process, or the exploration or mining of oil shale or extraction and production of oil and gas produced from the retorting of oil shale are not, authorised activities for petroleum tenures and such activities are administered under the *Mineral Resources Act 1989* or elsewhere.

Subclause 32(3) ensures that contractors, or any other person, authorised by the holder are able to undertake authorised activities. This is intended to reflect the standard operating practice of the upstream petroleum industry where specialised contractors are engaged to undertake most of the authorised activities.

Clause 33 allows the holder to undertake incidental activities necessary to facilitate the efficient and responsible exploration for and testing of petroleum. These activities or structures to be constructed are temporary and the right does not exist to build permanent structures on the land subject to the authority to prospect.

Division 2—Obtaining authority to prospect

Subdivision 1—Preliminary

Clause 34 provides that an authority to prospect can only be granted through a competitive tender process. The only exception is where an application to divide an authority to prospect is made for the grant of new authorities over an existing authority.

Subdivision 2—Competitive tenders

Clause 35 provides for the ability to have and set the conditions relating to a call of tenders for land to be explored for petroleum. A call for tenders is considered to be the key element in ensuring that the State has competition in the exploration for petroleum, and if successful, the upstream supply of gas. The tender process will:

- provide a transparent process for the awarding of exploration tenures; and
- ensure that the State achieves the best possible exploration programs based on an understanding of the petroleum potential of the area being offered.

The call for tenders must provide additional information on any other conditions that may be imposed on the successful tender, land to be excluded from the tender area and any special criteria and weighting to be used in deciding the tender. The requirement to provide this information is to ensure the openness of the tender process.

The requirement to publish a notice in the gazette ensures that there is a consistent place for the publication of all tenders. However, this does not limit the Minister to publishing the tender in the gazette only. The tender may also be published in the Queensland Government Mining Journal, the department's internet site and other publications and relevant petroleum industry journals.

Clause 36 provides the right for a person to make an application for an authority to prospect subject to a call for tenders. The application cannot be made after the closing time and the tender must be submitted for all of the land subject to the tender and not for part of the land. The restriction on

the application being made for all of the land provides an equal basis for the assessment of applications.

Clause 37 requires that an application for an authority to prospect be made on the approved form, lodged at a particular place, and accompanied by the proposed work program and prescribed fee. The application is also to include a statement in respect to how consultation is to be undertaken with owners and occupiers of land. This requirement is part of the approach to improve the relationship between the petroleum authority holder and the owner or occupier of the land.

Clause 38 enables the Minister to publish a gazette notice at any time to terminate the tender process. The tender process may take several months, during which an issue may arise that would result in a conflict with petroleum exploration and production. The ability to terminate the tender process has the potential to reduce the possibility of conflicting land use if the authority were granted. The preference is to be able to terminate the tender process rather than allowing the conflict to arise.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The grant of an authority to prospect is the State exercising its rights in respect of managing the State's petroleum resources. Also one of the purposes of the Bill is to minimise land use conflict arising from petroleum activities. The ability to terminate a call for tenders is required to protect the State's interest in the management of these resources. Up until an authority to prospect is granted, the applicant has no rights under this Bill. Therefore, the termination of the previously advertised call for tenders in no way effects the rights of the applicant; the applicant being aware of the risk associated with any tender process prior to submitting the tender application. It is noted that in commercial practice, tenders may be cancelled at any time. The tender process for authorities to prospect is no different.

Subdivision 3—Deciding tenders

Clause 39 provides for the Minister to decide a call for tenders in any manner the Minister considers appropriate. The Minister may use any process that is considered appropriate to decide the tender.

Clause 40 provides for the preferred tenderer to address a number of matters required by the Minister. Payment of the annual rent for the first year and security is to ensure that all the necessary financial transactions are completed before the grant of the authority to prospect. There may be a

requirement for other processes to be completed before the grant of the authority to prospect, such as the completion of a process under the *Native Title Act 1993* (Cwlth). The clause also provides that if the preferred tenderer does not comply with the matters, then the tenderer is no longer the preferred tenderer, and the Minister may select another tenderer as the new preferred tenderer.

Clause 41 requires for the consideration of all tenders and a decision on whether to grant an authority to prospect to one of the tenderers or not to grant any authority to prospect at all. An authority to prospect can only be granted if the tenderer is an eligible person, as defined in the Bill, the Minister has approved the tenderer's proposed work program, and a relevant environmental authority under the *Environmental Protection Act 1994* has been issued for the proposed authority to prospect.

Clause 42 provides for the Minister to decide the provisions of the authority to prospect, including the term (limited to a maximum of 12 years), area, relinquishment days, conditions not inconsistent with the mandatory conditions provided for in the Bill, and the day the authority takes effect. The ability to decide these provisions enables conditions to be set addressing issues specific to a particular authority to prospect. These conditions will ensure that the State can manage the authority for the best overall outcome in relation to petroleum exploration. A maximum term of 12 years will ensure that land will become available to other explorers who may wish to use different exploration concepts or techniques in the area. Setting of the relinquishment days provides the holder with prior notice of when land is to be relinquished.

Clause 43 provides for the matters to be considered in deciding to grant the authority to prospect including any special criteria contained in the tender. The capability criteria are to be considered so as to ensure that the authority to prospect will only be granted to a holder that has the resources and ability to complete the proposed work program in full and on time.

Clause 44 requires that a notice be given to unsuccessful tenderers. The giving on the notice provides closure of the tender.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. A tender process for the grant of an authority to prospect ensures that the best possible outcome can be obtained in relation to the management of the State's resources. The grant of the authority to prospect is a decision made by the Minister as the steward of the State's resources. The unsuccessful applicants have no right to the grant of an authority to prospect. Therefore, an appeal against this decision is not considered appropriate.

It is also envisaged that the advertisement calling for tenders for an authority to prospect will detail information about the criteria that will be used to decide competitive tender applications. Further, it is envisaged that the whole competitive tender assessment process will be transparent and publicly available to all potential tender applicants prior to the applicants submitting their tenders.

Note that the *Judicial Review Act 1991*, in particular section 32 "Request for statement of reasons", applies to the decision making process about which this notice is given.

Division 3—Work programs

Subdivision 1—Function and purpose of work program

Clause 45 provides for the function and purpose of a work program.

Subdivision 2—Requirements for proposed initial work program

Clause 46 provides for the operation of this subdivision.

Clause 47 requires that any proposed work program must state its period and the period must be the same as that in the relevant call for tenders. The requirement for the period to be the same as that in the call ensures that the applications can be assessed on an equal basis.

Clause 48 provides for the contents of a proposed work program. The proposed program is intended to specify the exploration and testing activities proposed to be conducted during the work program period, but not all authorised activities that can be carried out under the authority. The specification of contents of the work program assists in obtaining all the information necessary to enable a decision to be made in respect to the work program.

Subdivision 3—Criteria for deciding whether to approve proposed initial work programs

Clause 49 provides the criteria to be used in deciding whether to approve an initial work program. The criteria are based on the potential of the area of the authority to prospect for the discovery of petroleum, the type of work to be undertaken, and when and where it is to occur, in relation to the authority to prospect. This ensures that the program is adequate to explore the area. The concept of the potential of an area is not to be considered to limit the application of new ideas. The intention is to ensure that the work program adequately tests the applicant's concept regarding the potential of the area to contain commercial quantities of petroleum.

Subdivision 4—Requirements for proposed later work programs

Clause 50 provides for the operation of this subdivision.

Clause 51 provides for the general requirements in respect to later work programs. The later work programs must comply with the initial work program requirements so as to provide a consistency of content for all proposed programs. Additional requirements relate to the extent of compliance with the previous work program, any amendments and the effect of any petroleum discovery. This additional information is to ensure that the proposed work program is consistent with the other key factors that impact upon future activities. For example, if the work program has not been completed, then the proposed program should reflect that absence of the information that would have been acquired. Likewise, the results of exploration, in particular a discovery of petroleum, may influence the work program by requiring additional work to confirm the commercial potential of a discovery. If a discovery was not made during the previous program period, then new exploration concepts may be used for future exploration.

Clause 52 requires the proposed later work program to state the period to which it is to apply. The period of the work program will generally be 4 years so as to correspond to what will generally be the term for an authority to prospect. The Minister may approve a longer term. It would be meaningless to allow for the approval of a work program for a period that extends beyond the term of the authority to prospect, as there is no guarantee that the authority to prospect would be renewed.

Clause 53 provides that an evaluation program for a declared potential commercial area in the authority becomes part of the work program for the authority to prospect. The proposed later work program for the authority to prospect must also include work necessary to implement the evaluation program.

Clause 54 provides that the combined work programs for an application to divide an authority to prospect must not be less than the work program for the authority to prospect before any division occurs.

Subdivision 5—Approval of proposed later work programs

Clause 55 provides for the application of this subdivision.

Clause 56 provides for the continuation of the current work program until the later work program is decided. This provision is required to ensure that there is always a current work program for any authority to prospect.

Clause 57 provides for approval or refusal of the proposed later work program. This clause states the matters to be considered in approving a later work program. The approval process requires the consideration of the standard criteria used in assessing the original work program plus the extent of compliance with, and any change (and reason for the change) to the existing work program.

Subclause 57(2)(d) provides for the consideration of any discovery made, commercial viability report or independent assessment on the authority to prospect. This information is needed to ensure that the work program is consistent with the prospectivity and potential commercial development of petroleum from within the authority to prospect.

Clause 58 details the steps to be taken after making a decision regarding the later work program. The holder is to be notified in respect to the decision. If the Minister decides to refuse to approve the work program, then the applicant has the right of appeal against that decision. This right of appeal is necessary as the applicant may have already expended significant funds in relation to previous exploration activities and the new program would be likely to be based, in part, on the investment already made.

Subdivision 6—Amending work programs

Clause 59 prevents an amendment to the period of the work program to ensure that the work is carried out in the time originally set. There is to be no restriction on other amendments provided they are made in accordance with the procedures in this subdivision. The restriction ensures that there is certainty in relation to circumstances under which amendments to the work program will be considered.

Clause 60 allows for the amendment of the approved work program and specifies that the application must be made at least 20 business days before the relevant period ends. The time is specified to ensure that the application can be assessed within the relevant period, to which the amendment relates and in the context that the reasons for the amendment are relatively current.

Clause 61 provides that the application must be lodged at a stated place and be accompanied by the prescribed fee.

Clause 62 provides for the circumstances when an application to amend the work program or substitute work will be considered by the Minister. The inability to change the initial work program relates to the program being set as a result of the tender process. The inability to change the work program is to ensure the integrity of the work program that was proposed in the tender and approved by the Minister, is carried out in full. Substitution provides for a degree of flexibility to enable the holder to undertake a work program that best achieves their exploration objectives. Substitution cannot be undertaken in relation to the initial work program.

Subclause 62(2) provides for other circumstances when an amendment to the work program will be considered. The application is not to be related to holder's financial or technical resources or ability to manage petroleum exploration as these are a reflection of the manner in which the holder undertakes their business. The failure to secure the timely access to the necessary equipment and technical resources is an indication of the ability to manage petroleum exploration. The results of petroleum exploration are not considered to be a valid reason for amending a work program, otherwise by substitution, as it is an inherent risk associated with exploration. The holder of an authority to prospect is not to be disadvantaged by an event beyond their control which could not have been prevented by a reasonable person in their position.

Subclause 62(3) enables the Minister to defer the relinquishment days for a period that relates to the circumstances of the amendment. The

deferral of one relinquishment day does not effect later relinquishment days or provide for any extension to the term of the authority to prospect.

Subclause 62(4) enables the Minister to require the relinquishment of additional land in consideration of the approval of the amendment.

Clause 63 provides for the actions to be taken after the decision made regarding the application to amend the work program and for when the decision is to take effect. There is to be no appeal in relation to the Minister's decision as it relates to the management of the State's resources.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause in that it does not provide for an appeal in relation to any conditions that the Minister may set in relation to the approval. The Minister setting conditions is consistent with the Minister's initial approval of the work program and the Minister's role as the custodian of the State's resources.

Division 4—Key mandatory conditions for authorities to prospect

Subdivision 1—Preliminary

Clause 64 provides for the imposition of mandatory conditions on an authority to prospect. The imposition of mandatory conditions ensures the standardisation of key conditions for all authorities to prospect. The holder of an authority to prospect is required to comply with key provisions including security, notice of entry and compensation provisions of the Bill.

Subdivision 2—Relinquishment condition and related provisions

Clause 65 provides for relinquishment of part of the area of the authority to prospect. This relinquishment is to make land available for exploration, via further tender processes, on a regular basis. This is intended to provide opportunities for new explorers with different exploration concepts. The relinquishment is to be made by way of a notice lodged at a stated place. All late relinquishments take effect as of the due date. The deferral of a relinquishment day under another provision of the Bill, relates only to that day and does not result in a deferral of later relinquishment days or an extension of the term of the authority to prospect. The holder of the

authority to prospect can relinquish more than the required amount. Any additional amount can be considered as contributing to the requirement to be met at the next relinquishment day.

Clause 66 gives the percentage of the number of original notional sub-blocks to be relinquished. The amount is to be one-twelfth (8.33 percent) per annum resulting in one-third of the original area to be relinquished every 4 years. The 4-year period is the maximum time that an authority to prospect can exist without a relinquishment.

Clause 67 provides for what land cannot be counted as an area relinquished from the authority to prospect for the relinquishment condition. This land includes an area relinquished under an additional or penalty relinquishment, the area the subject of a petroleum lease, and any application for a petroleum lease or a potential commercial area. Areas that are declared as potential commercial areas, or applications for potential commercial areas may be relinquished, however the application or declaration for the potential commercial area no longer has effect.

Clause 68 provides that if the amount of land available for relinquishment is less than the amount of land to be relinquished, then the relinquishment condition is considered to have been met. This is to ensure that there is no requirement to relinquish land still subject to the authority, for example where an application for a petroleum lease or potential commercial area has been made and not decided and the land can still be considered to be part of the authority to prospect. If the application for a potential commercial area or petroleum lease is not granted, then that land will have to be relinquished to the extent sufficient to meet the relinquishment condition.

Clause 69 provides that the relinquishment condition has been complied with if all land subject to the authority to prospect, other than the area of a declared potential commercial area for the authority to prospect, is relinquished, even though the necessary area amount has not been met.

Clause 70 provides for the relinquishment to be made by blocks. The relinquishment by blocks ensures the integrity of the administrative process whereby the area of the authority to prospect is related to specific blocks and ensures that a reasonable area unit for exploration is made available. Where a block contains an area that cannot be counted as a relinquishment, then only the remainder of the block is required to be relinquished.

Clause 71 clarifies that the authority to prospect ends if all of the area of the authority, including any potential commercial area, is relinquished from the authority to prospect.

Subdivision 3—Other mandatory conditions

Clause 72 imposes a condition on the petroleum lease such that the gaseous petroleum can only be flared if it is not technically or commercially feasible to use it. Venting is only permitted if, for safety reasons, it cannot be vented or flared or there is a technical reason why the gaseous petroleum cannot be flared (that is, where there is insufficient flow from a well to allow ignition or where methane concentrations are low and it is not safe to do so).

Clause 73 provides for testing of a well to determine the viability of petroleum production, or a natural underground reservoir for storage of petroleum. The holder of the authority to prospect has the right to test each well for a maximum period of 30 days from when production testing commenced. Approval is required for all testing of a well outside of this period and conditions may be set in relation to this testing. The capability to set conditions is to ensure that the testing is appropriate to determine commercial viability. A condition to pay royalty will most likely be applied to the production testing of natural or coal seam gas that is likely to result in a high rate of production over a long period resulting in a large quantity of gas being produced and the gas cannot be economically stored for later use. The gas would normally be flared or vented and while the information collected could be considered to be important, the production of the gas has provided no benefit to the State. Any crude oil produced during production testing can be sold and royalty will be payable.

Clause 74 requires that the holder of an authority to prospect must consult with owners and occupiers of land where authorised activities are likely to be carried out. The requirement to consult is intended to provide information at an early stage of the exploration activities and thereby assist in the development of good landholder relations. This clause does not exempt the holder from the need to comply with provisions relating to notice of entry and compensation in relation to the authorised activities.

Clause 75 requires that the holder of an authority to prospect pays the annual rent and, if required, royalty on any petroleum produced. The royalty payment is for any petroleum produced as part of the testing

program and subsequently sold. This is likely to be the case in relation to the testing of a well in respect to oil production.

Clause 76 imposes a civil penalty of 15 percent for the nonpayment of the annual rent. The civil penalty is intended to provide an incentive for the timely payment of the rent.

Clause 77 provides that the holder of an authority to prospect must have an approved work program.

Clause 78 requires that the holder of an authority to prospect must comply with the approved work program. The work program is the minimum amount of work that the holder must complete during the period for which the work program applies. The holder can undertake work in addition to that in the approved work program. Compliance with any approved work program ensures that the holder maintains a minimum level of exploration in the authority to prospect, and compliance with the initial work program is a key part of maintaining the integrity of the tender process. Failure to comply with the work program is considered to be a significant breach of the mandatory conditions.

Clause 79 requires that the holder of the authority to prospect must submit a later work program between 60 and 20 business days before the end of the current work program. The requirement to submit a later work program is to ensure that there is sufficient time to assess and approve the later work program, thereby ensuring that there is an obligation to continue to explore the land subject to the authority to prospect. If the later work program has not been approved before the end of the current work program, the holder is not considered to be in breach of the requirement to have an approved work program. The provision of a prescribed late fee is intended to be an incentive to encourage the timely submission of the later work program.

Clause 80 provides that on failure to lodge a later work program, as required by the notice given to the holder, the authority to prospect is cancelled.

Division 5—Renewals

Clause 81 provides for the conditions for a renewal application for an authority to prospect. An application cannot be made if there are payments owing to the State or security still to be paid. The requirement that there is no money outstanding is a reflection of the capability of the applicant. The

application cannot be made more than 60 business days before the end of the term, so that the extent of compliance in relation to the conditions of the previous term can be properly considered.

Clause 82 provides for the requirements of a renewal application for an authority to prospect. The application is to include information on activities to be undertaken in the new term, as well as statements in respect of compliance with the work program for the previous term. The information in relation to previous performance assists in assessing the relevance of future activities and also in determining if any disciplinary action for failure to comply with conditions is necessary.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The late lodgement fee is proposed to encourage the timely submission of renewal applications, by authority to prospect holders, for possible grant by the Minister. The time for lodgement of a renewal application has been determined with a view to completing the necessary work of assessing, and granting or refusing the application before the expiry of the current term approved for the authority to prospect. The late lodgement of the renewal application greatly reduces the time for this. To discourage the late lodgement of renewal applications, and to reduce unnecessary increases in the Minister's and administering department's work loads, a late fee significantly greater than the lodgement fee is proposed. The authority to prospect holder has 40 business days, before the end of the current term of the authority to prospect, to submit the renewal application without incurring the proposed late fee. This is a reasonable timeframe for lodgement, considering the authority to prospect holder has known of this date since the grant of the authority to prospect. The department will also, as a matter of course, be sending out notices prior to the time for lodgement of the renewal application, advising of the requirement for lodgement, the times for submission, and the late fee payable if the renewal application is not submitted within stated timeframes.

Clause 83 provides for the authority to prospect to continue until the application for renewal has been decided. The continuation is needed as the only way for an authority to prospect to be granted is by a tender process. If the tenure ended, then a tender process would have to undertaken and the original applicant may not be successful. This would be inappropriate if the reason for the authority to prospect ending was the failure of the renewal to be completed before expiry. Also, some exploration activities will need to continue after the due expiry date.

An example of the continuation of activities is production testing of petroleum, especially in relation to coal seam gas. Production testing for coal seam gas involves the reduction of pressure in the reservoir by pumping water from the reservoir resulting in the release of gas in the seam and its flow to the surface. The reduction in pressure can take up to a year and cessation of the reduction process can result in the loss of gas production. If the production testing had to cease at the end of the tenure and could only commence after the tenure had been renewed, then the possibility exists that the test may not be valid and additional work will have to be undertaken to determine the commercial viability of coal seam gas production in that area.

Clause 84 places the restrictions on deciding the application to renew the authority to prospect. An authority to prospect can only be renewed if the holder continues to satisfy the capability criteria, has substantially complied with the conditions of the authority and the provisions of the Bill, the Minister has approved the holder's proposed work program, and a relevant environmental authority under the *Environmental Protection Act 1994* has been issued for the proposed authority to prospect. The renewal application cannot be decided if the holder has been required under the Bill to apply for a petroleum lease and the application for the lease has not been decided. The decision on the petroleum lease may result in a different later work program being approved and conditions being placed on the authority to prospect. The applicant may be required to pay the annual rent and give security before the Minister decides to grant the renewal. This is to ensure that all of the administrative arrangements have been completed before the authority is renewed.

Clause 85 provides for provisions of the authority to prospect that must be decided in respect to the renewal application. There are restrictions in relation to the term, area, start date and the presence of potential commercial areas for the renewed authority to prospect. These restrictions ensure that the basic provisions in respect of an authority to prospect are maintained and cannot be subsequently changed to allow for an increased term or area. An additional provision is required in relation to potential commercial areas as these can continue past the expiry date for the authority to prospect.

Clause 86 requires that the same criteria be used for the decision to grant the authority to prospect as for its renewal. The application of the same criteria will ensure a consistency in the decision making process, regarding the provisions, throughout the life of the tenure.

Clause 87 provides for the applicant to be given an information notice if the renewal of the authority to prospect is refused. The requirement for giving an information notice is appropriate considering that the holder has probably invested in exploration activity in the area of the authority.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause in that it does not provide for an appeal in relation to any conditions that the Minister may set in relation to the approval. The Minister setting conditions is consistent with the Minister's initial approval of the work program and the Minister's role as the custodian of the State's resources.

Clause 88 states that the refusal to renew an authority to prospect does not take effect until after the date for an appeal against the decision passes. This date ensures that if the holder decides to appeal and the appeal is successful, then the authority to prospect continues and would not have to be reinstated. As the authority to prospect continues, applications cannot be made for a new petroleum tenure over the area of the original authority.

Division 6—Potential commercial areas

Clause 89 details the process for applying for a potential commercial area within a granted authority to prospect. A potential commercial area enables the holder of an authority to prospect who has discovered petroleum or a natural underground reservoir suitable for the storage of petroleum, the opportunity to retain an interest in and later develop the discovery if it is not currently commercially viable. An application can be made for whole or part of an authority to prospect to be declared a potential commercial area. The future commercial viability of the discovery may be dependent upon changes in technology to extract the petroleum, the development of infrastructure such as pipelines, or market opportunities. There is no limitation on the number of potential commercial areas that can be declared for each authority to prospect or the timing of the submission of the application. *Subclause (3)* provides for the requirements of the application including a requirement to provide a report in relation to the discovery in the area of the application. The report needs to meet the standard of a commercial viability report. The report is required to demonstrate that the development of the petroleum resource or storage capability is likely to be commercially viable. A potential commercial area is not to be used as a means of retaining an interest in a petroleum discovery or a natural underground reservoir for storage that does not have

the potential to be commercially viable. An evaluation program relating to the potential petroleum production or storage and for market opportunities is also required. The evaluation program may require additional exploration or testing to be undertaken in relation to the discovery.

Clause 90 provides for the matters to be considered in relation to the decision to declare a potential commercial area including the size of the area and that petroleum production or storage will be likely within 15 years. The area is to be no more than 75 contiguous sub-blocks and be no more than is needed to cover the discovery and form a single parcel of land. The area requirements are necessary to ensure that potential commercial areas are not used as a means of retaining access to land that would normally be expected to be relinquished or surrendered as part of the tenure conditions. The area requirement is the same as for a petroleum lease as the expectation is that a potential commercial area will progress to a lease within the 15 year period.

Clause 91 provides for the evaluation program that accompanied the application to become part of the approved work program for the authority to prospect. The incorporation of the evaluation program into the work program ensures that there is an obligation for the holder to undertake the evaluation program.

Clause 92 enables a potential commercial area to be declared for a maximum term of 15 years. A shorter period would only be considered in relation to discoveries known at the time of grant to be in the area of the authority to prospect or made during the early years of the authority. A shorter period may be declared if the potential commercial area contains a discovery where no (or limited) work has been undertaken to bring the discovery into commercial production since its discovery.

Subclause 92(3) enables the holder of an authority to prospect to have an area no longer declared a potential commercial area by giving the Minister a notice to that effect.

Clause 93 provides that where a mining lease for coal or oil shale has been granted over a potential commercial area, the term of the declaration may be extended to a period of no more than 2 years after the mining leases ends. It is intended that this be no more than 2 years after the term of the lease or, if the lease ends earlier, then no more than 2 years after the end of the lease. This is to allow for the situation where a preference decision has not been provided to any petroleum development, and the authority to prospect holder wishes to retain long term title until the coal mining lease has ended. The clause also provides for the applicant to be given an information notice if the renewal of the authority to prospect is refused.

The requirement to give an information notice is appropriate considering that the holder has probably invested in exploration activity in the area of the authority.

Clause 94 states that potential commercial area remains part of the original authority to prospect and retains the rights and obligations associated with that tenure. The administration of and obligations in relation to a potential commercial area are simplified by remaining part of the authority to prospect.

Division 7—Provisions to facilitate transition to petroleum lease

Clause 95 states that the division only applies if the Minister considers that the holder should apply for a petroleum lease because within whole or part of the authority to prospect, petroleum production is currently commercially viable or is likely to become viable within 2 years, or that there is a natural underground reservoir that has commercial storage potential. The application of the division provides a mechanism for the State to manage its petroleum resources to meet the needs of the community.

Clause 96 provides for action that the Minister may take if the holder of an authority to prospect does not apply for a petroleum lease. The action may include excision of part or the cancellation of the authority to prospect. The basis for this action must be supplied to the holder who has at least 6 months to make a submission as to why a lease application should not be made. The limit of 6 months for the submission is considered sufficient to enable the holder of the authority adequate time to assess the basis for the action and to undertake a review of the discovery to determine if the holder would like to proceed with commercial development.

Clause 97 provides for the limitations on proposed action in relation to the holder of the authority to prospect. The limitations ensure that appropriate consideration has been given to any submission and the result of any application for a petroleum lease has been decided. The decision to take action does not take effect until an information notice has been issued to the holder.

Division 8—Miscellaneous provisions

Subdivision 1—Area provisions

Clause 98 provides for limitations on the area of an authority to prospect, and for land that cannot be included in the area of an authority to prospect. These limitations ensure that only one petroleum tenure can be granted over any land. More than one authority to prospect may be needed to cover a prospective part of the State. The need for more than one authority, in conjunction with a call for tenders, assists in providing competition for land in prospective regions, and provides the best possible exploration outcome and future upstream competition for the supply of gas.

Subclause 98(4) provides for land over which an authority to prospect cannot be granted. The gazettal of land over which an authority to prospect cannot be granted ensures that land is unavailable where the land use is not compatible with petroleum exploration.

Subclause 98(5) ensures the continuation of the integrity of the description of land, subject of the authority to prospect, by blocks.

Clause 99 enables land to be excluded from an authority to prospect. The exclusion may relate to a specific type of land or an area in the authority. Land may be excluded if there is an incompatibility between the land use and petroleum exploration. Excluded land can be land in an adjacent petroleum tenure but only to the extent of petroleum tenures sharing the same block. The assignment of excluded land in a common block enables this land to be added to one of the petroleum tenure after the other is surrendered over the common block.

Clause 100 enables excluded land to be added to an authority to prospect. The addition of the land can only occur if the holder consents. The conditions in relation to the tenure may be changed to reflect the addition of the land. An example of a change in conditions would be a change to the approved work program to reflect the additional land over which exploration can be conducted. The addition of this land enables all the available land in one block to be allocated to a single authority to prospect.

Clause 101 requires the area of the authority to prospect to be reduced on the grant of a petroleum lease. The grant of the petroleum lease from an authority gives the petroleum lease holder additional rights including production. The reduction of the area from the authority to prospect

ensures that the relinquishment condition can be met from land in the authority. If the whole of the area of the authority coincides with land in a petroleum lease, then the land under the lease could be relinquished as a means of meeting the relinquishment condition, thus ending the authority to prospect.

Clause 102 provides that a declaration of a potential commercial area may extend beyond the 12 years after the authority took effect. If after the 12 years has elapsed, the declaration for a potential commercial area ends, then so does that part of the authority to prospect.

Subdivision 2—Dividing authorities to prospect

Clause 103 allows the holder of an authority to prospect to apply to divide the original authority into two or more authorities. The application cannot be made if there are monies owing to the State. The payment of monies to the State is considered to be an important indicator of the applicant's capability to manage petroleum exploration. The ability to divide an authority to prospect is to enable the holder to apply for an additional authority to reflect any commercial agreements that have been made in relation to the original authority. If the new authority is to be granted to someone other than the original tenure holder, then the new person must be eligible and agree to the grant.

Clause 104 provides that the application to divide the authority to prospect must be lodged at a stated place and be accompanied by the prescribed fee. The clause also states that the application must provide information about compliance with the work program and includes proposed work programs for each proposed new authority.

Clause 105 provides for the decisions to be made, and limitations on, the new authority to prospect. The Minister must consider the work program and capability criteria in relation to the future holders of the authorities in deciding the application. This is to ensure that the appropriate standards are met in relation to the holders of authorities and in the work to be undertaken. The new authority cannot be for a longer term and must have the same relinquishment days as the original authority. The term and relinquishment condition are not reset upon the grant of the new authority but are the same as for the original authority. The adoption of the same term and relinquishment condition prevents access to land for longer periods than would have been allowed under the original authority. The work program and conditions of any new authority are to be determined to

ensure that they are consistent with the petroleum potential of the authority. The requirement to give security or additional security is to ensure that the required administrative procedures are completed before the grant of the authorities to prospect.

Clause 106 provides for the provisions for the new authorities, including the term and relinquishment days and the relinquishment condition.

Clause 107 provides for a notice to be forwarded to the applicant when the provisions and work program for any new authority to prospect have been decided. The ability to determine provisions and the work program is required to ensure that they are consistent with the petroleum potential of the authority. The grant of the new authority must be made as soon as practicable after payment is received. No appeal provision is provided for in relation to refusal of an application to divide an authority to prospect as the refusal does not impact upon the original holder's rights and is consistent with the Minister's responsibility in managing the State's resources. Also, there is no reason the applicant could not enter into a strictly commercial agreement to provide the same outcome.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The grant of an authority to prospect, whether the original grant or the making of the original authority into more than one authority, is considered to be the State exercising its rights in respect of managing its petroleum resources. The holder of the original authority has all the rights provided for by this Bill, over that land within the area of the authority and this will not be diminished in any way by the Minister refusing the division of the original authority to prospect. Generally, the State would need to benefit by increased petroleum exploration activity for the Minister to consider making the division of the original authority to prospect.

PART 2—PETROLEUM LEASES

Division 1—Key authorised activities

Subdivision 1—General Provisions

Clause 108 provides for the operation of this subdivision. A petroleum lease is for the production of petroleum and is not to be used for retention of a petroleum discovery that is yet to be brought into production.

Clause 109 provides for the type of exploration, production and storage activities that the petroleum lease holder can undertake. Testing of a well for petroleum production can also be undertaken. The exploration and production of gasification products produced by underground coal gasification process, or the exploration or mining of oil shale or extraction and production of oil and gas produced from the retorting of oil shale are not authorised activities for petroleum tenures and such activities are administered under the *Mineral Resources Act 1989* or elsewhere. Contractors authorised by the holder of the petroleum lease are able to undertake authorised activities. This is intended to reflect the standard operating practice of the upstream petroleum industry where specialised contractors are engaged to undertake most of the authorised activities.

Clause 110 enables the holder of a petroleum lease to construct and operate pipelines that are wholly within the area of the lease or contiguous leases held by the same holder. These pipelines generally link petroleum production wells in the lease or leases to a central gathering point or processing plant.

Clause 111 enables petroleum processing to be undertaken as an authorised activity under a petroleum lease. Petroleum processing can involve many different activities. For crude oil, the activity involves the separation of water from the oil generally at a centrally operated facility. The processing of gas involves the separation of water and other substances and the fractionation of the different types, or mixtures of hydrocarbons to a standard suitable for transportation, commonly by a transmission pipeline. The standard achieved for the gas may be sufficient for supply to customers. The process of removing water at the well site is also allowed.

Clause 112 provides for the holder of the right to undertake incidental activities necessary to facilitate the efficient and responsible production of

petroleum. These activities, or structures to be constructed, are temporary and will be required to be removed upon the cessation of petroleum production.

Subdivision 2—Provisions for coextensive natural underground reservoirs

Clause 113 details when this subdivision applies. This subdivision applies where there is a petroleum lease adjacent to a coal mining lease or oil shale mining lease or another petroleum lease (or a proposed coal mining lease or oil shale mining lease or petroleum lease) and the reservoir from which the petroleum or coal seam gas is to be produced (that is, the coal seam) continues across the boundary of these adjacent leases. The intention of the provisions of this subdivision is to ensure that the issues of ownership and producing gas near lease boundaries is settled before production commences.

Clause 114 provides for a coordination arrangement to be reached, between the relevant parties, about the petroleum or incidental coal seam gas to be produced from the same "reservoir" (that is, the coal seam.) The intention being that the parties reach their own agreement negating the need for any arbitration.

Clause 115 provides that petroleum cannot be produced if it is known to have come, or is likely to have come, from outside of the petroleum lease area, unless there is a coordination arrangement or a decision from the Land and Resources Tribunal in place. However, if production is already occurring on a petroleum lease, and a new adjacent lease is granted, the petroleum lease holder has 6 months to have a coordination arrangement in place, or is to have applied for a decision from the tribunal about this matter.

Clause 116 provides that if a coordination arrangement cannot be made, either relevant party may apply to the Land and Resources Tribunal to decide the ownership of the petroleum produced. The tribunal may decide other matters such as which party bears the cost of production, and how the mining or production is to be coordinated. This may include setting a minimum distance from the boundary of lease for the drilling of a production well or determine the timing and length of production from a well. The tribunal must seek to optimise the production and mining of the resources in making their decision and have regard to the public interest as defined under this Bill. In determining ownership it is intended that the

tribunal is not bound to seek out and apply uncertain common law principles such as the "rule of capture" doctrine.

Division 2—Transition from authority to prospect to petroleum lease

Subdivision 1—Applying for petroleum lease

Clause 117 provides that the holder of an authority to prospect may apply for a petroleum lease over part of the area of the authority to prospect. A person other than the holder may apply jointly with or without the permission of the holder. The ability for the petroleum lease to be granted to others enables the authority to prospect holder to have a lease granted to parties to reflect the commercial interest in the lease.

Clause 118 requires that an application for a petroleum lease be made on the approved form and for the additional information to be included in the application. This material includes statements in relation to the area of the lease, the consultation process to be undertaken in relation to affected landholders, contracts in relation to the supply of petroleum, capability criteria and the development plan. The additional information is intended to assist in the timely assessment of the application. The area statement is to ensure that the area applied for is adequate for the purpose of petroleum production. The requirement for the development of the consultation process is a reflection of the importance placed on the development of good landholder relations.

Clause 119 provides that if an ATP-related application for a petroleum lease is not decided before the authority to prospect ends, then the authority to prospect continues until the specified events in this clause happen. The land subject to the petroleum lease is likely to have completed petroleum wells and equipment that the applicant will use as part of their production activities. The continuation of the authority to prospect enables the holder of the authority to prospect to access these wells and equipment, ensuring they are maintained in proper working order. Also, production testing could continue without the possibility of any disruption, resulting in a significant impact that could have a detrimental effect on later petroleum production

Subdivision 2—Deciding ATP-related applications

Clause 120 requires the Minister to grant the petroleum lease if the Minister is satisfied that the requirements for grant, detailed in this Bill, have been met. The requirement that the Minister must grant provides certainty that the holder of the authority to prospect will be granted a petroleum lease. This minimises sovereign risk in relation to the petroleum industry.

Clause 121 provides that the holder of an authority to prospect must be granted a petroleum lease if the applicant has met specific requirements in relation to the application and has substantially complied with the conditions of the authority to prospect. If the purpose of the lease is petroleum production, the proposed area must contain identified resources and reserves of petroleum. It is expected that these have been determined in accordance with relevant industry accepted codes. It is intended that the level of knowledge, or classification of resources or reserves required, will be defined in departmental policy. The holder of an authority to prospect must have substantially complied with the conditions of their authority. Substantial compliance relates to when an application is submitted towards the end of a work program year and the expectation is that the work program for all previous years has been completed. The petroleum lease can only be granted if the petroleum is likely to be produced within 2 years or the applicant has entered into a contract to supply petroleum after the end of 2 years or store petroleum by the end of 5 years. The difference in time is intended to allow the holder the opportunity to develop a commercial third party storage operation and therefore, time is needed to obtain the necessary contracts. The requirements in relation to the grant of a petroleum lease are to ensure that a petroleum lease is used for the purpose of producing or storing petroleum.

Clause 122 is intended to ensure that all supply contracts are genuine and thereby petroleum will be produced to meet the contract. If the Minister is not satisfied that the contract is genuine, then the Minister may refuse to grant a petroleum lease. This provision is intended to prevent the grant of a petroleum lease as a means of retaining access to land containing a discovery when the holder, under normal circumstances, would have had to relinquish the land.

Clause 123 provides the list of provisions to be decided for the petroleum lease. The maximum term of 30 years for a lease is to limit the term of a lease (that is, so it is not unlimited) and is generally adequate to produce all the petroleum in a natural underground reservoir. If all the

petroleum has not been produced, the holder may apply to have the petroleum lease renewed. The initial grant can only be made if production is to commence within 2 years after the day the petroleum lease takes effect or a relevant supply contract is in place. If there is a relevant supply contract, then the Minister is able to set a day by which petroleum production must commence. The development plan and the capability criteria are to be considered in making a decision in relation to the provisions.

Clause 124 provides that for a decision to refuse the grant of the petroleum lease, the applicant has the right of appeal against that decision. This right of appeal is necessary, as the applicant may have already expended significant funds in relation to previous exploration activity.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause in that it does not provide for an appeal in relation to any conditions that the Minister may set in relation to the approval. The Minister setting conditions is consistent with the Minister's initial approval of the work program and the Minister's role as the custodian of the State's resources.

Clause 125 states that the refusal to grant the petroleum lease does not take effect until after the date for an appeal against the decision passes. This date ensures that if the holder decides to appeal and the appeal is successful, then the appeal provisions in the Bill apply.

Division 3—Obtaining petroleum lease by competitive tender

Subdivision 1—Preliminary

Clause 126 provides for the operation of this division.

Subdivision 2—Calls for tenders

Clause 127 provides for the ability to have and set the conditions relating to a call of tenders for the grant of a petroleum lease. A call for tenders is considered to be the key element in ensuring that the State has competition in the upstream supply of gas. The tender process provides:

- a transparent process for the awarding of a petroleum lease; and

- ensures that the State achieves the best possible development program for the petroleum identified in the area of the proposed petroleum lease.

The call for tenders must provide additional information on any other conditions that may be imposed on the preferred tenderer, land to be excluded from the tender area and any special criteria and their weighting to be used in deciding the tender. The requirement to provide this information is to ensure the openness of the tender process.

Clause 128 provides the right for a person to make an application for a petroleum lease subject to a call for tenders. The application cannot be made after the closing time and the tender must be submitted for all of the land subject to the tender and not just part of the land. The restriction on the application being made for all of the land provides an equal setting for the assessment applications.

Clause 129 enables the Minister to publish a gazette notice at any time to terminate the tender process. The ability to terminate the tender process has the potential to reduce the possibility of conflict of land use arising. The tender process may take several months, during which an issue may arise that would result in a conflict with petroleum exploration and production. The preference is to be able to terminate the tender process rather than allowing of the conflict to arise. The tender process is a means of allocating the right to explore and produce the State's resources. Compensation is not to be payable as no allocation of the State's resources has occurred.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The grant of a petroleum lease is the State exercising its rights in respect of managing the State's petroleum resources. The ability to terminate a call for tenders is required to protect the State's interest in the management of those resources. Up until an application for a petroleum lease in response to a call for tenders is granted, the applicant has no rights to the tenure. Therefore, the termination of the previously advertised call for tenders in no way affects the rights of the applicant, as the applicant is aware of the risk associated with any tender process prior to submitting the tender application. It should be noted that in commercial practice, tenders may be cancelled at any time. The tender process for petroleum leases is no different.

Subdivision 3—Deciding tenders

Clause 130 provides for the Minister to decide a call for tenders in any manner the Minister considers appropriate. The Minister may use any process that is considered appropriate to decide the tender.

Clause 131 provides for the preferred tenderer to address a number of matters required by the Minister. Payment of the annual rent for the first year, and the security, is to ensure that all the necessary financial transactions are completed before the grant of the petroleum lease. There may be a requirement for other processes to be completed before the grant of the authority to prospect, such as the completion of a process under the *Native Title Act 1993* (Cwlth). The clause also provides that if the preferred tenderer does not comply with the matters, then the tenderer is no longer the preferred tenderer, and the Minister may select another tenderer as the new preferred tenderer.

Clause 132 requires for the consideration of all tenders and a decision on whether to grant a petroleum lease. If required, the tender assessment process can be modified to address the specific requirements of the tender. A petroleum lease can only be granted if the applicant is an eligible person and the Minister approves the tenderer's proposed development plan. Payment of the annual rent for the first year and the security is to ensure that all the necessary financial transactions are completed before the grant of the petroleum lease. There may be a requirement for other processes to be completed before the grant of the petroleum lease.

Clause 133 provides that if the Minister decides to grant a petroleum lease then the provisions of the lease are to be decided as if the application was an ATP-related petroleum lease application. This ensures a similarity of process in deciding the provisions for all petroleum leases.

Clause 134 provides for the matters to be considered in deciding to grant the petroleum lease including any special criteria contained in the tender document. The capability criteria are to be considered so as to ensure that the authority to prospect will only be granted to a holder that has the resources and ability to be able to complete the proposed work program in full and on time. The ability to set the weighting of the criteria is intended to allow for the selection criteria to be set to reflect the uniqueness of each area released for tender.

Clause 135 requires that a notice be given to unsuccessful tenderers. The giving of the notice provides closure on the tender process for the unsuccessful tenderers.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. A tender process for the grant of a petroleum lease ensures that the best possible outcome can be obtained in relation to the management of the State's resources. The grant of the petroleum lease is a decision made by the Minister as the steward of the State's resources. The unsuccessful applicants have no rights to the grant of a petroleum lease. Therefore, an appeal against this decision is not considered appropriate. It is also envisaged that the advertisement calling for tenders for a petroleum lease will detail information about the criteria that will be used to decide competitive tender applications. Further, it is envisaged that the whole competitive tender assessment process will be transparent and publicly available to all potential tender applicants prior to the applicants submitting their tenders. Note that the *Judicial Review Act 1991*, in particular section 32 "Request for statement of reasons", applies to the decision making process about which this notice is given.

Division 4—Development plans

Subdivision 1—Function and purpose of development plan

Clause 136 provides for the function and purpose of a development plan. The development plan is the key element in ensuring the timely and orderly development of petroleum and also forms an important criterion in assessing the holder's performance in undertaking these activities. The provision of this information and the requirement for having approved plans allows for improved management of the development of resources on leases. It is intended that a development plan may cover several leases that are related, or are part of the same project, and that any later development plan that refers to multiple leases may replace any existing plan for a number of individual leases.

Subdivision 2—Requirements for proposed initial development plan

Clause 137 provides for the operation of this subdivision.

Clause 138 details what the initial development plan must include. This includes information about the amount of petroleum to be produced, proposed rate of production and the types of activities to be undertaken.

The information enables an assessment of whether there are sufficient resources available and whether the activities are appropriate to achieve the proposed rate of production. It is intended that the information provided for each year of the plan must be quite detailed and more general information must also be provided on the proposed development over the whole of the term of the mining lease. Provision is made for a regulation to provide details about the form of the information to be supplied in the plan.

Clause 139 provides for the period to which the development plan is to apply. Generally the plan is for a period of 5 years, which is considered adequate in the context of the construction and operation of plant and equipment necessary for petroleum production. This period is also sufficient to allow for a review of the performance of the natural underground reservoir in the context of the amount and rate of petroleum production in determining future production.

Clause 140 provides for additional information to be provided if storage is proposed for the petroleum lease.

Subdivision 3—Criteria for deciding whether to approve proposed initial development plans

Clause 141 provides for the criteria that must be considered in deciding to approve a proposed development plan. These criteria best represent the key elements in determining the appropriateness of a development plan.

Subdivision 4—Requirements for proposed later development plans

Clause 142 provides for the operation of this subdivision.

Clause 143 provides for the requirements of a later development plan. A later development plan must comply with the initial development plan requirements to ensure that there is consistency in content and form for all development plans. It is the intention of this clause that a "significant change" should only be considered as a change in relation to the amount, location and type of activities which may impact on the interests of the State and others, or (particularly with any proposal for the reduction or cessation of activities), when the activities are not in line with best resource utilisation practice. It is not intended that the provisions of this clause

should require a later development plan every time there is a "minor" change to the proposed activities on the lease.

Reasons must accompany any significant change in activities to clarify the aim of the change and to ensure that there is no detrimental effect to the development of the remaining petroleum in the area of the lease. If the significant change involves a cessation or reduction of petroleum production, then the proposed plan must include an evaluation of the potential for future production and market opportunities. If the holder plans to cease or reduce petroleum production, then the application must be accompanied by reasons for the cessation or reduction and provide a program for determining the lease's petroleum production potential and market opportunities. The program will only be required when the cessation or reduction is due to an end of a contract or production from another underground reservoir to meet a current contract and reserves remain within the area of the lease. If the cessation or decline is the natural decline associated with production, then the program assessing possible production potential and market opportunities would state that, in the context of the reasons for the cessation or reduction, a full assessment would be inappropriate. These requirements are consistent with a petroleum lease being a production tenure and not a retention tenure.

Clause 144 provides that the combined effect for an application to divide a petroleum lease must not be less than the effect of the development plan for the lease before any division occurs.

Subdivision 5—Approval of proposed later development plans

Clause 145 provides for the application of this subdivision.

Clause 146 provides that until the later plan is decided the lease is taken to have a development plan (even though the plan period has actually ended) and the lease holder is allowed to undertake any authorised activities for the lease.

Clause 147 provides for the matters that must be considered in deciding whether to approve the proposed plan. The criteria have been selected to ensure that petroleum production is technically possible and viable for current or future commercial production. This is consistent with a petroleum lease being a production tenure and is not to be used for retaining access to land with no intention of undertaking production.

Clause 148 provides for a possible relinquishment of land as a requirement of the approval of the proposed development plan when a reduction or cessation of production is planned. The cessation or reduction may be a result of production no longer occurring from a natural underground reservoir in a particular part of the lease, so that area may no longer be required and should not be part of the area of lease. It may also apply in extreme circumstances where production is not occurring, but the Minister considers that it could be. This may provide opportunities for utilisation by other parties, so a relinquishment may be required. The relinquishment may not be required at the time of approval of the development plan, but may be required at some later time within the period of the proposed plan.

Clause 149 provides for an information notice to be given if the decision is not to approve the proposed later plan. An information notice is appropriate as the holder is likely to have invested in plant and infrastructure for petroleum production during the early plans. The decision generally takes effect after time for an appeal ends, otherwise it is the day of effect specified in the information notice.

Division 5—Key mandatory conditions for petroleum leases

Clause 150 provides for the imposition of mandatory conditions on a petroleum lease. This imposition of mandatory conditions ensures the standardisation of key conditions for all petroleum leases. The holder of a petroleum lease is required to comply with key provisions including security, notice of entry and compensation provisions of the Bill.

Clause 151 imposes a condition on the petroleum lease such that the gaseous petroleum can only be flared if it is not technically or commercially feasible to use it. Venting is only permitted if, for safety reasons, it cannot be flared or there is a technical reason why the gaseous petroleum cannot be flared (that is, where there is insufficient flow from a well to allow ignition or where methane concentrations are low and it is not safe to do).

As the intention of this clause is to ensure the best possible use of the gas produced, both from a resource utilisation and a greenhouse gas perspective, the clause also provides that the restriction on venting does not apply in the case where the gaseous petroleum is being used, or is proposed to be used, under a greenhouse abatement scheme. This is to ensure that the clause is not interpreted as changing the baseline level of emissions of

carbon dioxide determined under those schemes and so reduce the direct or indirect (such as through a commercial agreement with an electricity generator) benefit available under those schemes. As the name of the listed schemes may change, or new schemes may be introduced that have the same purpose, the clause provides that a regulation may prescribe another scheme not listed.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. Due to the fact that "greenhouse abatement schemes" are very specific in nature, and that the relevant clause qualifies what may be prescribed as a scheme, it strictly limits schemes that may be prescribed under regulation to those "about the abatement of greenhouse gases".

Further, prescribing another scheme about the abatement of greenhouse gases under a regulation has the advantage of allowing any successive Governments that may administer these two schemes, to change the names of these schemes, without the Queensland Government having to amend the Bill to implement the change of name.

Clause 152 provides for the testing of a well to determine the viability of petroleum production or storage in a natural underground reservoir. The holder of the petroleum lease has the right to test each well for a maximum period of 30 days from when production commenced. Approval is required for all testing of a well outside of this period and conditions may be set in relation to this testing. The capability to set conditions is to ensure that the testing is appropriate to determine commercial viability. A condition to pay royalty will most likely be applied to the production testing of natural or coal seam gas that is likely to result in a high rate of production over a long period resulting in a large quantity of gas being produced and the gas cannot be economically stored for later use. The gas would normally be flared or vented, and while the information collected could be considered to be important, the production of the gas has provided no benefit to the State. Any crude oil produced during production testing can be sold and royalty will be payable.

Clause 153 requires that the holder of the petroleum lease must consult with the owners and occupiers of land in the lease area about the carrying out of activities. This consultation is intended to keep the owners and occupiers informed of the timing and extent of authorised activities to be undertaken on the land and thereby assist in the development of good landholder relations. The clause does not exempt the holder of the petroleum lease from the need to comply with notice of entry and compensation provisions of the Bill.

Clause 154 provides that the holder of the petroleum lease must commence petroleum production. The specification of a start date for the commencement of production is to ensure that a petroleum lease is granted for the purpose of petroleum production and not as a means to retain land. The requirement to commence production does not apply where the development plan for a petroleum lease only provides for the storing of petroleum in a natural underground reservoir.

Clause 155 requires that the holder of the authority to prospect pays the annual rent and royalty on petroleum produced.

Clause 156 imposes a civil penalty of 15 percent for the nonpayment of the annual rent. The civil penalty is intended to provide an incentive for the timely payment of the rent.

Clause 157 provides that the holder of a petroleum lease must have a development plan for the lease.

Clause 158 requires the holder of the petroleum lease to comply with their approved development plan. Compliance with the development plan ensures that development of the production of petroleum occurs in a timely and orderly manner. In the case of a petroleum lease being granted as a result of a tender process, compliance with the development plan is essential to ensure the integrity of the tender process. Failure to comply with the development plan is considered to be a significant breach of the mandatory conditions.

Clause 159 requires that the holder of the petroleum lease must submit a later development plan and the times and occasions when a later development plan is required. The later plan must comply with the later development plan requirements. The obligation to submit a later development plan ensures there is always a plan for the orderly production of petroleum for a petroleum lease. The timeframes relating to the submission of the proposed later development plan ensures that there is adequate time to assess and approve the later development plan. The provision of a late fee is intended to be an incentive to encourage the timely submission of the later development plan.

It may be considered that there is as a breach of a fundamental legislative principle triggered by this clause. The late lodgement fee is proposed to encourage the timely submission of later development plans, by petroleum lease holders, for Ministerial approval. The time for lodgement of a later development plan has been determined with a view to completing the necessary work of assessing, and approving or rejecting the later development plan before the expiry of the current development plan

approved for the petroleum lease. The late lodgement of the later development plan greatly reduces the time for this. To discourage the late lodgement of later development plans, and to reduce unnecessary increases in the Minister's and administering department's work loads, a late fee significantly greater than the lodgement fee is proposed. The petroleum lease holder has 40 business days, before the end of the current approved development plan period, to submit the later development plan without incurring the proposed late fee. This is a reasonable timeframe for lodgement, considering the petroleum lease holder has known of this date since the approval of the current development plan. The department will also, as a matter of course, be sending out notices prior to the time for lodgement of the proposed later development plan, advising of the requirement for lodgement, the times for submission, and the late fee payable if the development plan is not submitted within stated timeframes.

Clause 160 provides that on failure to lodge a later development plan as required by the notice given to the holder, the petroleum lease is cancelled.

Division 6—Renewals

Clause 161 provides for the conditions for the renewal applications for a petroleum lease. The renewal provision is required if at the end of the term petroleum still remains in the area of the lease and the holder intends to produce the petroleum. The presence of remaining petroleum may be due to factors including:

- the field being of a large size and all the petroleum could not be produced in the initial term;
- additional reserves of petroleum were discovered during the term of the lease; or
- the production characteristic of the field means that it will take a longer time to produce the petroleum than had originally be planned.

An application cannot be made if there are payments owing to the State or security still to be paid. The requirement that there is no money outstanding is a reflection of the capability of the applicant. The application cannot be made more that 80 business days before the end of the term so that consideration can be made in respect to the extent of compliance in relation to the conditions for the previous term. The application for renewal can be submitted 2 years before the expiry if there

is a storage agreement for the lease. This earlier submission date is intended to allow for the renewal to be completed sooner and thereby enabling the holder to enter into new storage agreements. This removes the uncertainty in relation to the renewal and should assist in minimising any disruption to a holder's storage operation.

Clause 162 provides for the requirements of the renewal application for the petroleum lease. The information provides for activities to be undertaken in the new term, as well as statements in respect of compliance with the development plans for the previous term. The information in relation to previous performance assists in assessing the relevance of future activities and also to determine if any disciplinary action for failure to comply with conditions is necessary.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The late lodgement fee is proposed to encourage the timely submission of renewal applications by petroleum lease holders, for possible grant by the Minister. The time for lodgement of a renewal application has been determined with a view to completing the necessary work of assessing and granting or refusing the application before the expiry of the current term approved for the petroleum lease. The late lodgement of the renewal application greatly reduces the time for this. To discourage the late lodgement of renewal applications, and to reduce unnecessary increases in the Minister's and the department's workloads, a late fee significantly greater than the lodgement fee is proposed. The petroleum lease holder has 40 business days, before the end of the current term of the petroleum lease, to submit the renewal application without incurring the proposed late fee. This is a reasonable timeframe for lodgement, considering the petroleum lease holder has known of this date since the grant of the petroleum lease. The department will also, as a matter of course, be sending out notices prior to the time for lodgement of the renewal application, advising of the requirement for lodgement, the times for submission, and the late fee payable if the renewal application is not submitted within stated timeframes.

Clause 163 provides for the petroleum lease to continue until the application for the renewal has been decided. The continuation is needed to ensure that there is a valid petroleum tenure if production needs to continue after the end of the tenure. The need to continue petroleum production may be the result of the need to meet on-going contracts.

Clause 164 places restrictions on deciding the application to renew the petroleum lease. The Minister must not grant the renewal unless the proposed later development plan is approved, and the holder continues to

be suitable and has substantially complied with the conditions of the lease. This restriction on the renewal ensures that the authorised activities to be undertaken are appropriate for the specific circumstance relating to the production or storage of petroleum in the lease. The applicant may be required to pay the annual rent and give security before the Minister decides to grant the renewal. This is to ensure that all of the administrative arrangements have been completed before the petroleum lease is renewed.

Clause 165 provides for provisions of the authority to prospect that the Minister must decide in respect to the renewal application. There are restrictions in relation to the term, area and start date for the renewed lease. These restrictions ensure that the basic provisions in respect of a petroleum lease are maintained and cannot be subsequently changed to allow for an increased term or area.

Clause 166 provides that for a decision to refuse the renewal of the petroleum lease, the applicant has the right of appeal against that decision. This right of appeal is necessary, as the applicant may have already expended significant funds in relation to previous exploration and development activity.

Clause 167 states that the refusal to renew the petroleum lease does not take effect until after the date for an appeal against the decision passes. This date ensures that if the holder decides to appeal and the appeal is successful, then the petroleum lease continues. As the petroleum lease continues, applications cannot be made for a new petroleum tenure over the area of this lease.

Division 7—Miscellaneous provisions

Subdivision 1—Area and term of petroleum lease

Clause 168 provides for limitations on the area and land that cannot be included in a petroleum lease. These limitations ensure that only one petroleum tenure can be granted over any land. The maximum size limit of 75 sub-blocks is specified.

Subclause 168(4) provides for land over which a petroleum lease cannot be granted. The gazettal of land over which a lease cannot be granted ensures that land is unavailable where the land use is not compatible with petroleum production.

Subclause 168(5) ensures the continuation of the integrity of the description of land subject of the petroleum lease by sub-blocks.

Clause 169 enables land to be excluded from a petroleum lease. The exclusion may relate to a specific type of land or an area in the lease. Land requiring specific procedures in relation to it being accessed is the most likely to be excluded at grant. The excluded land within the boundaries of the lease is likely to be the same as for the pre-existing authority to prospect. Owing to the administration of the area of a lease by sub-blocks, there is no need to maintain the integrity of the blocks and therefore there is no need to consider land in another petroleum tenure as excluded land.

Clause 170 enables excluded land to be added to a petroleum lease. The addition of the land can only occur if it complies with the area provision in the Bill and if the holder consents. The conditions in relation to the tenure may be changed to reflect the addition of the land. An example of a change in conditions would be a change to the approved development plan to reflect the additional land over which petroleum can be produced.

Subdivision 2—Dividing petroleum leases

Clause 171 allows the holder of a petroleum lease to apply to divide the original lease into two or more leases. The application cannot be made if there are monies owing to the State. The payment of monies to the State is considered to be an important indicator of the applicant's capability to manage petroleum exploration. The ability to divide a petroleum lease is to enable the holder to apply for an additional lease to reflect any commercial agreements that have been made in relation to the original lease. If the new lease is to be granted to someone other than the original tenure holder, then the new person must be eligible and agree to the grant. The application must be accompanied by the proposed development plans for the new petroleum leases. The combined proposed development plans must not be less than the approved development plan.

Clause 172 provides that the application to divide the petroleum lease must be lodged at a stated place and be accompanied by the prescribed fee. The clause also states that the application must provide information about compliance with the development plan and includes proposed development plans for each proposed new lease.

Clause 173 provides for the decisions to be made and limitations on the new petroleum lease. The new lease cannot be for a longer term than the original lease. The adoption of the same term prevents access to land for

longer periods than would have been allowed under the original lease. The development plan and conditions of any new petroleum lease are to be determined to ensure that they are consistent with the planned petroleum production.

Clause 174 provides for the provisions for the new leases, including the term and relinquishment conditions.

Clause 175 provides for a notice to be forwarded to the applicant when the provisions and development plan for any new petroleum lease have been decided. The ability to determine provisions and the development plan is required to ensure that they are consistent with the rate of petroleum production from the lease. The grant of the new lease must be made as soon as practicable after payment is received. If the decision is to refuse the application to subdivide the leases, then a notice is to be given to the applicant. The refusal does not limit or restrict the rights that the holder already has in respect to their current petroleum lease. Also, the refusal does not prevent the holder of the petroleum lease entering into another form of agreement to give effect to a proposed outcome by dividing the lease.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The grant of a petroleum lease, whether the original grant or the making of the original lease into more than one lease, is considered to be the State exercising its rights in respect of managing its petroleum resources. The holder of the original petroleum lease has all the rights, provided for by this Bill, over that land within the area of the lease and this will not be diminished in any way by the Minister refusing the division of the original petroleum lease. Generally, the State would need to benefit by increased petroleum exploration and production activity for the Minister to consider making the division of the original petroleum lease.

PART 3—DATA ACQUISITION AUTHORITIES

Division 1—Obtaining data acquisition authority

Clause 176 provides for the holder of a petroleum tenure to enter land adjacent to their tenure to acquire geophysical data under a data acquisition

authority. The need to extend a geophysical survey beyond the bounds of the tenure is to enable the full acquisition of data at depth. The failure to acquire a full data set at depth results in poor quality data and uncertainty in the definition of the geological target. A data acquisition authority will be issued over land not in a petroleum tenure. If an adjacent petroleum tenure exists then the holder must acquire the data under the authority of, and with the agreement of, the holder of the adjacent tenure. A data acquisition authority cannot be used to drill a petroleum well or undertake production testing.

Clause 177 provides that the application for the data acquisition authority must be lodged at a stated place and be accompanied by the prescribed fee.

Clause 178 provides for the provisions of the data acquisition authority including its term and day of effect. The authority is a temporary authority and is intended to provide for only sufficient time for the acquisition to be completed. Any conditions placed on the authority are not to be inconsistent with the mandatory conditions for the tenure to which it relates to ensure that the authority is not used for another purpose.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The right of entry to owner or occupier lands is balanced by the application of private land, public land, and compensation provisions in the Bill.

Clause 179 provides for a notice to be given to the applicant regarding a decision to refuse the application.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The holder of a petroleum tenure may apply to the Minister for a data acquisition authority, the granting of which would allow the applicant to conduct geophysical surveys on land adjacent to their petroleum tenure, providing this land is not subject to another petroleum tenure. The petroleum tenure holder only has rights, provided for under this Bill, in relation to land that is considered part of their petroleum tenure and, except for the granting of a data acquisition authority, has no rights, provided for under this Bill, to land outside the boundary of their petroleum tenure. The ability to acquire geophysical survey data is intended to assist in providing full data coverage up to the boundary of the petroleum tenure in question, both to assist the petroleum tenure holder and eventually, to form part of the data collected by the State.

The grant of a data acquisition authority is to be made by the Minister in relation to the State's resources and, because it does not limit any

authorised activity within the petroleum tenure already held by the applicant, it is not considered appropriate for an appeal to apply.

Division 2—Provisions for data acquisition authorities

Clause 180 provides for the right to carry out authorised activities that can be undertaken under a data acquisition authority and that the carrying out of the activities is subject to other provisions of the Bill.

Clause 181 provides for a condition on a data acquisition authority to become a condition for the relevant petroleum tenure. This provision ensures that the holder of the tenure must comply with the condition. Failure to comply with condition means that disciplinary action can be taken against the relevant petroleum tenure holder.

Clause 182 provides that the holder of the data acquisition authority is the holder of the relevant petroleum tenure.

Clause 183 provides for the data acquisition authority to end if the relevant tenure ends. As the authority was granted for the sole purpose of acquiring data for the tenure, this purpose no longer exists if the tenure ends.

Clause 184 provides for where a petroleum tenure is granted over land covered by a data acquisition authority after the authority was granted. The authority continues to exist and acquisition of data can occur. However, if the carrying out of data acquisition conflicts with the authorised activities under the petroleum tenure, then the petroleum tenure activities take priority. The assignment of this priority recognises the tenure holder's right to undertake activities in the area of their tenure.

Although an earlier right has been provided to the holder of the data acquisition authority, the petroleum tenure holder should be aware of the details of activities (what and where) to be conducted under the authority.

The data acquisition authority has been granted for a very limited period (up to 1 year) when there is no overlapping petroleum tenure. The holder of the data acquisition authority should not be impeded in conducting the activities as the activities directly relate to a contiguous petroleum tenure which was granted before any subsequent petroleum tenure.

The reason behind granting a petroleum tenure over land already subject to a data acquisition authority (even though the authority was granted certain, but lesser rights before the tenure holder), is that there is no

possibility of petroleum production or testing from the area of the data acquisition authority by the authority holder. The State has given higher priority to the activities under the tenure in order to promote the earlier production of petroleum.

PART 4—WATER ENTITLEMENTS FOR PETROLEUM TENURES

Clause 185 establishes a statutory authority for holders of an authority to prospect or a petroleum lease (a petroleum tenure holder) to take or interfere with underground water in the area of the tenure.

Subclause 185(1)(a) provides for clarity of the petroleum tenure holder's entitlements in relation to the taking and interfering with underground water when carrying out authorised petroleum activities.

Underground water is defined in subclause (8) and means either artesian or subartesian water.

The authorisation applies to underground water that is:

- necessarily or incidentally taken or interfered with during the course of carrying out another authorised petroleum activity. For example, underground water that is necessarily or unavoidably taken or interfered with during the course of drilling a petroleum well.
- taken or interfered with by constructing/drilling a water bore for the purpose of carrying out an authorised petroleum activity. For example, used in the course of drilling or for camp purposes.

Subclause 185(3) provides there is no limit, as defined by a volume or rate of taking, set out in the clause for the amount of underground water that can be taken or interfered with. However the amount of underground water that may be taken is limited to the extent the taking must only be for authorised petroleum activities. The reporting on the volume of water taken is to be included in the annual report for the petroleum tenure.

Subclause 185(4) defines the underground water necessarily or incidentally taken or interfered with from a petroleum well is called, for the purposes of the Bill, associated water. This water is commonly referred to

as 'produced' water as it is incidentally produced in the course of petroleum drilling and production.

Subclause 185(5) makes it clear that associated water can only be used by the tenure holder for carrying out authorised petroleum activities for the tenure. Associated water can be used by an owner or occupier of land in the limited circumstances as set out in the Bill. Any associated water residual to the needs of the tenure holder can only be used or supplied for other purposes under the authority of a water licence granted under the *Water Act 2000*.

Clause 186 permits a petroleum tenure holder to allow an owner or occupier of land in the area of the tenure or land that joins land in the area of tenure, held by the same owner or occupier, to use on that land associated water for stock and domestic purposes only. This is a change from the *Petroleum Act 1923* that extended the use of water taken by a petroleum tenure holder to a landowner of land in the tenure area or of adjoining land, or land in the vicinity, of the tenure.

Clause 187 defines certain activities as water monitoring activities. Water monitoring activities are activities carried out by a petroleum tenure holder for the purpose of complying with, or assessing the need to comply with, the make good obligation in relation to the impact of the tenure holder's extraction of water. This clause authorises the petroleum tenure holder to carry out water monitoring activities, in the area of the tenure, for that specified purpose.

To carry out water monitoring activities on land outside of the area of tenure, a petroleum tenure holder will require a water monitoring authority granted under the Bill.

Clause 188 recognises the *Water Act 2000* as the Act that defines water and vests all entitlements to the use, flow and control of all water in Queensland to the State. The *Water Act 2000* makes it an offence to take, supply or interfere with water unless authorised under this Act. However, it is this Bill that authorises petroleum tenure holders to take or interfere with underground water and landowners to use associated water in accordance with the Bill. To ensure the taking or interference with underground water authorised under this Bill is not in breach of the *Water Act 2000*, this clause makes it clear the taking or interference with, or the use of, underground water by a petroleum tenure holder and the use of associated water by a landowner, in accordance with the Bill, is authorised pursuant to the *Water Act 2000*.

Clause 189 removes any doubt about the authority for a petroleum tenure holder to take or interfere with and use underground water. The petroleum tenure holder is authorised under this Bill to only take or interfere with, and use, underground water in accordance with the Bill. The taking or interfering with all other water, as defined by the *Water Act 2000*, by a tenure holder must be authorised under the *Water Act 2000*.

PART 5—WATER MONITORING AUTHORITIES

Division 1—Obtaining water monitoring authority

Clause 190 provides for who may apply for a water monitoring authority. The restriction of the applicant to a petroleum tenure holder is intended to ensure that a water monitoring authority is only granted in relation to the effects of authorised activities of the tenure holder and is not to be available to any one else. The ability for a water monitoring authority to be granted over land in another petroleum authority is needed as the impact on authorised petroleum activities may extend beyond the petroleum tenure boundary. The ability to grant over other petroleum authorities will ensure that the petroleum tenure holder has a right of access to undertake their obligations in relation to water, irrespective of the presence of an underlying petroleum tenure.

Clause 191 provides for the application to be made on the approved form and where the application is to be lodged.

Clause 192 enables the Minister to grant a water monitoring authority. There are specific provisions requiring the area to be stated and the petroleum tenure to which it relates. The ability for a water monitoring authority to relate to one or more tenure is to minimise the administrative impact in relation to their grant and administration.

It may be considered that there is a breach of fundamental legislative principles triggered by this clause. The ability of the Minister to refuse a water monitoring authority is to ensure that the authority is appropriate and necessary, in relation to the likely impacts from the exercise of the underground water right on the nominated petroleum tenure. The ability to refuse is important owing to the right to drill a water observation bore,

which could be used to obtain geological information outside the tenure area.

The rights of the owners and occupiers of land subject to the water monitoring authority are protected, as the holder of the authority is subject to the requirement to give a notice of entry and to have a compensation agreement.

The priority in relation to activities under a water monitoring authority and other petroleum tenures and mining tenements are defined elsewhere in the Bill. Generally, the activities of the other tenure take priority over authorised activities for a water monitoring authority.

Division 2—Key authorised activities

Clause 193 states that this division provides for the key authorised activities that can be undertaken under a water monitoring authority.

Clause 194 restricts the carrying out of authorised activities to the area of the water monitoring authority.

Clause 195 provides restrictions on the taking or interfering with underground water but recognises that some water will be taken or interfered with as a result of undertaking authorised activities.

Clause 196 provides that water taken as part of authorised activities under a water monitoring authority is an authorised activity under the *Water Act 2000*. The absence of this authorisation would result in the taking of water being an offence under that Act.

Clause 197 restates the intent provided for in that the taking or interfering with water, as defined in the *Water Act 2000*, cannot be undertaken by the holder of a water monitoring authority holder unless it is authorised under this subdivision or the *Water Act 2000*.

Clause 198 provides for an offence if the holder of a water monitoring authority interferes with the carrying out authorised activities for another petroleum tenure holder or water monitoring authority. This provision is required as a water monitoring authority can be granted over another petroleum tenure or water monitoring authority and there is a possibility that the various authorised activities could be undertaken in the same area at the same time.

Clause 199 states that the holder of a water monitoring authority has no right to any petroleum discovered while carrying out authorised activities.

This clause is necessary as an observation bore can be constructed into the same natural underground reservoir from which petroleum is being produced and there is the possibility of additional petroleum being discovered by the bore. The absence of a right to any petroleum discovered preserves the intention of the tenure regime in the Bill.

Division 3—Miscellaneous provisions

Clause 200 restricts the term of a water monitoring authority to longer than the term of any petroleum tenure to which it relates. A water monitoring authority is only needed while there is a requirement to access land for the purposes of undertaking remedial work as part of the make good obligation. There is no need for a water monitoring authority after the petroleum tenure ends.

Clause 201 provides that if the water monitoring authority relates to only one petroleum tenure, then the holder of the tenure is also the holder of the authority. This relationship applies even if there is a change in the holder of the petroleum tenure.

Clause 202 provides for a condition imposed on a water monitoring authority to become a condition of each petroleum tenure to which the authority relates. If there is a breach of a condition of a water monitoring authority, then non-compliance action can be taken against the holder of the related petroleum tenure.

Clause 203 allows for the holder of a water monitoring authority to apply to amend the authority by increasing the area or changing the petroleum tenure to which it relates. The amendment is to allow for a change in its area to reflect a change in the extent of the impact of authorised activities or the addition of new tenures to which the water monitoring authority relates. The ability to amend a water monitoring authority ensures that the authority remains relevant to changes in circumstances.

PART 6—THIRD PARTY STORAGE ACCESS TO NATURAL UNDERGROUND RESERVOIRS

Division 1—Purpose of part

Clause 204 provides for the purpose of the part of the Bill to encourage appropriate use of natural underground reservoirs for storage.

Division 2—Storage agreements and related provisions

Subdivision 1—Storage agreements

Clause 205 provides for the petroleum lease holder to enter into an agreement with another person for the storage of petroleum. The ability to offer storage to another party assists in ensuring an efficient petroleum industry in this State. Processing plant activities and production can be undertaken at optimum rates with any petroleum in excess of demand being placed in storage. During periods of peak demand, petroleum can be removed from storage for supply to the market. This clause also provides for the definition of a storage agreement and an existing user. The storage agreement provides for the amount of gas to be stored and when the gas will be stored and retrieved. An existing user is a person who is already storing gas in the natural underground reservoir. An existing user can make an agreement with someone else to store, but only on the basis of an existing user's storage agreement with the lease holder. This limitation is needed to restrict the existing user entering into an agreement that the petroleum lease holder cannot meet.

Clause 206 provides for the development plan to be the basis for development of the infrastructure on the lease to meet the requirements of the storage agreement. If there is an inconsistency, then the lease holder must apply to amend the development plan. The development plan is modified to ensure that the necessary infrastructure is constructed and is adequate for requirements of the storage agreement. If the development plan did not take precedence, then the existing user may enter into a storage agreement, which the lease holder could only meet if there was non-compliance with the development plan.

Clause 207 requires the user under the storage agreement to provide information to the petroleum lease holder necessary for the safe and reliable operation of the natural underground reservoir. This information will assist the lease holder in ensuring that the equipment and procedures are adequate to meet the requirements of the user.

Subdivision 2—Negotiation obligations of petroleum lease holders and existing users

Clause 208 provides for conditions to apply to all petroleum leases that have a natural underground reservoir that has or is likely to have capacity to store petroleum or a prescribed gas. Authorised activities associated with the production of petroleum take precedence over storage activities. Storage can only be undertaken if there is spare storage capacity or would be spare if the necessary works were carried out. This recognition of spare storage capacity is to ensure that because work is required, it cannot be used as a means of denying access to storage. *Subclause (2)* provides for storage capacity that has become contracted to no longer be considered to be available. This is intended to prevent the same capacity being contracted to two different users. *Subclause (3)* provides for when the contracted capacity is to become available. This ensures that the contracted capacity is not used as a means of denying access to a potential user.

Clause 209 requires for the petroleum lease holder to negotiate with a proposed user in an attempt to reach a fair and reasonable storage agreement. This requirement ensures that the holder of the lease cannot unduly hinder or obstruct the proposed user from accessing the storage capacity in the lease.

Clause 210 provides for priority in negotiations for access to storage capacity. If the potential first user commenced negotiation with the holder of the petroleum lease, then these negotiations are not affected by negotiations with the second party. That is the second person cannot enter into an agreement that unreasonably effects the negotiations with the first user.

Subclause 210(3) ensures that an existing user has priority in respect to the capacity that is being used. This priority ends 2 years before the end of the existing agreement. This cessation of priority enables the lease holder to enter into negotiations for storage agreements to maintain the ongoing commercial viability of the storage operation.

Clause 211 places an obligation on the petroleum lease holder or existing user to provide all information relevant to the reservoir's storage capacity to enable the negotiation of a fair and reasonable storage agreement. The information to be supplied is to be provided on a non-discriminatory basis to ensure that one party is not disadvantaged in their negotiations. This information is necessary to ensure that all potential users have the same opportunity to negotiate a storage agreement.

Division 3—Provisions for stored petroleum or prescribed storage gas after petroleum lease ends

Subdivision 1—Preliminary

Clause 212 provides for when a petroleum lease ends and there is a storage agreement recorded in the register. If an application to renew the lease has been submitted then the lease continues until the refusal of the renewal takes effect or the result of an appeal on the refusal is decided. This provision provides certainty as to when a petroleum lease has ended in relation to a storage agreement.

Subdivision 2—Claiming stored petroleum or prescribed storage gas

Clause 213 requires the Minister to publish a notice to identify anyone with a claim to the stored petroleum. The notice will ensure that all parties claiming ownership of the stored petroleum can be identified. The notice will only be issued after the petroleum lease where storage has been provided has ended.

Clause 214 provides for if no notice to claim is received in respect to stored petroleum, then the ownership of the petroleum reverts to the State. The investiture of the ownership of the petroleum to the State enables the management of this petroleum to be undertaken as provided for in the Bill.

Subdivision 3—Deciding claims

Clause 215 requires for the Minister to decide whether the claimant owns the petroleum. The Minister may decide that the claimant does not

own the petroleum if the claimant has not taken reasonable steps to have recovered the petroleum. The ability to make a claim for stored petroleum is intended to provide a means of recovering petroleum in circumstances where the failure to recover the petroleum was beyond the control of the applicant.

Clause 216 provides that if the Minister decides that no claimant owns the petroleum, then the ownership of the petroleum reverts to the State. The investiture of the ownership of the petroleum to the State enables the management of this petroleum to be undertaken as provided for in the Bill.

Subdivision 4—Dealing with upheld claims

Clause 217 provides for the application of this subdivision.

Clause 218 requires a call for tenders for a petroleum lease to be made if the Minister decides that a claimant owns the petroleum. The need for a call for tenders for a petroleum lease is to provide the necessary tenure to enable access to the land to recover the petroleum. There is a requirement for the area of the proposed lease to cover the whole of the natural underground reservoir where the petroleum is stored to ensure that another tenure is not granted that would enable production of some of the stored petroleum.

Clause 219 provides that the claimant for any of the stored petroleum or prescribed gas must lodge a notice specifying matters about the stored petroleum or prescribed gas. If the owner of any of the stored petroleum or prescribed gas ceases to own the petroleum or gas, then the new owner must lodge a notice specifying matters about the stored petroleum or prescribed gas.

Clause 220 provides that a preferred tenderer for a petroleum lease may enter into a storage agreement with a claimant or owner of any stored petroleum or prescribed gas subject to the lease application area.

Clause 221 provides for the situation where the successful tenderer is not the same as the person with a claim to the stored petroleum in the area of the petroleum lease. The holder of the new lease is required to enter into a storage agreement with the owner of the stored petroleum. If a petroleum lease is granted 5 years after the old lease under which the petroleum was stored ends. The new lease does not take effect until there is storage agreement or the claimant withdraws their claim to the petroleum. The

requirement to have a storage agreement before the lease takes effect ensures that the claimant will be guaranteed access to their petroleum.

Clause 222 places an obligation on the holder of the petroleum lease to negotiate with the owners of the stored petroleum to reach a fair and reasonable storage agreement.

Clause 223 provides for when a non-owner petroleum lease takes effect. The setting of when a lease takes effect is to ensure that all of the issues associated with the stored petroleum have been addressed. The failure to address all the issues before the lease took effect may result in additional issues if the incorrect amount of petroleum was supplied to one of the owners.

Clause 224 provides for the cancellation of the non-owner petroleum lease if the Minister has not fixed a later day of effect before the first anniversary of the grant of the lease or a later day stated in the lease. The failure to set a later day of effect would result from the failure of the holder of the non-owner lease and the owners of the petroleum to reach an agreement. The cancellation of the lease enables the Minister to have a call for tenders for the lease and thereby provide another opportunity for a lease to be granted for the production of the stored petroleum.

Clause 225 provides for the payment of rent, for a non-owner lease, from the day the non-owner lease is granted irrespective of whether the non-owner lease is subsequently cancelled.

Clause 226 provides for when the petroleum becomes the property of the State. The petroleum only becomes the property of the State if the current owner gives an ownership relinquishment notice or the lease does not take effect. The petroleum becoming the State's property enables the future management of petroleum and the natural underground reservoir where it is stored, to be made in the interest of the State.

Clause 227 provides for the payment of rent by a recognised claimant to stored petroleum in a natural underground reservoir. The claimant is to pay rent until the relevant petroleum lease and relevant storage agreement has been agreed or the petroleum becomes the property of the State. The payment of the rent reflects the continued access provided by the State to the natural underground reservoir in which the claimant has stored petroleum.

Division 4—Regulatory provisions

Clause 228 prevents a person from knowingly engaging in conduct that may prevent a person from obtaining use of a natural underground reservoir. The clause ensures that access to a natural underground reservoir is provided on a free and open basis.

Clause 229 enables a person to apply to the District Court for an order restraining an obstructor or requiring an obstructor to do something to end the obstruction. An order may also be issued to provide for compensation for damage or loss arising from the activities of the obstructor. The court may make any other order including an injunction against another person involved in the conduct. The court may decide that it is not necessary for an order to be made as the provisions of this Bill adequately deal with the issue.

PART 7—COMMERCIAL VIABILITY ASSESSMENT

Clause 230 enables the Minister to request by notice from the holder, a commercial viability report on the whole or part of a petroleum tenure. The purpose of the commercial viability report is to provide information on the potential of an area in a petroleum tenure to be able to commercially produce petroleum in the next 15 years. The request must state the reasons why the Minister is of the opinion that commercial production is likely within the next 15 years. The report is intended to provide a detailed assessment of the potential of areas or individual natural underground reservoirs to produce commercial quantities of petroleum.

Clause 231 provides for the content of a commercial viability report. The data in support of the information and conclusions is also required to accompany the report. The information being sought covers all aspects in relation to the development of the discovery from the amount of petroleum in the natural underground reservoir or the ability to undertake storage through to commercial consideration. The provision of the data and information enables an assessment of the validity of the conclusions in relation to commercial viability of a discovery to produce or store commercial quantities of petroleum.

Clause 232 enables the Minister to obtain an independent viability assessment in respect to the commercial viability of petroleum production or storage of petroleum. The independent report provides a mechanism for the Minister to determine the viability of production or storage in relation to any discovery and thereby address any public concerns that a resource is currently commercial and is not being developed. The Minister is to advise the holder of the intention to obtain an independent assessment and of any associated costs. This power could be used as a means of verifying the conclusions in the commercial viability report prepared by the holder. The holder being required to pay costs for an independent viability assessment report encourages the petroleum tenure holder to fully address all issues in relation to the commercial viability of any petroleum discovery. The holder has the right to make a written submission on why the Minister should not seek an independent viability report.

Clause 233 provides for the circumstances for the recovery of costs of the independent viability assessment to be recovered from the holder. If the holder fails to pay the costs, then these costs can be recovered as a debt.

PART 8—PETROLEUM ACTIVITIES COORDINATION

Clause 234 provides for an arrangement to allow for the orderly coordination of the production of petroleum. The coordination arrangement will allow for a structured approach to the development of petroleum production from several petroleum or mining leases in an area. The coordination arrangement may relate to the timing of petroleum production and development and the sharing of infrastructure. The ability to enter into a coordination arrangement should ensure a more efficient petroleum industry. The arrangement may provide for matters inconsistent with the leases or their conditions. It also allows for subleasing of all or part of the lease to another party. However, any coordination arrangement has no effect unless the Minister approves it.

Clause 235 provides for the parties to any proposed coordination arrangement must seek the Minister's approval of the arrangement before it has any effect. If the arrangement is inconsistent with the current development plan a new plan must be submitted.

Clause 236 provides the criteria by which the Minister may approve or refuse a proposed coordination arrangement. The requirement for the

Minister's approval acts to ensure that the arrangement is in the best interest of the State, consistent with the purposes of relevant legislation and that the coordination arrangement is appropriate in the context of the spatial relationship of the lease.

Clause 237 provides that while a coordination arrangement may have a term longer than the term of the lease, the approval of such an arrangement does not obligate the Minister to renew the lease.

Clause 238 provides that any coordination arrangement relating to a sublease of a lease authorised under the *Petroleum Act 1923* is taken to have been approved as a permitted dealing under that Act.

Clause 239 provides for an approved arrangement to override the conditions of relevant mining and petroleum leases. This provision is necessary as the lease conditions may be inconsistent with the provisions of the coordination arrangement, especially in relation to when production of petroleum is to occur.

Clause 240 provides for the grant of a pipeline licence if the coordination agreement provides for the grant of a pipeline licence. As the intention is to encourage greater efficiency in relation to the use of infrastructure, in particular pipelines, then the coordination agreement may extend to cover the grant of a pipeline licence. Even though a pipeline licence is to be granted, the grant is still subject to other provisions about the grant of a pipeline licence in the Bill relating to the capability of the holder of the licence to operate the pipeline. This is required to ensure that the pipeline licence holder is capable of operating a pipeline.

Clause 241 provides for the agreement to be amended or cancelled by the parties to the agreement with the Minister's approval. The power to amend or cancel the agreement is needed as circumstances may change and the agreement may no longer be appropriate. The approval of the Minister is required to ensure that the outcome is in the public interest and that there is no detrimental effect.

Clause 242 provides for the Minister to be able to cancel the arrangement. This power is needed if there are reasons why the agreement is considered to no longer be relevant or appropriate. The Minister is required to give the parties a notice of intention to cancel the agreement and to consider any submission made. An information notice is to be issued in relation to the decision to cancel the agreement. An information notice is appropriate as the parties may incur an expense or a disruption to petroleum production as a result of the decision.

Clause 243 states that the cancellation does not affect any relevant lease, but any sublease of a petroleum lease or a 1923 Act petroleum lease provided for under the arrangement is cancelled.

PART 9—EXISTING WATER ACT BORES

Division 1—Preliminary

Clause 244 provides for a simplified outline of this Part. This Part imposes an obligation on a petroleum tenure holder to make good the supply of water to specified authorised water users affected by the tenure holder's exercise of the tenure holder's entitlement to take or interfere with underground water (referred to in these Explanatory Notes as the "extraction of water"). The obligation, described as the "make good" obligation is a mandatory condition of the tenure. The extraction of water by the tenure holder in the course of carrying out authorised petroleum activities may impact on the taking of underground water by existing water users both within and outside of the tenure area. The extent of extraction influence or impact resulting from the tenure holder's extraction of underground water may not only effect the aquifer from which the tenure holder takes or interferes with water (the source aquifer) but also other hydraulically connected aquifers. This Part sets out the process a tenure holder must follow in order to comply with the make good obligation. The make good obligation is primarily intended to restore the supply of water to an existing authorised water user affected by the tenure holder's extraction of water. However, it is recognised that a monetary settlement may also satisfy the make good obligation. In brief, a series of reports are to be lodged by the tenure holder, starting with an underground water impact report. This report essentially determines the area and extent of impact resulting from the extraction of underground water and provides the mechanism for predicting the impact and for identifying existing bores that are affected. Monitoring reports are required to monitor the extraction of water and its consequential effect. Review reports are required to review the effect against that predicted. A final report is required before the end of tenure to predict those existing bores that will be impacted after the tenure ends from the extraction of water during tenure and to make good that predicted impact before the tenure ends.

Clause 245 defines what is meant by an existing *Water Act 2000* bore for the purposes of the Bill. The bore and the taking of, or interfering with water, must be authorised pursuant to the *Integrated Planning Act 1997* and the *Water Act 2000*. In relation to being authorised under the *Water Act 2000*, this can mean either that the taking of water is authorised under section 20(6), or under a water entitlement. The water bore can be a bore in existence at the time of grant of tenure, or a bore constructed during the period from grant of tenure, up until the earlier of the start of approved testing for petroleum production, or the start of petroleum production for commercial purposes.

Clause 246 provides that if an existing *Water Act 2000* bore is unduly affected by the petroleum tenure holder's extraction of underground water, then the petroleum tenure holder is required to comply with the make good obligation. This clause defines when an existing *Water Act 2000* bore is unduly affected. There are two elements that must be considered. Firstly, there must be a drop in the water level of the bore that exceeds a trigger threshold because of the effect of the tenure holder's extraction of underground water. Secondly, if the water level drop exceeds the trigger threshold, the existing bore has an impaired capacity.

Subclause 246(2) applies in circumstances where the combined effect of the extraction of water by multiple tenure holders causes a drop in the level of water in an existing *Water Act 2000* bore. If the combined effect causes a water level drop that exceeds the trigger threshold, the existing *Water Act 2000* bore is unduly affected by the extraction of water by each of the multiple tenure holders.

Clause 247 defines impaired capacity for bores taking or interfering with water for a number of different purposes.

Clause 248 defines what are restoration measures for the purpose of the make good obligation.

Clause 249 provides for what is meant by a petroleum tenure holder in this Part. The clause is needed to ensure that a tenure holder's make good obligation continues when either a petroleum lease is granted from authority to prospect or when tenure ends.

Division 2—Obligation to make good for existing Water Act bores

Clause 250 provides for the petroleum tenure holder's obligations in relation to existing *Water Act 2000* bores unduly affected during the term

of the tenure and those existing *Water Act 2000* bores predicted to become unduly affected after the tenure ends because of the tenure holder's extraction of underground water during the term of the tenure. The obligations are called the make good obligation.

Clause 251 outlines matters in relation to the make good obligation. The make good obligation applies to existing *Water Act 2000* bores that are unduly affected, located inside or outside the area of the petroleum tenure. In addition, if an existing *Water Act 2000* bore was first unduly affected after the tenure ends, because of the exercise of underground water entitlements during the tenure, the make good obligation applies. Where more than one petroleum tenure holder is responsible for an existing *Water Act 2000* bore becoming unduly affected, the make good obligation applies to each of the holders jointly and severally. The make good obligation continues to apply despite the ending of the tenure.

Division 3—Underground water impact reports

Subdivision 1—Fixing of trigger threshold for aquifers

Clause 252 states that this division provides for the fixing of a trigger threshold for aquifers in the area affected by the exercise of underground water entitlements for a petroleum tenure. The trigger threshold is a necessary requirement for the underground water impact prepared by the tenure holder under this division. A trigger threshold is one of the two elements to be satisfied for determining if an existing *Water Act 2000* bore is unduly affected by the exercise of underground water entitlements by a petroleum tenure holder. The trigger threshold is fixed by the chief executive in a later provision and, in general terms, is a drop in the water level of a bore to a level that results in a material impact on the bore as determined by the chief executive.

Clause 253 requires that prior to the lodging of an underground water impact report, it will be necessary for a petroleum tenure holder to ask the chief executive what the trigger threshold is for the aquifers in the area affected by the tenure holder's exercise of underground water entitlements. If no trigger threshold has been previously fixed for aquifers in the affected area, the chief executive must determine the trigger threshold. A trigger threshold will not need to be determined if a trigger has already been set for an aquifer in any part of the area affected by the petroleum tenure holder's

extraction of water. In these circumstances the trigger threshold will be the trigger threshold already set.

It may be considered that there is a breach of fundamental legislative principles triggered by this clause. The ability of the chief executive officer to set trigger thresholds without the right of appeal is a reflection of the State's role in managing the water resources. This role enables the chief executive to set trigger thresholds that, when breached, are likely to cause a significant drop in the pumping rate or flow of water of existing *Water Act 2000* bores. Once a trigger threshold has been set, the threshold is to apply equally to all subsequent petroleum tenure holders. The provision of appeal rights may result in different trigger thresholds for different petroleum tenures, rather than a consistent set as provided for by this clause.

Clause 254 defines the meaning of a trigger threshold. A trigger threshold is the drop in water level in aquifers in an area affected by a petroleum tenure holder's exercise of underground water entitlements that the chief executive considers would be of such a level to cause a significant reduction in the maximum pumping rate (for subartesian water bores) or flow rate (for artesian water bores) of existing *Water Act 2000* bores in the area affected by the extraction of underground water by the tenure holder.

Subclause 254(2) requires the chief executive to consider a number of matters for fixing the trigger threshold.

Clause 255 provides that where the chief executive has fixed a trigger threshold for an aquifer in any part of an area affected by the petroleum tenure holder's extraction of underground water, the trigger threshold applies to the whole of the area affected by the extraction of underground water. This applies in circumstances where an area affected by the extraction of underground water by a tenure holder overlaps an (earlier in time) area affected by another tenure holder's extraction of underground water which already has a trigger threshold fixed for the aquifers in that area.

Subdivision 2—Lodging report

Clause 256 imposes an obligation on a petroleum tenure holder to lodge an underground water impact report on or before a specified time called 'the relevant time'. The report must comply with the requirements detailed elsewhere in the Bill. The report can be prepared for, and lodged by, one or

more tenure holders in relation to the exercise of the underground water entitlements for one or more petroleum tenures.

Clause 257 sets out matters in relation to an underground water impact report.

Subclause 257(1) details the information or matters to be contained in an underground water impact report.

Subclause 257(2) provides that the underground water impact report must comply with any requirements prescribed under a regulation.

Subclause 257(3) requires that the underground water flow model must comply with requirements prescribed under a regulation. This requirement will provide clarity in respect to the information to be supplied in relation to the underground water flow model.

Subclause 257(4) enables, where the underground impact report relates to a combined exercise of underground water entitlements, the relative liability in relation to a bore be agreed to between the different holders at this time. This agreement does not remove the holders' joint and several liability in relation to a bore.

Clause 258 provides that an underground water impact report is not required to be included in an underground water flow model if the chief executive is satisfied of those matters detailed in this clause.

Subdivision 3—Consideration of underground water impact report

Clause 259 gives the chief executive the power to require an amendment of an underground water impact report after the report has been lodged.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. There is no appeal against the chief executive's requirement that a new underground water impact report be submitted. This clause provides for the chief executive to specify the way the report is to be amended or the way the information is to be included. The requirement for an amended report can only be made if the chief executive is satisfied that the original report is inadequate. The submission of an amended report is to ensure that the underground water impact report is always current in respect to identifying impacts owing to the exercise of the underground water entitlement.

Clause 260 deals with the chief executive's decision on the underground water impact report.

Subclause 260(1) provides that the chief executive must decide whether to accept or reject an underground water impact report lodged by a petroleum tenure holder.

Subclause 260(2) provides that the chief executive may only reject the report if the chief executive is satisfied the report is inadequate in a material particular.

Division 4—Pre-closure report

Clause 261 imposes an obligation on a petroleum tenure holder to lodge a pre-closure report for the tenure that meets the requirements set out in this Bill for these reports. The purpose of a pre-closure report is to predict the existing *Water Act 2000* bores that may become unduly affected after the end of tenure, as a result of the tenure holder's extraction of underground water during the term of the tenure, and to detail how the make good obligation has and will be complied with in relation to these predicted unduly affected bores before the tenure ends.

Clause 262 sets out the information or matters to be contained in a pre-closure report.

Clause 263 gives the chief executive the power to require a petroleum tenure holder to amend a pre-closure report.

Clause 264 provides for the effect of the lodgement of a pre-closure report in relation to unduly affected *Water Act 2000* bores. Where a report or an amended report is accepted by the chief executive, the existing *Water Act 2000* bores, as identified in the report, predicted to become unduly affected, are taken to be existing *Water Act 2000* bores that will become unduly affected. The obligation to make good imposed on the tenure holder will apply to these bores.

Division 5—Monitoring and review reports

Clause 265 outlines the matters required to be complied with under this division in relation to monitoring and review reports.

Clause 266 requires for a monitoring report to be lodged at the same time as the annual report of the petroleum tenure. The requirement for the report to be lodged at the same time as the annual report is to provide

uniformity in reporting days for a petroleum tenure. The monitoring report is intended to provide information on the monitoring program provided in the impact report in relation to exercise of the underground water entitlement.

Clause 267 requires the petroleum tenure holder to lodge a review report on the underground water impact report. The review report is intended to ensure that the impacts are consistent with the underground water impact report. The timing for the submission of the reports increases from the first acceptance day of the underground water impact report reflecting the decline in the cumulative effect of production of associated water.

Subclause 267(1) details when a review report must be lodged.

Subclause 267(2) details what must be included in a review report. As the purpose of a review report is to essentially compare the effect of the tenure holder's extraction of water with that predicted in the holder's impact report – the review report will necessarily amend, where applicable, the impact report to reflect the conclusions of that comparison.

Clause 268 states the effect of the lodgement of a review report that has been prepared in accordance with the prescribed requirements.

Clause 269 gives the chief executive the power to change the frequency for the lodging of monitoring or review reports. For example, the chief executive may consider, based on information in the current monitoring report, that a review report is required earlier than previously provided for, to compare the effect of the extraction of water by the petroleum tenure holder to that predicted in the tenure holder's impact report.

Clause 270 gives the chief executive the power to change the reporting days in relation to monitoring and review reports.

Clause 271 gives the chief executive the power to require a petroleum tenure holder to amend a review report.

Division 6—Complying with make good obligation

Subdivision 1—Obligation to negotiate

Clause 272 imposes an obligation on the petroleum tenure holder to make reasonable attempts to negotiate an agreement with the owner of an existing *Water Act 2000* bore unduly affected by the extraction of

underground water by the tenure holder about how the make good obligation is to be complied with.

Subdivision 2—Tribunal decision on how the obligation must be complied with

Clause 273 provides for the application of this subdivision where one or more petroleum tenure holders and the owner of the bore cannot agree in relation to restoration measures. This subdivision provides a mechanism to enable the Land and Resources Tribunal to decide the required measures.

Clause 274 allows for the owner of the bore, or one or more of petroleum tenure holders whose exercise of their underground water entitlements has resulted in the bore becoming unduly affected, to apply to the Land and Resources Tribunal for a decision about how the make good obligation must be complied with. The requirement for them all to be a party to the application is to ensure that the interest of all parties can be protected.

Clause 275 provides for the circumstances and the basis upon which the Land and Resources Tribunal can make a decision in relation to the make good obligation for an unduly affected bore. The Land and Resources Tribunal can only consider the matter if it is not already addressed in an existing make good or other agreement. If the parties have reached an agreement, then the requirements of the agreement are also met in full. The restoration of the supply of water is the priority rather than the provision of monetary compensation in relation to the impact of authorised petroleum activities. The Land and Resources Tribunal can only make a decision to provide monetary compensation if the tribunal considers that it is not reasonably feasible to take restoration measures. If the obligation arose because of a combined effect of one or more petroleum tenures and the parties cannot agree between themselves, then the Land and Resources Tribunal can decide how much each must contribute. The ability of the Land and Resources Tribunal to make this decision ensures that there is a dispute resolution in relation to deciding relative liability. This decision does not affect the holders' joint and several liability in relation to the bore.

Clause 276 provides for the basis upon which the Land and Resources Tribunal assesses monetary compensation for the owner. The compensation is to cover the direct impact of the exercise of underground water entitlements on the value of the land or the impact on the owner resulting from the bore becoming unduly affected. The Land and

Resources Tribunal must consider any restoration measures that the petroleum tenure holder has undertaken. This consideration is necessary in cases where the petroleum tenure holder may have undertaken restoration beyond that agreed to, but may not have been successful.

Subdivision 3—Miscellaneous provisions

Clause 277 provides for any agreement or decision of the Land and Resources Tribunal to bind successors and assigns in relation to a bore. This ensures that an agreement or decision in relation to a bore remains valid.

Clause 278 allows for the Land and Resources Tribunal to review any make good agreement or decision if there is a material change in circumstances. The Land and Resources Tribunal is not required to review an agreement or decision just because one party is no longer happy with the original agreement.

Clause 279 provides for a right of entry after the tenure ends. A make good obligation may continue after a petroleum tenure ends and this provision enables the former petroleum tenure holder to enter land in order to meet this obligation. Provisions in relation to notice of entry and compensation also apply.

Clause 280 requires the chief executive to seek advice from the *Water Act 2000* regulator before deciding any matter under this part. The requirement recognises that the expertise in relation to water, associated with petroleum production, may reside with the department administering the *Water Act 2000*. Failure to seek the advice does not invalidate or otherwise affect a decision.

PART 10—GENERAL PROVISIONS FOR PETROLEUM WELLS, WATER SUPPLY BORES AND WATER OBSERVATION BORES

Division 1—Restrictions on drilling

Clause 281 provides for a prescribed standard for the drilling of a petroleum well. The standard will assist in ensuring that wells are drilled safely and minimise the potential for damage to natural underground reservoirs or the possibility of adversely affecting future coal mining.

Clause 282 requires a licensed water bore driller to drill a water observation bore or water supply bore except for specified exemptions under the *Water Act 2000*. This restriction ensures uniformity of construction techniques for all bores taking or interfering with water in this State.

Division 2—Converting petroleum well to water supply bore

Clause 283 allows for a petroleum tenure holder to convert a petroleum well to a water supply bore for the purpose of taking water provided that the well is modified for the purpose and the modifications are carried out by a licensed water bore driller. This restriction ensures uniformity of construction techniques for all bores taking or interfering with water in this State.

Clause 284 requires the petroleum tenure holder to lodge a notice advising of the conversion of a petroleum well 10 business days after the conversion. The lodgement of the notice is to ensure that the current status of the well is known to the department.

Division 3—Transfer of petroleum wells, water observation bores and water supply bores

Subdivision 1—General provisions

Clause 285 provides for the operation of this division in relation to ownership of work, and control and responsibility in relation to petroleum wells, water observation bores and water supply bores.

Clause 286 requires for all transfers to be undertaken under this subdivision. This requirement ensures that the proper requirements and standards are met in relation to the well or bore being transferred.

Clause 287 states that if the transfer is completed under this subdivision, then the previous owner no longer has any obligation in respect to the well or bore. This provision ensures that the responsibility of the well or bore remains clearly defined.

Subdivision 2—Permitted transfers

Clause 288 provides for the process to transfer a water bore or water supply bore to the landowner. These bores were originally constructed by a licensed water bore driller and there are no additional construction requirements. A notice is required to be lodged with the *Water Act 2000* regulator advising of the transfer. If necessary, a copy of a *Water Act 2000* licence is also required. This submission of the copy of the *Water Act 2000* licence ensures that all approvals have been obtained before the bore is transferred to the landowner.

Clause 289 allows for the transfer of a petroleum well to the holder of a geothermal exploration permit or mining tenement. The well must be in the area of the permit or tenement. The ability to transfer a well is to enable the reuse of a well for other purposes and thereby minimise the impact of activities under the permit or tenement on the land.

Clause 290 provides for the transfer of a water observation bore to a petroleum tenure holder or water monitoring authority holder. A water observation bore may be constructed under the authority of a petroleum tenure or water monitoring authority. The area of a tenure or an authority may overlap resulting in the water observation bore being in both the tenure and authority. The holder of either the tenure or authority may want

to continue the use of the water observation bore. The ability to transfer an observation bore will avoid duplication of infrastructure and provide a continuation of measurement at a specific site.

Subdivision 3—Notice of transfer

Clause 291 requires for notification of any transfer to be given to the *Water Act 2000* regulator or the *Mineral Resources Act 1989* chief executive as is relevant. The notification is to ensure that the regulator or chief executive is aware that the bore is now under their jurisdiction.

Division 4—Decommissioning of petroleum wells, water observation bores and water supply bores

Clause 292 requires that a petroleum well, water observation bore or water supply bore be decommissioned before the petroleum tenure or water monitoring authority ends. The requirement for the bore to be decommissioned is to ensure that the State does not inherit a liability in relation to a well or bore.

Clause 293 provides for a right of entry to decommission a bore after a petroleum tenure or water monitoring authority ends. This provision enables entry to decommission a well or bore if this obligation had not been met before the tenure or authority ended.

Clause 294 provides for the responsibility for a well or bore upon decommissioning. A well or bore remains the responsibility of the holder of a petroleum tenure or water monitoring authority until the tenure or authority ends. Provided the well or bore is decommissioned according to the prescribed standard, the well or bore is transferred to the State upon the ending of the tenure or authority. The State's ownership of the well or bore enables them to be subsequently transferred to the landowner or the holder of a geothermal exploration permit or mining tenement holder. This enables the reuse of the petroleum well or bore and therefore reduces the likelihood of additional impacts upon the land.

CHAPTER 3—PROVISIONS FOR COAL SEAM GAS

PART 1—PRELIMINARY

Division 1—Introduction

Clause 295 provides details of the main purposes of the coal seam gas regime. While ideally the optimal outcome would be to extract all commercial quantities of coal seam gas from the coal before any coal is mined it is recognised that there may be situations where extraction of all petroleum and coal resources in a particular area may not be possible. This is because at any point in time the extraction of one resource may be of greater overall benefit than extraction of both resources over a period of time. Optimisation of resource production may also not be possible because the other purposes of the regime, particularly the safety, certainty and future mineability requirements, have taken precedence.

Clause 296 outlines the processes and additional requirements to achieve the purposes of the coal seam gas regime.

Clause 297 ensures that the provisions for the coal seam gas regime detailed in this Chapter apply to the relevant exploration and development tenures as well as the relevant provisions of the Chapters stated in this clause and that the provisions contained in this Chapter prevail when there is any inconsistency with the other provisions of the Chapters stated in this clause.

Clause 298 provides for a petroleum lease granted under this chapter to be described in metes and bounds. Although generally described in sub-blocks this provision is needed for where petroleum leases may directly overlie coal mining leases or oil shale mining leases, which are described in metes and bounds.

Division 2—Definitions for Chapter 3

Clause 299 defines "coal seam gas" and "incidental coal seam gas". The meaning of these terms are defined, as they are used regularly throughout this Part.

Clause 300 defines "oil shale". The meaning of this term is defined, as it is used regularly throughout this Part.

Clause 301 defines "coal exploration tenement" and "coal mining lease" for this Part. The meaning of these terms are defined, as they are used regularly throughout this Part. The definition of coal mining leases includes the leases granted under two special agreements Acts to ensure the application of the regime to those Acts.

Clause 302 defines "oil shale exploration permit" and "oil shale mining lease" for this Part. The meaning of these terms are defined, as they are used regularly throughout this Part.

Clause 303 defines a "coal or oil shale mining tenement" for this Part. The meaning of this term is defined, as it is used regularly throughout this Part.

PART 2—OBTAINING PETROLEUM LEASE OVER LAND IN AREA OF COAL OR OIL SHALE EXPLORATION TENEMENT

Division 1—Obtaining petroleum lease other than by or jointly with, or with the consent of, coal or oil shale exploration tenement holder

Subdivision 1—Preliminary

Clause 304 provides that this division applies where a petroleum lease is applied for over land in the area of a coal or oil shale exploration tenement by someone other than the holder of the authority to prospect or without their consent. If the underlying tenement holder provides consent, then a simpler process, provided for elsewhere in this Bill, will apply.

Subdivision 2—Provisions for making petroleum lease application

Clause 305 requires the application to include additional material, over and above the regular application requirements, for this type of overlapping petroleum lease application. This additional material includes a "CSG statement", and information that addresses the "CSG assessment criteria". The CSG assessment criteria are considered when making a preference decision. These criteria include the requirements of the safety provisions; that the development plan requirements have been adequately addressed particularly those relating to overlapping coal tenements; and the legitimate business interests criterion, which is intended to elicit details of the potential impact of granting or not granting a lease would have on the relevant tenure holders interest in the land, including related commercial obligations or interests.

Clause 306 details the requirements of a CSG statement, which includes details on how the proposed production of petroleum will impact on the future development of the coal or oil shale resource and a proposed safety management plan. The proposed safety management plan must detail how potential adverse impacts on possible future safe and efficient mining will be minimised.

Subdivision 3—Provisions for splitting application in particular circumstances

Clause 307 requires the splitting of a petroleum lease application when it covers land within the tenure area of both a coal or oil shale exploration tenement and a coal or oil shale mining lease, and the lease and exploration tenement are not held by the same person. The separate applications will then be considered under separate divisions. This clause also provides for the amendment of the petroleum lease application to deal with this requirement.

Clause 308 makes provisions to split a lease application when an ATP-related petroleum lease application is also made over land that is not in the tenure area of a coal or oil shale exploration tenement, coal mining lease, or oil shale mining lease. In this case, the petroleum lease application may be separated, and the overlap area and the non-overlap area may progress as separate applications. The separate applications cannot proceed until all the application requirements are met for each "new" application.

Clause 309 provides that if the applicant requests, the lease application can be considered as two applications so that they can be considered under different parts of the Chapter stated in this clause, or for them to be considered separately under the Chapter stated in this clause and this Chapter.

Subdivision 4—Obligations of applicant and coal or oil shale exploration tenement holder

Clause 310 makes provisions about the obligations of the ATP-related petroleum lease applicant with respect to the coal or oil shale exploration tenement holder. These obligations include providing a copy of the petroleum lease application to the coal or oil shale exploration tenement holder; consulting with the exploration tenement holder and, as negotiated, changing the proposed petroleum lease's development plan to give effect to reasonable provisions made by the exploration tenement holder; and making appropriate arrangements with the exploration tenement holder about the exploration tenement holder's bulk sampling and other advanced testing that is being, or is proposed to be, carried out. The applicant is obligated to this where it is technically and commercially feasible for the petroleum lease applicant to do so. With respect to changing the proposed development plan it is intended that the lease applicant only give effect to any reasonable proposal, as there may be a number of ways of achieving the proposed outcome.

The applicant is also obliged to allow the exploration tenement holder time to complete or commence testing they may have been conducting or were planning to conduct (such as a bulk sample), or exploratory work that they need to complete in order have sufficient data to meet the requirements for making application for a mineral development licence. This obligation is limited to 12 months.

Clause 311 provides for the Minister to require further negotiation between the petroleum lease applicant and the coal or oil shale exploration tenement holder, to ensure that the applicant makes appropriate changes to the development plan to reflect the reasonable proposals of the coal exploration tenement holder, and makes a reasonable arrangement with the authority holder about bulk sampling and other advanced testing proposed by the tenement holder.

Clause 312 provides the Minister with the power to refuse the lease application if the previously mentioned obligations have not been complied with.

Clause 313 makes provisions about the obligations of the coal or oil shale exploration tenement holder to give the ATP-related petroleum lease applicant certain information. When given a copy of the application and accompanying development plan for the petroleum lease, the exploration tenement holder must negotiate with the petroleum lease applicant, and make reasonable attempts to reach agreement about amendments to the proposed development plan for the petroleum lease.

Clause 314 makes provisions for the coal or oil shale exploration tenement holder to make a submission to the Minister about the ATP-related petroleum lease application. The Minister must have regard to this submission in deciding the petroleum lease application.

Subdivision 5—Priority for earlier coal mining lease or oil shale mining lease application or proposed application

Clause 315 provides priority for any prior coal mining lease or oil shale mining lease application. A certificate of public notice for the petroleum lease cannot be issued until the prior coal mining lease or oil shale mining lease application has been decided.

Clause 316 provides for priority to be given to those proponents who have been granted approval for the preparation of a voluntary Environmental Impact Statement under the *Environmental Protection Act 1994* for a project that is, or includes, a proposed coal mining lease or oil shale mining lease. This is because the Environmental Impact Statement process is potentially publicly available from that point and so the trigger point for priority has been advanced ahead of the point of application for the lease.

Clause 317 provides for priority to be given to those proponents of a project that is declared a "significant project" under the *State Development and Public Works Organisation Act 1971* where the project is, or includes, a proposed coal mining lease or oil shale mining lease. This is because an Environmental Impact Statement is required for a "significant project" and the Environmental Impact Statement process is potentially publicly available from that point, and so the trigger point for priority has been advanced ahead of the point of application for the lease.

Subdivision 6—Ministerial decision about whether to give any preference to development of coal or oil shale resources

Clause 318 provides for when the division applies. Firstly, the Minister must be satisfied that there is an adequate definition of resources and reserves of coal or oil shale in the land and that these have been determined in accordance with relevant industry accepted codes. It is intended that the level of knowledge or classification of resources or reserves required will be defined in departmental policy. A preference decision is not required if the coal exploration tenement holder has not supplied relevant information or has not made a submission within the relevant period, or does not wish to have any preference.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is an absence of appeal rights on the Minister's deciding if a preference decision is required. The decision as to whether a preference decision is required or not is made by the Minister as the steward of the State's resources and as such, an appeal against the decision should not be allowed. However, there are a number of drafted provisions that the Minister must be satisfied of when deciding whether a preference decision is required. These provisions are detailed enough so that they safeguard against any "impulsive" decision being made by the Minister.

Clause 319 provides that the Minister must decide whether to recommend the grant of a petroleum lease or whether the priority is given to the development of coal or oil shale. This is described as the "preference decision". The CSG assessment criteria must be considered before this decision can be made. This clause also ensures that if a preference has already been provided to developing the petroleum resource, via a decision made under the relevant provisions of the *Mineral Resources Act 1989*, then preference cannot be made for coal or oil shale development and the original decision prevails.

Clause 320 requires that the chief executive must refer the application to the Land and Resources Tribunal to allow it to consider what the preference decision should be and to make recommendations to the Minister with respect to the decision and the term and conditions of any proposed lease. This is to occur before the Minister makes the preference decision and the Minister must consider the tribunal's recommendations before making a decision. The tribunal must consider the same matters that that the Minister considers, being the CSG assessment criteria and the matters detailed in the next clause, before they make their

recommendations. Their recommendations may also include recommendations about the term and conditions of the lease.

Clause 321 provides that preference decision cannot be made unless the Minister is satisfied with respect to a number of matters. The intention of this clause is to ensure that a preference decision can only be made in certain circumstances. Some of the matters that must be considered by the Minister include whether it is technically or commercially viable for a coordination agreement to be reached by the proponents, and whether the public interest would be best served if the development of petroleum is not given preference. In addition if the coal or oil shale resource is a greenfield resource, the Minister must be satisfied that coal or oil shale mining is likely to start within 2 years of the grant of any mining lease for this resource. If the resource is a brownfield resource, it must be critical to an existing operation or to the efficient use of related infrastructure.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is an absence of appeal rights on the Minister's preference decision. The giving of the coal or oil shale mining preference is a decision made by the Minister as the steward of the State's resources, for the best use of the mineral and petroleum resources for the maximum benefit to the State and as such, an appeal against the decision should not be allowed. However, there are number of drafted restrictions that the Minister must be satisfied of when deciding to give this preference decision. These provisions are detailed enough so that they safeguard against any "impulsive" preference decision being made by the Minister about the preference.

Subdivision 7—Process if preference decision is to give any preference to development of coal or oil shale resources

Clause 322 provides that this subdivision applies if the decision is to give preference to coal or oil shale development.

Clause 323 provides for the applicant and the coal or oil shale exploration tenement holder to be given notice of the preference decision and that the coal or oil shale exploration tenement holder be given six months from the time of the notice, to apply for a mining lease over that decided preference area (be it whole or part) within the petroleum lease application area.

Clause 324 provides that when the preferred coal or oil shale developer lodges a mining lease application for the whole of the preferred land, that

the petroleum lease application cannot be advanced. Also, if a decision is made to grant the coal or oil shale mining lease, the petroleum lease application is taken to have lapsed. It is intended however, that an application for the Minister to declare a potential commercial area, may be lodged if long-term title is needed to the area, while the coal or oil shale mining lease is in place.

Clause 325 provides that when the preferred coal or oil shale developer lodges a mining lease application for only part of the preferred land, the petroleum lease applicant may amend their application to include whole or part of the remaining land. If the petroleum lease applicant decides not to amend their application to include whole or part of the remaining land, then their application cannot be advanced until the mining lease application is decided. When a decision is made to grant the coal or oil shale mining lease over only part of the preferred land, the petroleum lease holder may still amend their application to include just the remaining area.

Clause 326 provides that if the preferred coal or oil shale developer does not lodge a mining lease application for the whole or part of the preferred land, that the petroleum lease application can be decided.

Subdivision 8—Deciding petroleum lease

Clause 327 sets out the two circumstances when this subdivision applies. First, if there was no preference decision because the coal exploration tenement holder has not supplied relevant information or made any submission within the relevant period or does not wish to have any preference. Second, if a preference decision was made and there was no preference provided to the development of the coal or oil shale resource, or if partial preference is provided, or if as result of the previous subdivision being complied with the Minister decides to grant a petroleum lease, then the following provisions will apply in finalising the petroleum lease application.

Clause 328 provides that the CSG assessment criteria must be considered when determining the term and conditions of the petroleum lease. Therefore, even when no preference is provided for the development of the coal or oil shale resource (in terms of allowing a mining lease to be applied for), the petroleum lease may still be conditioned to reflect the interests of the coal or oil shale tenement holder and the best resource development outcome.

Clause 329 provides for a relinquishment condition to be determined, with the intention of providing for timely resource development of the coal or oil shale resource, where it is known there is a conflicting resource interest awaiting development.

Clause 330 ensures that a notice of the preference decision and the reasons for that decision are published, aside from any commercial in confidence information. The intention is to provide a greater transparency in decision-making.

Division 2—Petroleum lease application by or jointly with, or with the consent of, coal or oil shale exploration tenement holder

Clause 331 provides that this division applies where the authority to prospect holder makes a lease application and the coal exploration tenement holder has consented to the making of the application. It also applies where a petroleum lease is applied for over a coal or oil shale exploration tenement by the tenement holder or with the tenement holder, and the tenement holder has also made a coal mining lease or oil shale mining lease application, that is not a special purpose mining lease application. This covers the situation where the holder of a mining lease for coal is applying for a petroleum lease to commercialise the mining of incidental coal seam gas on the proposed coal mining lease.

Clause 332 provides for the right of the person, to whom this division applies, to apply for a petroleum lease. The tenure area requirements of the Bill do not have to be complied with, because it is intended that the lease cover the same area of the mining lease (if appropriate) and that this may cover excluded land for another tenure and does not need to be described in sub-blocks.

Clause 333 makes additional requirements, over and above the regular application requirements, for such petroleum lease applications. These additional requirements include a CSG statement, an initial development plan that complies with the initial development plan requirements, and other information that addresses the CSG assessment criteria.

Clause 334 provides that the Minister cannot make a call for tenders for a petroleum lease for the land the subject of the petroleum lease application made by or jointly with the coal or oil shale exploration tenement holder.

Clause 335 requires the splitting of a petroleum lease application when it covers land within the tenure area of both a coal or oil shale exploration

tenement and a coal or oil shale mining lease, and the lease and exploration tenement are not held by the same person. The separate applications will then be considered under separate divisions. This clause also provides for the amendment of the original petroleum lease application to deal with this requirement.

Clause 336 makes provisions for when a petroleum lease application is made over land which is within both the tenure area of the relevant coal or oil shale exploration tenement and other land that is not within the tenure area of a coal or oil shale mining tenement. In this case, the mining lease application may be separated, into two applications so that the application that covers land not in a coal or mining tenement is only determined under the simpler processes of the Chapter detailed in this clause. The separate applications cannot proceed until all the application requirements are met for each "new" application.

Clause 337 provides that if the applicant requests, the lease application can be considered as two applications so that they can be considered under different parts of the Chapter stated in this clause, or for them to be considered separately under the Chapter stated in this clause and this Chapter.

Clause 338 applies the division and subdivision stated in this clause to the application, which gives priority to certain proposed lease applications undergoing relevant environmental processes.

Clause 339 ensures that if an authority to prospect holder has already made an application for a petroleum lease that application must be determined first (that is, before any lease application from a coal exploration tenement holder is determined).

Clause 340 provides for a "right to grant" leases under this division. It provides for two situations. First, where the authority to prospect holder is applying for petroleum lease which overlies a coal or oil shale exploration tenement and they have the consent of the exploration tenement holder. In this case the petroleum lease must be granted if the requirements for the grant of petroleum leases have been met.

Second, where the applicant for the petroleum lease has been granted (or a recommendation has been made to grant) a coal mining lease or oil shale mining lease, over the proposed petroleum lease tenure area under application. In this case the mining lease must be granted if the relevant requirements for the grant of petroleum leases have been met and the conditions of the coal or oil shale exploration tenement holder have been met. The intention here is that the petroleum lease granted under this

division would be coincident with the grant of the coal mining lease, for the purpose of allowing the mining lease holder to commercialise the mining of incidental coal seam gas on the lease.

Note that where the tenure area of the petroleum lease overlaps with the tenure area of an existing authority to prospect, the authority holder's written agreement is needed to carry out any authorised activity under the petroleum lease over and above the mining of incidental coal seam gas.

Clause 341 provides for additional matters that must be considered when determining the provisions of the lease. These include the development plan and the provisions for the relevant mining lease. Where the land of the petroleum lease will include land for an authority to prospect held by another party, the interests and any development proposals of that party and the likelihood of any agreement about coordinated development of all the petroleum in the land must also be considered.

Division 3—Petroleum lease applications in response to Mineral Resources Act preference decision

Clause 342 this clause ensures that the Minister can refuse to grant a petroleum lease application if it is considered that an application that was invited as a result of a preference decision not to grant a mining lease is not being progressed in a timely manner. This is necessary to ensure the integrity of the original preference decision.

PART 3—OBTAINING PETROLEUM LEASE OVER LAND IN TENURE AREA OF COAL MINING LEASE OR OIL SHALE MINING LEASE

Division 1—Exclusion of power to call for tenders

Clause 343 provides that the Minister cannot make a call for tenders for a petroleum lease for the land the subject of a coal mining lease or oil shale mining lease.

Division 2—Petroleum lease application other than by or jointly with coal mining lease holder or oil shale mining lease holder

Clause 344 provides for this division to apply where a petroleum lease is applied for over a prior coal mining lease or oil shale mining lease by someone other than the coal mining lease or oil shale mining lease holder. In this situation the consent of the prior lease holder will be required before the lease can be granted. This division also applies if the petroleum lease is applied for over both a coal or oil shale exploration tenement and a coal mining lease or oil shale mining lease, and the coal or oil shale exploration tenement and a coal mining lease or oil shale mining lease are held by the same person.

Clause 345 includes additional requirements, over and above the regular application requirements, for a petroleum lease application made in this division. These additional requirements include a CSG statement, and an initial development plan that complies with both the development plan requirements and the additional coal seam gas requirements of this Bill.

Clause 346 makes provisions for when a petroleum lease application is made over land which is not within the tenure area of a coal or oil shale mining tenement. In this case, the mining lease application may be separated, into two applications so that the application that covers land not in a coal or mining tenement is only determined under the other simpler processes provided for under this Bill. The separate applications cannot proceed until all the application requirements are met for each "new" application.

Clause 347 provides that if the applicant requests, the lease application can be considered as two applications so that they can be considered under different parts of the Chapter stated in this clause, or for them to be considered separately under the Chapter stated in this clause and this Chapter.

Clause 348 requires the petroleum lease applicant to notify the coal mining lease or oil shale mining lease holder of the petroleum lease application.

Clause 349 requires the coal mining lease or oil shale mining lease holder to negotiate with the petroleum lease applicant, and make reasonable attempts to reach a coordination arrangement, providing it is technically and commercially feasible for the coal mining lease or oil shale mining lease holder to reach an arrangement. While the coal mining lease

or oil shale mining lease holder is obligated to negotiate to see if an agreement can be reached, there is no obligation to reach an agreement.

Clause 350 sets out the additional requirements for the grant of the petroleum lease. The lease can only be granted if the lease applicant has reached agreement with the mining lease holder (and thus the mining lessee consents to the grant of the petroleum lease). The agreement in the form of a coordination arrangement must be approved by the Minister. The mining lease holder must have also agreed with the proposed safety management plan for the petroleum lease. In order that applications do not remain unresolved for excessive periods, if the requirements of this clause are not met, or if there are no reasonable prospects for a coordination arrangement to be made, the Minister may refuse the application.

Division 3—Petroleum lease application by or jointly with coal mining lease holder or oil shale mining lease holder

Clause 351 provides that this division applies where a petroleum lease is applied for over a prior coal mining lease or an oil shale mining lease by, or jointly with, the coal mining lease or an oil shale mining lease holder. This covers the situation where the holder of a mining lease for coal is applying for a petroleum lease to commercialise the mining of incidental coal seam gas or where a mining lease holder with the mineral "hydrocarbon" wishes to gain greater rights with respect to commercialising gas from the lease.

Clause 352 provides for the right of the person, to whom this division applies, to apply for a petroleum lease. No prior authority to prospect is needed.

Clause 353 makes additional requirements for a petroleum lease application under this division. These additional requirements include a CSG statement and an initial development plan that complies with both the initial development plan requirements proposed for this Bill, and the additional coal seam gas development plan requirements detailed in this Chapter.

Clause 354 makes provisions for when a petroleum lease application is made over land which is not within the tenure area of a coal or oil shale mining tenement. In this case, the petroleum lease application may be separated, into two applications so that the application that covers land not in a coal or mining tenement is determined only under the simpler processes of the Chapter detailed in this clause. The separate applications

cannot proceed until all the application requirements are met for each "new" application.

Clause 355 provides that if the applicant requests, the lease application can be considered as two applications so that they can be considered under different parts of the Chapter detailed in this clause, or for them to be considered separately under the Chapter detailed in this clause and this Chapter.

Clause 356 provides for a "right to grant". The lease will be granted if the relevant requirements for the grant of petroleum leases have been met and the conditions of the coal or oil shale exploration tenement have been substantially complied with.

Where the tenure area of the petroleum lease overlaps with the tenure area of an existing authority to prospect, the lease is limited such that the authority holder's written agreement is needed to carry out any authorised activity other than the extraction of incidental coal seam gas.

Clause 357 provides for additional matters that must be considered when determining the provisions of the lease. These include the development plan and the provisions for the relevant mining lease. Where the land of the petroleum lease will include land for an authority to prospect held by another party, the interests and any development proposals of that party and the likelihood of any agreement about coordinated development of all the petroleum in the land must also be considered.

PART 4—ADDITIONAL PROVISIONS FOR AUTHORITIES TO PROSPECT AND DATA ACQUISITION AUTHORITIES

Division 1—Grant of authority to prospect in area of coal or oil shale exploration tenement

Clause 358 allows for overlapping exploration tenements to be granted. That is exploration permits for coal or oil shale under the *Mineral Resources Act 1989* and authorities to prospect under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*. The clause also provides that if a coal or oil shale exploration tenement holder

has already commenced an authorised activity in their tenement, then an authority to prospect holder cannot interfere with, or adversely impact on, the carrying out of that activity.

Division 2—Restriction on authorised activities on coal mining lease or oil shale mining lease land

Clause 359 provides that this division applies when land within the area of a coal mining lease or oil shale mining lease is in the area of an authority to prospect, or is subject to a data acquisition authority.

Clause 360 provides that an authority to prospect holder or a data acquisition authority holder can only undertake authorised activities on their authority, on any land of an overlapping mining lease only when the coal mining lease or oil shale mining lease holder has agreed in writing to the activity.

Division 3—Exception to automatic area reduction of authority to prospect on grant of petroleum lease

Clause 361 ensures that an authority to prospect held by another party is not automatically reduced, if a petroleum lease was granted to the holder of a coal mining lease or oil shale mining lease for the purposes of commercialising coal seam gas. This ensures that the authority to prospect holder is still able to negotiate with the coal mining lease holder or oil shale mining lease holder with respect to the grant of a future petroleum lease and agree to the extraction of more than incidental coal seam gas.

Division 4—Conditions

Clause 362 requires an authority to prospect holder to notify the coal or oil shale exploration tenement holder (or coal or oil shale exploration tenement applicant) of the grant of an authority to prospect, which overlaps the tenement within 20 days of the tenement being granted.

Clause 363 makes the obligations for consultation and negotiation and other relevant matters in the *Mineral Resources Act 1989* conditions of the

authority to prospect which the authority to prospect holder must comply with.

PART 5—ADDITIONAL PROVISIONS FOR PETROLEUM LEASES

Division 1—Restriction on authorised activities for particular petroleum leases

Clause 364 provides that where a petroleum lease has been granted under the Bill for the purposes of commercialising coal seam gas on a coal mining lease and the petroleum lease is within the tenure area of an authority to prospect that is held by someone other than the petroleum lease holder, the petroleum lease holder may only conduct authorised activities on the overlapping land with respect to incidental coal seam gas. This would mean in the case of petroleum lease granted to the holder of a mining lease for coal, the holder would have the ability only to undertake activities in relation to incidental coal seam gas. However, in the case of a mineral "hydrocarbon" mining lease a transitional provision will apply and the holder would be able to undertake authorised activities with respect to all coal seam gas.

In the case of the mining lease for coal or oil shale the authorised activities are also limited to a defined area described as the mine working envelope. This includes past mine workings, current mine workings and mine workings scheduled to be mined within the next 5 years. This restriction is intended to provide a clearer basis of gas rights to facilitate negotiation between the authority to prospect holder and the coal mining lease holder about coordinated development of all petroleum and coal.

The clause also provides that the restriction does not apply if the written consent of the authority holder is provided. This allows the authority to prospect holder and the mining lease holder to negotiate and reach agreement about extracting all the gas or petroleum from the lease. The Bill does not allow for an additional petroleum lease to be granted over an existing petroleum lease, rather it is expected any consent provided by the authority to prospect holder under this clause would be subject to separate commercial agreements or perhaps a sublease arrangement.

Division 2—Conditions

Clause 365 provides that where a petroleum lease is granted over land in the tenure area of a coal mining lease or oil shale mining lease (and the application for this petroleum lease was not made with the mining lease holder), there must always be a relevant coordination arrangement in place. All holders must be party to the coordination arrangement, and that if there ceases to be a relevant coordination agreement in place, no authorised activities can be carried out on the petroleum lease.

Clause 366 provides that the obligation to negotiate with the coal or oil shale mining lease applicant under the *Mineral Resources Act 1989* is a condition of the petroleum lease, to which the petroleum lease holder must comply.

Clause 367 provides that where there is a relinquishment condition on a petroleum lease and the relinquishment is made, that a relinquishment report must accompany the relinquishment notification. This clause also provides that a copy of the relinquishment report must be given to the relevant coal or oil shale exploration tenement holder and anyone else who has applied for a coal mining lease or oil shale mining lease over that part being relinquished.

Clause 368 provides that where there is a relinquishment condition on a petroleum lease, the condition no longer applies if that area of land is no longer within an overlapping coal or oil shale exploration tenement.

Division 3—Amendment of relinquishment condition by application

Subdivision 1—Preliminary

Clause 369 provides that this subdivision applies if a petroleum lease has a relinquishment condition and there is an overlapping coal or oil shale exploration tenement over part or all of the area of the petroleum lease.

Subdivision 2—Making application to amend relinquishment condition

Clause 370 provides for the petroleum lease holder to apply to the Minister to amend the relinquishment condition on their lease. An

application to amend can only be made if consultation has already been undertaken with the coal or oil shale exploration tenement holder, and that reasonable provisions (where they are technically and commercially feasible to do so) have been incorporated into the relinquishment application and development plan.

Clause 371 requires the coal or oil shale exploration tenement holder to negotiate with the petroleum lease holder, and make reasonable attempts to reach agreement about the proposed changes such that the best resource utilisation outcome is achieved without significant impact or other parties rights or interests.

Clause 372 details the requirements of an application by the petroleum lease holder to amend the relinquishment condition for their lease. These include a CSG statement, whether the current development plan has been undertaken, a later development plan, results of the consultation undertaken with coal or oil shale exploration tenement holder and whether their proposals have been included in any later development plan.

Clause 373 requires the applicant to give a copy of the application to the coal or oil shale exploration tenement holder immediately after making the application.

Subdivision 3—Deciding amendment application

Clause 374 provides for submissions to be made by the coal or oil shale exploration tenement holder, about the application by the petroleum lease holder to amend the relinquishment condition for their lease. The tenement holder must provide a copy of their submission to the applicant. The Minister will have regard to the exploration tenement holder's submissions when deciding this application.

Clause 375 provides for the Minister to require further negotiation between the petroleum lease holder and the coal or oil shale exploration tenement holder, to come to an agreement about the changes proposed in the application by the petroleum lease holder to amend the relinquishment condition for their lease. The applicant must use all reasonable attempts to comply with this negotiation requirement and if they do not the Minister may refuse the application. No appeal has been provided as the Minister will have already provided an opportunity for further negotiation and for the two parties to reach agreement.

Clause 376 sets out the matters the Minister must consider in deciding the application by the petroleum lease holder to amend the relinquishment condition for their lease. These include whether the petroleum lease holder has taken all reasonable steps to comply with the relinquishment condition. It is intended that the amendment of relinquishment condition for a petroleum lease would only be approved if there were very good reasons for the relinquishment not being met (such as if the resource is still being commercially produced or production has been delayed by *force majeure* reasons). The impact of any delay or change in relinquishment on the development of the coal or oil shale resource should be carefully considered.

Division 4—Restriction on amendment of other conditions

Clause 377 provides for the Minister, when amending the conditions of a petroleum lease, to consider the interests of any coal or oil shale mining tenement holder.

Division 5—Renewals

Clause 378 provides for the petroleum lease renewal application process to follow the petroleum lease application process, but only in relation to the consultation and information provisions. The preference decision (that is, the determining of whether the priority is given to the petroleum lease application, or given to the development of the coal or oil shale resource) undertaken at grant, is not redone at renewal.

Division 6—Restrictions on particular transfers

Clause 379 restricts, in certain circumstances, the approval of the transfer of a holding in a petroleum lease. Where land in the tenure area of a petroleum lease, is also land within the tenure area of a coal mining lease or oil shale mining lease, the transfer of a holding in the petroleum lease, cannot be approved unless the new party is a party to a coordination arrangement. This provision is included because it is a fundamental principal of the coal seam gas regime that overlapping petroleum leases

and coal mining leases or oil shale mining leases can only co-exist over the same land where there is agreement between each and all of the parties.

PART 6—ADDITIONAL PROVISIONS FOR DEVELOPMENT PLANS

Division 1—Additional requirements for proposed initial development plans

Clause 380 provides details on the function and purpose of development plans for petroleum leases.

Clause 381 provides that a proposed initial development plan for a petroleum lease is to include a statement about how the interests of any coal or oil shale exploration tenement holder have been considered, with regard to the purposes of the coal seam gas regime and the CSG assessment criteria that have not already been addressed. It is intended that the proposed activities should not adversely impact on the rights and activities of any overlapping or adjacent tenure or tenure holder.

Clause 382 requires that activities proposed under an initial development plan for a petroleum lease are to optimise petroleum production in a safe and efficient way. Activities must not adversely affect the future safe and efficient mining of a mineable coal seam where it is commercially or technically feasible to do so. The use of the word "commercial" in this context is from a whole of lease/project perspective, not a particular activity. It is expected that to meet these requirements there could be some additional commercial cost or change required in the activities proposed in the development plan arising from compliance with the safety provisions of the Bill and relevant regulations which may impose greater requirements on the activities of operating plant.

Clause 383 provides that where there is a coincidental petroleum lease and a coal mining lease or oil shale mining lease (that is, where a coordination arrangement has been reached between different lease holders), the development plan for the petroleum lease must be consistent with both the development plan for the coal mining lease or oil shale mining lease, and the coordination arrangement relating to the coincidental land.

Division 2—Additional development plan criteria for proposed later development plans

Clause 384 sets out what the Minister must consider when deciding to approve a later development plan for a petroleum lease, and the tenure area of the petroleum lease includes whole or part of the tenure area of a coal or oil shale mining tenement. The criteria to be considered include the CSG assessment criteria and the effect on the relinquishment condition for the lease if the later development plan is approved.

PART 7—ADDITIONAL PROVISIONS FOR SAFETY MANAGEMENT PLAN

Clause 385 provides that where a petroleum lease application is accompanied by a CSG statement (which includes a proposed safety management plan), the deciding of the lease application, or the granting of the lease, does not remove the obligations of the lease holder to have a safety management plan in place for the lease. The deciding of the application, or the grant of the lease, is not intended to suggest any acceptance of the plan, and is not evidence that a safety management plan complies with the relevant provisions of the Bill. The relevant safety provisions of this Bill still apply.

Clause 386 states the obligations of an operator who is operating, or proposes to operate, plant (for example, an exploration or production drilling rig) for the obtaining of petroleum. The operator, in finalising the safety management plan proposed for the obtaining of the petroleum, must consult with any relevant coal or oil shale mining tenement holder, and have regard to their views about the effect the obtaining of petroleum will have on the safe and efficient mining of coal or oil shale. It is intended that this consultation must occur with any coal or oil shale mining tenement holder that will be affected, and may include adjacent tenement holders, not just those where there is a direct overlap. It is intended that any reasonable provisions the tenement holder suggests should be incorporated into a safety management plan where it is commercially or technically feasible to do so. Again, if this clause is complied with, it is not intended to suggest any acceptance of the plan and is not evidence that a safety management plan complies with the relevant safety provisions of the Bill.

Compliance with the safety provisions of the Bill and relevant regulations may impose greater requirements on the activities of operating plant.

Clause 387 provides for the chief inspector to resolve any dispute about the reasonableness of a provision proposed by the coal or oil shale mining tenement holder for the operator's proposed safety management plan. The clause provides a process for the dispute to be settled including lodging submissions with the chief inspector. The section explicitly states that the chief inspector's decision is not evidence that a safety management plan complies with the relevant safety provisions of the Bill, and it is not intended to suggest any acceptance of the proposed safety management plan.

Clause 388 allows the inclusion of additional requirements for safety management plans where the activities of an operating plant may adversely affect the safe and efficient mining of a mineable coal seam. These additional requirements include details of the activities proposed for the obtaining of petroleum, that may have a possible impact on the safe and efficient mining of coal seams, the proposed measures to be taken to lessen these impacts, and an assessment of the potential risks to the safe and efficient mining of coal seams caused by obtaining petroleum. The proposed measures must comply with good industry practice and any standards or protocols prescribed under a regulation. These may be described in regulation. This clause also provides that mineable coal seams will be defined by regulations.

Clause 389 provides that the operator need not comply with a stated requirement (or part of a requirement) arising from the previous clause with respect to a particular tenure (or part of a tenure) or a particular mineable coal seam. The clause allows for a conservative definition of a mineable coal seam to be set under the proposed regulations, and provide an exemption provision as a practical mechanism for affected parties to exclude certain defined coal seams that may be unintentionally captured under the proposed definition, due to the difficulty of finding an appropriate universal definition.

The clause provides for the Minister to seek submissions from any affected coal or oil shale exploration tenement holder.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is an absence of appeal rights if the decision is to refuse the exemption from additional requirements for a safety management plan. These additional requirements for a safety management plan apply to an operating plant used to explore for, extract, produce or release petroleum. There should be no appeal against not

allowing an exemption to these requirements, as the integrity of the safety management plan must not be jeopardised. Doing so may place an unnecessary risk on the health and well being of the workers at the operating plant used to explore for, extract, produce or release petroleum, and adversely affect the safe and efficient mining, or future mining, of mineable coal seams.

PART 8—CONFIDENTIALITY OF INFORMATION

Clause 390 provides that the division applies where a tenure holder gives another tenure holder information as a result of requirements of this Part subject to any agreement the holders may have.

Clause 391 provides that where a tenure holder gives another tenure holder information as a result of requirements of this Part, this information must not be disclosed to anyone else and can only be used for the purpose for which it was given, unless the consent of the other holder is given. A tenure holder can only use the information for the purposes it was given under this Part and may not use the information for commercial gain.

Clause 392 confirms that it is intend that the obligation in the preceding section is a statutory duty and that civil remedies should be sought if the confidentiality obligations are not met.

CHAPTER 4—LICENCES

PART 1—SURVEY LICENCES

Division 1—Key authorised activities

Clause 393 identifies that the purpose of this division is to allow access to land for surveying activities that involve minimal impact on or disturbance of the land.

Clause 394 identifies the rights under a survey licence for the purpose of the location of a pipeline or petroleum facility and associated access routes, subject to compliance with relevant provisions of the Bill. These rights are non-exclusive and as such means multiple licences may be authorised for the same area of land. This should not concern owners or occupiers of land as the holder of the survey licence must give an entry notice and the compensation provisions also apply. In the case of public land (with the exception of roads where a notice of entry is sufficient), the licence holder must not carry out an authorised activity without the written approval of the public land authority.

Though the licence is non-exclusive, it is unlikely that several companies would want to survey exactly the same area of land. However, it is important to retain this non-exclusivity as it ensures that the most practicable pipeline route may be assessed without restrictions.

Division 2—Obtaining survey licence

Clause 395 provides for the application for a survey licence, the information to be contained in the application form and for a prescribed application fee to be paid. The information provides a clear statement of the purpose for which the application is being made and the area of the application for the licence. The information can be used by the Minister in deciding conditions for the licence.

Clause 396 provides for the Minister's decision whether to grant the survey licence. The survey licence is to specify its area and term, and may

be subject to conditions. The maximum term for a survey licence is 1 year as this should be sufficient to determine the route of a pipeline or suitability of land for a petroleum facility. If additional time is required, a further survey licence may be applied for. The licence may exclude or restrict the carrying out of an authorised activity for the licence.

Clause 397 provides for the criteria for the deciding the application for a survey licence.

PART 2—PIPELINE LICENCES

Division 1—Key authorised activities

Subdivision 1—Preliminary

Clause 398 states that this division provides for the key authorised activities for pipeline licences and clarifies that, subject to compliance with relevant provisions of the Bill, authorised activities may be carried out despite the rights of an owner or occupier of land on which they are exercised. The holder of the pipeline licence must give an entry notice and the compensation provisions also apply. In the case of public land (with the exception of roads where a notice of entry is sufficient), the licence holder must not carry out an authorised activity without the written approval of the public land authority.

Clause 399 defines "pipeline land" for pipeline licences. Pipeline land is land where the holder of the licence has obtained an interest in the land to allow for ongoing access, that is ownership or an easement, or has been granted a permission to enter land to exercise rights under a pipeline or petroleum facility licence. Under this Part, the holder of a pipeline licence is required to obtain such an interest in the land owing to the long life of a pipeline. The grant of a pipeline licence does not create an interest in the land sufficient to allow for the construction of the pipeline.

Subdivision 2—General restriction on authorised activities

Clause 400 addresses the coordination of activities where a pipeline licence is granted over an area that is already in the area of a mining lease. The holder of the pipeline licence may only carry out an authorised activity for the licence if there is an established agreement with the holder of the mining lease in relation to that activity.

Subdivision 3—Pipeline construction and operation

Clause 401 generally authorises the holder of a pipeline licence to construct and operate the pipeline on land subject to a licence, which is pipeline land, or public land in the area of the licence.

Clause 402 provides for extension of the right to construct and operate a pipeline for transportation of another substance if the substance has been prescribed by regulation. It may be considered that there is a breach of a fundamental legislative principle triggered by this clause allowing such substances to be prescribed by regulation. However, the scope of the prescription is limited as a substance can only be prescribed if the substance is similar to petroleum and is suitable for transportation by the pipeline. It is envisaged that this provision may be utilised to enable petroleum products, such as aviation fuel, to be transported by the pipeline even though the gas is not within the definition of "petroleum" as it does not "occur naturally in the earth's crust".

Clause 403 provides for incidental activities that may be undertaken if reasonably necessary for the construction and operation of a pipeline.

Division 2—Availability of pipeline licences

Clause 404 provides for the types of pipeline licences, being an area, or point-to-point licence. An area licence is to be granted in the case where the holder will have on ongoing need to construct pipelines. For example, the holder of several petroleum leases may apply for an area pipeline licence to allow for the construction of pipelines to connect on these leases, to enable petroleum to be transported to a central processing plant. A point-to-point pipeline licence is required if only one pipeline is to be constructed or if the pipeline is a transmission pipeline. Transmission

pipelines represent major infrastructure associated with the transportation of petroleum and their location can bring many benefits to the regions through which they are constructed. These pipelines are to be licensed individually to ensure that they bring the maximum benefit to the State.

Clause 405 enables a pipeline licence to be granted for all pipelines other than those licensed under the *Gas Supply Act 2003*.

Clause 406 enables a pipeline licence to be granted over any land including land subject to another petroleum authority. A pipeline licence does not confer any rights in respect of the right to explore or produce petroleum. The ability to construct a pipeline across any land ensures that a pipeline can be constructed to cross land subject to exploration and to link petroleum leases and petroleum facilities to markets.

Division 3—Obtaining pipeline licence

Subdivision 1—Applying for pipeline licence

Clause 407 provides for who may apply for a pipeline licence. A licence cannot be granted for area pipelines in more than one area or for more than one point-to-point pipeline. Individual applications can be submitted for licences to cover all the pipelines sought to be constructed and operated.

Clause 408 provides for the applicant for the pipeline licence to give application details to each relevant local government. The construction of a pipeline may involve a significant movement of materials through a local government area. The supply of the application details will give the relevant local government an indication of the location of and likely impacts of the construction of the pipeline.

Clause 409 provides for the details of the application. The information being requested is consistent with the information to be used to decide the application and includes the location of the pipeline, the substances to be transported, the nature and extent of the activities to be carried out and, for specified pipelines, the proposed completion day for the pipeline. Information is also required on how and when the applicant proposes to consult with, and keep informed, owners and occupiers of affected land and, where any land is in the area of another petroleum authority or a mining interest, possible impacts of authorised activities under the licence on authorised activities under the other petroleum authority or on mining under the mining interest. The prescribed application fee is also to be paid.

Subdivision 2—Deciding pipeline licence application

Clause 410 authorises the Minister to grant a pipeline licence if a person is an eligible person, the relevant environmental authority for activities under the licence has been issued, and may require the payment of security and licence fee for the first year.

Clause 411 requires the Minister not to grant a pipeline licence unless an appropriate public notice has been published. The publication of a public notice and the ability to make a submission is intended to identify particular issues in relation to construction and operation of the pipeline. The ability to make a submission is in recognition of the possible long-term impact that a pipeline may have on a landowner and community.

Clause 412 provides for the provisions of a pipeline licence, including its term and area of the licence, and completion date for specified pipelines. Other conditions and provisions may be specified provided they do not conflict with mandatory conditions or environmental conditions of environmental authorities for the authorised activities under the licence. The licence may exclude or restrict the carrying out of an authorised activity for the licence.

Clause 413 enables the Minister to insert a clause allowing for the takeover of a pipeline. This clause cannot be inserted unless an appropriate tender process has been carried out and there is a contract between the State and the party for the imposition of the condition. A tender process for a pipeline will only be conducted for major pipelines to be constructed in the State. The imposition of the takeover condition is to ensure that the pipeline can be taken over to ensure that a timely completion of the project and to minimise any possible disruption to the public and industry.

Clause 414 provides for the reduction of the area of the licence upon completion of the pipeline. The area of a pipeline licence, when initially granted, will consist of a corridor several kilometres wide. This corridor enables the pipeline to be optimally sited when considering conditions associated with its construction and operation. The final position of the pipeline can only be determined when construction has, or is about to be, completed. "Pipeline land" is acquired for the areas necessary for the pipeline. The licence holder is not interested in land outside the pipeline land or public land required for the operation of the pipeline and therefore the area of licence can be reduced to only the pipeline land and such public land. This clause allows for this reduction to occur.

Clause 415 provides for the criteria that must be considered in deciding the application. The applicant's technical and financial resources and ability to capably, competently and safely manage the construction and operation of the pipeline are key criteria deciding the capability of the applicant. The appropriateness of each pipeline for its proposed uses, the location of the pipeline area proposed and likely impact on authorised activities under the licence on activities under any other petroleum authority or on mining interest and the public interest are important in ensuring licence conditions are appropriate.

Clause 416 provides that, if the licence is not granted, the applicant is to be given an information notice of the refusal.

Division 4—Key mandatory conditions for pipeline licences

Clause 417 provides for the operation of this division. Key mandatory conditions are the most important of all conditions and the failure to comply with any of these conditions is considered to be a major non-compliance.

Clause 418 requires the holder of a pipeline licence to consult with the owners and occupiers of land in the licence area about the carrying out of activities. This consultation is intended to keep the owners and occupiers informed of the timing and extent of authorised activities to be undertaken on the land and thereby assist in the development of good landholder relations. This clause does not exempt the holder of the pipeline licence from the need to comply with provisions relating to notice of entry and compensation in relation to the authorised activities.

Clause 419 provides an obligation to complete the construction of the pipeline on or before any completion day stated in the licence. This obligation is to ensure that for all licences the pipeline is actually constructed by the specified time. A pipeline licence for which there has been a failure to construct the pipeline by the completion day is likely to be cancelled.

Clause 420 requires a pipeline licence holder to give notice to the department of completion of the construction of the pipeline. This notice must provide information such as the date of completion of the pipeline and details about the pipeline land and public land required. The notice is to be accompanied by the handling fee to record the information, as prescribed under a regulation.

Clause 421 requires a pipeline licence holder, within 6 months after completing the pipeline, to give the public road authority for the road accurate details of the location of the pipeline and to keep complete and accurate records of the location of the pipeline. It is important that there is public or available information on the location of such pipelines.

Clause 422 places an obligation on the holder to maintain and use the pipeline and that the pipeline must not remain unused for a period of more than 3 years unless the Minister otherwise agrees. Any pipeline not used for a period of 3 years should be decommissioned and the licence surrendered. In the case where a pipeline may have a future use, the Minister may agree to the pipeline remaining unused but the pipeline will have to be maintained in a state enabling it to be readily brought back into use.

Clause 423 requires the payment of the annual licence fee.

*Clause 4*24 imposes a civil penalty of 15 per cent for the nonpayment of the annual licence fee. The civil penalty is intended to provide an incentive for the timely payment of the fee.

Division 5—Amendment of point-to-point pipeline licences after pipeline completed

Clause 425 provides for amendment of a point-to-point pipeline licence to reduce its area to the pipeline land for the licence and any specified public land in the area of the licence. The area of a pipeline licence, when initially granted, will consist of a corridor several kilometres wide. This corridor enables the pipeline to be optimally sited when considering conditions associated with its construction and operation. The final position of the pipeline can only be determined when construction has, or is, about to be completed. "Pipeline land" is acquired for the areas necessary for the pipeline. The licence holder is not interested in land outside the pipeline land or public land required for the operation of the pipeline and therefore the area of licence can be reduced to only the pipeline land and such public land. This clause allows for this reduction to occur.

Division 6—Provisions for public land authorities

Subdivision 1—Public roads

Clause 426 requires conditions imposed by a public road authority about the alignment for a pipeline, to be reasonable in relation to the protection of the pipeline and its location in respect of the road. This provision is to ensure that reasonable conditions in relation to the location of the pipeline are imposed and that the imposition of conditions is not used as a means to hinder the construction of the pipeline.

Clause 427 requires the road authority to give the pipeline licence holder a notice of the details of any proposed road or change to a road likely to affect the safety, location or operation of the pipeline. This provision is intended to identify potential impacts of road construction on the operation or safety of the pipeline before the road is constructed or changed. The road authority must consider any submissions lodged by the holder and if the authority decides to implement the proposal, must give the holder notice of the decision.

It may be considered that there is a breach of fundamental legislative principles triggered by this clause. The original placement and construction of the pipeline on the road, or future road, was a business risk that the pipeline licence holder would have identified, been aware of, and accepted at the time of the construction of the pipeline. This clause provides for a consultation process between the road authority and a pipeline licence holder for a constructed pipeline; the road authority having to give the licence holder a notice about the construction of, or change to, the road. The road authority must also consider any submissions made by the licence holder before such construction or change to the road is implemented. Absence of an appeal is a reflection of the road authority's original presence on the land.

Clause 428 provides for the costs associated with the pipeline resulting from the construction of the road. This provision provides for the later party to pay the costs. The principle incorporated into this section is for the party present first not to bear the costs resulting from the activities of the later party.

Clause 429 provides for the road authority to give accurate and complete information in respect to the permanent level of a road. This information is to assist the pipeline licence holder constructing a pipeline to minimise any possible impact resulting from later activities associated with the road.

Clause 430 enables the licence holder to construct the pipeline even if the road authority does not provide the information in relation to the permanent level of the road. This clause ensures that pipeline construction can occur if the information is not available but the construction is to be undertaken in accordance with the standards prescribed under the Bill.

Subdivision 2—Works directions

Clause 431 provides for a public land authority to be able to impose a condition in relation to the construction of the pipeline (works direction). The ability of the public land authority to impose a condition ensures that impacts associated with pipeline construction can be properly managed. The requirement that any works direction must comply with any standard prevents the public land authority imposing unreasonable conditions on the pipeline licence holder. The holder is not able to appeal against a work direction.

Clause 432 requires a pipeline licence holder to comply with a works direction. If the holder does not comply with the works direction then the public land authority can undertake the work and the reasonable costs be recovered by the holder. This clause ensures that the works direction is carried out and the public land authority is not financially disadvantaged if it is required to undertake the work.

Division 7—Ministerial review of pipeline licence conditions

Clause 433 provides for the application of this division. This division applies only if a pipeline licence states a review day.

Clause *434* provides for the power to review conditions of a pipeline licence and the circumstances when conditions can be amended. Any amendment cannot be inconsistent with the mandatory conditions, which ensures that there is a standard approach to the setting of key conditions for the licence.

Clause 435 provides for a notice to be given if the Minister intends to amend the conditions of a pipeline licence. The pipeline licence holder has the opportunity to make a submission on the proposed amendment of conditions. The ability to make a submission is to ensure that all relevant

issues, likely to impact on the holder as a result of the amendment, have been identified and considered.

Clause 436 requires for the Minister to consider any submissions before making a decision and to provide an information notice about the decision. The provision of an information notice provides the holder with a right of appeal against the decision.

Division 8—Miscellaneous provisions

Clause 437 provides for a limitation on the pipeline licence holder's liability in relation to the failure of pipeline or the supply of gas not of a prescribed quality. In many cases, these issues are beyond the control of the licence holder and therefore, in those cases, the holder should not be considered liable for any cost, damage or loss.

It may be considered that there is a breach of fundamental legislative principles triggered by this clause. The restriction on the ability of an affected person to claim compensation is intended to make the transmission pipeline licence holder responsible for certain activities that are considered as being within the control of the holder. However, the failure to transport petroleum may have been the result of the petroleum not being supplied by the producer, rather than the faulty operation of the pipeline. Further, the holder should not be held responsible for the quality of fuel gas being transported by the pipeline, this being the responsibility of the producer of the petroleum. It is considered inappropriate for the pipeline licence holder to be held responsible in the certain listed situations, as these circumstances are beyond the holder's control and they could not have been prevented by a reasonable person in the holder's position.

PART 3—PETROLEUM FACILITY LICENCES

Division 1—Key authorised activities

Subdivision 1—Preliminary

Clause 438 provides for the key authorised activities for petroleum facility licences and clarifies that, subject to compliance with relevant provisions of the Bill, authorised activities may be carried out despite the rights of an owner or occupier of land on which they are exercised. The petroleum facility licence must give an entry notice and the compensation provisions also apply.

Clause 439 defines "petroleum facility land" for petroleum facility licences. Petroleum facility land is land where the holder of the licence has obtained an interest in the land to allow for ongoing access, that is ownership or an easement, or has been granted permission to enter provided for under the Part of this Bill titled "Permission to Enter Land to Exercise Rights Under a Pipeline or Petroleum Facility Licence" to construct and operate a petroleum facility. Under this Part, the holder of a petroleum facility licence is required to obtain such an interest in the land owing to the long life of a petroleum facility. The grant of a pipeline licence does not create an interest in the land sufficient to allow for the construction of the petroleum facility.

Subdivision 2—General restriction on authorised activities

Clause 440 addresses the coordination of activities where a petroleum facility licence is granted over an area that is already in the area of a mining lease. The holder of the petroleum facility licence may only carry out an authorised activity for the licence if there is an established agreement with the holder of the mining lease in relation to that activity.

Subdivision 3—Petroleum facility construction and operation

Clause 441 generally authorises the holder of a petroleum facility to construct or operate the petroleum facility on land which is petroleum facility land.

Clause 442 provides for incidental activities that may be undertaken if reasonably necessary for the construction and operation of a petroleum facility.

Division 2—Obtaining petroleum facility licence

Subdivision 1—Applying for petroleum facility licence

Clause 443 provides for who may apply for a petroleum facility. Many of the authorised activities to be undertaken under a petroleum facility licence can also be undertaken under a petroleum lease. If the facility is to be on land covered in part by a petroleum lease and other land, then the facility licence must be for all of the land and not for the part not covered by a petroleum lease. This is because a petroleum lease is for the production and associated processing of petroleum. When production ceases then the lease is to end. The presence of a petroleum facility licence will ensure that the facility can continue to operate after the petroleum lease ends.

Clause 444 provides for the applicant for the petroleum facility licence to give application details to each relevant local government. The construction of a facility may involve a significant movement of materials through the local government area. The supply of the application details is to give the relevant local government an indication of the location of and likely impacts of the construction of the facility.

Clause 445 provides for the details of the application. The information being requested includes the location, purpose of the petroleum facility and the nature and extent of the activities to be carried out. Information is also required on how and when the applicant proposes to consult with, and keep informed, owners and occupiers of affected land and, where any land is in the area of another petroleum authority, possible impacts of authorised activities under the licence on authorised activities under the other petroleum authority. The prescribed application fee is also to be paid.

Subdivision 2—Deciding petroleum facility licence application

Clause 446 authorises the Minister to grant a petroleum facility licence if a person is an eligible person, the relevant environmental authority for activities under the licence has been issued and may require the payment of security and licence fee for the first year.

Clause 447 provides for the provisions of a petroleum facility licence, including its term, area of the licence, and completion date for construction. Other conditions and provisions may be specified provided they do not conflict with mandatory conditions or environmental conditions of environmental authorities for the authorised activities under the licence. The licence may exclude or restrict the carrying out of an authorised activity for the licence.

Clause 448 provides for the criteria that must be considered in deciding the application. The applicant's technical and financial resources and ability to capably, competently and safely manage the construction and operation of the facility are key criteria deciding the capability of the applicant. The appropriateness of the facility for its proposed uses, the location of the facility area proposed and likely impact on authorised activities under the licence on activities under any other petroleum authority and the public interest are important in ensuring licence conditions are appropriate.

Clause 449 provides that, if the licence is not granted, the applicant is to be given an information notice. The holder therefore has a right of appeal.

Division 3—Key mandatory conditions for petroleum facility licences

Clause 450 provides for the operation of this division. Key mandatory conditions are the most important of all conditions and the failure to comply with any of these conditions is considered to be a major non-compliance.

Clause 451 requires the holder of a petroleum facility licence to consult with the owners and occupiers of land in the licence area about the carrying out of activities. This consultation is intended to keep the owners and occupiers informed of the timing and extent of authorised activities to be undertaken on the land and thereby assist in the development of good landholder relations. This clause does not exempt the holder from the need

to comply with provisions relating to notice of entry and compensation in relation to the authorised activities.

Clause 452 provides for an obligation to complete the construction of the facility on or before any completion day stated in the licence. This obligation is to ensure that for all licences the facility is actually constructed by the specified time. A facility licence for which there has been a failure to construct the facility by the completion day is likely to be cancelled.

Clause 453 places an obligation on the holder to maintain and use the facility.

Clause 454 requires the payment of the annual licence fee.

Clause 455 imposes a civil penalty of 15 per cent for the nonpayment of the annual licence fee. The civil penalty is intended to provide an incentive for the timely payment of the fee.

PART 4—TAKING LAND FOR PIPELINES AND PETROLEUM FACILITIES

Clause 456 enables the State to take land or an interest in land for carrying out authorised activities for a licence or proposed licence. The exercise of this power is subject to other provisions in this Bill.

Clause 457 restricts the taking of land to the minimum area needed and that the taking of the land is in the public interest. There cannot be other land that would be more appropriate to be taken.

Clause 458 sets out the process for taking of land. The constructing authority is the State and stated parts of the *Acquisition of Land Act 1967* are applied.

Clause 459 enables the State to recover the reasonable costs incurred in taking the land. The licence holder who is to receive the land from the State will pay the costs of taking the land, as it is the licence holder who benefits from the taking.

Clause 460 authorises a person to enter and assess the suitability of the land proposed to be taken. The authorised person is to report the findings to the Minister.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. This entry is similar to an entry, pursuant to section 115 of the *Electricity Act 1994* authorising, by gazette notice, an electricity entity (and its employees and agents) to enter onto land and remain on it for as long as necessary to decide the suitability of the land for the entity's proposed works. This clause's purposes are similar to this, except that each owner and occupier of the land is given a detailed notice about the entry to the subject land ten days before the actual entry is to occur. It should also be noted that the Minister's power under this Bill, to allow entry to land proposed to be taken, does not include the power to allow entry to a structure, or a part of a structure, used for residential purposes, without the consent of the occupier of the structure or part of the structure.

Clause 461 sets out the process for the giving of a notice of entry. The notice must identify the authorised person and provide details of the land and the purpose of the entry.

Clause 462 enables the State to transfer or sell the taken land to the holder or proposed holder of a licence.

PART 5—PERMISSION TO ENTER LAND TO EXERCISE RIGHTS UNDER A PIPELINE OR PETROLEUM FACILITY LICENCE

Division 1—Applying for and obtaining permission

Clause 463 enables an applicant for a pipeline licence or petroleum facility licence or a holder of either licence to apply for a permission to enter land to exercise rights under a pipeline or petroleum facility licence in the area of the licence. This entry is not subject to a warrant. The applicant for the permission, at this stage, has been unable to gain an easement or permission to enter from the owner, or buy the land to become the owner.

Clause 464 provides that the application for the permission must be in the approved form and accompanied by the prescribed fee. The applicant must in particular, state the steps undertaken to gain an easement ,or permission to enter from the owner, or buy the land to become the owner.

Clause 465 provides for a process of consultation with each affected land owner. It also enables the owner to lodge submissions about the application for a permission to be granted under this Part.

Clause 466 confirms that a change in the owner of the land does not mean the consultation process must re-commence. However, if the applicant is aware of a change in owner, the applicant must give the new owner a copy of the consultation notice.

Clause 467 authorises the Minister to grant a permission to enter land to exercise rights under a pipeline or petroleum facility licence after considering any land owner submission and after considering the appropriateness of the consultation between the affected parties. The Minister is able to impose conditions on the permission when it is granted.

It may be considered that there is a breach of fundamental legislative principles triggered by this clause. The approval by the Minister of a permission to enter land to exercise rights under the pipeline or petroleum facility licence gives notice to the landholder that this is the final step before the State may take the land. Negotiations between the licence holder and the landowner must have occurred, with a settlement about the licence holder acquiring the subject land being unlikely.

The applicant for this permission must state the steps taken to become the owner of the land, or be granted an appropriate easement to construct or operate the pipeline or petroleum facility, or obtained the permission of the owner of the land to enter the land to construct or operate the pipeline or petroleum facility. The Minister must also be satisfied that the area of the land is the minimum area needed to adequately carry out the activities for which it is taken, other land is not more appropriate for carrying out the activities and the taking of the land is in the public interest.

These provisions have been drafted to provide the maximum opportunity for a licence holder and a landowner to come to an agreement about the licence holder acquiring the subject land, before the licence holder applies for this permission. The approval of this permission allows the State to exercise its right in relation to the infrastructure required for the timely, efficient and safe development and transportation of the State's petroleum, while allowing for the determination of a route that is in the best interests of landholders and public land authorities. To allow a landholder an appeal would at the least, circumvent this, and at the most, prevent it outright.

Clause 468 provides the criteria to be used when deciding to grant a permission. The permission can only be granted if the Minister is satisfied that the consultation period has ended and the applicant has been unable to

acquire an interest in the land, or the owner of the land has agreed to the permission, or the owner of the land has given the applicant permission to enter the land. The Minister must also be satisfied that the site of the facility or licence is decided, and that the land is the minimum required and is suitable for the purpose.

Clause 469 provides that permission may include a statement that the State intends to resume the land within 9 months after the permission takes effect.

Clause 470 states when the permission has effect and requires the Minister to publish it in the gazette. This ensures a clear public record of the process and approval.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause owing to the absence of an appeal in relation to a refusal of this permission. This permission is to be granted in circumstances where the licence holder has not been able to obtain an interest in the land and the absence of the interest is, or has, the potential to affect authorised activities under a licence. The refusal to grant this permission does not limit the licence holder's ability to acquire an interest in the land or authorised activities under the licence. An appeal against a refusal is not warranted under these circumstances.

The rights of the owners and occupiers of land subject to this permission are protected, as the holder of the authority is subject to the requirement to give a notice of entry and to have a compensation agreement. The notice to the landowner of the grant of this permission may be accompanied by a notice that the State intends to resume the land. If the resumption proceeds, then the requirement for compensation is provided for under other provisions of this Bill.

Division 2—Effect and term of part 5 permission

Clause 471 confirms that land under the permission becomes pipeline land or petroleum facility land. However, a permission does not authorise activities. It is the grant of the licence that authorises relevant activities.

Clause 472 sets out the term of a permission. A permission is not ongoing and ends if the land becomes pipeline or petroleum facility land or the permission is cancelled, or 9 months has elapsed after its grant. If the State has given a notice of its intention to resume the land, then the permission continues until the land is taken or the taking is discontinued.

The continuation after the notice has been given is needed as the licence holder may have started activities on land the subject of the permission. Ending of the permission in those circumstances may have a significant imposition in relation to the authorised activities for the licence.

Clause 473 enables the Minister to cancel the permission at any time by giving its holder an information notice of the cancellation. The cancellation provides for a right of appeal.

PART 6—AMENDING LICENCE BY APPLICATION

Clause 474 allows a licence holder to apply to amend its licence. However, a proposed amendment cannot be inconsistent with a mandatory condition or environmental condition for the licence.

Clause 475 sets out the process for making an amendment application. The application is to be accompanied by the prescribed fee.

Clause 476 provides that if the application is to extend the area of a pipeline licence, then the applicant is required to give a notice to the relevant local government and for a notice to be gazetted. The same requirements for the grant of a pipeline licence are to be considered to ensure that there is a consistency of process in relation to the land to be covered by the pipeline licence.

Clause 477 authorises the Minister to grant the application. The Minister must in deciding the application, consider the decision making criteria for obtaining a licence. This ensures that the amendment is not inconsistent with the original intent or conditions of the licence without reasonable justification.

Clause 478 requires the giving of an information notice to the applicant. The holder therefore has a right of appeal.

PART 7—RENEWALS

Clause 479 enables a holder of a pipeline or petroleum facility licence to apply for renewal of their licence. An application for renewal must be made within stated times and cannot be made if there are outstanding matters related to the licence, for example, the annual fee.

Clause 480 sets out the process for making an application. The application must be made in the approved form and accompanied by the prescribed application fee. The application is required to state whether the licence holder has met all their reporting requirements in respect to the licence.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The late lodgement fee is proposed to encourage the timely submission of renewal applications, by authority to prospect holders, for possible grant by the Minister. The time for lodgement of a renewal application has been determined with a view to completing the necessary work of assessing, and granting or refusing the application before the expiry of the current term approved for the authority to prospect. The late lodgement of the renewal application greatly reduces the time for this. To discourage the late lodgement of renewal applications, and to reduce unnecessary increases in the Minister's and administering department's work loads, a late fee significantly greater than the lodgement fee is proposed. The authority to prospect holder has 40 business days, before the end of the current term of the authority to prospect, to submit the renewal application without incurring the proposed late fee. This is a reasonable timeframe for lodgement, considering the holder has known of this date since the grant of the licence. The department will also, as a matter of course, be sending out notices prior to the time for lodgement of the renewal application, advising of the requirement for lodgement, the times for submission, and the late fee payable if the renewal application is not submitted within stated timeframes.

Clause 481 ensures that if an application for renewal has not yet been decided the licence continues until the decision is made.

Clause 482 details when the Minister must grant the renewal. The details are that the licence holder remains capable, has substantially complied with the licence and a relevant environmental authority has been issued. This clause provides certainty to the pipeline licence holder in that subject to stated conditions, the Minister must grant the renewal.

Clause 483 enables the conditions of the renewed licence to be different (except for the inclusion of a takeover condition) from the existing licence. A renewed licence must also state its term. The ability to set new conditions ensures that the conditions for the authority remain relevant for the renewed term for the licence.

Clause 484 sets out the matters to be considered in deciding the renewal application. If the application is for the renewal of a pipeline licence and the applicant proposes to change the pipelines subject to the licence, then the criteria for the grant of the pipeline licence need to be considered. If there is to be a change to a petroleum facility, then the appropriateness of the configuration, design and construction methods for the change are to be considered. These criteria ensure that any changes are consistent with the purpose of the licence.

Clause 485 requires the giving of an information notice about the refusal. The holder therefore has a right of appeal.

Clause 486 provides that a refusal does not take effect until the end of the appeal period for the decision to refuse.

CHAPTER 5—COMMON PETROLEUM AUTHORITY PROVISIONS

PART 1—SECURITY

Clause 487 provides for the Minister to require security for a petroleum authority or a proposed petroleum authority. The minimum amount for each petroleum authority will be prescribed under a regulation. The security given ensures compliance with this Bill and any authority issued pursuant to this Bill, or secures any amounts payable by the holder, such as rent, penalties imposed for breaches and royalty to the State, under this Bill. The security may also be used to pay compensation to an owner or occupier of land, where the person authorised by the chief executive has entered this land to exercise remedial powers, and the owner or occupier of the land has suffered a cost, damage or loss because of the exercise of these remedial powers.

Clause 488 provides that the Minister may, at any time, require the prescribed amount of security from a petroleum authority holder (or proposed holder), in the prescribed form.

Clause 489 provides that the Minister may, at any time, require an increased amount of security from a petroleum authority holder. The procedure to require additional security involves the Minister giving the petroleum authority holder a notice stating the proposed requirement, and inviting the holder to make written submissions about the requirement within a stated period that must not be less than 20 business days.

The Minister must consider any written submission from the petroleum authority holder received within the stated period before making the requirement. This clause also states when this requirement takes effect.

Clause 490 provides for the State to keep any interest that accrues on cash securities given for petroleum authorities under this part.

Clause 491 provides for the State to use the security given for a petroleum authority and any interest accrued on cash securities, for matters detailed in this part.

Clause 492 provides that the Minister may, at any time and in a reasonable way, amend the amount of security to replenish any of the utilised security in order to maintain the determined security level for a petroleum authority, or may require another amount of security to be given for the petroleum authority.

Clause 493 provides that any security held for a petroleum authority remains as security for the petroleum authority and may be used by the State, irrespective of whether there has been a transfer of, or any change in, percentage holdings for the petroleum authority. The name of the holder of any unconditional financial institution security, or similar instrument, given as security for a petroleum authority, 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 petroleum authority that was noted in the register as being the last holder of the authority before it ended.

Clause 494 allows for the security given for a petroleum authority to be held for one year after the petroleum authority has ended. If there is a claim for an amount of this security and this claim has not been properly assessed, this claimed amount may be held until such time as the claim has been properly assessed.

PART 2—PRIVATE LAND

Division 1—Preliminary

Clause 495 describes the application of this Part.

Clause 496 provides that on private land in the area of a water monitoring authority, the holder of a petroleum tenure or of another water monitoring authority on the land, is taken to be an owner or occupier of the land for the purposes of this Part.

Division 2—Requirement for entry notice for entry to private land in area of petroleum authority

Subdivision 2—Requirement for entry notice

Clause 497 lists the restrictions on entry to carry out authorised activities. Authorised activities for petroleum authorities cannot be carried out on private land unless a notice (an "*entry notice*") has been given to each owner and occupier of the land at least 10 business days before the proposed entry.

However, a person may enter private land to carry out authorised activities without giving an entry notice, where the entry is required because of a dangerous or emergency situation that exists (or may exist) on the land proposed to be entered. In these circumstances, the person must, if practicable, notify each owner and occupier of the land orally before entering the land.

A person may also enter private land to carry out authorised activities without giving an entry notice, however each owner and occupier must agree to the entry with the person (called a "*waiver of entry notice*").

Clause 498 lists the requirements for a waiver of entry notice. The waiver of entry notice may be given only by signed writing and state that the owner or occupier has been told that it is not compulsory that they have to agree to the waiver, list the authorised activities proposed to be carried out on the land, the period of entry, and when and where on the land the activities are proposed to be carried out.

During the period of entry stated in the waiver of entry notice, the owner or occupier cannot withdraw the waiver of entry notice. The entry consent ceases to have effect after the period of entry stated in the waiver of entry notice.

Clause 499 outlines the required contents of an entry notice. Each of the following must be stated in an entry notice:

- the land proposed to be entered (generally described as lot-on-plan);
- the period of entry on the land (called the "*entry period*");
- the proposed authorised activities on the land stated in this entry notice;
- where (specifically on the land previously described) and when (specific periods within the previously identified entry period) the authorised activities are proposed to be carried out; and
- the contact details of the holder of the petroleum authority, or the contact details of a person authorised to discuss the matters stated in the entry notice.

The entry period cannot be longer than 6 months (where the entry notice is for an authority to prospect) or 12 months (where the entry notice is for any other petroleum authority) unless each relevant owner and occupier agrees in writing to a longer period.

Where an authorised activity proposed by a petroleum authority holder is unlikely to significantly disrupt the day-to-day activities the occupier of the land normally carries out on the land, the notice of entry requirements about proposed authorised activities (and where and when the authorised activities are proposed to be carried out) may be complied with by generally describing the nature and extent of the activities.

An information statement in the approved form, containing the rights and obligations of petroleum authority holders, occupiers and owners in relation to the entry of land under a petroleum authority, must be included with (or accompany) the entry notice.

Clause 500 provides for the chief executive to approve, in certain listed circumstances, the giving of an entry notice by publication.

In some cases, particularly those relating to certain authorised activities proposed under pipeline and survey licences, it is more practical for an entry notice to be given by publication, rather than having to give each owner and occupier the entry notice individually.

However, the chief executive must be reasonably satisfied that the publication of the notice is reasonably likely to adequately inform each of the owners and occupiers of land the subject of the entry notice, about the proposed entry, at least 10 business days prior to this entry occurring.

Where the chief executive has approved the giving of an entry notice by publication, the published entry notice must state where a copy of the information statement, which would normally have been included with or accompanied the entry notice, may instead be obtained or inspected free of charge.

Division 3—Access to private land outside area of petroleum authority

Subdivision 1—Preliminary

Clause 501 provides that the division applies to private land outside the area of the petroleum authority.

Subdivision 2—Access rights and access agreements

Clause 502 provides the right, the exercise of which is restricted, for a petroleum authority holder to cross land to access the holder's petroleum authority (called "access rights", with the land in question being called "access land"), or conduct certain activities on this access land to assist in the accessing of the holder's authority. These activities may include constructing a track or opening and closing gates.

Clause 503 provides when access rights may be exercised. These rights may be exercised only when the entry is required because of a dangerous or emergency situation that exists (or may exist). These rights may also be exercised only when a written or oral agreement (called an "access agreement") has been obtained about the exercising of the rights from each owner and occupier of the land (where a permanent impact on the land is likely to be made), or each occupier of the land (where a permanent impact on the land is not likely to be made). A definition of permanent impact on the land is detailed, and an example of a permanent impact given. An example of where a permanent impact on the land is not likely to be made is also detailed.

Clause 504 provides for an owner or occupier not to unreasonably refuse to make an access agreement. This clause also provides that an owner or occupier may make reasonable and relevant conditions part of the access agreement. If an access agreement is not made within 20 business days after the petroleum authority holder has asked the owner or occupier, the owner or occupier is taken to have refused to agree.

Clause 505 provides the principles to be applied in deciding whether access is reasonable. These include whether it is reasonably necessary for the holder to cross the land to allow entry to the petroleum authority, or carry out activities on the land to allow for the crossing of the land, or whether the owner or occupier has unreasonably refused to make an access agreement. The holder of the petroleum authority must first show that they cannot use formed roads as access. If the holder shows that they cannot use formed roads as access, consideration must be given to the nature and extent of any impact the exercise of the access rights will have on the land and the owner or occupier's use and enjoyment of it, and how, when and where and the period during which the authority holder proposes to exercise the access rights.

Clause 506 provides for the notice of entry provisions to apply to the entry of access land. However, any access agreement made may contain details about the waiver of this requirement or an alternative to this requirement. If an access agreement contains alternative provisions to the notice of entry provisions, the notice of entry provisions do not apply to the entry so long as the alternative provisions are in force. Access agreements may also contain compensation provisions in relation to the exercise of the rights, or future exercise of the access rights by the petroleum authority holder. It is also provided that this division does not limit an owner or occupier granting an authority holder a right of access to the land by other means, for example, by the grant of an easement.

Clause 507 provides that the access agreement binds all parties to it and each of their personal representatives. The agreement also binds all future holders in the title and all assigns.

Subdivision 3—Tribunal resolution

Clause 508 provides for any party to apply to the Land and Resources Tribunal. Any conditions imposed by the Land and Resources Tribunal about the exercise of the access rights are considered to be the access

agreement between the parties (where one does not already exist) or the conditions of the access agreement (where one already exits).

Clause 509 provides for the Land and Resources Tribunal, when applied to by a party to an access agreement, to vary any condition of an access agreement, providing there has been a material change in circumstances. This clause does not prevent the parties to an access agreement, by consensus, varying the access agreement.

Clause 510 provides that the Land and Resources Tribunal must have regard to particular matters when making a decision under this subdivision.

Division 4—Provisions for dealings or change in ownership or occupancy

Clause 511 states that a dealing with a petroleum authority (that is, a transfer or a mortgage) does not affect an entry notice, waiver of entry notice or access agreement given or made for a petroleum authority.

Clause 512 applies where there has been a change of occupancy or ownership after an entry notice has been given for a petroleum authority. In this case, the holder of the relevant petroleum authority is taken to have given a notice to the new owner or occupier, and the holder of a relevant petroleum authority is not required to give the new owner or occupier a notice at least 10 business days before entry. Also, the change of ownership or occupancy does not affect the entry period stated in the notice.

Where a waiver of entry notice has previously been given by a petroleum authority holder and agreed to by the owner and occupier of the subject land, and the ownership or occupancy of this land changes, the new owner or occupier is taken to have agreed to that waiver of entry notice.

When the holder of a relevant petroleum authority becomes aware that there has been a change to the occupancy or ownership of the land the subject of an entry notice or a waiver of entry notice, the petroleum authority holder must (within 15 business days of becoming aware of the change), give a copy of the entry notice or waiver of entry notice to the new owner or occupier.

If the holder does not give a copy of the entry notice or waiver of entry notice to the new owner or occupier within 15 business days of becoming aware that there has been a change to the occupancy or ownership of the land the subject of an entry notice or a waiver of entry notice, then the

allowances under the clause cease to apply, and the provisions of this Bill relating to entry consents and entry notices then apply.

Division 5—Periodic notice after entry of land

Clause 513 applies when a petroleum authority holder has entered private land to conduct authorised activities, or access land has been entered to exercise the rights over the land. The petroleum authority holder is required to give a notice about authorised activities conducted on the land and where these activities were carried out. If no authorised activities were conducted, the notice must state this fact.

This notice must be given to each owner and occupier of the land within 3 months after the end of those relevant periods stated in this clause for entry notices and waiver of entry notices.

PART 3—PUBLIC LAND

Division 1—Public Roads

Subdivision 1—Preliminary

Clause 514 states that this division does not apply to a petroleum authority 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 petroleum authority pursuant to Part 4, Division 7 of the *State Development and Public Works Organisation Act 1971*.

Clause 515 defines the meaning of notifiable road use for a petroleum authority and details “threshold rates”.

Subdivision 2—Notifiable road uses

Clause 516 provides for a notice to be given to a public road authority, by a petroleum authority holder, where the petroleum authority 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.

Clause 517 provides for a "road use direction" to be given to the petroleum authority 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.

This clause also provides that the road use direction may require the petroleum authority holder to carry out an assessment of the impacts likely to arise from the notifiable road use and to consult with the public road authority in carrying out the assessment. However, this clause also outlines when the assessment is not required.

Clause 518 provides for it to be a condition of the petroleum authority that the authority holder comply with the road use direction, unless there is a reasonable excuse.

Subdivision 3—Compensation for notifiable road uses

Clause 519 provides for compensation to be paid by a petroleum authority 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.

Clause 520 provides for the petroleum authority 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.

Clause 521 provides for the public road authority or the petroleum authority holder to apply to the Land and Resources Tribunal to decide the 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.

Clause 522 provides details about what the Land and Resources Tribunal must take into account when deciding a compensation liability.

Clause 523 provides for the public road authority or the petroleum authority holder to apply to the Land and Resources Tribunal to review the original compensation agreement between the petroleum authority holder and the public road authority, agreed to by these two parties or as determined by the Land and Resources Tribunal. However, there must have been a material change in circumstances since the agreement or decision.

This clause also outlines what 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 the Land and Resources Tribunal sees fit.

Clause 524 provides for it to be a condition of a petroleum authority 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 petroleum authority 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. This clause also provides that the written authorisation must be given for each renewal of the petroleum authority.

Clause 525 provides that the compensation agreement or decision about compensation liability binds all parties to it and each of their personal representatives. The agreement also binds all successors and all assigns.

Division 2—Other public land

Clause 526 provides details on when this clause applies. This clause also outlines when a petroleum authority holder requires the approval of the public land authority (called the "public land authority approval") to carry out authorised activities for the petroleum authority on public land, or cross public land to enter the petroleum authority. Further, the clause provides that the public land authority approval cannot be unreasonably withheld, and that if it is, the public land authority must give an information notice about the decision to refuse to the petroleum authority holder.

Clause 527 provides for a public land authority to impose conditions on a "public land authority approval" with certain restrictions. The conditions imposed by the "public land authority approval" cannot be irrelevant or unreasonable, or be a condition that is the same or substantially the same as, or inconsistent with, a condition of the petroleum authority or the relevant environmental authority for the petroleum authority. This clause also provides for the public land authority to give an information notice to the petroleum authority holder, if the public land authority sets a condition in the "public land authority approval" that has not been agreed to or requested by the petroleum authority holder.

PART 4—ACCESS TO LAND IN AREA OF ANOTHER PETROLEUM AUTHORITY OR A MINING TENEMENT

Clause 528 details when this Part applies. This Part applies to land outside the area of a petroleum authority (called "the first authority"), that is within the area of another petroleum authority or a mining tenement (called "the second authority"). This clause also provides that if this land is also private land or public land, then this Part does not limit the "*Private land*" or "*Public land"* provisions of this Chapter.

Clause 529 provides that when the holder of the first authority wishes to enter land within the area of a petroleum lease or mining lease, then the first authority holder must obtain the written consent of the petroleum or mining lease holder before entering the subject land. The first authority holder is then required to lodge a notice, with the office as stated in this clause, stating that the written consent of the mining or petroleum lease holder has been given.

Clause 530 provides for when the holder of the first authority wishes to enter land within the area of a petroleum authority or mining tenement that is not a petroleum lease or mining lease (called the "second authority"). The first authority holder may cross the land or carry out activities on the land that are reasonably necessary to allow the crossing of the land to access the first authority, or carry out activities that are reasonably necessary to allow the crossing of the land to access the first authority (for example, opening a gate) providing the written consent of the second authority holder is first obtained. However, this clause also provides that the right to cross the land of the second authority, or the carrying out of

reasonable activities necessary to allow the crossing of the second authority, may only be exercised if it does not adversely affect the carrying out of an authorised activity for the second authority.

PART 5—GENERAL COMPENSATION PROVISIONS

Clause 531 provides that each petroleum authority holder is liable for compensation, to each relevant owner or occupier of private and public land (called an "eligible claimant"), for any compensatable effect the eligible claimant suffers because of authorised activities for the petroleum authority, or that is caused by the exercise of access rights over access land for the authority, or consequential damages the "eligible claimant" incurs because of a compensatable effect. This clause also outlines what a "compensatable effect" is, what a "relevant owner or occupier" is and what a "compensation liability" is. Note, however, that this clause does not apply for a public land authority in relation to a notifiable road use, or a compensatable effect caused by the exercise of an underground water right.

The intention of this clause, particularly in defining what is a compensatable effect, was to align it with, where possible, the compensation provisions of the *Mineral Resources Act 1989*. The *Mineral Resources Act 1989* provides for the Land and Resources Tribunal to settle the amount of compensation an owner of land is entitled to, as compensation for various things that may occur to the owner's land because of the activities proposed for the mining lease.

Clause 532 provides for the holder of the petroleum authority and an eligible claimant to enter into an agreement (called a "compensation agreement"). This agreement may relate to all or part of the compensation liability or future compensation liability of the petroleum authority holder to the eligible claimant. The clause outlines various matters that must be addressed in the compensation agreement, and various matters that may be addressed in the compensation agreement. This clause also provides that if the petroleum authority is a pipeline licence or a petroleum facility licence, that the compensation agreement may be included in the easement relating to the licence.

Clause 533 provides for either the eligible claimant or the petroleum authority holder to apply to the Land and Resources Tribunal to determine the compensation liability or future compensation liability to the eligible

claimant. The Land and Resources Tribunal can only determine the compensation liability or future compensation liability to the eligible claimant to the extent it is not already covered in a compensation agreement.

Clause 534 provides for either the eligible claimant or the petroleum authority holder to apply to the Land and Resources Tribunal to review the original compensation agreement if there has been a material change in circumstances. This clause also provides for the Land and Resources Tribunal to amend or confirm the original compensation agreement.

Clause 535 provides for the Land and Resources Tribunal to make appropriate orders it sees fit to enforce any decision made by it under this Part of the Bill, and may order monetary or non-monetary compensation.

Clause 536 provides that the holder of a petroleum authority (except a survey licence or a petroleum facility licence), must not enter private land unless the holder owns the land, or unless an eligible claimant for the land is a party to a compensation agreement with the authority holder, or an application has been made to the Land and Resources Tribunal for deciding a compensation agreement, or an emergency situation exists, or unless an eligible claimant for the land is a party to an agreement (called a "deferral agreement") that allows for a compensation agreement to be entered into after the entry. This clause also outlines details about the deferral agreement.

Clause 537 provides that the compensation agreement or the Land and Resources Tribunal decision about compensation binds all parties to it. The agreement or decision also binds all future successors and assigns and all future successors and assigns for the area of the petroleum authority until the authority ends.

PART 6—OWNERSHIP OF PIPELINES, EQUIPMENT AND IMPROVEMENTS

Division 1—Pipelines

Clause 538 provides for the application of this part to pipelines operated or constructed under a petroleum tenure or pipeline licence.

Clause 539 provides the circumstances when a pipeline is taken to be, or remains, the personal property of the holder of a petroleum tenure or pipeline licence.

Clause 540 outlines what happens to the ownership of the pipeline when the relevant pipeline licence or petroleum tenure ends, or the land on which the pipeline is constructed ceases to be in the area of the petroleum tenure or licence. The clause is also subject to any condition of the former petroleum tenure or any takeover or other condition of the former licence, and provides that if the pipeline is decommissioned, the petroleum tenure or licence holder, or former petroleum tenure or licence holder, may dispose of it to anyone else.

Division 2—Equipment and improvements

Clause 541 provides for the application of this Part to equipment taken on to, or improvements placed on, land in the area of a petroleum authority that is in force, and to equipment or improvements taken on or used for an authorised activity for a petroleum authority that is in force.

Clause 542 provides the circumstances when equipment or improvements is taken to be, or remains, the personal property of the holder of a petroleum authority.

PART 7—REPORTING

Division 1—Reporting provisions for petroleum tenures

Subdivision 1—General provisions

Clause 543 provides for the results of production testing on petroleum tenures to be submitted to the office stated in this clause, and within the timeframes stated in this clause.

Clause 544 provides for when a petroleum tenure holder makes a petroleum discovery, that the tenure holder must lodge a notice of discovery with the office detailed in this clause, within the timeframes

detailed in this clause. This clause also provides that the discovery notice must state the geological significance of the discovery.

Clause 545 provides for a relinquishment report to be submitted to the office stated in this clause, and in the timeframes stated in this clause. A relinquishment report provides details on areas relinquished (as required by the provisions of this Bill), or other areas of a petroleum tenure voluntarily surrendered (providing these areas do not consist of the whole of the area of a petroleum authority). The report must include details about the authorised activities for the petroleum tenure carried out in the relinquished or surrendered area, the results of these activities, and any other matters prescribed under a regulation.

Clause 546 provides for an end of tenure report to be submitted to the office stated in this clause and in the timeframes stated in this clause. An end of tenure report provides details on that area of the petroleum tenure that was within the petroleum tenure immediately before it ended (called the "relevant area"). The report must include details about the authorised activities for the petroleum tenure carried out in the relevant area, the results of these activities, and any other matters prescribed under a regulation. However, the end of tenure report need not contain details of, or the results, of activities for which a report has already been submitted to the relevant office under this Bill (for example, details of, or the results, of activities already provided within an annual report required under the provisions of this Bill).

Subdivision 2—Records and samples

Clause 547 provides for a petroleum tenure holder to keep records and samples (as prescribed under a regulation), obtained from authorised activities conducted within the petroleum tenure, for a period prescribed under a regulation. These samples or records may include such things as samples of core or fluid obtained from drilling activities, or the results of the analysis of these core or fluid samples).

Clause 548 provides for a petroleum tenure holder to lodge a record or sample (as provided for in the previous clause) to the office stated in this clause and in the timeframes stated in this clause. This clause also provides for the Minister to require the lodgement of more of a sample in the timeframes stated in this clause.

Subdivision 3—Releasing required information

Clause 549 provides a definition of "required information". "Required information" is information in any form, about authorised activities carried out under a petroleum tenure that the holder has lodged to comply with various provisions of this Bill. For example, records and samples submitted as required by the Bill.

Clause 550 provides for the chief executive to release any required information to the public, after the end of the confidentiality period (prescribed by regulation) has passed, irrespective of whether the petroleum tenure 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 petroleum tenure that is no longer within the area of the tenure.

For example, a well may have been drilled within a petroleum tenure and a well completion report about this drilling may have been submitted to the required office. Then, the area the well was drilled in was relinquished from the tenure. The chief executive may then, if the confidentiality period has not ended, release the report to the public.

Clause 551 provides for the chief executive to use any required information for purposes related to this Bill, irrespective of whether the petroleum tenure the required information relates to has ended or not. This is for the betterment of the geoscientific information available about the State.

Division 2—Reporting provisions for all petroleum authorities

Clause 552 provides for the lodgement of an annual report, containing information about all matters about the petroleum authority prescribed under a regulation. This annual report must be lodged with the office stated in this clause and in the timeframes stated in this clause. When a petroleum authority ends, this clause also provides that a report is required for the period from when the last annual report was due to be submitted to the office stated in this clause, to the end of the authority.

Clause 553 provides for a regulation, or the chief executive, for services to the State, to require a petroleum authority holder to keep (as prescribed under a regulation) stated information or types of information, obtained from authorised activities conducted within the petroleum authority (or any

access rights exercised for the authority). This clause also provides for a regulation, or the chief executive, for services to the State, to require a petroleum authority holder to lodge a notice with stated information, types of information or stated reports at stated times or intervals, about activities conducted within the petroleum authority (or any access rights exercised for the authority). This stated information may include such things such as exploration data and conclusions based on this data. Any of this information or reports, that are required to be lodged with a notice, must be submitted to the office stated in this clause.

PART 8—GENERAL PROVISIONS FOR CONDITIONS AND AUTHORISED ACTIVITIES

Division 1—Other mandatory conditions for all petroleum authorities

Clause 554 provides for general mandatory conditions for all petroleum authorities for this division.

Clause 555 provides for a petroleum authority holder to do all things reasonably necessary to prevent the spread of the reproductive material of any declared pest, either when conducting authorised activities on the petroleum authority, or when entering or leaving the petroleum authority.

Clause 556 provides for the petroleum authority holder, when entering land, to consider using formed roads wherever practical. If the holder decides not to use a formed road, the holder must take reasonable steps to consult with the owner of the land before entry.

Clause 557 provides for the obligation to comply with this Bill and prescribed standards. When conducting authorised activities for a petroleum authority, the holder of the authority must comply with this Bill, any standard (including any Australian standard, or code, or protocol) provided for by the petroleum authority that must be complied with when carrying out an activity, and any standard (including any Australian standard, or code, or protocol) prescribed under a regulation in circumstances where the authority does not provide for a standard for carrying out an activity under the petroleum authority.

Clause 558 provides for the Minister, by the issuance of a notice to the petroleum authority holder, to require the holder to survey or re-survey the

area of the authority within a reasonable period as stated in the notice. All costs must be paid by the holder in complying with the notice.

The petroleum authority holder must have the survey (or re-survey) carried out in a way prescribed by the Minister and by a person who is registered as a cadastral surveyor under the *Surveyors Act 2003*.

Division 2—Provisions for when authority ends or area reduced

Clause 559 provides for the decommissioning of a pipeline in certain listed circumstances. The holder (or former holder) of the authority must decommission the pipeline on the relevant land, in the way prescribed under a regulation, before the land ceases to be in the area of the authority, or the authority ends, or at a later date set by the Minister.

The intention of this clause is to ensure that the decommissioning is carried out by the holder and not by the State. However, where another petroleum authority is granted before the decommissioning day, and this pipeline's operation becomes an authorised activity for this authority, the above requirement for decommissioning a pipeline does not apply.

Clause 560 provides for the removal of equipment (which includes machinery or plant) or improvements in certain listed circumstances, even where the equipment or improvements were not owned by the holder.

Where equipment (which includes machinery or plant) or improvements are used for an authorised activity under a petroleum authority, or for exercising access rights for the authority, the holder (or former holder) must remove the equipment or improvements from the land prior to the removal day, unless the owner of the land agrees otherwise.

The intention of this clause is to ensure that the removal of the equipment or improvements is conducted by the holder (or former holder) and not by the State, the landowner, nor the occupier of the land.

Clause 561 provides the holder (or former holder) with the right to enter that land subject to the provisions of this division, or to cross other land to enter that land the subject of this division, so that the holder (or former holder) can comply with this division's provisions.

It may be considered that there is a breach of fundamental legislative principles triggered by this clause, as there is a power to enter without warrant, and the effect this entry has on the rights of owners or occupiers. However, although there is no warrant required to enter the land, the

occupier or owner of the land generally instigates the procedure for the removal of equipment and improvements and is not too concerned about the procedure for allowing entry onto their land, providing the end result is the removal of the offending equipment or improvements from the subject land. This right of entry is balanced by application of the private land, public land and compensation provisions of the Bill.

It should also be noted that the there are two safeguards against any unnecessary effect upon the rights of the occupier or owner drafted in the Bill for this clause. First, the Minister's power under this clause does not extend to allowing entry to a structure, or a part of a structure, used for residential purposes, without the consent of the occupier of the structure or part of the structure. Second, every attempt must be made by the former holder, who has the entry authorisation, to show the occupier or owner the former holder's authorisation.

Division 3—Provisions for authorised activities

Clause 562 provides for what restrictions the carrying out of an authorised activity for a petroleum authority or the exercise of the access rights of a petroleum authority holder are subject to.

Clause 563 provides details about who may carry out (exercise) authorised activities for a petroleum authority. The persons carrying out the authorised activities for the holder must be acting within the scope of the person's authority from the holder. This clause also details how this authority may be implied or expressed.

PART 9—PETROLEUM REGISTER

Clause 564 provides for the chief executive to keep a register about petroleum authorities, coordination arrangements, and any other documents related to this Bill that the chief executive considers appropriate (for example, mortgages over petroleum tenures and other dealings as defined under this Bill).

Clause 565 provides for the chief executive to keep the register in the way the chief executive considers appropriate. This may include keeping

the register in an electronic form. This clause also provides a requirement for the chief executive to amend the register to reflect changes to any information recorded in the register, and when the change is to be made. The chief executive must record when the information was amended and, for certain listed dealings, when the approval for the dealing took effect.

Clause 566 requires the chief executive to keep the petroleum register open for public inspection during certain listed times, lists the places the register may be inspected, allows a person to take extracts from the register for free, and allows a person to obtain (for a fee commensurate with costs incurred in giving the person a copy of the register) a copy of the register (or part of it).

The only information in the petroleum register that must not be inspected by the public is "exempt matter" as defined in the *Freedom of Information Act 1992*.

Clause 567 provides for the chief executive to correct the petroleum register, providing the chief executive is satisfied about certain listed matters, and the chief executive also records the details of the register before the correction and the time, date and circumstance of the correction.

PART 10—DEALINGS

Division 1—Permitted dealings

Clause 568 provides a listing of permitted dealings that may be recorded on the register.

Clause 569 provides a listing of prohibited dealings.

Clause 570 provides for a permitted dealing to be approved, or it has no effect. This clause also provides that when a dealing is approved, it takes effect on the day the dealing is concluded, or a later day for effect (if this is provided for in its approval).

Division 2—Obtaining approval for permitted dealing

Clause 571 provides for the Minister to indicate the Minister's likelihood of approving a permitted dealing. The Minister may impose conditions on the dealing as a prerequisite to approving the dealing.

This clause was drafted to allow for a party to a proposed dealing to obtain an indication from the Minister about whether the dealing may be approved. An example of when this indication may be required is when a pipeline licence holder wishes to sell the subject pipeline by tender. The holder may seek an indication from the Minister about whether the Minister is likely to approve the transfer and if conditions are likely to be imposed on the transfer, what these conditions are likely to be.

This allows for a number of matters to be addressed, including whether there are any unresolved financial or data matters that need to be finalised by the holder to keep the licence in good standing prior to the sale, and gives a reasonable indication to the applicant for the tender that the Minister may transfer the licence if their tender is successful.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. Although there are no appeal rights on the merits against any decision about obtaining an indication from the Minister that a dealing may be approved, or any decision about imposing conditions for the indication, the party may still apply for approval of the dealing pursuant to clause 572. This is irrespective of whether the indication was approved or not, or the conditions imposed by the Minister were met or not. When a decision is made by the Minister to refuse the application for approval of a dealing pursuant to clause 572, a right of appeal has been provided for against that refusal.

Clause 572 provides for the holder of the relevant petroleum authority, pipeline, or interest, to apply to the Minister in the approved form (which must be lodged at the office stated in this clause) for approval of the permitted dealing. This clause also provides details about what is to accompany the application for the dealing.

Clause 573 provides for the Minister to decide to grant or refuse the application for a permitted dealing or, in certain listed circumstances, when the Minister must approve the permitted dealing.

Clause 574 provides details of the matters the Minister must consider, before deciding whether to approve the permitted dealing.

PART 11—SURRENDERS

Clause 575 provides details about when the holder of a petroleum authority may surrender all or part of the area of the petroleum authority. However, this clause also provides that a surrender of all or part of the area of a petroleum authority, does not include relinquishments of area emanating from relinquishment conditions provided for under this Bill, for authorities to prospect or petroleum leases.

Clause 576 provides details about the requirements for a surrender application, these being that the surrender application must be made on the approved form and that it must be lodged with the office stated in this clause. This clause also provides for the surrender application to be accompanied by a report containing details about the authorised activities conducted on the area the subject of the surrender application.

Clause 577 provides for further requirements for when a surrender application is made for a pipeline licence through which fuel gas is transported. This clause also provides that the surrender application, for a pipeline licence through which fuel gas is transported, must be preceded by a notice at least three months prior to the surrender application being lodged. This notice must state the holder's intention to make the surrender application, the reasons for the proposed surrender, and the notice must be lodged at the office stated in this clause. After lodgement of this notice, the chief executive may require more written information about the proposed surrender, or the pipeline, by a stated day.

Clause 578 provides that the Minister may only approve the surrender if the listed details have been met. Further, this clause provides that the Minister must consider, in deciding whether to approve the surrender, the extent to which the applicant for the surrender has complied with the conditions of the petroleum authority. This clause also provides that if the application is for a partial surrender of a petroleum authority, the Minister may only approve the surrender subject to the applicant's written agreement to the Minister amending the conditions applying to the rest of the area of the authority, in the way the Minister considers appropriate.

Clause 579 provides for the Minister, on approval of the surrender, to give the applicant for the surrender a notice about the decision. The surrender then takes effect the day after the decision is made. This clause also provides that when a surrender is not approved, or when a decision to approve a surrender is subject to the applicant's written agreement to the Minister amending the petroleum authority in a stated way, an information

notice is to be given to the surrender applicant. However, an information notice does not have to be given when a decision to approve a surrender is subject to the applicant's written agreement to the Minister amending the petroleum authority in a stated way, and the applicant has given written agreement to this amendment.

PART 12—ENFORCEMENT OF END OF AUTHORITY AND AREA REDUCTION OBLIGATIONS

Clause 580 provides for the chief executive, when a petroleum authority holder has not decommissioned petroleum wells or pipelines, or has not removed equipment or improvements, to authorise a person (called an "authorised person") to enter land and do all things necessary to ensure the remedial requirement is complied with and enter any other land to cross for access to the other land. The authorisation given to the authorised person must be in writing and may be given on conditions the Minister sees as appropriate. This clause also provides that the authorised person cannot enter residential structures without the consent of the occupier.

Clause 581 provides for a notice of entry to be given 10 business days before the entry to land for remedial purposes. This notice must be given to the occupier of the land (if the land has an occupier) or to the owner of the land (if the land has no occupier). This clause also provides details about what information the notice must detail, and provides for the chief executive to approve, in certain listed circumstances, the giving of the entry notice by publication. Also, this clause provides that if the occupier of the land is present on the land when remedial activities are about to take place, the authorised person must show the occupier of the land the person's authorisation.

It may be considered that there is a breach of fundamental legislative principles triggered by this clause, as there is a power to enter without warrant, and the effect this entry has on the rights of owners or occupiers. However, although there is no warrant required to enter the land, the occupier or owner of the land generally instigates the procedure for the decommissioning of a petroleum well or pipeline, or removal of equipment and improvements, and will not generally be concerned about the procedure for allowing entry onto their land, providing the end result is the

decommissioning of the petroleum well or pipeline, or removal of the offending equipment or improvements from the subject land.

There are two safeguards against any unnecessary effect upon the rights of the occupier or owner drafted in the Bill for this clause. First, the chief executive's power under this clause does not extend to allowing entry to a structure, or a part of a structure, used for residential purposes, without the consent of the occupier of the structure or part of the structure. Second, every attempt must be made, by the authorised person who has the entry authorisation, to show the occupier or owner the authorisation.

It should also be noted that each owner and occupier of the subject land is to be given a detailed notice about the entry to the subject land 10 days before the actual entry is to occur.

Clause 582 provides that the authorised person is to take as reasonable care as is practicable not to cause too much inconvenience nor create too much damage.

Clause 583 provides for the authorised person, if in exercising remedial powers the person damages land or something on the land, to give a notice of damage to the owner and occupier of the land, where possible. The notice must state the particulars of the damage, and that pursuant to the provisions in the Bill about compensation for the exercising of remedial powers, the owner or occupier may claim compensation from the State.

Clause 584 provides details about an owner or occupier claiming compensation arising from a loss because of the exercise of remedial powers.

Clause 585 provides that when exercising remedial powers and a thing is removed, the thing becomes the property of the State, and the State may deal with it by destroying it, giving it away, or selling it.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is an effect on the property rights of the holder or the former holder. However, it is envisaged that provisions in the Bill (General provisions for conditions and authorised activities) will be the first legislative step taken by the Minister when requiring the former petroleum authority holder to enter land previously within the area of the petroleum authority or access land, to remove equipment and improvements from the subject land. It is also envisaged that the second legislative step will be for the chief executive to give authority to a person to decommission a petroleum well or pipeline, or remove equipment and improvements from the subject land.

The exercise of these remedial powers on the subject land is to keep good faith with the landholders of Queensland; they having some legislative guarantee that if, where the previous authority holder has failed to decommission a petroleum well or pipeline, or remove equipment and improvements, that the chief executive can authorise someone to rectify this failure.

Neither the State, nor the landholder, should be expected to cover the costs of this remediation, which may be more than the amount of the security that is held for the subject petroleum authority. Consequently, the thing removed should become the property of the State, so that the costs of removal and sale may be recovered at no expense to the landholder or the State.

Nonetheless, this clause still provides for the return of the proceeds of the sale, less the costs of the remediation and the sale, to the former owner of the thing.

Clause 586 provides for the State to recover costs and compensation, brought about by the exercise of the remedial powers, as a debt.

PART 13—MISCELLANEOUS PROVISIONS

Clause 587 provides for the Minister to ensure compliance by a petroleum authority holder, where the holder of a petroleum authority has not complied with a requirement under this Bill, and no other provision of this Bill allows someone other than the holder to ensure compliance with the requirement. This clause provides for the Minister, by issuing a notice containing the details listed in this clause, to do any action the Minister considers appropriate to ensure all or part of the requirement is complied with once the Minister has considered submissions given by the petroleum authority holder in response to the notice.

Clause 588 provides for interest to accrue, and become available to the State, when any amounts (such as rent, a civil penalty for non-payment of rent, or an annual licence fee) are owing under this Bill. This clause provides details of the amount of interest and when the interest commences to accrue.

Clause 589 provides for the State to recover an amount, including interest, as a debt, when a provision of this Bill requires petroleum authority holder to pay this amount (and any interest).

CHAPTER 6—PETROLEUM ROYALTY

PART 1—IMPOSITION OF PETROLEUM ROYALTY

Clause 590 establishes the obligation on producers of petroleum to pay to the State the prescribed royalty. Similar to how the *Mineral Resources Act 1989* imposes royalty rates by regulations (for mineral mined), it is proposed that regulations under this Bill will prescribe rates of royalty. It is also proposed that the regulations for this Bill will also prescribe when payment is required and how the value of the petroleum produced is to be worked out, again similar to the *Mineral Resources Regulation 2003*.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as the above matters can be prescribed by regulation rather than detailed within the Bill. It is considered appropriate to provide for these matters by regulation for consistency with the administration of the *Mineral Resources Act 1989.* Also, issues from the day to day operations of producers can arise which create uncertainty, for example, about whether certain "expenses" are allowable or certain income is assessable in working out the value of petroleum produced. A regulation can be quickly made to address these uncertainties.

Clause 591 provides exemptions from the requirement to pay royalty on certain petroleum produced in Queensland. This recognises that petroleum can be unavoidably lost during production, or vented or flared whilst being evaluated for commercial production, or may be used for the authorised activities under the petroleum tenure from which it is produced. Generally, royalty should not be paid twice where the petroleum is re-injected into natural underground reservoirs after initial production. Incidental coal seam gas that is mined under a mining lease, and is used for the purposes of mining, is exempt from royalty. This exclusion from royalty also extends to incidental coal seam gas used for the purpose of generating power,

which in turn is used for the purposes of mining, including the mining of the coal and the coal seam gas, on the mining lease.

Clause 592 provides that the Minister, where sufficient information or measurement has not been supplied by a producer, may decide what the information or measurement is. This will effect the amount payable as royalty by the producer. The petroleum producer has a right of appeal against the Minister's decision.

PART 2—ROYALTY RETURNS

Clause 593 specifies when this Part, which requires royalty returns to be lodged, applies to a petroleum producer. This Part applies for any month in which petroleum is produced or disposed of or stored, irrespective of whether or not petroleum royalty is payable for that month.

Clause 594 provides for monthly royalty returns to be lodged by petroleum producers. The return must contain the information prescribed by regulation.

Clause 595 provides that the responsibility to lodge a royalty return continues until it is lodged and if the return is not lodged on time, or information is missing from the return, the producer must also pay a late fee prescribed by regulation. To encourage prompt returns and payment on time of royalty to which the State is entitled, the late fee will be greater than an amount that would be commensurate with the costs of considering the late return.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The late lodgement fee is proposed to encourage the timely submission of royalty returns. The time for lodgement of a royalty return will be determined with a view to completing the necessary work of assessing, and processing the return. The late lodgement of the royalty return greatly reduces the time for this. To discourage the late lodgement of royalty returns, and to reduce unnecessary increases in the Minister's and administering department's work loads, a late fee significantly greater than the lodgement fee is proposed.

Clause 596 addresses the situation where it may be difficult for a producer to give accurate information in all monthly returns. The Minister may approve the giving of estimates. This clause also provides for the

verification of the estimated information, and payment of any shortfall of royalty payable. Also, with the producer's agreement, the Minister may change the approval or conditions of the approval. The Minister may withdraw the approval at any time. It may be considered that there is a breach of a fundamental legislative principle triggered by this clause in that no right of appeal is given against the withdrawal. However, there is always an obligation on the producer to give accurate information and the granting of the use of estimates is a concession by the State and, in any case, the Bill ultimately requires verification of reasonable accuracy of estimated information.

Clause 597 provides that the producer who uses an estimate must verify the reasonable accuracy of the estimated information, lodge reconciliation returns after the approved period for using estimates and pay any shortfall of royalty payable by a day specified in the Minister's approval to use an estimate.

Clause 598 requires a producer, as soon as practicable after discovering an inaccuracy in a royalty return or reconciliation return, to disclose the inaccuracy to the Minister. Disclosure may be included in a later royalty return.

Clause 599 imposes an obligation on producers of petroleum to lodge annual returns, within three months after the end of the 12 month period which ends either on 30 June or 31 December.

PART 3 —PAYMENT OF PETROLEUM ROYALTY

Clause 600 provides for refunds to producers of overpayments of royalty, which may also be by way of crediting the amount against unpaid or future royalty liability. No interest is payable on the overpaid amount.

Clause 601 provides for underpayments of royalty to be owing and unpaid from when the royalty was payable. If the underpayment is brought about by the use of estimates and is greater than 15 percent of the royalty that was payable, an additional petroleum royalty (being 25 percent of the difference) is payable. This applies unless the Minister is satisfied that the producer made a genuine mistake and the circumstances are such that the additional royalty should be wholly or partially waived.

Clause 602 provides that where royalty, or additional royalty, is not paid on time, the Minister may require the person to pay the State interest on the amount at the rate prescribed under a regulation.

Clause 603 establishes the right of the State to take action through the courts, to recover as a debt, the amounts of unpaid royalty from producers.

Clause 604 provides a process by which the Minister may issue a certificate to a petroleum producer of the amount payable and unpaid by the producer. The Minister can only act after notice has been given to the producer and any submission made by the producer has been considered. The producer may appeal against the decision of the amount payable and unpaid. The Minister's certificate is evidence of the amount payable and unpaid.

PART 4—MONITORING PAYMENT OF PETROLEUM ROYALTY

Division 1—Audits by approved auditors

Clause 605 provides for the appointment of auditors for this part. Usually, public service officers who are officers of the department are appointed. However, there may be times when the available resources of the department will not be adequate or appropriate for the audit of a particular producer. In these cases, an appropriately qualified person may be appointed for the audit of specific producers but the appointment cannot be for more than 6 months although the person may be re-appointed. To adequately carry out the audit such auditors will need to have the powers specified later in this part of the Bill.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as it may be perceived that it is not appropriate to appoint the chief executive's powers to a non-public service officer as an approved auditor. However, there are restrictions in this clause that require the person to be appropriately qualified to carry out the audit under this division. It is envisaged that the chief executive's powers will be delegated to a non-public service officer in rare and unusual circumstances, such as when a public service officer or employee is not considered suitably qualified to conduct the audit. The non-public service officer is

also restricted to audit only those petroleum producers identified on the auditor's instrument of appointment.

Clause 606 provides for the approved auditor to hold office on the conditions stated in the instrument of appointment, a notice signed by the chief executive or stated in a regulation. Similarly, the powers or functions of the approved auditor may be restricted.

Clause 607 requires an approved auditor to be issued with an identity card as an approved auditor. This identity card must contain a recent photo of the approved auditor, a copy of the approved auditor's signature and state an expiry date.

Clause 608 contains the standard provisions requiring production of the approved auditor's identity card to a person in relation to whom the auditor is exercising functions, if asked by the person.

Clause 609 contains the standard provisions for when the approved auditor ceases to hold office, for example, end of term, when conditions for ceasing and resignation apply.

Clause 610 provides that the chief executive may revoke an appointment of an approved auditor.

Clause 611 provides for the resignation of an approved auditor by signed notice given to the chief executive.

Clause 612 makes it an offence for a person who ceases to be an approved auditor to fail to return the person's identity card to the chief executive within 20 business days after ceasing to be an approved auditor, unless there is reasonable excuse.

Clause 613 gives an approved auditor power to audit a petroleum producer to monitor whether petroleum royalty has been paid as required and whether petroleum royalty will be payable by the producer. A decision to carry out the audit may be made on a random or other basis.

Clause 614 applies provisions in the investigations and enforcement chapter of the Bill to approved auditors carrying out, (or proposing to carry out) audits as if the auditor were an authorised officer carrying out (or proposing to carry out) functions of an authorised officer.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause in that the authorised auditor may enter premises without obtaining a warrant to enter. Warrants are usually sought where there is a reasonable suspicion that there has been a breach of an Act. This is not the case for auditors. A holder of a petroleum tenure, by

applying for such, is aware that documents and records must be kept and may be audited from time to time in order that the State can ensure that it has received the correct return in the form of royalty payments. In most instances, the carrying out of an audit as part of compliance activity would be undertaken without any suspicion of wrong doing on the part of the petroleum producer. Accordingly, it would be inappropriate for a warrant to be sought to carry out routine audit activity for the purposes of verifying the royalty paid to the State.

Division 2—Audits by auditor-general

Clause 615 provides for the Auditor-General, at the Minister's request, to audit a petroleum producer, this audit being for purposes similar to the audit purposes an authorised auditor undertakes.

Clause 616 gives the Auditor-General the powers the Auditor-General has under the *Financial Administration and Audit Act 1977*.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause in that the Auditor-General may enter premises without obtaining a warrant to enter and exercise powers. Ownership of petroleum vests in the State. Holders of petroleum tenures are allowed to exploit petroleum resources for commercial gain provided that the appropriate amount of royalty is paid to the State. In order to ensure that the State has received the correct return, it is essential that the Auditor-General, when approved to carry out an audit by the Minister, has all the necessary powers conferred on such position in terms of the *Financial Administration and Audit Act 1977*. Furthermore, a holder of a petroleum tenure, by applying for such, is aware that documents and records may be audited from time to time (including by the Auditor-General) in order that the State can ensure that it has received the correct return in the form of royalty payments.

Clause 617 places an obligation on the Auditor-General to prepare a report about each audit and give the report to the Minister. Where the report states whether or not petroleum royalty is payable by a petroleum producer and if so, its amount, the report (in any proceeding under or in relation to this Bill to which the producer is a party) is evidence of any matter stated in the report.

CHAPTER 7—FUEL GAS QUALITY AND CHARACTERISTICS FOR CONSUMERS

PART 1—PRELIMINARY

Clause 618 restricts the application of the Chapter to fuel gas, which is supplied for use by consumers. This means that the chapter does not apply to untreated or unprocessed gas.

Clause 619 defines a consumer of fuel gas and includes all uses including use as a refrigerant where the gas is strictly not "consumed".

PART 2—QUALITY

Division 1—Quality restrictions

Clause 620 provides for a regulation to prescribe a quality specification for fuel gas. Such a specification may include the purity, composition or physical parameters of the fuel gas. It should be noted that the intent is to use the Australian standard for natural gas quality. The quality standard for LP gas has not been agreed nationally and options will be canvassed in the preparation of the regulations.

Clause 621 provides for a method to allow the supply of gas that is not of the prescribed quality. Such a situation could exist where a single gas field was supplying a single industrial user and agreement was reached between the parties to use non-specification gas. To ensure that safety is not compromised, the clause requires the chief inspector to receive a copy of the agreement. If there was a safety issue, the chief inspector could then intervene using powers detailed elsewhere in this Bill.

Division 2—Gas quality approvals

Clause 622 provides for gas quality approvals to be given by the chief inspector. These would be used where gas of a non-specified quality was to be provided to a number of users. Such a circumstance could arise in an industrial estate or perhaps an isolated township where butane was provided instead of traditional LP gas which is predominantly propane. In such circumstances it would not be appropriate to use the "agreement" method provided for in an earlier clause. It may also occur during a temporary quality failure of major domestic supply.

Clause 623 gives the mechanisms for the chief inspector to approve a gas quality approval which include assurance of safety and that the approval is really necessary.

Clause 624 instructs the chief inspector to advise the applicant of a granted approval and a notice setting out the appeal process if an application is refused.

Clause 625 allows the chief inspector to cancel a gas quality approval immediately if significant safety issues arise and also to give notice of cancellation of approval for any other reason. In the second case there is a review process and in both cases, appeal mechanisms.

PART 3—CHARACTERISTICS

Clause 626 makes additional requirements for fuel gas supplied through pipelines. Queensland has previously experienced some problems with such contaminants as oil, mercury and sulphur and it may be necessary to declare limits on these or other contaminants. This clause contains a provision for a "Safety Requirement" to specify a level.

Clause 627 provides that a regulation may prescribe an odorant to be used with gas. There are many odorants available today, some with entirely different odour to the well-known sulphur based compounds in common use. There needs to be some control over odorants used for gas to ensure that the public recognises a "gas smell".

Clause 628 gives a mechanism for specific consumers to be provided with unodourised gas. Such a situation arises, for example, where LP gas

is used as a propellant in a pressure-pack can. The clause provides for a risk-based approach and must include gas detectors and shut down systems to ensure that safety is maintained. The clause also allows the chief inspector to over-ride any approval if safety is still considered to be inadequate.

CHAPTER 8—PETROLEUM AND FUEL GAS MEASUREMENT

PART 1—INTRODUCTION

Division 1—Application of chapter 8

Clause 629 restricts the application of the chapter to meters used for custody transfer of petroleum or fuel gas, or used to work out royalty payable to the State. All other measurement systems fall under the *Trade Measurement Act 1990*.

Clause 630 effectively makes compliance with this chapter a "deemed compliance" with the *Trade Measurement Act 1990*. This is necessary as the measurement systems used in the petroleum and gas industries are significantly different in design and construction to most commercial measurement systems and detailed compliance with the *Trade Measurement Act 1990* would not be possible in many cases.

Division 2—Interpretation

Clause 631 defines the term "meter" which, as well as covering the normal devices used for measurement, also covers manual techniques such as tank dips (which are often used to determine liquid petroleum quantities).

Clause 632 defines the "controller" of a meter as the person owning it or who has the responsibility for it. This definition is needed as often the meter is owned and operated by two different parties.

Clause 633 defines the term "measurement scheme". This concept is being used rather than the range of "approvals" given under previous legislation and will simplify administration of this Bill.

Clause 634 allows for estimation to also be defined as measurement. This is necessary to allow for occasions when metering instruments fail and estimates must be used.

Clause 635 defines the term "tolerance for error" and provides that the tolerance may be defined by regulation, by the measurement scheme itself, or by an Australian standard. It is envisaged that any regulation made will always take precedence.

PART 2—MEASUREMENT SCHEMES

Division 1—Making and revision of measurement scheme

Clause 636 requires the controller of the meter to make, implement and maintain a measurement scheme.

Clause 637 gives the detailed requirements for a measurement scheme which include the description of the meter, the standards to which it complies, the tolerance for error and a number of other details regarding its administration such as key performance indicators and competency of persons involved in maintenance and calibration.

Clause 638 provides for the chief executive to define a competency required for any person involved in a measurement scheme. This is needed to ensure that meters are maintained and calibrated by competent persons.

Clause 639 provides for the revision of measurement schemes. This is particularly important when a new metering concept is being introduced, as field evidence may point out deficiencies which must be corrected.

Division 2—Compliance with measurement scheme

Clause 640 provides that no meter can be installed or used unless it complies with a measurement scheme.

Clause 641 provides that, as well as the metering device, the measurement itself must comply with the measurement scheme.

Clause 642 provides that the controller of the meter is responsible for its compliance with the measurement scheme. This clause also provides that it is evidence that a controller committed the offence of failing to ensure that a person complies with the scheme, if the person has been convicted of an offence against the certain clauses stated in this clause.

Division 3—Regulatory provisions

Clause 643 provides for the chief executive to impose a measurement scheme where none exists. This clause also provides for an appeal against the scheme or any of the conditions imposed by it.

Clause 644 provides that the chief executive may require a meter controller to amend the measurement scheme and may state how it should be amended.

Clause 645 allows the meter controller to lodge a submission in response to a requirement made under the previous clause. This clause also provides that the chief executive be required to consider the submission and advise the controller accordingly.

Clause 646 provides the chief executive with the right to issue a "revision notice" which, after consideration of any submissions, requires action by the meter controller.

Division 4—Significant meter anomalies

Clause 647 establishes that the division applies when the meter controller becomes aware of an error.

Clause 648 instructs the controller to stop using the meter and not use it again until the error has been corrected.

Clause 649 provides for the chief executive to require reporting of a particular type of anomaly and also provides that the controller must make such a report. This clause was drafted to prevent "over-reporting" of minor errors, but provides for the chief executive to be notified of serious anomalies.

Division 5—Other reporting requirements

Clause 650 provides for the controller of a meter to give an annual report on the measurement scheme and, as this report may contain evidence of non-compliance, it has also been provided in this clause that the contents of the report itself will not be used in prosecution proceedings. The reason for this exclusion is to encourage honest reporting of any problems arising with metering.

Clause 651 provides the specific requirements for the measurement report, which includes assessment against key performance indicators. This clause also provides for the controller to reveal any non-compliance with the scheme and to detail how these non-compliances are being addressed.

Clause 652 provides for the chief executive to require a notice from the controller about the names and competencies of individuals who carry out work with a meter. This allows the chief executive to determine that competent individuals are undertaking such work.

PART 3—COMPETENCY ASSESSMENTS

Clause 653 provides the chief executive with the right to demand an assessment of the competency of any person who carries out work on a meter. It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there are no appeal rights available against the decision by the chief executive to require the competency assessment. However, the skills needed for meter calibration and maintenance are often of an advanced nature and it is necessary that only properly trained persons undertake this work. The accuracy of a meter will also ensure that there is no major discrepancy in the measurement activities under a measurement scheme for the meter, which

may result in the inadvertent avoidance of the correct royalties payable to the State when petroleum is produced. Consequently, it is essential that the chief executive have the right to demand a competency assessment, with no allowance for appeal against this requirement.

Clause 654 provides for the controller to be responsible for the costs of a competency assessment.

Clause 655 provides for the chief executive to put limitations on any person found not to be competent and for the controller to take remedial action such as re-training.

PART 4—GENERAL PROVISIONS ABOUT METERS

Clause 656 provides for a controller to have a meter tested if the controller suspects that it is registering incorrectly.

Clause 657 provides for it to be prohibited for any person to unlawfully interfere with a meter or its operation. This occurs from time to time when domestic meters are interfered with or "bypassed" to reduce gas bills. Interference with such a meter often involves breaking a seal.

Clause 658 provides for limiting the use of pre-payment meters to approved situations. While the use of "coin in the slot" meters has now vanished, there are proposals to design meters which allow for credit card-type payments at the meter. Introduction of such metering will need to be carefully assessed.

PART 5—METER ACCURACY DISPUTES

Division 1—Preliminary

Clause 659 restricts the application of this Part to disputes about accuracy of meters where there is no contract between the parties. In most large metering situations such contracts contain dispute resolution mechanisms.

Clause 660 defines the term "affected party", which is the person affected by any meter inaccuracy. In the case of royalty calculations, the chief executive is the affected party.

Clause 661 defines the term "service provider" as the person who provides the metering service or, where the metering is for royalty purposes, the tenure holder.

Division 2—Test by service provider

Clause 662 provides for an affected party to require a test to ensure that the meter is performing correctly. It is the responsibility of the affected party to pay for the test and the service provider must have the test undertaken by a qualified person and provide the affected party with a test certificate.

Clause 663 provides for the required data that is to be detailed in the test certificate.

Clause 664 provides for the affected party to be reimbursed any fees paid for a service provider test if the meter is shown to be inaccurate in favour of the service provider.

Clause 665 provides for a restriction to any adjustment being made to a meter, under test, until agreement is obtained from the affected party. This is to prevent evidence of inaccuracy from being hidden.

Division 3—Validation of service provider test

Clause 666 provides for a further test (called a "validation test") to be undertaken if the accuracy of the meter is still in dispute following the service provider test. In this case the meter is to be examined by an independent qualified party and again requires a test certificate.

Clause 667 provides for the affected party to be reimbursed any fees paid for a service provider and validation test if the meter is found to favour the service provider.

Clause 668 provides for the service provider to bring the meter into an accurate state if the validation test shows it to be inaccurate. The service provider can decline to do so if it is impractical or uneconomic to do so, but must then identify the meter as "Inaccurate: not to be used".

CHAPTER 9—SAFETY

PART 1—SAFETY REQUIREMENTS

Clause 669 provides for the concept of a "safety requirement", a fundamental element of this Chapter. This will be a regulation, which defines the requirements for safety in a specific area. The requirement could be a mandatory standard, a preferred standard (where the standard must be the same, or equivalent to a stated document), an industry code of practice, or a local requirement. Where Australian standards exist, it is proposed to always refer to them as either mandatory or preferred with respect to safety issues. One mandated standard proposed is the Australian Pipeline Code AS2885, which has been agreed to by the Council of Australian Governments to be used nationally. Specific mention is made of safety requirements to ensure that petroleum exploration or production of coal seam gas does not increase the hazards of future coal mining operations.

PART 2—SAFETY MANAGEMENT PLANS

Division 1—Preliminary

Clause 670 provides for the term "operating plant" to be used to include the wide range of facilities and processes covered by the safety chapter. As well as facilities such as pipelines, LP gas terminals, production facilities and treatment plants, the term encompasses activities such as the delivery of bulk LP gas or LP gas cylinders and seismic survey operations.

Clause 671 provides the definition of the term "coal mining-CSG operating plant". The application of the term "operating plant" at a coal mine is limited to facilities used in the extraction, processing or transport of coal seam gas, where the mining lease holder is also the petroleum lease holder, or where the mining operator holds a mineral "hydrocarbon"

mining lease. In all other cases the *Coal Mining Health and Safety Act 1999* applies.

Clause 672 provides for the safety management plan to be renewed, at each major phase of an operating plant's life, as the safety requirements during this period will have changed significantly. The major phases defined are those of commissioning, operation, maintenance/modification and decommissioning. It is intended that those areas of design and construction to be covered under this chapter will be addressed in a "safety requirement".

Clause 673 provides for the term "operator" to be one of the defined terms in this Chapter designed to specify accountabilities and responsibilities for safety. The "operator" is defined as the person in charge of the plant while it is in operation. In the case of the activities defined as "operating plant" it is intended that this term apply to the person in overall charge, say of a tanker delivery operation, rather than the individual tanker driver. In the case of a coal mine also extracting coal seam gas, the "operator" is the site senior executive as defined in the *Coal Mining Health and Safety Act 1999*.

Division 2—Operator's obligations

Clause 674 provides for every operating plant to have a safety management plan, with the operator being responsible for making, implementing and maintaining the plan. Further, no stage of the plant can be commenced unless a safety management plan is in place. It is acceptable for a safety management plan to apply to more than one operating plant. For example, an operator controlling a number of LP gas terminals may make a common safety management plant to apply to all.

Clause 675 provides a detailed description of the issues, which need to be addressed in safety management plans. The list includes policies and organisational structures, safety assessments, skills and training processes, standards and equipment details, emergency response, and administrative issues such as implementation mechanisms, key performance indicators, investigation processes and records management. To achieve consistency with the safety requirements of other agencies, the plan must also address relevant parts of the *Workplace Health and Safety Act 1995* as well as any relevant sections of the national standard on major hazard facilities.

Clause 676 provides for any persons who must comply with the safety management plan to have access to the plan, or at least those portions of the

plan, which apply to them. This clause also provides that persons who have an obligation under the plan are told of that obligation.

Clause 677 provides for the operator to be charged with the responsibility of ensuring that everyone who has an obligation under the safety management plan complies with those obligations. This clause also provides that it is evidence that an operator committed the offence of failing to ensure that a person complies with the safety management plan, if the person has been convicted of an offence against the clause stated in this clause.

Clause 678 provides for the revision of the safety management plan, the need for which can arise due to changing standards, a specific safety event, or because of changes to the plant itself that increase risk.

Division 3—Validation of safety management plans

Clause 679 provides for the chief inspector to give the operator notice that the chief inspector believes the safety management plan does not comply with the requirements of this Bill and needs to be amended. The notice may contain details of the required amendment. This clause also provides for the operator to make a submission, giving reasons why the plan does comply with the requirements of this Bill.

Clause 680 applies only if a submission from the operator, under the previous clause has been made. This clause provides for the chief inspector to consider any submission made, make a decision, and advise if the plan complies.

Clause 681 provides for the chief inspector, after considering a submission and still believing that the plan does not comply, to issue a revision notice which compels the operator to take remedial action within a specified period.

Clause 682 provides that the issue of a notice under the previous clause does not affect other powers available to the chief inspector, such as issuing a dangerous situation notice.

Division 4—Special provisions for safety management plans for coal mining—CSG operating plant

Clause 683 defines the extent of coverage of this division. To prevent the doubling-up of almost identical requirements of the *Coal Mining Safety and Health Act 1999* and this Bill, special provisions are made for coal mining-CSG operating plants.

Clause 684 provides that where the operator already has a safety and health management system under the *Coal Mining Safety and Health Act 1999*, compliance with the requirements to have and revise a safety management plan are deemed to be met.

Clause 685 provides that the operator is deemed to have complied with the requirement to display the safety management plan, providing the operator complies with similar provisions in the *Coal Mining Safety and Health Act 1999.*

Clause 686 restricts the chief inspector from giving notice, to amend the safety provisions, to those areas directly affecting the gas extraction and processing part of the operation.

PART 3—SAFETY POSITIONS AND REPORT

Division 1—Executive safety manager and safety report

Clause 687 provides for an "executive safety manager", one of two designated positions which have clearly defined responsibilities under the safety provisions of this Bill. The executive safety manager is the person who will have overall accountability for safety. For simplicity, the executive safety manager on a coal mining-CSG operating plant is the site senior executive under the *Coal Mining Safety and Health Act 1999.* In all other cases, the executive safety manager is the most senior officer, except for the operator in Australia. In the case of a sole operator, the operator is also the executive safety manager.

Clause 688 outlines the overarching responsibilities of the executive safety manager, who must ensure that the plant has the necessary safe operating procedures, emergency response capability and safety

information, and first aid equipment available. The executive safety manager must ensure that plant operators are trained and that this training is recorded.

Clause 689 provides for the executive safety manager to give an annual safety report. As later clauses provide for disclosure of information, which could involve a breach of the Bill, allowance is made for the report not to be used as admissible evidence for an offence. This will encourage honest and full disclosure of problems, which may need attention.

Clause 690 provides the details of issues, which need to be addressed in the safety report, including basic details of the plant and its administration, the identification of significant safety risks, and details of any non-compliance from the safety management plan together with plans for rectifying that non-compliance. Again, part of this clause provides for the requirement that any hazards which could affect future coal mining must be identified in the report and include measures taken to mitigate the effect of these hazards.

Clause 691 provides that details of a safety report, which cover an operating plant in the area of a coal or oil shale tenement, be provided to the tenement holder. This ensures the holder is advised of the nature and location of any hazards created by the operating plant.

Division 2—Site safety manager

Clause 692 provides for a "site safety manager", who is the person charged with the responsibility of implementing the safety management plan on-site. While there logically could be only one executive safety manager appointed for an operating plant, there may be a number of site safety managers, say for shift work or for different sections of a large plant. The requirement for a site safety manager comes from the safety management plan itself and this clause provides that if the safety management plan calls for a site safety manager, then one must be appointed. This clause also provides for the chief inspector to require that a site safety manager be appointed. This could occur if the plant was undergoing some special process such as a modification, or where the chief inspector believes the safety management plan is deficient in not providing for a site safety manager.

Clause 693 provides the specific obligations of the site safety manager which cover the activities of every person on site, be they employee, contractor or visitor. The site safety manager must arrange suitable

induction, ensure that every person complies with the safety management plan and relevant standard operating procedures, and ensure that a first aid facility is available.

Clause 694 provides that where no site safety manager has been appointed for any operating plant, the operator now assumes the responsibilities of the site safety manager.

PART 4—OTHER SAFETY OBLIGATIONS

Division 1—Obligations relating to plant or equipment for use in operating plant

Clause 695 provides that because of similar requirements under the *Coal Mining Safety and Health Act 1999*, this division does not apply to a coal mining-CSG operating plant.

Clause 696 provides that to comply with any safety requirements that apply to any operating plant, responsibilities are placed on designers, importers, manufacturers, modifiers and suppliers of purpose-designed equipment for use at the plant. This clause also provides that designers, importers, manufacturers, modifiers and suppliers of purpose designed equipment, for use at any operating plant, must notify the operator if they become aware of any defect or hazard in this equipment.

Clause 697 provides for a restriction to be placed on installers of equipment to ensure that the equipment complies with any relevant safety requirement. This clause also provides that the installer is then required to certify compliance with the safety requirements.

Division 2—Operating plant owners

Clause 698 provides that where the owner of the operating plant is a different entity to the operator (as often occurs with pipelines), the owner of the operating plant must ensure that the operator is competent to operate the plant.

Division 3—Control and management of risk at operating plant

Clause 699 provides an obligation to every person at an operating plant to take reasonable action to minimise risk at the plant.

Clause 700 addresses the difficult concept of what is meant by an "acceptable level" of risk. This clause provides that cognisance must be taken of acceptable safety limits (say, in Australian standards), keeping the risk as low as reasonably practical, and taking into account the likelihood and severity of any accident. This clause also provides that activities must be carried out to avoid risk if this can be achieved.

Clause 701 addresses when the target of acceptable level of risk has been achieved. This includes a risk analysis, removing avoidable risks, monitoring risk levels and a review process.

Division 4—Other obligations of persons at operating plant

Clause 702 provides that every person at an operating plant has the obligation to comply with the safety management plan for that plant.

Clause 703 provides that any person at an operating plant must comply with lawful instructions given by the operator or a supervisor. This would particularly apply to contractors and visitors to the plant.

Clause 704 provides that no person should indulge in wilful or reckless acts or make an omission that could affect safety.

Division 5—Hazard reporting for operating plant on coal or oil shale mining lease

Clause 705 provides the operator of an operating plant in a coal mining lease or oil shale mining lease area (which is not operated by a mining lease holder) with an obligation to immediately and subsequently report to a relevant person (an inspector, and either the site senior executive or the mining lease holder) the location of any hazard and steps being taken to mitigate the hazard.

Division 6—Prescribed incident reporting and security of incident sites

Clause 706 provides for a regulation to prescribe the types of incidents that must be reported and the manner in which they are to be reported. Typically, this will be for serious incidents such as death, injury or high potential incidents, with the manner of reporting in the first instance to be to an emergency telephone number. The persons obligated to make the report are outlined in the clause (a nominated person or the occupier) and where a report of an incident has been made under the *Coal Mining Safety and Health Act 1999*, it is also accepted as compliance with the provisions of this clause.

Clause 707 provides for an inspector to restrict access to an incident site, to protect the site from interference, which could prejudice an investigation. This power of restriction provided for in this clause may be delegated to a responsible person on site.

Clause 708 provides for it to be prohibited for any person entering or remaining on a site if access has been restricted. This does not apply to a person who is an inspector, approved by an inspector or has entered the site to save life or prevent injury. Anyone on the site other than an inspector (who may be seizing evidence) must minimise disturbance at the site.

PART 5—BOARDS OF INQUIRY

Division 1—Establishment and functions

Clause 709 provides for the Minister to establish a board of inquiry for a prescribed incident. Such a board of inquiry would only be called in the most serious of cases and where the cause of the incident may be difficult to identify, or where significant action by the Government may be warranted.

Clause 710 provides for composition of the board, which is to be chaired by a Magistrate and assisted by up to three independent experts who are appointed by the Minister.

Clause 711 outlines the functions of the board to inquire into the circumstances and cause of the prescribed incident, and report to the

Minister its findings and recommendations. This clause provides a requirement for the Minister to publish these recommendations.

Division 2—Conduct of inquiry

Clause 712 provides the procedures by which witnesses and other relevant persons are given at least 14 days notice of the time and place of the inquiry.

Clause 713 provides the basic rules for the conduct of the inquiry including the requirement for natural justice, timeliness, and record keeping. This clause also provides that the inquiry is not to be bound by the rules of evidence and allows the board to conduct its inquiry in a way it sees fit.

Clause 714 provides that, unless otherwise directed by the board, the inquiry is to be held in public.

Clause 715 provides for equivalent protection for members of the board, representatives and witnesses, as for the conventional Supreme Court system.

Clause 716 provides powers to the board including the powers to receive evidence on oath or by statutory declaration, act in the absence of a person given notice and adjourn the inquiry.

Clause 717 provides for a person who has been given notice of the inquiry to, on their own behalf or through a lawyer or agent, call, examine, cross examine and re-examine witnesses.

Clause 718 provides for the chairperson to require a person to attend the inquiry and to continue to attend to give evidence or produce documents and other requirements, unless that person has a reasonable excuse. Provision is made for a witness fee to be paid. The witness may be required to take an oath or make an affirmation and answer a question or produce a document or thing, unless they have a reasonable excuse, one of which would be that the evidence may incriminate the witness.

Clause 719 provides for the board of inquiry to inspect, photograph, or make copies of documents or things and retain them as necessary. This clause also provides that the owner of the document or thing is entitled to access to it, as considered reasonable by the board.

Division 3—Miscellaneous provisions

Clause 720 provides that the operations of the board of inquiry may proceed independently of any other court proceedings, unless a court determines otherwise.

Clause 721 provides for it to be prohibited for a person to make a false or misleading statement or produce documents or things that the person knows to be false or misleading.

Clause 722 provides that persons must not insult, deliberately interrupt, disturb or otherwise act in contempt of a board of inquiry.

Clause 723 provides that a change to the membership of a board of inquiry does not affect the board or its operation.

PART 6—RESTRICTIONS ON GAS WORK

Division 1—Preliminary

Clause 724 provides that the term "gas device" be used in this Bill, rather than the earlier term "gas appliance", as the scope of the term "gas device" covers more than the traditional gas appliance, particularly in the area of the use of gas in refrigeration or as a propellant. Fundamentally, this clause has provided for a "type A" gas device to be one for which a certification system exists. This covers mainly "white goods" gas appliances. This clause also provides that all other devices are designated "type B" gas devices.

Clause 725 provides for the definition of the term "gas work" as any work associated with the gas system of gas devices. For example, it would not cover electrical work unless that work was concerned with the operation of the gas system of the device.

Division 2—Restrictions

Clause 726 provides for the traditional licensing system to be continued with "type A" gas devices. This clause also provides that it is prohibited for gas work to be carried out on these devices unless the person carrying out the work holds the appropriate licence.

Clause 727 provides for licensing to be discontinued and be replaced by authorisations. This is because of the enormous variety of "type B" devices, ranging from the gas conversion of a car to a gas fired power station. These authorisations would usually be issued to an entity rather than an individual where a suite of skills needed to undertake the gas work would be held by a number of people, which could include specialists. This clause also provides that this type of gas work is limited to holders of the authorisation, or those who work under its authority.

Division 3—Gas work licences and authorisations

Clause 728 provides for the chief inspector to issue licences or authorisations and to limit the work or set conditions on the licence or authorisation.

Clause 729 provides the requirement for the authorisation or licence holder to comply with any conditions set by the chief inspector.

Clause 730 provides the requirement for the chief inspector to keep a register of licences and authorisations.

Clause 731 provides for allowing persons reasonable access to the register while protecting private information such as private addresses.

PART 7—MISCELLANEOUS PROVISIONS

Clause 732 (*Increase in maximum penalties in circumstances of aggravation*) provides for substantially increased penalties, including jail terms, where any person is convicted of an offence in which that person, by act or omission, was responsible for deaths, grievous bodily harm or serious property damage.

Clause 733 provides for any person manufacturing or importing "type A" or "type B" gas devices or gas fittings, to certify that it complies with the relevant safety requirements. This clause also provides for the restriction of the sale, installation and use, of "type A" or "type B" gas devices or gas fittings to those approved by the chief inspector, or a person or body approved by the chief inspector.

Clause 734 provides for it to be prohibited for an installer to install a system that does not comply with an applicable safety requirement. This clause also provides that if a defect is found before putting the system into operation, that it not be operated, and the owner/operator advised. This clause also provides that installers are required to certify that any installation they install complies with the relevant safety requirements.

CHAPTER 10—INVESTIGATIONS AND ENFORCEMENT

PART 1—INVESTIGATIONS

Division 1—Inspectors and authorised officers

Clause 735 provides for the appointment of statutory officers, namely the chief inspector, deputy chief inspector, inspectors and authorised officers. There is a caveat that such appointees can only be appointed by the chief executive if the person has the expertise or experience and the qualifications necessary for the position.

Clause 736 provides the broad powers and functions given to inspectors and authorised officers which include the conducting of audits and inspections and collecting information for the Bill. Inspectors have additional functions and powers to investigate incidents and respond to emergencies. This clause also provides an inspector or authorised officer to be a "public official" under the *Police Powers and Responsibilities Act 2000*, which allows police to assist these officers if called upon.

Clause 737 provides the functions or powers of any appointed inspector or authorised officer to be limited. This could be used, for example, for a new appointee who must undergo training before being given the full powers of the office.

Clause 738 provides for the chief executive to issue an identity card to each appointed inspector or authorised officer and gives details of the card.

Clause 739 provides for authorised officers and inspectors to produce or display their identity cards when exercising powers under this Bill.

Clause 740 provides for the manner in which a person can cease to hold office as an inspector or authorised officer, which includes the expiry of the office under a condition or resignation.

Clause 741 provides for resignation to occur by signed notice to the chief executive.

Clause 742 provides that any inspector or authorised officer who ceases to hold office promptly returns the identity card issued to them.

Division 2—Powers of entry of inspectors and authorised officers

Clause 743 provides limited general powers of entry to inspectors and authorised officers which either entails occupier consent, the entry during business hours onto business premises covered under the Bill, or using a warrant. The entry by consent option is overwhelmingly used in practice as inspectors entering premises, particularly private premises, only do so when specifically invited to enter by the owner/occupier. Usually this is in response to a complaint or problem expressed by the occupier to the inspectorate or to the Minister. It is logical and sensible that this option remain. The entry onto business premises during working hours without invitation is an essential part of an inspector's work, as an "unannounced" inspection can often detect a breach which would otherwise be hidden.

Clause 744 provides for powers of entry in an emergency, which are an essential component of controlling a real situation where prompt action may be essential to preserve life and property.

Clause 745 provides that inspectors have the essential right of entry at any time, so that they may properly monitor operating plants. This clause specifically excludes any residential premises on the operating plant from this right of entry.

Clause 746 provides that authorised officers have the essential right of entry at any time, so that they may properly monitor activities on a petroleum authority. This clause specifically excludes any residential premises on the petroleum authority from this right of entry.

It may be considered that there is as a breach of a fundamental legislative principle triggered by this clause. The authorised officer may do the following things: conduct audits, investigations and inspections to monitor and enforce compliance with provisions of this Act other than provisions relating to safety; and collect information for this Bill. To do this effectively, the authorised officer should be able to "spot check" land subject to a petroleum authority without forewarning the holder, thus allowing the proper monitoring of activities. It should be noted that the authorised officer is issued an identity card by the chief executive and this is to be shown upon demand, that a number of matters have to be addressed before entry can be effected, that entry must be at a reasonable time and that entry cannot be to land where a person resides.

Division 3—Procedure for entry

Clause 747 provides for when an inspector or authorised officer seeks consent to enter a place. The inspector or officer is required to tell the occupier the purpose of the entry and give the occupier the right of refusal. The inspector or officer may ask the occupier to sign a consent form, a copy of which must be given to the occupier.

Clause 748 provides for entry by warrant and details the method by which a warrant is obtained.

Clause 749 provides for the magistrate to issue the warrant and gives the details of the contents of the warrant.

Clause 750 provides various methods by which an application for a warrant may be made including telephone, facsimile or other electronic communication and provides for various mechanisms of issue.

Clause 751 provides that insubstantial defects in a warrant do not invalidate the warrant.

Clause 752 provides that an inspector must, before entering a place under a warrant, provide identification, give the occupier a copy of the warrant and give the person the opportunity to allow entry without force.

Division 4—Powers after entering a place

Clause 753 provides for this division to apply only after entry has been effected and, where consent has been requested, that consent has been given.

Clause 754 provides for powers after entry that are necessary to investigate or inspect the situation for which entry was sought. They include the ability to test, measure, copy, photograph anything or take a thing or a sample away for testing. The powers also provide for the inspector or authorised officer to bring onto the site other persons or equipment necessary to exercise the power.

Clause 755 provides for the inspector or authorised officer to request assistance because in any investigatory or emergency situation, an inspector or authorised officer will often require assistance. Any person being asked to help must be informed of the power under this Bill

Clause 756 provides that a person asked for help must comply unless that person has a reasonable excuse.

Division 5—Power to obtain information

Clause 757 provides inspectors and authorised officers with the power to require persons to state their name and address where an offence is identified or reasonably suspected. The inspector or authorised officer may require evidence to demonstrate the correctness of the information is given.

Clause 758 provides for an inspector or authorised officer to require the production of a document and to make or obtain a copy of it. The inspector or authorised officer may require that any copy made by the person be certified as a true copy. If the inspector or authorised officer copies a document, the original must be returned as soon as practicable.

Clause 759 provides that, unless the person has a reasonable excuse (and self-incrimination is a reasonable excuse), a document must be produced on demand. However, this exclusion does not apply to documents required to be kept under the Bill.

Clause 760 provides that a person must make a certified copy of a document on demand unless there is a reasonable excuse.

Clause 761 provides for an inspector or authorised officer to require a person to give information about an alleged offence at a reasonable place or time.

Clause 762 provides that it is an offence for a person who, without reasonable excuse, does not comply with the requirement to provide the information about an alleged offence.

Division 6—Seizure and forfeiture

Subdivision 1—Seizure powers

Clause 763 provides for powers of seizure to be given to inspectors and authorised officers where a thing may be necessary as evidence of an offence or required for an investigation. This is particularly important when interference with the thing could destroy or invalidate vital evidence.

Clause 764 provides for the seizure to take place despite any other claim which may relate to the thing seized.

Subdivision 2—Powers to support seizure

Clause 765 provides for an inspector or authorised officer to require, by notice to a person in charge of a seized item, to take control of the seized item or move it to a defined location. In some cases, the thing seized could be quite substantial, such as a section of plant.

Clause 766 provides that a person who fails to comply with a seizure direction notice, without reasonable excuse, commits an offence.

Clause 767 provides for the inspector or authorised officer to move, tag, secure or make inoperable, any seized item.

Clause 768 provides for any person, other than an inspector or authorised officer, to be prohibited from interfering with, moving or being at a place where the seized item is kept without reasonable excuse.

Clause 769 provides for inspectors and authorised officers to test anything seized under this Bill and, where the thing is a sample of petroleum or gas, test it to destruction. Other items may only be

destructively tested after the owner is notified and is given the opportunity to make submissions which must be considered.

Subdivision 3—Safeguards for seized property

Clause 770 provides for an inspector or authorised officer to give a receipt for anything seized and provide an information notice about the decision, unless impractical or not reasonable to do so.

Clause 771 provides that the owner of any seized thing has a right of access to it for inspection, or copying, unless such access would be unreasonable.

Clause 772 provides that an inspector or authorised officer is required to return anything seized within 6 months or another period determined by circumstances. This does not apply to items forfeited.

Subdivision 4—Forfeiture

Clause 773 provides that, in cases of danger, inability to locate an owner, to prevent further offences, or where the item has no real value, the item seized may be forfeited. Forfeiture can only occur after reasonable efforts have been made to contact the owner and, where an owner is found, the owner must be given an information notice about the forfeiture where that would be reasonable. Forfeiture without notice can be decided where the item has no intrinsic value, which is often the case.

Clause 774 provides for the chief executive or chief inspector to dispose of any forfeited item, providing an appeal concerning this item is not proceeding.

Division 7—Notice of damage caused when exercising power

Clause 775 provides that the division applies where damage is caused to a thing by an inspector or authorised officer while exercising powers, or by a person helping an inspector or authorised officer. It does not apply where damage is trivial or the item is not in the possession of anyone.

Clause 776 provides that the inspector or authorised officer is required to give, or leave, the person in control of the thing a notice, detailing the damage caused. This notice can be delayed if an investigation would be hindered by complying immediately.

Clause 777 provides that the notice must include details of the damage and any circumstances which may have led to the damage beyond the control of the inspector or authorised officer.

Division 8—Miscellaneous provisions

Clause 778 provides for how and when compensation may be made to a person, who suffered a cost, damage or loss as a result of an inspector or authorised officer exercising, or purportedly exercising, a power under this Part of the Bill.

Clause 779 provides for an inspector or authorised officer to comply with all requirements of a safety management plan at an operating plant unless approved in writing by the chief inspector.

PART 2—DIRECTIONS AND ENFORCEMENT

Division 1—Direction to remedy contravention

Clause 780 provides for an inspector or authorised officer to give a "compliance direction" where a breach of the Bill exists or may exist, but where the breach does not present an immediate danger. The direction must be in writing and may state the steps needed to remedy the breach or potential breach. Allowance is made for an inspector to enter the premises at stated times to check compliance with the direction.

Clause 781 provides for the details needed in a compliance direction, which include a statement that the Bill is believed to have been breached and the reasons for that belief, and that steps necessary to rectify the breach must be taken within a reasonable stated period. The direction may state the steps necessary, and an information notice must be provided about the direction and time allowed.

Clause 782 provides that an offence is committed if a person does not comply with the compliance direction without reasonable excuse and that, where steps are nominated, taking those steps is deemed to be compliance. Allowance is made for a person to comply in another way.

Division 2—Direction to remedy dangerous situation

Clause 783 provides for a "dangerous situation direction" to be given by the inspector, who must believe that a dangerous situation exists and that the person given the direction has the ability to remove or minimise the danger. The direction can state the steps which must be taken and allowance is made for an inspector to enter the premises at stated times to check compliance with the direction.

Clause 784 provides for the details needed in a dangerous situation direction, which includes a statement that a dangerous situation exists, the reasons for that belief and that the person must take the necessary steps to remove or minimise the danger. The direction may state the steps necessary, and an information notice must be provided about the direction and time allowed. In cases where it is not practical to give the direction in writing, the inspector may give the direction orally and later confirm it in writing. This would often be the case in an emergency situation.

Clause 785 provides that a person given a dangerous situation direction must comply with it.

Division 3—Enforcement of directions

Clause 786 provides for an inspector to undertake any reasonable re-inspection necessary to ensure compliance with a direction.

Clause 787 provides that for where a direction has been given but not complied with, an inspector or authorised officer may take the necessary steps to have the direction actioned by other means.

Clause 788 provides for costs of the re-inspection, or undertaking the action to have the direction complied with by the inspector or authorised officer, can be recovered by the State from the person responsible.

Division 4—Noncompliance procedure for all authorities under Act

Subdivision 1—Introduction

Clause 789 provides a process for action against holders of an authority (including a licence or authorisation) for noncompliance. It is noted that this division does not limit the ability to take other noncompliance actions.

Subdivision 2—Noncompliance action

Clause 790 provides for a number of noncompliance actions which depend on the authority being issued. These include reducing the term of the authority, amending or imposing conditions, suspension or cancellation of the authority or, in the case of tenure, taking such actions as reducing the tenure area or withdrawing the work program approval. This clause also provides for a monetary penalty to be used in place of other actions in some cases.

Clause 791 provides for details about when noncompliance action can be taken. These reasons include the authority being obtained falsely, a noncompliance with the Bill, the failure to pay an amount due and other reasons associated with improper actions under a tenure authority.

Clause 792 provides for where a petroleum tenure has been divided into more than one petroleum tenure, that any compliance action started, or that could have been taken, against the holder of the original authority, may be continued or started against any holder of the tenures the original authority was divided into. This clause also provides the procedure for any noncompliance action that is taken, or to be taken, pursuant to this clause.

Subdivision 3—Procedure for immediate suspension of gas work licence or authorisation

Clause 793 provides that the subdivision only applies to holders of gas work licences and authorisations.

Clause 794 provides for the chief inspector to immediately suspend an authority if it is imperative to control or prevent a danger to the public. Such an instance could arise if a incompetent gasfitter was discovered

doing dangerous work and there was reason to suspect this would continue. This clause also provides for the period of suspension to be limited to 40 business days to allow a more formal process to be concluded. The authority holder has the right to lodge a submission as to why the suspension should end. This clause would only be used in cases where failing to do so would present a real danger to the industry or the public.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The issue here is that it should not be possible by using an appeal process to defer the immediate implementation of the suspension notice. Such a notice would only be served if there was a clear and present danger to the community by allowing the authority to continue.

Subdivision 4—Procedure for other noncompliance action

Clause 795 provides for noncompliance actions other than immediate suspension.

Clause 796 provides that the relevant official give notice to the authority holder that a noncompliance action will be taken, what action is proposed, and details of the facts and grounds for the action. The notice must include provision for the holder to lodge a submission about the proposal within a stated period, which must not be less than 20 business days.

Clause 797 provides that the relevant official must consider any submission made and, if no further action is contemplated, advise the authority holder.

Clause 798 provides for the relevant official, once any submissions have been considered, to take the proposed action.

Clause 799 provides that an authority holder must be given notice of the noncompliance decision and the date it takes effect.

CHAPTER 11—GENERAL OFFENCES

PART 1—RESTRICTIONS RELATING TO PETROLEUM ACTIVITIES

Clause 800 restricts the carrying out of petroleum tenure activities in relation to land, except in certain circumstances listed in this clause.

One of the exceptions listed is where the land in question is also subject to a mining lease and the mining lease authorises activity mentioned in the *Mineral Resources Act 1989*, dictionary, definition "*mineral*", paragraph (c) or (f) for a substance of a type mentioned in these paragraphs.

The *Mineral Resources Act 1989,* dictionary, definition "mineral", paragraphs (c) and (f) currently states:

> "(c) hydrocarbons and other substances or matter occurring in association with shale or coal and necessarily mined, extracted, produced or released by or in connection with mining for shale or coal or for the purpose of enhancing the safety of current or future mining operations for coal or the extraction or production of mineral oil therefrom;
>
> (f) mineral oil or gas extracted or produced from shale or coal by in situ processes".

The *Mineral Resources Act 1989* allows the extraction of hydrocarbons etcetera, under certain circumstances, as a part of the activities associated with coal mining under that Act. The primary reason this is done is for safety; however the hydrocarbons are often used as a source of fuel to generate electricity for some operations on the mining lease.

The purpose of this clause is to penalise persons who conduct petroleum activities on land that was not within the tenure area of a petroleum authority or in other allowable circumstances detailed in this clause. However, the application of this clause would have made the legitimate extraction of hydrocarbons etcetera on mining leases, as authorised under the provisions of the *Mineral Resources Act 1989*, a breach of this Bill. Consequently, this clause is not to apply to those holders of mining leases

who have a legitimate right to extract hydrocarbons etcetera under the provisions of the *Mineral Resources Act 1989*.

Clause 801 provides that a petroleum producer must measure each product detailed in this clause in accordance with the relevant measurement scheme for the meter, ensure the meter complies with prescribed requirements and that the measurement is made at the times and in the way prescribed.

Clause 802 restricts the construction or operation of a pipeline (other than a distribution pipeline), except in certain circumstances listed in this clause.

One of the exceptions listed in this clause is where a person constructs or operates a pipeline (other than a distribution pipeline) pursuant to the authority to prospect and petroleum lease incidental activities provisions of the Bill.

Another exception allows a person to construct or operate a pipeline (other than a distribution pipeline) if the operation of the pipeline consists of the transportation, within the boundaries of a mining lease, of a substance produced under the lease of a type mentioned in the *Mineral Resources Act 1989*, dictionary, definition "*mineral*", paragraph (c) or (f) for a substance of a type mentioned in these paragraphs.

The *Mineral Resources Act 1989,* dictionary, definition "mineral", paragraphs (c) and (f) currently states:

> "(c) hydrocarbons and other substances or matter occurring in association with shale or coal and necessarily mined, extracted, produced or released by or in connection with mining for shale or coal or for the purpose of enhancing the safety of current or future mining operations for coal or the extraction or production of mineral oil therefrom;
>
> (f) mineral oil or gas extracted or produced from shale or coal by in situ processes."

The *Mineral Resources Act 1989* allows the transportation of hydrocarbons etcetera, within the area of a mining lease, as a part of the activities associated with coal mining under that Act. The primary reason this is done is to transport the hydrocarbons for use as a source of fuel to generate electricity for some operations on the mining lease.

The purpose of this clause is to penalise persons who construct or operate a pipeline without a pipeline licence, or in other circumstances detailed in this clause. However, the application of this clause would have

made the legitimate transportation of hydrocarbons etcetera within the boundaries of a mining lease, as authorised under the provisions of the *Mineral Resources Act 1989*, a breach of this Bill. Consequently, this clause is not to apply to those holders of mining leases who have a legitimate right to transport hydrocarbons etcetera under the provisions of the *Mineral Resources Act 1989*.

Clause 803 restricts the construction or operation of a petroleum facility, except in certain circumstances listed in this clause.

One of the exceptions listed is where a person constructs or operates a petroleum facility pursuant to the petroleum processing provision in the Bill.

Clause 804 requires a person who is conducting activities under a petroleum authority to carry out the activities without unreasonably interfering with other activities being properly conducted by other persons on the area of the authority. Also, this clause requires that a person exercising access rights for a petroleum authority must do so without unreasonably interfering with other activities being properly conducted by other persons on the access land.

As petroleum activities may impinge on the rights of the other tenures, landholders etcetera, there is a need to ensure all parties co-operate. For example, a person carrying out an authorised activity for a petroleum authority must not unreasonably interfere with a grazier going about their day-to-day business.

PART 2—INTERFERENCE WITH AUTHORISED ACTIVITIES

Clause 805 prohibits a person, without reasonable excuse, from obstructing a petroleum authority holder from the petroleum authority holder's right of access, or obstructing the holder while the holder carries out activities authorised by the petroleum authority. However, when entering land to conduct an authorised activity, the petroleum authority holder must have complied with the private land or public land clauses of this Bill.

As petroleum activities may impinge on the rights of other tenures, landholders etcetera, there is a need to ensure all parties co-operate.

Clause 806 provides that a person must not interfere with a water observation bore unless the person is the owner of the bore or a person authorised by the owner.

Clause 807 restricts a person, other than a holder of any of the pipeline licences covering the pipeline land, to construct or place a structure on the land unless the consent of all pipeline licence holders is first obtained.

Clause 808 restricts a person from changing the depth of burial of a pipeline except in certain listed circumstances.

Clause 809 makes it unlawful for a person to take petroleum from a pipeline (as defined in this clause) or from a gas fitting.

Clause 810 restricts a person from constructing or placing a structure on the petroleum facility land unless the consent of the petroleum facility licence holder is first obtained.

PART 3—OTHER OFFENCES

Clause 811 provides that a person must not obstruct an inspector or authorised officer in the exercise of a power unless the person has a reasonable excuse. If a person is obstructing an inspector or authorised officer, and the inspector or authorised officer proceeds with the exercise of a power, the inspector or authorised officer must warn the person that it is an offence to obstruct, and that the person's conduct is considered an obstruction.

Clause 812 provides that a person must not pretend to be an inspector or an authorised officer.

Clause 813 provides that a person must not make an entry in a document knowing that it is false or misleading in a material particular.

Also, where directed or required under this Bill, a person must not give a document or thing that the person knows is false or misleading in a material particular.

Clause 814 requires the executive officers of a corporation to ensure that the corporation complies with the Bill. If a corporation commits an offence against one of this Bill's provisions, each of the executive officers commits the offence of failing to ensure that the corporation complies.

Also, it is specified that it is evidence that each of the executive officers failed to ensure the corporation complied with this Bill if there is evidence that the corporation has been convicted of an offence against a provision of the Bill. The clause also provides defences for an executive officer of a corporation in relation to the offence.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is a reversal of onus of proof. However, this provision is a standard clause in many pieces of legislation, including the *Child Care Act 2002*, *Property Agents and Motor Dealers Act 2000*, and the *Environmental Protection Act 1994*. It is appropriate that an executive officer, who is in a position to influence the conduct of the corporation, should be accountable for offences committed against provisions of this Bill by the corporation. However, it should be noted that there are standard defences within this provision relating to whether the executive officer was in a position to influence the corporation's conduct in relation to the offence or, if the executive officer was in this position, that the officer exercised reasonable diligence to ensure the corporation complied with the provision.

Clause 815 restricts a fuel gas supplier from supplying LPG, in a container with a water capacity of 25 kilograms, where the container is another fuel gas supplier's property. This clause has been carried over from the *Gas (Residual Provisions) Act 1965* with some doubt over its validity in terms of restriction of trade. However, discussions with the Australian Competition and Consumer Commission resulted in the agreement that the section would remain for a period of 3 years to allow industry time to demonstrate that its removal would materially jeopardize safety. This clause also provides a sunset provision, which will allow it to expire 3 years after its commencement.

Clause 816 provides for it to be an offence if a person attempts to commit an offence against this Bill. Section 40 of the Criminal Code applies to this clause.

CHAPTER 12—REVIEWS AND APPEALS

PART 1—REVIEW OF DECISIONS

Clause 817 provides for a person whose interests are affected by an original decision to apply for the decision to be reviewed. This clause also sets out to whom a person may apply to for a review.

Clause 818 sets out the requirements for making a review decision application by a person whose interests are affected by an original decision.

Clause 819 provides the reviewer of a decision the ability to grant a stay of the original decision. This clause also lists the conditions of the stay and provides that the period of a stay is not to extend past the time when the reviewer decides the review. An application made for a review affects the original decision, or the carrying out of the decision, only if the decision is stayed.

Clause 820 requires the reviewer to review the original decision within 20 business days after the review application has been made. The reviewer must also, within 20 business days after the review application has been made, make a decision to confirm or amend the original decision, or substitute another decision for the original decision.

For the purposes of an appeal, where the review decision confirms or amends the original decision, the original decision is taken to be this confirmed or amended review decision.

Clause 821 details who must not deal with a review application for an original decision. This clause also allows a reviewer to seek, and take into account, any information from any other person.

Clause 822 requires the reviewer to give the applicant a notice about the review decision (which may include or be accompanied by an information notice) 5 business days after the reviewer has made their review decision. If the reviewer does not give the applicant a notice on the review decision within the 5 business days, the reviewer is taken to have made a review decision confirming the original decision.

PART 2—APPEALS

Clause 823 provides that a person whose interests are affected by a review decision may appeal against the decision to the industrial court or District Court or, depending on the decision, may appeal the decision to the court or tribunal (called the "*appeal body*") outlined in a schedule in the Bill.

Clause 824 details when an appeal must commence, and allows for the appeal body to extend the appeal making period.

Clause 825 outlines how an appeal is started.

Clause 826 provides the appeal body the ability to grant a stay of the decision. This clause also lists the conditions of the stay and provides that the period of a stay is not to extend past the time when the appeal body decides the appeal. The appeal affects the decision, or the carrying out of the decision, only if the decision is stayed.

Clause 827 provides for the appeal hearing procedure, which must be in accordance with the rules for the appeal body, or by directions of the appeal body where the rules make no provision for the appeal. The appeal is by way of rehearing.

Clause 828 provides for how the appeal body may confirm a decision, set aside and substitute another decision, or set aside and return the issue to the original decider with appropriate directions from the appeal body.

Where the appeal body sets aside and substitutes another decision, the substituted decision is taken to be the original decider's decision.

Clause 829 provides that the tribunal cannot exercise some of the appeal body's power for a decision on the ground that the preference decision for the lease application was to give any coal or oil shale development preference, in whole or part.

Clause 830 provides details about appealing an appeal body's decision. An appeal to the Court of Appeal from the District Court, and an appeal to the District Court on a decision from the Industrial Court, may only be made on a question of law.

CHAPTER 13—EVIDENCE AND LEGAL PROCEEDINGS

PART 1—EVIDENTIARY PROVISIONS

Clause 831 describes when this division applies.

Clause 832 provides that it is not necessary to prove the appointment of an inspector or authorised officer, or their power to do anything under the Bill.

Clause 833 provides that a signature purporting to be the signature of an official is evidence of the signature it claims to be.

Clause 834 provides that a certificate, purporting to be signed by the chief executive and stating certain matters as outlined in this clause, are to be taken as evidence of the matter.

Clause 835 provides that a certificate by the Minister, that stated land taken under the State's power to take land, is evidence that the taking of the stated land was for the purpose mentioned.

Clause 836 provides that the provisions of a safety management plan for an operating plant at a particular time, are taken to be the provisions in the copy of the safety management plan.

PART 2—OFFENCE PROCEEDINGS

Clause 837 provides that offences against this Bill are summary offences. This clause also provides that a proceeding for an offence against safety management plans, other safety obligations, or restrictions on gas work provisions of the Bill must be brought before an industrial magistrate and can be started only by complaint of the chief inspector or someone else authorised by the Minister, with the *Industrial Relations Act 1999* applying to this proceeding. This clause also provides for when and where a proceeding for an offence must be brought.

Clause 838 provides that, in the case of a complainant initiating a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day, is evidence that the matter came to the complainant's knowledge on that day.

Clause 839 applies to a proceeding for an offence involving a false or misleading document, statement or information.

Clause 840 applies to a proceeding for an offence if it is relevant to prove a person's, (or an actual or apparent representative of a person's) state of mind.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is a reversal on the onus of proof. However, it is appropriate that a person, who is in a position to influence the conduct of their representative, should be accountable for offences committed against provisions of this Bill by the representative. However, it should be noted that there are defences within this provision relating to whether the person was in a position to influence the representative's conduct in relation to the offence or, if the person was in this position, that the person exercised reasonable diligence to ensure the representative complied with the provision.

Clause 841 provides for additional orders a court may make on the conviction of a person for an offence against this Bill, including forfeiture of certain things to the State.

CHAPTER 14—MISCELLANEOUS PROVISIONS

PART 1—APPLICATIONS

Clause 842 provides that a person who has to decide an application may accept an application where all the requirements of the application have not been met; providing the person believes that the application substantially complies with the requirements.

Clause 843 provides for a person who is making a decision about an application (called the "*decision maker*") to request further information

about an application, the decision maker requires to properly assess the application. The decision maker may also require the applicant to supply a statutory declaration verifying any information within the application, or verifying any further information requested under this clause.

Where the application is for a petroleum authority, the decision maker may also require a survey or re-survey of the area. The survey must be carried out in a manner approved by the Minister, and by a person who is registered as a cadastral surveyor under the *Surveyor's Act 2003*.

Further, the decision maker may refuse an application if the applicant does not give the required information or the statutory declaration about the application to the chief executive within the required timeframe.

All costs in complying with this clause must be borne by the applicant.

Clause 844 provides for a person who has made an application under this Bill to amend the application before it has been decided, providing the decision maker agrees to the amendment.

Where the amendment to the application is to change an applicant, all other applicants must agree to this change. The amended applicant will then be considered an applicant from the making of the application, for the purposes of deciding the application.

This clause also provides that if the application is a tender for a petroleum tenure, the proposed work program or development plan cannot be amended after the applicant has become the preferred tenderer for the tender, or the tender cannot otherwise be amended after the closing of tenders.

Clause 845 provides for an applicant to withdraw an application, by giving a notice to the official making a decision about the application. Generally, this notice must be made before the application is decided or, in the case of an application for a petroleum authority, before the authority is granted. The withdrawal of the application by the applicant takes place when the notice of withdrawal is given.

If the applicant is the preferred tenderer for a call for tenders, the withdrawal of the application does not affect the Minister's power to decide other applications in response to the same call-for-tenders.

Clause 846 provides for the Minister to refund whole or part application fees upon the refusal or withdrawal of an application.

PART 2—MISCELLANEOUS PROVISIONS FOR ALL AUTHORITIES UNDER ACT

Clause 847 provides for the operation of this Part and states that it applies to any authority under the Bill.

Clause 848 provides the power for an official, who has issued an authority, to amend an authority at any time, with certain restrictions. For example, the official may amend the authority to correct a clerical or formal error, and record the particulars of the amendment in the petroleum register, by issuing a notice to the holder of the authority.

The official may also amend the authority by issuing a notice to the holder of the authority, and making the amendment, if it does not affect the interests of the holder or anyone else and the holder has agreed to the amendment in writing.

However, this clause does not apply for a mandatory condition for, or the term of the authority, or for an amendment to a work program (for an authority to prospect) or development plan (for a petroleum lease).

The official cannot amend the authority if the authority (as amended) would be inconsistent with the mandatory conditions applying to that type of authority.

Clause 849 allows for the replacement of an original authority or licence, where the original authority or licence has been lost, destroyed or stolen.

The authority holder must apply for a replacement authority or licence to the official who issued the authority. The official must consider the application and, if reasonably satisfied that the authority or licence has been lost, destroyed or stolen, replace the authority or licence.

If the official decides to refuse the application, the official must give the applicant an information notice about why the application was refused.

Clause 850 states that if more than one person holds an authority, each holder is jointly and severally responsible for complying with the conditions of the authority and liable for all debts payable under this Bill and unpaid by the holder of the authority to the State.

Clause 851 provides for an official to refuse to deal with a person claiming to be acting as an agent for an authority holder, unless the authority holder has given the official a notice, stating that the agent is representing the holder.

PART 4—OTHER MISCELLANEOUS PROVISIONS

Clause 852 provides for a person, who has lodged a signed notice at the office stated in this clause, to nominate another person at a stated address as being the address for the service of a notice or other document for this Bill.

Clause 853 provides for an official to request further written information about advice given to the official. This request can be given by the official by a notice, given to a person previously requested under this Bill to give a notice, copy of a document, report, or information; and the person has given the official this notice, copy of a document, report, or information. The person must comply with the official's notice within a reasonable timeframe as stated in this notice.

Clause 854 provides for what other rights are referred to when referring to a right to enter a place.

Clause 855 provides the relationship with another provision of the Bill, another law, or a provision of another law, if those other provisions or laws apply.

Clause 856 provides when a "relevant person" (an official, a public service officer or employee, a contractor carrying out activities relating to the administration of this Bill, or a person who is required to comply with a direction or requirement given under this Bill) may be protected from civil liability for an act done, or omission made, honestly and without negligence under this Bill. If a civil liability is prevented from being attached to a "relevant person", the liability instead attaches to the State. A definition of "civil liability" is also provided for in this clause.

Clause 857 provides for the Minister, chief executive or chief inspector to delegate their respective powers under this Bill. This clause also provides to whom the Minister, chief executive or chief inspector can delegate their respective powers to under this Bill. The Minister and the chief executive may delegate their respective powers to an inspector or, with the Minister's approval, to an appropriately qualified public service officer or employee, or an appropriately qualified contractor carrying out activities, relating to the administration of this Bill, for the department. The chief inspector may delegate the chief inspector's powers to an inspector or, with the Minister's approval, to an appropriately qualified public service officer or employee, or an appropriately qualified contractor carrying out activities, relating to the administration of the Bill, for the department.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as it may be perceived that it is not appropriate to delegate the Minister's, chief executive's or chief inspector's powers to a contractor. However, there are restrictions in this clause that require the contractor to be appropriately qualified and be carrying out activities pursuant to the administration of this Bill for the department administering the Bill. It is envisaged that the Minister's, chief executive's or chief inspector's powers will be delegated to a contractor in rare and unusual circumstances, such as when an inspector, or public service officer or employee, is not considered suitably qualified to be delegated such powers. Note also that the chief inspector cannot delegate powers to a contractor unless approval to do so is first obtained from the Minister.

Clause 858 provides for the chief executive to approve forms for use under the Bill, and for the chief inspector to approve forms for use under the parts of the Bill that deal with fuel gas quality and characteristics for consumers, petroleum and fuel gas measurement, safety, and investigations and enforcement.

Clause 859 provides for the Governor in Council to make regulations about fees payable under the Bill and that a regulation under the Bill may be made in the same instrument as a regulation made under the *Petroleum Act 1923*.

CHAPTER 15—REPEAL AND TRANSITIONAL PROVISIONS

PART 1—REPEAL OF GAS (RESIDUAL PROVISIONS) ACT 1965

Clause 860 provides for the repeal of the *Gas (Residual Provisions) Act 1965*. However, there is limited continued application of this Act for plant operated, or an activity carried out, immediately before the commencement of this clause if this Bill applies to the activity or operation.

PART 2—TRANSITIONAL PROVISIONS FOR REPEAL OF GAS (RESIDUAL PROVISIONS) ACT 1965

Clause 861 provides the definitions of words commonly used in this division.

Clause 862 provides for this clause to apply to meters operated pursuant to the repealed *Gas (Residual Provisions) Act 1965* immediately before the commencement of this Bill. This clause also provides that the Chapter and Part stated in this clause (relating to petroleum and fuel gas measurement/ measurement schemes), of this Bill do not apply to these meters until the later of the dates detailed in this clause.

Clause 863 provides for this clause to apply where an application had been made to test a meter and the test had not been carried out prior to the relevant regulation under the *Gas Regulation 1989* being repealed. Despite this repeal, the application can be dealt with pursuant to sections 57 and 58 of the *Gas Regulation 1989,* rather than the Chapter and Part stated in this clause (relating to petroleum and fuel gas measurement/meter accuracy disputes) of this Bill.

Clause 864 provides for this clause to apply where a person held a current gas installer's licence or a gas serviceman's licence pursuant to the relevant regulation under *Gas Regulation 1989* before it was repealed. This clause also provides for when the licence ends, subject to the provisions of this Bill stated in this clause (relating to investigations and enforcement/ directions and enforcement/ noncompliance action for all authorities).

Clause 865 provides for this clause to apply where a person held a current gas installer's (advanced) licence, a gas motor fuel installer's licence, or a gas suppliers inspector's licence pursuant to the relevant regulation under the *Gas Regulation 1989* before it was repealed. This clause also provides that on the commencement of this Bill, the licence is taken to be an authorisation for the same purpose of the licence, and details when the licence ends, subject to the provisions of this Bill stated in this clause (relating to investigations and enforcement/ directions and enforcement/ noncompliance action for all authorities).

Clause 866 provides for this clause to apply where an application for a gas installer's licence, gas serviceman's licence, current gas installer's (advanced) licence, a gas motor fuel installer's licence, or a gas suppliers inspector's licence had been made, pursuant to section 84 of the *Gas Regulation 1989* before it was repealed, and the application had not been

decided. This clause also provides that on the commencement of this Bill, the licence application is taken to be an application for a gas work licence or authorisation for the same purpose proposed under this Bill. However, if the application is not for a gas installer's licence, gas serviceman's licence, current gas installer's (advanced) licence, a gas motor fuel installer's licence, or a gas suppliers inspector's licence, this clause provides for the application to lapse and the application fee to be returned to the applicant.

Clause 867 provides *Clause Z8* (*Gas examiners and other officers*) provides for the *Gas (Residual Provisions) Act 1965* to continue to apply to an accident to which section 10A of this Act applies. However, the accident must have happened, and the report on the accident not have been completed, before the commencement of this Bill. This clause also provides for the relevant change in nomenclature of the various officials under the *Gas (Residual Provisions) Act 1965*, to those as stated under this clause, for this Bill.

Clause 868 provides for the relevant change in nomenclature of the gas examiners and other officials under the *Gas (Residual Provisions) Act 1965*, to those as stated under this clause, for this Bill.

Clause 869 provides that if a gas examiner had given a person a requirement under the repealed Act, section 8, and the requirement is still in force and has not been complied with, then the requirement is taken to be a dangerous situation direction given to the person on the commencement. This clause ensures that if there are any potentially dangerous situations, then this situation will still need to be addressed after the commencement of the Bill.

Clause 870 provides that if a gas examiner had seized and removed a substance under the repealed Act and the substance has not been dealt with under that Act, then the repeal Act, section 8(1)(e) continues to apply. The continuation of the repeal Act, section 8(1)(e) ensures that there is a continuation of process in relation to a seized substance.

Clause 871 provides that a matter under the repealed Act which is also a matter under this Bill, then the decision on the matter under the repealed Act is taken, on the commencement to be a decision under this Act. This clause ensures that previous decisions continue to have effect on the commencement of the Bill.

PART 3—TRANSITIONAL PROVISIONS FOR PETROLEUM AND GAS (PRODUCTION AND SAFETY) ACT 2004

Division 1—Provisions for particular existing mining tenements

Clause 872 provides that subclauses stated in this clause within the Bill, and in the *Mineral Resources Act 1989* do not apply for the carrying out of authorised activities until 3 months after the commencement of the Bill. The delay of 3 months is to enable the parties to reach the required agreements in relation to undertaking authorised activities on the relevant tenures.

Division 2—Provisions for coal seam gas

Clause 873 provides for the deferral for 6 months after the commencement of the Bill for the need to have addressed the issue of petroleum production from coextensive natural underground reservoirs. Six months is a reflection of the time that is likely to be needed to reach an agreement in relation to this issue.

Clause 874 provides for the applicant for a petroleum lease to produce coal seam gas, as the mining lease allowed for the mining of the "mineral hydrocarbon". This clause ensures that the rights under the mining lease to all of the coal seam gas are preserved.

Division 3—Miscellaneous provisions

Clause 875 provides for the continuation of the exemption to pay royalty if the payment of royalty, in respect to flaring or venting of gas, was approved immediately before the commencement of the Bill. This exemption is to apply to converted tenures and to those tenures that are to continue under the *Petroleum Act 1923*.

Clause 876 provides for any petroleum facility operating within 2 weeks before the commencement to have one year in which to obtain a petroleum facility licence.

Clause 877 provides for the deferment of the requirement to have a safety management plant for a time that is either prescribed under regulation, or if not prescribed, 6 months after the commencement. The prescribed period must not be longer than 12 months after the commencement. These different periods of time are intended to be sufficient to enable compliance with the relevant provisions.

Clause 878 provides that the haulage, being undertaken immediately before the commencement of this Bill, would be considered to be notifiable road use. This provision allows for the haulage of produced petroleum and of material for the construction of a pipeline to continue, if immediately before the commencement, the haulage was being undertaken. Haulage in relation to a seismic survey of the drilling of a petroleum well or water supply or observation bore being undertaken or drilled on the commencement day can be completed. A seismic survey, well or bore commenced after the commencement day will have to comply with the relevant provisions in the Bill.

CHAPTER 16—AMENDMENT OF ACTS

PART 1—AMENDMENT OF ABORIGINAL LAND ACT 1991

Clause 879 provides for amendment to the *Aboriginal Land Act 1991*.

Clause 880 provides for section 3, where it states the definition "mining interest", "or the *Petroleum Act 1923*" to amend this to "the Petroleum *Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*". This clause also provides for section 3, where it states the definition "petroleum", "*Petroleum Act 1923*" to amend this to "the *Petroleum and Gas (Production and Safety) Act 2004*".

Clause 881 provides for section 88(1), where it states "*Petroleum Act 1923*" to amend this to "*Petroleum and Gas (Production and Safety) Act 2004*".

PART 2—AMENDMENT OF COAL MINING SAFETY AND HEALTH ACT 1999

Clause 882 provides for amendment to the *Coal Mining Safety And Health Act 1999.*

Clause 883 provides for the insertion of a clause 62A into this Act, which requires that where coal mining operations include activities related to incidental coal seam gas, in developing the safety and health management system, regard must be had to the requirements for a safety management plan under this Bill.

Clause 884 amends schedule 2 of the Act to specifically include coal seam gas matters in the regulations. The clause also provides for the regulations to determine what are mineable coal seams and allows for exemptions from complying with stated requirements with respect to mineable coal seams. The intention is that the definition of mineable coal seams will be conservative and that where the definition has unnecessarily included an operation or a mineable coal seam, an exemption can be sought by the coal mine operator to allow for a case by case decision to be made on whether or not stated requirements need to apply.

Clause 885 amends schedule 3 of the *Coal Mining Safety And Health Act 1999* to include a definition of incidental coal seam gas and to make consequential changes to other definitions. The definition of surface mine has been clarified with an example with respect to surface coal seam gas facilities to ensure that section 21 of this Act can provide for separate operators to be appointed to surface related coal seam gas facilities and underground coal mine operations.

PART 3—AMENDMENT OF COASTAL PROTECTION AND MANAGEMENT ACT 1995

Clause 886 provides for amendment to the *Coastal Protection and Management Act 1995*.

Clause 887 provides for the amendment to the schedule, where it states the definition "interest", paragraph (b) after "*Petroleum Act 1923*" to

"*Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*".

PART 4—AMENDMENT OF DANGEROUS GOODS SAFETY MANAGEMENT ACT 2001

Clause 888 provides for amendment to the *Dangerous Goods Safety Management Act 2001*.

Clause 889 provides for the omission of section 3(1)(c) of this Act and the insertion of the details stated in this clause.

Clause 890 provides for amending this section of this Act by deleting the reference to the *Petroleum Act 1923* and the *Gas Act 1965* and replacing it with the *Petroleum and Gas (Production and Safety) Act 2004*.

PART 5—AMENDMENT OF DUTIES ACT 2001

Clause 891 provides for amendment to the *Duties Act 2001*.

Clause 892 provides for the omission of certain wording in section 137(3) of this Act and the insertion of the details stated in this clause.

Clause 893 provides for the amendment to the schedule, where it states the definition "statutory licence", "the *Petroleum Act 1923*" to "the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*".

PART 6—AMENDMENT OF ELECTRICAL SAFETY ACT 2002

Clause 894 provides for amendment to the *Electrical Safety Act 2001*.

Clause 895 provides for the amendment to section 6(3), where it states "statutory licence", "the *Petroleum Act 1923*" to "the *Petroleum and Gas (Production and Safety) Act 2004*".

PART 7—AMENDMENT OF ENVIRONMENTAL PROTECTION ACT 1994

Clause 896 provides for amendment to the *Environmental Protection Act 1994*.

Clause 897 provides for the amendment to section 75(2), where it states "petroleum activity", "paragraph a" to those details stated in this clause.

PART 8—AMENDMENT OF EXPLOSIVES ACT 1999

Clause 898 provides for amendment to the *Explosives Act 1999*.

Clause 899 provides for the deletion of section 6(2) of this Act.

PART 9—AMENDMENT OF FIRE AND RESCUE SERVICE ACT 1990

Clause 900 provides for amendment to the *Fire and Rescue Service Act 1999*.

Clause 901 provides for the insertion of the words "and the *Petroleum and Gas (Production and Safety) Act 2004*" after "*Petroleum Act 1923*" as stated in section 95(1)(c).

PART 10—AMENDMENT OF FOREIGN OWNERSHIP OF LAND REGISTER ACT 1988

Clause 902 provides for amendment to the *Foreign Ownership of Land Register Act 1988*.

Clause 903 provides for the omission of the wording in section 4, definition "interest in land", paragraph (n), from "the crude oil," to "Petroleum *Act 1923*" of this Act and the insertion of the details stated in this clause. This clause also provides for the omission of the wording in section 4, definition "interest in land", paragraph (o), after "*Petroleum Act 1923*" of this Act and the insertion of the details stated in this clause.

PART 11—AMENDMENT OF FORESTRY ACT 1959

Clause 904 provides for amendment to the *Forestry Act 1959.*

Clause 905 provides for the amendment to section 5, definition "Mining Acts", "or the *Petroleum Act 1923*" to "the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*".

PART 12—AMENDMENT OF GAS PIPELINES ACCESS (QUEENSLAND) ACT 1998

Clause 906 provides for amendment to the *Gas Pipelines Access (Queensland) Act 1998.*

Clause 907 provides for the deletion to section 11, definition "local Minister", of the words "*Petroleum Act 1923*" and the insertion of the words "*Gas Supply Act 2003*".

Clause 908 provides for the amendment to section 56, definition "*pipeline* licence", by deleting the words "*Petroleum Act 1923*" and inserting "*Petroleum and Gas (Production and Safety) Act 2004*".

PART 13—AMENDMENT OF GAS SUPPLY ACT 2003

Clause 909 provides for amendment to the *Gas Supply Act 2003*.

Clause 910 provides for amending section 40(c) of this Act by deleting the words "Gas (Residual Provisions) Act" and replacing them with the words "Petroleum and Gas (Production and Safety) Act".

Clause 911 provides for amending section 46 of this Act by deleting the words "Gas (Residual Provisions) Act" and replacing them with the words "Petroleum and Gas (Production and Safety) Act".

Clause 912 provides for amending section 57(2)(b)(ii) and (iii) of this Act by deleting the words "Gas (Residual Provisions) Act" and replacing them with the words "Petroleum and Gas (Production and Safety) Act".

Clause 913 provides for amending section 85(1)(d)(ii) of this Act by deleting the words "Gas (Residual Provisions) Act" and replacing them with the words "Petroleum and Gas (Production and Safety) Act".

Clause 914 provides for amending section 88(3) of this Act by deleting the words "Gas (Residual Provisions) Act" and replacing them with the words "Petroleum and Gas (Production and Safety) Act".

Clause 915 provides for amending section 93(3) of this Act by deleting the words "Gas (Residual Provisions) Act" and replacing them with the words "Petroleum and Gas (Production and Safety) Act".

Clause 916 provides for amending section 98(3) of this Act by deleting the words "Gas (Residual Provisions) Act" and replacing them with the words "Petroleum and Gas (Production and Safety) Act".

Clause 917 provides for the omission of the wording in section 109(1)(a)(i) and (ii) of this Act and the insertion of the details stated in this clause. This clause also provides for the omission of the wording in section 109(2) of this Act "or under the Gas (Residual Provisions) Act, section 60B" and the insertion of the details stated in this clause.

Clause 918 provides for the omission of the wording in section 120(3)(b) of this Act and the insertion of the details stated in this clause. This clause also provides for the omission of the wording in section 120(4) of this Act.

Clause 919 provides for amending section 123(2) of this Act by deleting the words "Gas (Residual Provisions) Act" and replacing them with the words "Petroleum and Gas (Production and Safety) Act".

Clause 920 provides for amending section 166(b) of this Act by deleting the words "Gas (Residual Provisions) Act" and replacing them with the words "Petroleum and Gas (Production and Safety) Act".

Clause 921 provides for amending section 181(2)(b)(ii) and (iii) of this Act by deleting the words "Gas (Residual Provisions) Act" and replacing them with the words "Petroleum and Gas (Production and Safety) Act".

Clause 922 provides for amending section 204(1)(e) of this Act by deleting the words "Gas (Residual Provisions) Act" and replacing them with the words "Petroleum and Gas (Production and Safety) Act". This clause also provides for the omission of the wording in section 204(2) of this Act "or under the Gas (Residual Provisions) Act, section 60B" and the insertion of the details stated in this clause.

Clause 923 provides for amending section 222(3)(a) of this Act by deleting the words "Gas (Residual Provisions) Act" and replacing them with the words "Petroleum and Gas (Production and Safety) Act".

Clause 924 provides for amending section 236(d)(i) of this Act by omitting the words after "a person who" and replacing them with the words stated in this clause. This clause also provides for the insertion of the wording "or licence" in section 236(d)(ii) of this Act after the word "lease".

Clause 925 provides for the omission of the wording in section 239(2)(a) of this Act and the insertion of the details stated in this clause.

Clause 926 provides for the insertion of clause 257A after Chapter 4, section 257 of this Act. This clause provides that if an insufficiency of supply direction has been given under the *Gas Supply Act 2003*, certain stated clauses of this Bill do not apply to the carrying out of a relevant activity, if the carrying out of the relevant activity was required by the direction.

Clause 927 provides for the omission of the wording "or licence" in section 314(3) of this Act.

Clause 928 provides for the insertion, in section 324 of this Act, of the details stated in this clause.

Clause 929 provides for omitting schedule 4, definition "Gas (Residual Provisions) Act" section 236(d)(i) of this Act and replacing it with the words stated in this clause. This clause also provides for omitting schedule 4, definition "transmission pipeline licence", "*Petroleum Act 1923*" and inserting the words "*Petroleum and Gas (Production and Safety) Act 2004*".

PART 14—AMENDMENT OF GEOTHERMAL EXPLORATION ACT 2004

Clause 930 provides for amendment to the *Geothermal Exploration Act 2004*.

Clause 931 provides for the omission of the wording in section 7 of this Act and the insertion of the details stated in this clause. This clause will still provide details about the relationship between the Act and this Bill. This clause establishes that the power to grant or renew an authority to prospect or petroleum lease under the *Petroleum Act 1923* or grant a petroleum authority under this Bill over a geothermal exploration permit is not limited. However, activities carried out under an authority to prospect or a petroleum lease under the *Petroleum Act 1923* or the grant of a petroleum authority under this Bill cannot adversely affect geothermal exploration that has already commenced.

Clause 932 provides for amending section 50(b) of this Act by deleting the words "*Petroleum Act 1923*" and replacing them with the words "*Petroleum and Gas (Production and Safety) Act 2004*".

Clause 933 provides for the insertion, after the word "person" in section 126(1) of this Act, of the words "other than the State".

Clause 934 provides for inserting into the schedule, definition "landholder", paragraph (a)(ii) after "*Petroleum Act 1923*" the words "or the *Petroleum and Gas (Production and Safety) Act 2004*". This clause also provides for omitting from the schedule, definition "mining interest", paragraph (b), and inserting the words as detailed in this clause. This clause also provides for the insertion of the wording "or licence" in section 236(d)(ii) of this Act after the word "lease". This clause also provides for inserting into the schedule, definition "production interest", paragraph (b) after "*Petroleum Act 1923*" the words "or the *Petroleum and Gas (Production and Safety) Act 2004*". Further, this clause provides for omitting from the schedule, definition "production interest", paragraph (c), and inserting the words as detailed in this clause.

PART 15—AMENDMENT OF INTEGRATED PLANNING ACT 1997

Clause 935 provides for amendment to the *Integrated Planning Act 1997*.

Clause 936 provides for omitting from section 5.1.7(4), "or the *Petroleum Act 1923*", and inserting the words as detailed in this clause.

Clause 937 provides for omitting from section 5.1.17(2), the words "or the *Petroleum Act 1923*", and inserting the words as detailed in this clause.

Clause 938 provides for inserting into schedule 9, table 5, under heading, "Mining and petroleum activities", item 1, paragraph (b), after "*Petroleum Act 1923*" the words "or the *Petroleum and Gas (Production and Safety) Act 2004*".

PART 16—AMENDMENT OF LAND ACT 1994

Clause 939 provides for amendment to the *Land Act 1994*.

Clause 940 provides for omitting from section 20(2)(b) "or the *Petroleum Act 1923*", and inserting the words as detailed in this clause. This clause also provides for omitting from section 20(3), definition "mining interest", the words "or the *Petroleum Act 1923*", and inserting the words as detailed in this clause.

PART 17—AMENDMENT OF LAND AND RESOURCES TRIBUNAL ACT 1999

Clause 941 provides for amendment to the *Land and Resources Tribunal Act 1999*.

Clause 942 provides for inserting the words as detailed in this clause. This provides for the Land and Resources Tribunal, when hearing matters

as provided for under this Bill, to have a presiding member constitute the tribunal.

PART 18—AMENDMENT OF LAND PROTECTION (PEST AND STOCK ROUTE MANAGEMENT) ACT 2002

Clause 943 provides for amendment to the *Land Protection (Pest and Stock Route Management) Act 2002*.

Clause 944 provides for inserting into schedule 3, definition "owner" paragraph (a)(iv), after "*Petroleum Act 1923*" the words "or the *Petroleum and Gas (Production and Safety) Act 2004*".

PART 19—AMENDMENT OF LAND TITLE ACT 1994

Clause 945 this Part provides for amendment to the *Land Title Act 1994*.

Clause 946 provides for inserting into section 185(1) the words as detailed in this clause. Section 185 of this Act provides for the exemptions to section 184 of this Act. Section 184 provides for the quality of registered interests.

PART 20—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Clause 947 this Part provides for amendment to the *Local Government Act 1993*.

Clause 948 provides for inserting into section 4(1)(e), after "*Petroleum Act 1923*" the words "or the *Petroleum and Gas (Production and Safety) Act 2004*".

PART 21—AMENDMENT OF MINERAL RESOURCES ACT 1989

Clause 949 describes the Act to be amended in this Part.

Clause 950 provides some simple mechanisms to deal with any overlap issues for non-regime tenures that might arise. The intent is that activities on exploration permits, mineral development licences and mining leases that are outside of the regime (that is, non-coal and non-oil shale mining tenements) must not adversely impact on prior authority to prospect or petroleum lease activities. Prior leases will always have "right of way" and the consent of an existing lease holder is needed before any authorised activity can be undertaken by an exploration tenement holder.

Clause 951 defines the meaning of "mineral". This has been relocated from the "Schedule – Dictionary" as it is a fundamental definition for this Act. Consequential drafting changes have been made to better express the definition of clay, and locate all the exceptions together. Changes have also been made to mineral "(c)" now called coal seam gas, and the main definition of coal seam gas is provided for later in this Bill. The mineral "(f)" has been clarified. This mineral defines underground coal gasification products and has been clarified to include coal seam gas that will be desorbed and extracted as a consequence of the gasification process. The mineral "(i)" has been simplified and the main definition of oil shale is now provided for later in this Bill.

Clause 952 inserts a new section 6D to state that notes in the text of this Bill are part of the Bill.

Clause 953 provides clarification that the mineral "coal seam gas" cannot be specified in the lease to ensure that there will be no new grants of what was the mineral hydrocarbon. It is proposed that a coal mining lease holder will have a right to mine incidental coal seam gas, but commercialisation of coal seam gas must be undertaken under a petroleum lease.

Clause 954 is a consequential drafting amendment to refer to the new entitlement to incidental coal seam gas provision later in this Bill.

Clause 955 provides that the requirement for an application for a mining lease to include information on the proposed mining program is not required if a proposed development plan is included with the application.

Clause 956 provides that where the tribunal has already made recommendations with respect to the preference decision, they are

excluded from revisiting the Minister's preference decision when they make recommendations on the grant of a coal or oil shale mining lease.

Clause 957 inserts a drafting correction to provide the correct reference.

Clause 958 changes the heading to better reflect the subject of the section.

Clause 959 ensures that coal seam gas cannot be added as a mineral to a mining lease. The mineral "hydrocarbon" has been omitted from the definitions of a mineral and replaced by the term "coal seam gas". To commercially utilise coal seam gas, a petroleum lease is required.

Clause 960 provides for the insertion of a new Part into the *Mineral Resources Act 1989.*

PART 7AA—PROVISIONS FOR COAL SEAM GAS

Division 1—Preliminary

Subdivision 1—Introduction

Clause 318A details the main purposes of the Part. These are based on the objectives of the coal seam gas regime. It is intended that purposes "(e)" and "(f)" be achieved within the context of the other objectives. While ideally the optimal outcome would be to extract all commercial quantities of coal seam gas from the coal before any coal is mined, it is recognised that there may be situations where extraction of all the resources in a particular area may not be possible. This is because at any point in time the extraction of one resource may be of greater overall benefit than the hypothetical extraction of both resources over a period of time. Optimisation of resource production may also not be possible because the other purposes of the regime, particularly the safety, certainty and future mineability requirements, have taken precedence.

Clause 318AA outlines the processes and additional requirements needed to achieve the purposes of the coal seam gas regime.

Clause 318AB ensures that the provisions for the coal seam gas regime detailed in this Part apply to relevant exploration and mining tenures of the

Mineral Resources Act 1989, as well as the other relevant provisions of that Act and that the provisions contained in this Part prevail when there is any inconsistency with the provisions of the *Mineral Resources Act 1989*.

Subdivision 2—Definitions for Part 7AA

Clause 318AC defines "coal seam gas" and "incidental coal seam gas". The meaning of these terms are defined, as they are used regularly throughout this Part.

Clause 318AD defines "oil shale". The meaning of this term is defined, as it is used regularly throughout this Part.

Clause 318AE defines "coal exploration tenement" and "coal mining lease" for this Part. The meaning of these terms are defined, as they are used regularly throughout this Part.

Clause 318AF defines "oil shale exploration permit" and "oil shale mining lease" for this Part. The meaning of these terms are clarified, as they are used regularly throughout this Part.

Clause 318AG defines a "coal or oil shale mining tenement" for this Part. The meaning of this term is defined, as it is used regularly throughout this Part.

Clause 318AH defines "development plan" and "plan period" for this Part. The meaning of these terms are defined, as they are used regularly throughout this Part.

Clause 318AI defines "petroleum tenures", namely "a petroleum lease" and an "authority to prospect" for this Part. The meaning of these terms are defined, as they are used regularly throughout this Part.

Clause 318AJ defines a "coordination arrangement" for this Part. The meaning of this term is defined, as it is used regularly throughout this Part.

Clause 318AK defines the factors that make up the "public interest". The public interest is a matter that must be considered in the making of a number of decisions and the definition is broad enough to include the benefits to the State and also overarching government policy such as the Queensland Government priorities, Queensland Energy Policy, and policy on utility pricing.

Subdivision 3—Relationship with particular special agreement Acts

Clause 318AL provides that the provisions of the coal seam gas regime under this Part override the ability to grant a special coal mining lease under the mining lease pursuant to the *Central Queensland Coal Associates Agreement Act 1968.* The "automatic right" to a lease provided for under that Act is in conflict with the preference decision process undertaken at the time of a lease application under the new regime. The "automatic right" to a lease provision may have been appropriate in the context of a special development act introduced to promote coal development in Central Queensland some 40 years ago. However, it is considered no longer necessary, given the maturity of the coal industry and the emergence of a coal seam gas industry. Also, it is not considered appropriate in a modern legislative framework which must consider the interests of other parties.

Clause 318AM provides that the provisions of this Part override the provisions of the *Central Queensland Coal Associates Agreement Act 1968* and the *Thiess Peabody Coal Pty Ltd Agreement Act 1962* to the extent of any inconsistency between the provisions.

Clause 318AN provides that no compensation is payable because of the operation of this subdivision. Given the justification for the drafting of the provisions of this sub-division (provided above), and the fact that those companies to which this Bill will apply, have had ample time to exercise their rights under these Acts previously mentioned, it is considered unnecessary to provide for any compensation as a result of these provisions.

Division 2—Obtaining coal mining lease or oil shale mining lease over land in area of authority to prospect (other than by or jointly with, or with the consent of, authority to prospect holder)

Subdivision 1—Preliminary

Clause 318AO details where this division applies or does not apply. This provision applies where a coal mining lease or an oil shale mining lease is applied for over an authority to prospect other than by, or jointly with, or with consent of, the authority to prospect holder.

Subdivision 2—Provisions for making coal mining lease or oil shale mining lease application

Clause 318AP makes provisions to include additional requirements, over and above the regular application requirements, for coal mining lease or oil shale mining lease applications. These additional requirements include a "CSG statement", a development plan that complies with the initial development plan requirements, and other information that addresses the "CSG assessment criteria". The clause defines what are the "CSG assessment criteria", which are criteria the Minister will later consider when determining a preference decision, provided for in a later clause. The legitimate business interests criterion are intended to include relevant matters with respect to the potential impact the grant, or refusal to grant a lease would have on the relevant tenure holder's interest in the land, including related commercial obligations or interests.

Subdivision 3—Provisions for splitting application in particular circumstances

Clause 318AQ makes provisions for when a coal mining lease or oil shale mining lease application is made over land that is partially subject to an authority to prospect and partially over land subject to a petroleum lease, and the authority to prospect and petroleum lease are not held by the same person. In this case, the mining lease application must be separated, and that part of the mining lease application made over land the subject of the authority to prospect, and that part of the mining lease application made over land the subject of the petroleum lease, must progress as separate applications under different divisions.

Clause 318AR makes provisions for when a coal mining lease or oil shale mining lease application is made over land that is partially subject to an authority to prospect or partially over land subject to a petroleum lease and other land not in the tenure area of a petroleum tenure. In this case, the mining lease application may be separated, and the overlap area and the non-overlap area may progress as separate applications.

Clause 318AS provides that if the applicant requests, the lease application can be considered as two applications so that they can be considered under different divisions of this Part, or for them to be considered separately under this and the previous Part.

Subdivision 4—Obligations of applicant and authority to prospect holder

Clause 318AT makes provisions about the obligations of the coal mining lease or oil shale mining lease applicant. These obligations include the providing of a copy of the mining lease application to the authority to prospect holder. These obligations also include consulting with the authority holder and, as negotiated, changing the proposed mining lease's development plan to incorporate reasonable provisions made by the authority holder; and make appropriate arrangements with the authority holder about the authority holder testing for petroleum production, providing it is technically and commercially feasible for the coal mining lease or oil shale mining lease applicant to do so.

Parts of this clause also obligate the applicant to allow the authority to prospect holder time to complete or commence testing they may have been conducting, or were planning to conduct, such as a production test, or exploratory work that they need to complete. This is in order to have sufficient data to meet the requirements for making an application for a potential commercial area. This obligation is limited to 12 months.

Clause 318AU provides for the Minister to require further negotiation between the coal mining lease applicant or oil shale mining lease applicant and the authority to prospect holder. This ensures that the applicant makes appropriate changes to the development plan to reflect the reasonable proposals of the authority to prospect holder, and makes a reasonable arrangement with the authority holder about testing for petroleum production, or gathering information with respect to resources and reserves to meet the requirements for an application for a potential commercial area.

Clause 318AV provides the Minister with the power to ensure compliance with the listed previous provisions and reject the coal mining lease or oil shale mining lease application if these have not been complied with.

Clause 318AW makes provisions about the obligations of the authority to prospect holder to give the coal mining lease applicant or oil shale mining lease applicant certain information. When given a copy of the application and accompanying development plan for the coal mining lease or oil shale mining lease, the authority holder must negotiate with the coal mining lease applicant or oil shale mining lease applicant, and make reasonable attempts to reach agreement about amendments to the proposed development plan for the coal mining lease or oil shale mining lease.

Clause 318AX makes provisions for the authority to prospect holder to make a submission to the Minister about the coal mining lease or oil shale mining lease application. The Minister must have regard to this submission in deciding the coal mining lease or oil shale mining lease application.

Subdivision 5—Priority for earlier petroleum lease application or proposed application

Clause 318AY provides priority for any prior petroleum lease application. A certificate of public notice for the coal mining lease or oil shale mining lease cannot be issued until the petroleum lease application has been decided.

Clause 318AZ provides for priority to be given to those proponents who have been granted approval for the preparation of a voluntary Environmental Impact Statement under the *Environmental Protection Act* 1994 for a project that is, or includes, a proposed petroleum lease. This is because the Environmental Impact Statement process is potentially public from that point and so the trigger point for priority has been advanced ahead of the point of application for the lease.

Clause 318B provides for priority to be given to those proponents of a project that is declared a "significant project" under the *State Development and Public Works Organisation Act 1971* where the project is, or includes, a proposed petroleum lease. This is because an Environmental Impact Statement is required for a "significant project" and the Environmental Impact Statement process is potentially public from that point, so the trigger point for priority has been advanced ahead of the point of application for the lease.

Subdivision 6—Ministerial decision about whether to give any preference to petroleum development

Clause 318BA provides for when the division applies. Firstly, the Minister must be satisfied that there is an adequate definition of resources and reserves of petroleum in the land and that these have been determined in accordance with relevant industry accepted codes. It is intended that the level of knowledge, or classification of the resources or reserves required, will be defined in departmental policy. A preference decision is not

required if the authority to prospect holder has not supplied relevant information, or has not made a submission within the relevant period, or does not wish to have any preference.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is an absence of appeal rights on the Minister's deciding if a preference decision is required. The decision as to whether a preference decision is required or not is made by the Minister as the steward of the State's resources and as such, an appeal against the decision should not be allowed. However, there are a number of drafted provisions that the Minister must be satisfied of when deciding whether a preference decision is required. These provisions are detailed enough so that they safeguard against any "impulsive" decision being made by the Minister.

Clause 318BB provides that the Minister must decide whether to recommend the grant of a mining lease or whether the priority is given to the development of petroleum. This is described as the "preference decision". The CSG assessment criteria must be considered before this decision can be made. This clause also ensures that if a preference has already been provided to develop the coal or oil shale resource, via a decision made under this Bill, then preference cannot be made for petroleum development and the original decision prevails.

Clause 318BC requires that the chief executive must refer the application to the Land and Resources Tribunal to allow it to consider what the preference decision should be, and to make recommendations to the Minister with respect to the decision and the term and conditions of any proposed lease. This is to occur before the Minister makes the preference decision and the Minister must consider the tribunal's recommendations before making a decision. The tribunal must consider the same matters that the Minister considers, being the CSG assessment criteria and other matters detailed in a later clause, before they make their recommendations. Their recommendations may also include recommendations about the term and conditions of the lease.

Clause 318BD provides that the preference decision cannot be made unless the Minister is satisfied with respect to a number of matters. The intention of this clause is to ensure that a preference decision can only be made in certain circumstances. Some of the matters that must be considered by the Minister include, whether it is technically or commercially viable for a coordination agreement to be reached by the proponents, and whether the public interest would be best served if the development of coal or oil shale is not given preference. In addition, if the

petroleum resource is a greenfield resource, the Minister must be satisfied that petroleum production is likely to start within 2 years of the grant of any petroleum lease for this resource. If the resource is a brownfield resource, it must be critical to an existing operation or to the efficient use of related infrastructure.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is an absence of appeal rights on the Minister's preference decision. The giving of the petroleum production preference is a decision made by the Minister as the steward of the State's resources, for the best use of the mineral and petroleum resources for the maximum benefit to the State and as such, an appeal against the decision should not be allowed. However, there are a number of drafted restrictions that the Minister must be satisfied of when deciding to give this preference decision. These provisions are detailed enough so that they safeguard against any "impulsive" preference decision being made by the Minister.

Clause 318BE provides that the preference decision must be made before the certificate of public notice is made. This is to ensure that the related lease application processes, such as environmental requirements, native title and objections are not commenced until it is certain whether the lease will proceed or not.

Subdivision 7—Process if preference decision is to give any preference to petroleum development

Clause 318BF details when this subdivision applies, which is if the decision was to give preference to petroleum development.

Clause 318BG provides for the applicant and authority to prospect holder to be given notice of the preference decision, and that the authority to prospect be given six months from the time of the notice to apply for a petroleum lease over that decided preference area (be it whole or part) within the coal mining lease or oil shale mining lease application area.

Clause 318BH provides for when the preferred petroleum developer lodges a petroleum lease application for the whole of the preferred land, that the coal mining lease application or oil shale mining lease application cannot be advanced. Also, if a decision is made to grant the petroleum lease, the coal mining lease application or oil shale mining lease application lapses. It is intended however, that a mineral development licence may be applied for, over the concurrent area, if long term access is needed, by the coal mining lease or oil shale mining lease applicant, while

the petroleum lease is in place. The "further step" mentioned in this clause means that a certificate of public notice, for the coal mining lease or oil shale mining lease, cannot be issued.

Clause 318BI provides that when the preferred petroleum developer lodges a petroleum lease for only part of the preferred land, the coal mining lease or oil shale mining lease applicant may amend their application to include whole or part of the remaining land. If the coal mining lease or oil shale mining lease applicant decides not to amend their application to include whole or part of the remaining land, then their application cannot be advanced until the petroleum lease application is decided. When a decision is made to grant the petroleum lease over only part of the preferred land, the coal mining lease or oil shale mining lease holder may still amend their application to include just the remaining area.

Clause 318BJ provides that if the preferred petroleum developer does not lodge a petroleum lease application for whole or part of the preferred land, then the coal mining lease or oil shale mining lease application can be decided.

Subdivision 8—Deciding mining lease

Clause 318BK details when this subdivision applies. Firstly, it applies if there was no preference decision made because the authority to prospect holder had not supplied relevant information or made any submission within the relevant period or did not wish to have any preference. Secondly, it applies if a preference decision was made and there was no preference provided to the development of the petroleum resource, or if partial preference is provided or (if as result of the previous subdivision being complied with) the Minister decides to recommend the grant of a mining lease.

Clause 318BL provides that the CSG assessment criteria must be considered when determining the term and conditions of the coal mining lease or oil shale mining lease. Therefore, even when no preference is provided to the petroleum development (in terms of allowing a petroleum lease to be applied for), the coal mining lease or oil shale mining lease may still be conditioned to reflect the interests of the petroleum tenure holder and the best resource development outcome.

Clause 318BM provides for a relinquishment condition to be determined, with the intention of providing for timely resource

development of the petroleum resource, where it is known there is a conflicting resource interest awaiting development.

Clause 318BN ensures that a notice of the preference decision and the reasons for that decision are published, aside from any commercial in confidence information. The intention is to provide greater transparency of decision making.

Division 3—Obtaining coal mining lease or oil shale mining lease over land in tenure area of authority to prospect (by or jointly with, or with the consent of, authority to prospect holder)

Clause 318BO details when this division applies. This division applies in two cases where a coal mining lease or oil shale mining lease is applied for over an authority to prospect. Firstly, where the holder of a coal exploration tenement makes application for a mining lease and the overlapping authority to prospect holder has provided consent. Secondly, the division applies if the application is made by the authority holder or with the authority holder, although the holder in this case still has to have the relevant pre-requisite title to make such an application.

Clause 318BP makes additional requirements, over and above, the regular application requirements for coal mining lease or oil shale mining lease applications. These additional requirements include a CSG statement, an initial development plan that complies with the initial development plan requirements, and other information that addresses the CSG assessment criteria.

Clause 318BQ requires the splitting of the coal mining lease application or oil shale mining lease application when it covers land within the tenure area of both an authority to prospect and a petroleum lease, and the lease and authority are not held by the same person. The applications will then be considered under separate divisions. This clause also provides for the amendment of the original coal mining lease or oil shale mining lease application to deal with this requirement.

Clause 318BR makes provisions for when a coal mining lease application or oil shale mining lease application is made over land which is within both the tenure area of the relevant authority to prospect and other land that is not within the tenure area of a petroleum tenure. In this case, the mining lease application may be separated, and the overlap area and the non-overlap area may progress as separate applications.

Clause 318BS provides that if the applicant requests, the lease application can be considered as two applications so that they can be considered under different divisions of this Part, or for them to be considered separately under this Part and what is currently the "Part 7 – Mining Lease" provisions of the *Mineral Resources Act 1989*.

Clause 318BT applies the proposed provisions applicable to earlier petroleum lease applications or proposed applications to the mining lease application, which gives priority to certain proposed petroleum lease applications undergoing relevant environmental processes.

Clause 318BU provides for additional matters that must be considered when determining the conditions and term of the mining lease. These include the conditions of the authority to prospect, any development proposals of the authority to prospect holder, and the likelihood of any agreement about coordinated development of petroleum under a future petroleum lease. This ensures that even when no preference is provided to petroleum development (in terms of allowing a petroleum lease to be applied for), the coal mining lease or oil shale mining lease may still be conditioned to reflect the interests of the petroleum tenure holder and provide the best resource development outcome.

Division 4—Coal mining lease and oil shale mining lease applications in response to Petroleum and Gas (Production and Safety) Act preference decision

Clause 318BV this clause ensures that the Minister can refuse to grant a mining lease application if it is considered that an application that was invited as a result of a preference decision not to grant a petroleum lease is not being progressed in a timely manner. This is necessary to ensure the integrity of the original preference decision.

Division 5—Obtaining coal mining lease or oil shale mining lease over land in area of petroleum lease (other than by or jointly with petroleum lease holder)

Clause 318BW details where this division applies or does not apply. This division applies where a coal mining lease or an oil shale mining lease is applied for over a prior petroleum lease by someone other than the petroleum lease holder. In this case, the consent of the prior petroleum

lease holder will be required before the lease can be granted. This division also applies if the coal mining lease or oil shale mining lease is applied for over both an authority to prospect and a petroleum lease, and the authority to prospect and the petroleum lease are held by the same person.

Clause 318BX makes provisions to include additional requirements, over and above the regular application requirements, for coal mining lease or oil shale mining lease applications made in this division. These additional requirements include a CSG statement, and a development plan that complies with the initial development plan requirements.

Clause 318BY makes provisions for when a coal mining lease application or oil shale mining lease application is made over land which is within an authority to prospect not held by the applicant. In this case, the mining lease application may be separated, and that part of the mining lease application made over land the subject of the authority to prospect and that part of the mining lease application made over the petroleum lease may progress as separate applications.

Clause 318BZ provides that if the applicant requests, the lease application can be considered as two applications so that they can be considered under different divisions of this Part, or for them to be considered separately under this Part and what is currently the "Part 7 – Mining Lease" provisions of the *Mineral Resources Act 1989*.

Clause 318C requires the coal mining lease applicant or oil shale mining lease applicant to notify the petroleum lease holder of the coal mining lease applicant or oil shale mining lease application.

Clause 318CA requires the petroleum lease holder to negotiate with the coal mining lease applicant or oil shale mining lease applicant, and make reasonable attempts to reach a coordination arrangement, providing it is technically and commercially feasible for the petroleum lease holder to reach an arrangement. While the petroleum lease holder is obligated to negotiate to see if an agreement can be reached, there is no obligation to reach an agreement.

Clause 318CB sets out the provisions to include additional requirements for the grant of the mining lease. The lease can only be granted if the lease applicant has reached an agreement with the prior petroleum lease holder (and thus the petroleum lease consents to the grant of the mining lease). The agreement, in the form of a coordination arrangement, must be approved by the Minister. The petroleum lease holder must have also agreed with the proposed safety management system for the mining lease. In order that applications do not remain unresolved for excessive periods, if

the requirements of this clause are not met, or if there are no reasonable prospects for a coordination arrangement to be made, the Minister may refuse the application.

Division 6—Obtaining coal mining lease or oil shale mining lease over land in area of petroleum lease (by or jointly with petroleum lease holder)

Clause 318CC details where this division applies or does not apply. This provision applies where a coal mining lease or an oil shale mining lease is applied for over a prior petroleum lease by, or jointly with, the petroleum lease holder. This division also applies if the coal mining lease or oil shale mining lease is applied for over both an authority to prospect and a petroleum lease, and the authority to prospect and the petroleum lease are held by the same person. In these cases, the consent agreements required in the previous division are not needed.

Clause 318CD makes provisions to include additional requirements, over and above the regular application requirements, for coal mining lease applications or oil shale mining lease applications. These additional requirements include a CSG statement, and a development plan that complies with the initial development plan requirements.

Clause 318CE makes provisions for when a coal mining lease application or an oil shale mining lease application is made over land which is within an authority to prospect not held by the applicant. In this case, the mining lease application may be separated, and that part of the mining lease application made over land the subject of the authority to prospect and that part of the mining lease application made over the petroleum lease may progress as separate applications.

Clause 318CF provides that if the applicant requests, the lease application can be considered as two applications so that they can be considered under different divisions of this Part, or for them to be considered separately under this Part and what is currently the "Part 7 – Mining Lease" provisions of the *Mineral Resources Act 1989*.

Clause 318CG provides for additional matters that must be considered when determining the conditions and term of the mining lease. These include the conditions and development plan of the prior petroleum lease.

Division 7—Additional provisions for coal and oil shale exploration tenements

Subdivision 1—Grant of coal or oil shale exploration tenement in area of authority to prospect

Clause 318CH allows for overlapping exploration tenements that have been granted. That is exploration permits for coal or oil shale under the *Mineral Resources Act 1989* and authority to prospects for petroleum under the *Petroleum Act 1923* or this Bill. The clause also provides that if an authority to prospect holder has already commenced an authorised activity in their authority then a coal or oil shale exploration tenement holder cannot interfere or adversely impact on the carrying out of that activity.

Subdivision 2—Restriction on authorised activities on petroleum lease land

Clause 318CI requires that a coal or oil shale exploration tenement holder can only undertake authorised activities on their tenement, which is also on any land of an overlapping petroleum lease, if the petroleum lease holder has agreed in writing.

Subdivision 3—Conditions

Clause 318CJ requires the coal or oil shale exploration tenement holder to notify any underlying authority to prospect holder (or authority to prospect applicant) of the grant of a coal or oil shale exploration tenement which overlaps the authority, within 20 days of the tenement being granted.

Clause 318CK makes the obligations for consultation and negotiation and other matters (as detailed in this clause) conditions of the coal or oil shale exploration tenement, which the coal or oil shale exploration tenement holder must comply with.

Division 8—Additional provisions for coal mining leases and oil shale mining leases

Subdivision 1—Entitlement to coal seam gas

Clause 318CL limits the application of the division to coal and oil shale mining leases.

Clause 318CM provides for a coal mining lease or oil shale mining lease holder to mine incidental coal seam gas as part of their mining processes. This clause also defines "mine" and "incidental coal seam gas".

The mining of incidental coal seam gas is restricted to gas that is released as part of the mining process and gas that is mined, or proposed to be mined, to ensure a safe working environment for the mine, or is necessary to minimise fugitive emission of methane from coal mining operations. It is also clarified that this includes any goaf gas which has to be managed and mined as part of the mining operations for the listed reasons. Consequently, the mining of incidental coal seam gas may include any necessary pre-drainage, including drainage from strata or seams not being mined that are adjacent to the seam being mined, if this is to ensure the safe mining of the seam. However, mining of incidental coal seam gas is not intended to include coal seam gas in other seams or strata, where there is no relationship with mining. It is intended that the right to mine gas from seams proposed to be mined is provided only where there is a clear and demonstrated intention to mine the coal.

Clause 318CN provides for a coal mining lease or oil shale mining lease holder to use mined incidental coal seam gas only on the site of their mining lease and only for purposes related to mining on this lease ("non-commercial" purposes). Mining in this context includes the mining of any mineral authorised on the lease, not just the mining of the incidental coal seam gas. If the mining lease holder wishes to comercialise the gas (that is, sell it or use it off the lease) they will need a petroleum lease. This clause also authorises the transportation or storing of incidental coal seam gas on the lease, so that an authorisation under this Bill is not required.

Clause 318CO imposes a condition on the mining lease that the incidental coal seam gas can only be flared if it is not technically or commercially feasible to use it. Venting is only permitted if for safety reasons it cannot be vented or flared, or there is a technical reason why the gas cannot be flared (that is, where there is insufficient flow from a well to

allow ignition or where methane concentrations are low and it is not safe to do so).

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as another scheme about the abatement of greenhouse gases may be prescribed under a regulation. As the intention of this clause is to ensure the best possible use of the gas obtained, both from a resource utilisation and a greenhouse gas perspective, the clause also provides that the restriction on venting does not apply in the case where the incidental coal seam gas is being used, or is proposed to be used, under a greenhouse abatement scheme. This is to ensure that the clause is not interpreted as changing the baseline level of emissions of carbon dioxide determined under those schemes and so reduce the direct or indirect (such as through a commercial agreement with an electricity generator) benefit available under those schemes. As the name of the listed schemes may change or new schemes may be introduced that have the same purpose, the clause provides that a regulation may prescribe another scheme not listed.

Subdivision 2—Provisions for mining coal seam gas from coextensive natural underground reservoirs

Clause 318CP details when this subdivision applies. This subdivision applies where there is a coal mining lease or oil shale mining lease adjacent to a petroleum lease or another coal mining lease or oil shale mining lease (or a proposed coal mining lease or oil shale mining lease or petroleum lease) and the reservoir from which the petroleum or coal seam gas is to be produced (that is, the coal seam) continues across the boundary of these adjacent leases. The intention of the provisions of this subdivision is to ensure that the issues of ownership and production of petroleum and coal seam gas near lease boundaries is settled before production commences.

Clause 318CQ provides for a coordination arrangement to be reached, between the relevant parties, about the petroleum or coal seam gas to be produced from the same "reservoir" (that is, the coal seam). The intention being that the parties reach their own agreement negating the need for any arbitration.

Clause 318CR provides that coal seam gas, cannot be produced if it is known to come or is likely to have come from outside of the coal mining lease or oil shale mining lease area, unless there is a coordination arrangement or a decision from the Land and Resources Tribunal in place.

However, if production is already occurring on a coal mining lease or oil shale mining lease, and a new adjacent lease is granted, the coal mining lease or oil shale mining lease holder has 6 months to have a coordination arrangement, or to have applied for a decision from the tribunal, in place.

Clause 318CS provides that if a coordination arrangement cannot be made, either relevant party may apply to the Land and Resources Tribunal to decide the ownership of the petroleum or coal seam gas produced. The tribunal may decide other matters such as which party bears the cost of production, and how the mining or production is to be coordinated. This may include setting a minimum distance from the boundary of the lease for the drilling of a production well or determine the timing and length of production from a well. The tribunal must seek to optimise the production, and mining of, the resources in making their decision and have regard to the public interest as defined under this Act. In determining ownership, it is intended that the tribunal is not bound to seek out and apply uncertain common law principles such as the "rule of capture doctrine".

Subdivision 3—Conditions

Clause 318CT provides for where a coal mining lease or oil shale mining lease is granted over land in the tenure area of a petroleum lease (and the application for this mining lease was not made with the petroleum lease holder), that there must always be a relevant coordination arrangement in place. All holders must be party to the coordination arrangement, and that if there ceases to be a relevant coordination agreement in place, no authorised activities can be carried out on the coal mining lease or oil shale mining lease.

Clause 318CU requires the coal mining lease or oil shale mining lease holder to use a meter to record the amount of incidental coal seam gas mined and for them to comply with the relevant provisions of this Bill relating to meters and their use. The definition of a meter, provided for in this Bill, is quite broad and in the case of mine ventilation air, would cover conventional mine flow rate and sampling methodology.

Clause 318CV provides for the coal mining lease or oil shale mining lease holder to lodge annual reports two months after the anniversary day of the lease, with respect to details about the amount of incidental coal seam gas and other minerals mined and disposed of, a plan of the mine working envelope and other matters.

Clause 318CW provides that the obligation under the clause stated in this clause is a condition of the coal mining lease or oil shale mining lease, to which the coal mining lease or oil shale mining lease holder must comply.

Clause 318CX provides that where there is a relinquishment condition on a coal mining lease or oil shale mining lease and the relinquishment is made, that a relinquishment report must accompany this relinquishment notification.

This clause also provides that a copy of the relinquishment report must be given to the relevant authority to prospect holder and anyone else who has applied for a petroleum lease over that part being relinquished.

Clause 318CY provides that where a coal mining lease or oil shale mining lease holder has made a surrender application, that a surrender report must accompany this surrender application.

Clause 318CZ provides that where there is a relinquishment condition on a coal mining lease or oil shale mining lease, the condition no longer applies if that area of land is no longer within an overlapping authority to prospect.

Subdivision 4—Amendment of relinquishment condition by application

Clause 318D details when this subdivision applies. This subdivision applies if a coal mining lease or oil shale mining lease has a relinquishment condition and there is an overlapping authority to prospect over part or all of the area of the mining lease.

Clause 318DA provides for the coal mining lease or oil shale mining lease holder to apply to the Minister to amend the relinquishment condition on their lease. An application to amend can only be made if consultation has already been undertaken with the authority to prospect holder, and that reasonable provisions (where they are technically and commercially feasible to do so) have been incorporated into the relinquishment application and development plan.

Clause 318DB requires the authority to prospect holder to negotiate with the coal mining lease or oil shale mining lease holder, and make reasonable attempts to reach agreement about the proposed changes, such that the best resource utilisation outcome is achieved without significant impact or other parties rights or interests.

Clause 318DC details the requirements of an application by the coal mining lease or oil shale mining lease holder to amend the relinquishment condition for their lease. These include a CSG statement, whether the current development plan has been undertaken, a later development plan, results of the consultation undertaken with the authority to prospect holder and whether their proposals have been included in the later development plan.

Clause 318DD requires the applicant to give a copy of the application to the authority to prospect holder immediately after making the application.

Clause 318DE provides for submissions to be made by an authority to prospect holder, about the application by the coal mining lease or oil shale mining lease holder to amend the relinquishment condition for their lease. A copy of the submission must also be provided to the applicant. The Minister will have regard to the authority holder's submissions when deciding this application.

Clause 318DF provides for the Minister to require further negotiation between the coal mining lease or oil shale mining lease holder and the authority to prospect holder, to come to an agreement about the changes proposed in the application by the coal mining lease or oil shale mining lease holder to amend the relinquishment condition for their lease. The applicant must use all reasonable attempts to comply with this negotiation requirement and if they do not the Minister may refuse the application.

Clause 318DG makes provisions about the matters the Minister must consider in deciding the application by the coal mining lease or oil shale mining lease holder to amend the relinquishment condition for their lease. These include whether the coal mining lease or oil shale mining lease holder has taken all reasonable steps to comply with the relinquishment condition.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is no appeal against the decision to refuse an amendment to the relinquishment condition for the lease. The Minister, as the steward of the State's resources, will determine the best use of the mineral and petroleum resources for the maximum benefit to the State, so it is intended that the amendment of relinquishment condition for a lease would only be approved if there were very good reasons for the relinquishment not being met (such as if the resource is still being commercially produced or production has been delayed by *force majeure* reasons).

Subdivision 5—Restriction on recommendation to amend other conditions

Clause 318DH provides for the Minister, when recommending the varying of the conditions of a mining lease, to consider the interests of any petroleum tenure holder.

Subdivision 6—Renewals

Clause 318DI makes additional provisions for an application to renew a coal mining lease or oil shale mining lease. These additional provisions require the renewal application to include a statement about compliance with the current development plan, reasons for any non-compliance, and a proposed later development plan.

Clause 318DJ provides for the coal mining lease or oil shale mining lease renewal application process to follow the relevant coal mining lease or oil shale mining lease application process, but only in relation to the consultation and information provisions and the later development plan provisions. The preference decision (that is, the determining of whether the priority is given to the coal mining lease or oil shale mining lease application, or given to the development of coal seam gas) undertaken at grant, is not redone at renewal.

Clause 318DK provides that until the renewal is decided the lease is taken to have a development plan (even though the plan period has actually ended) and the lease holder is allowed to undertake any authorised activities for the lease.

Subdivision 7—Consolidations

Clause 318DL provides that a coal mining lease or oil shale mining lease cannot be consolidated with another type of mining lease that is not a coal mining lease or oil shale mining lease.

Clause 318DM details additional application requirements when coal mining leases or oil shale mining leases are consolidated, including a proposed development plan for the proposed consolidated lease. This

development plan must comply with the later development plan requirements.

Clause 318DN makes provisions for certain clauses of the Bill to apply to the development plan approved for the consolidated coal mining leases or oil shale mining leases.

Subdivision 8—Restriction on assignment or subletting

Clause 318DO restricts the approval of the assignment of a holding in a coal mining lease or oil shale mining lease, or the approving of a sublease, in certain circumstances. Where land in the tenure area of a coal mining lease or oil shale mining lease, is also land within the tenure area of a petroleum lease, the assignment of a holding in the mining lease, or a sublease for the mining lease, cannot be approved unless the new party is a party to a coordination arrangement. This provision is included because it is a fundamental principal of the coal seam gas regime that overlapping coal mining leases or oil shale mining leases and petroleum leases can only co-exist over the same land where there is agreement between each and all of the parties.

Division 9—Development plans for coal mining leases and oil shale mining leases

Subdivision 1—General provisions about development plans

Clause 318DP details the function and purpose of development plans for coal mining lease or oil shale mining leases. Development plans are a key document that allows the assessment of work proposed and work undertaken on the mining lease. The provision of this information and the requirement for having approved plans allows for improved management of the development of resources on leases. It is intended that a development plan can cover a number of leases, if the leases are related or part of the same project or mining operation, and that any later development plan that refers to multiple leases will replace any existing plan for a single lease.

Clause 318DQ requires every coal mining lease or oil shale mining lease, to have a development plan.

Clause 318DR requires the holder of the lease to comply with their approved development plan. Compliance with the work program ensures that development of the production of petroleum occurs in a timely and orderly manner. Failure to comply with the development plan is considered to be a significant breach of the conditions of a lease.

Subdivision 2—Requirements for proposed initial development plans

Clause 318DS details the operation of this subdivision.

Clause 318DT details what the initial development plan must include. This includes information about the amount of each mineral to be mined, proposed rate of production and the types of activities to be undertaken. The information enables an assessment as to whether there are sufficient resources available and the activities are appropriate to achieve the proposed rate of production. It is intended that the information provided for each year of the plan must be quite detailed and more general information must also be provided on the proposed development over the whole of the term of mining lease. Provision is made for a regulation to provide details about the form of the information to be supplied in the plan.

Clause 318DU provides that an initial development plan for a coal mining lease or oil shale mining lease, must state the period to which it applies, which can be no longer than five years.

Clause 318DV provides for an initial development plan for a coal mining lease or an oil shale mining lease to include a statement about how the interests of relevant petroleum tenure holders have been considered with regard to the purposes of the coal seam gas regime, and other coal seam gas assessment criteria that have not already been addressed previously. Note it is intended that the clause includes an adjacent tenure holder.

Clause 318DW provides that activities proposed under an initial development plan for a coal mining lease or oil shale mining lease are to optimise incidental coal seam gas production where it is commercially or technically feasible to do so.

Clause 318DX provides that where there is a coincidental coal mining lease or oil shale mining lease and a petroleum lease (that is, where a coal miner is commericalising their incidental coal seam gas or where a coordination arrangement has been reached between different lease holders), the development plan for the coal mining lease or oil shale mining

lease must be consistent with both the development plan for the petroleum lease, and any coordination arrangement relating to the coincidental land.

Subdivision 3—Approval of proposed initial development plans

Clause 318DY details when this subdivision applies. It applies to all coal mining lease or oil shale mining lease applications.

Clause 318DZ provides for the Minister to approve a development plan for a coal mining lease or oil shale mining lease application. If the Minister does not approve the development plan for the coal mining lease or oil shale mining lease application, the application must be rejected.

Clause 318E provides for the applicant for a coal mining lease or oil shale mining lease to amend the proposed development plan up until the Minister approves the development plan proposed for the lease. This is intended to provide for the plan to be amended by the applicant if the Minister considers changes are needed before he would consider approving it.

Clause 318EA makes provisions about what the Minister must consider when deciding to approve or refuse a development plan for a coal mining lease or oil shale mining lease. The criteria to be considered includes the CSG assessment criteria and whether the mining of the minerals proposed to be specified in the lease will be optimised having regard to the public interests. It is intended that this be within the context of the purposes of this Chapter.

Subdivision 4—Approval of proposed later development plans

Clause 318EB provides for the coal mining lease or oil shale mining lease holder to give the Minister a later development plan before the current one expires, when a significant change in authorised activities is proposed, or when a coordination arrangement ends. It is the intention of this clause that a "significant change" should only be considered for changes in relation to the amount, location and type of activities which may impact on the interests of the State and others, or (particularly with any proposal for the reduction or cessation of activities) when the activities are not in line with best resource utilisation practice. It is not intended that the

provisions of this clause should require a later development plan every time there is a "minor" change to the proposed activities on the lease.

The timeframes relating to the submission of the proposed later development plan ensures that there is adequate time to assess and approve the later work program. The provision of a late fee is intended to be an incentive to encourage the timely submission of the later work program.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The late lodgement fee is proposed to encourage the timely submission of later development plans, by petroleum lease holders, for Ministerial approval. The time for lodgement of a later development plan has been determined with a view to completing the necessary work of assessing, and approving or rejecting, the later development plan before the expiry of the current development plan approved for the petroleum lease. The late lodgement of the later development plan greatly reduces the time for this. To discourage the late lodgement of later development plans, and to reduce unnecessary increases in the Minister's and administering department's work loads, a late fee significantly greater than the lodgement fee is proposed. The petroleum lease holder has 40 business days, before the end of the current approved development plan period, to submit the later development plan without incurring the proposed late fee. This is a reasonable timeframe for lodgement, considering the petroleum lease holder has known of this date since the approval of the current development plan. The department will also, as a matter of course, be sending out notices prior to the time for lodgement of the proposed later development plan, advising of the requirement for lodgement, the times for submission, and the late fee payable if the development plan is not submitted within stated timeframes.

This clause also provides for allowing another later development plan to be lodged (that is, a revised plan) if a decision is made not to approve the plan before the plan period ends. If a plan is not lodged before the end of current plan period the lease holder is given another 20 days to do so.

Clause 318EC provides that if the lease holder fails to lodge the later plan when given the additional notice to, the lease will be cancelled.

Clause 318ED makes provisions about the required details that have to be submitted as part of a later development plan for a coal mining lease or oil shale mining lease. Where the later development plan is lodged because of a proposed significant change to activities, the coal mining lease or oil shale mining lease holder must provide reasons for the change.

Clause 318EE provides that until the later plan is decided the lease is taken to have a development plan (even though the plan period has actually ended) and the lease holder is allowed to undertake any authorised activities for the lease.

Clause 318EF provides for the Minister to approve a later development plan for a coal mining lease or oil shale mining lease, and details the criteria the Minister must consider in deciding to approve this plan. Where the later development plan is lodged because of a proposed significant change to activities, the Minister must consider whether the cessation or reduction of the activities is reasonable and whether all steps have been taken to prevent the cessation or reduction.

Clause 318EG provides that where a proposed later development plan is lodged, because of a proposed significant reduction or cessation to activities, the Minister may require the surrender of land before approval or as a condition of approval of the plan.

Clause 318EH provides for when the Minister, after the Minister's decision whether to approve a later development plan, is to provide an information notice about the decision (and so provide an avenue for appeal). This clause also details when the Minister's decision takes effect.

Subdivision 5—Appeals

Clause 318EI provides for an appeal against a decision to defer, or not approve, a later development plan for a coal mining lease or oil shale mining lease.

Division 10—Confidentiality of information

Clause 318EJ provides that this division applies where a tenure holder gives another tenure holder information as a result of requirements of this Part, but the section is subject to any agreement the holders may have.

Clause 318EK requires that where a tenure holder gives another tenure holder information as a result of requirements of this Part that this information must not be disclosed to anyone else and can only be used for the purpose for which it was given, unless the consent of the other holder is given. A tenure holder can only use the information for the purposes it was

given under this Part and it is intended that the tenure holder may not use the information for commercial gain.

Clause 318EL allows a relevant court to order compensation. It is intended that the confidentiality obligation is a statutory duty and that civil remedies should be sought if these confidentiality obligations are not met.

Clause 961 provides for the renumbering of sections 318A to 318M of the *Mineral Resources Act 1989*.

Clause 962 makes provisions for an amendment to what is currently Part 7A, section 318C of the *Mineral Resources Act 1989*, to ensure that the terminology is consistent between this Bill and the *Mineral Resources Act 1989*, and to clarify that the mining of incidental coal seam gas is also subject to the "incidental road use" provisions of the *Mineral Resources Act 1989*.

Clause 963 provides for an amendment to the stated section of the *Mineral Resources Act 1989*, to ensure that there is consistency between this Act and this Bill.

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Clause 967 makes provisions for an amendment to section 417 of the *Mineral Resources Act 1989*. This provides for regulations to be made with respect to the disposal of coal seam gas.

Clause 968 provides for the insertion of a "Division 6 - Transitional provisions for *Petroleum and Gas (Production and Safety) Act 2004*" into the *Mineral Resources Act 1989.*

Division 6—Transitional and savings provisions for Petroleum and Gas (Production and Safety) Act 2004

Subdivision 1—Preliminary

Clause 739 provides definitions for this division including the definition of a mineral hydrocarbon mining lease. A list of the relevant mining leases is provided.

Subdivision 2—Provision for special agreement Acts

Clause 740 ensures that the special coal mining leases under the special agreement acts are treated as a "mineral hydrocarbon mining lease" because they are considered to have the same rights.

Clause 741 ensures that any undecided applications made under special agreement Acts cannot be granted. There are currently no such applications and the intention of the clause is to ensure that no one takes advantage of any "automatic" right to a mining lease provided for under those Acts before this Bill commences. This ensures that the coal seam gas regime provisions are enacted equitably and apply to all existing tenures. Failure to do this could lead to inappropriate grants, conflict of rights and sterilisation of resources.

Clause 742 ensures that these provisions prevail over any provisions in the special agreement Acts to the extent of any inconsistency between those Acts and this Bill.

Clause 743 this clause provides that no compensation is payable because of the withdrawal of certain rights provided for under the special agreement Acts. Therefore, it may be considered that there is a breach of a fundamental legislative principle triggered because of the limitation of rights or exclusion of liability. The withdrawal of certain rights provided for under the special agreement Acts is necessary to ensure that the coal seam gas regime provisions can apply equally to all tenure holders. The "automatic right" to a lease provided for in these Acts is in conflict with preference decision process undertaken at the time of the lease application under the new regime. The "automatic right" to a lease provision may have been appropriate in the context of a special development Act introduced to promote coal development in central Queensland 40 years ago. However,

it is no longer necessary, given the maturity of the coal industry and the emergence of a coal seam gas industry. Also, it is not considered appropriate in a modern legislative framework, which must consider the interests of other parties. Further, companies to which these Acts apply have had ample time to exercise their rights under these Acts, therefore it is considered unnecessary to provide for any compensation as a result of the provisions in this subdivision.

Subdivision 3—Provision for s3A

Clause 744 provides for a 3 month transitional period before certain restrictions on non-coal seam gas regime tenures take effect.

Subdivision 4—Unfinished coal or oil shale mining lease applications for land in area of petroleum tenure

Clause 745 provides that coal or oil shale lease applications, that have not been finalised and are applicable to the coal seam gas regime, must be subject to the relevant provisions provided for under this Bill. However, to provide for the efficient processing of these applications, substantial compliance provisions apply. The intention is that if the applicants have substantially met the intention of the provision the applications can proceed to determination under the relevant provisions of this Bill.

Subdivision 5—Provisions for existing coal mining leases

Clause 746 provides clarification that despite (former) section 150(4) of the *Petroleum Act 1923*, during the period that section 150 was in force, the entitlement pursuant to section 235 of this Act provided the right for the holder of mining lease for coal to mine incidental coal seam gas.

Clause 747 clarifies the right to mine coal seam gas for all mineral hydrocarbon mining leases. The holders of these leases have the right to mine all coal seam gas in the area of the lease, and the right to use the gas commercially. This right can be utilised independently of the right to mine coal. The right is subject to the venting and flaring restriction and to the safety requirements of this Bill.

Clause 748 applies the venting and flaring restrictions to all coal mining leases, and for leases existing before commencement, ensures this clause applies to all coal seam gas.

Clause 749 provides a 12 month transitional period for leases to comply with the venting and flaring requirements, and the requirement to have a petroleum lease to commercialise coal seam gas.

Clause 750 provides a 6 month transitional period for leases to comply with the requirements with respect to coextensive reservoirs.

Subdivision 6—Modified application of s 318CI for particular existing exploration tenements overlapping with petroleum lease

Clause 751 sets out where this subdivision applies. This subdivision applies if the land is in the area of a coal exploration tenement and a petroleum lease that are in force immediately before commencement. This subdivision does not apply in the case of a mineral development licence that was granted before the petroleum lease was granted.

Clause 752 provides for where a petroleum lease has been granted over an existing exploration permit or mineral development licence, the restriction on authorised activities, which requires the consent of the lease holder before any authorised activities can be undertaken on the tenement, is deferred for 3 months. However, any activities undertaken in this transitional period by the tenement holder must not adversely impact the authorised activities for the petroleum lease, unless the consent of the lease holder has been provided.

Clause 753 provides that if activities are restricted as a result of this subdivision, land may be relinquished from the tenement and the work program may be amended, although it is intended that the Minister will still have to approve the amended program.

Subdivision 7—Particular provision for existing mineral development licences that overlap with a Petroleum Act lease

Clauses 754 provides particular provisions for mineral development licences (or applications for mineral development licences), where a petroleum lease was granted over them, before the Bill commences. Similar provisions will be provided with respect to the relevant petroleum

leases in the transitional provisions for the Bill. Together, these provisions ensure that the rights of the underlying mineral development licence holder/applicant are given greater consideration without adversely impacting on the rights provided to the petroleum lease holder. This is desired, given that any petroleum lease was granted with no consideration of the licence holder/applicant's interests and with no consideration of the intent of the coal seam gas regime provisions.

Clause 755 provides that instead of a blanket restriction on activities in the area of a petroleum lease unless there is consent, that activities can be carried out on the licence, where there is an agreement between the licence holder/applicant and lease holder. The licence holder must provide the lease holder with reasonable notice before the proposed activities are to start. Proposed relevant clauses in the transitional provisions for the *Petroleum Act 1923* will require the lease holder to provide such access, provided the holder does not interfere with the authorised activities of the lease (whether or not they have started) and so long as the conditions are consistent with the safety management plan for the lease.

Subdivision 8—Development plans

Clause 756 applies the division to any coal or oil shale mining lease in force immediately before the commencement.

Clause 757 defers the obligation for existing mining lease holders to have and comply with a development plan.

Clause 758 provides for transitional periods to comply with development plan requirements. Where the lease has underground coal mining operations or has to manage or mine coal seam gas in any way (for example, highwall mining) then an initial development plan is required within 6 months of commencement. For all other coal or oil shale mining leases, the initial development plan will be required on the anniversary date of the lease, that falls between 6 and 18 months after the commencement of the Bill. This will allow a staggering of the receipt of the new plans.

Clause 759 applies the initial development plan approval provisions to all existing coal or oil shale mining leases.

Clause 760 provides additional requirements for development plans for mineral hydrocarbon mining leases. A mineral hydrocarbon lease holder must satisfy the Minister in their proposed development plans that either they propose to mine and commericalise coal seam gas, or that they have

investigated all opportunities to commercialise the gas and found that there is no basis for commercialising.

Clause 761 provides that if the Minister is not satisfied with respect to the additional requirements of proposed development plans for mineral hydrocarbon mining leases, the Minister may require the lease holder to undertake further investigations with respect to the commercialisation of the coal seam gas, including holding discussions with the holder of any authority to prospect holder which includes the area of the mineral hydrocarbon mining lease. The intention is that this would include any authority where the area of the lease is excluded land for the authority.

Clause 762 amends the conditions of certain existing coal mining leases to remove conditions or requirements for gas drainage plans, as these will be superseded by the development plan requirements.

Clause 763 requires that where an existing lease has no development plan and the lease holder applies for renewal of the lease, the application must include a proposed development plan and the relevant provisions stated in this clause will apply.

Clause 969 provides for the insertion of definitions in the dictionary for this Part.

PART 22—AMENDMENT OF NATIVE TITLE (QUEENSLAND) ACT 1993

Clause 970 this Part provides for amendment to the *Native Title (Queensland) Act 1993.*

Clause 971 provides for inserting in section 4, definition "State mining Act", the details as stated in this clause.

Clause 972 provides for omitting from section 17, example 1, the words "s 1.9 *Mineral Resources Act 1989*" and inserting the details stated in this clause. This clause also provides for omitting from section 17, example 1, the words "s 5 *Petroleum Act 1923*" and inserting the details stated in this clause.

Clause 973 provides for omitting from section 144(2), definition "compulsory acquisition Act" the words "*Petroleum Act* 1923" and

inserting the words "*Petroleum and Gas (Production and Safety) Act 2004*".

PART 23—AMENDMENT OF QUEENSLAND INTERNATIONAL TOURIST CENTRE AGREEMENT ACT REPEAL ACT 1989

Clause 974 this Part provides for amendment to the *Queensland International Tourist Centre Agreement Act Repeal Act 1989*.

Clause 975 provides for inserting in section 18 of this Act the details as stated in this clause.

PART 24—AMENDMENT OF THIESS PEABODY COAL PTY. LTD. AGREEMENT ACT 1962

Clause 976 this Part provides for amendment to the *Thiess Peabody Coal Pty. Ltd. Agreement Act 1962*.

Clause 977 provides for the insertion of clause 4A after section 4 of this Act. This clause provides for the termination of clause 18 of this Act. This section provides a right for a lease to be granted over any area specified by the company within the "coal field".

This clause also provides that no compensation is payable because of the withdrawal of this right. Therefore, it may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is a limitation of rights or exclusion of liability. The withdrawal of this right is necessary to ensure that the coal seam gas regime provisions can apply equally to all tenure holders. The "automatic right" to a lease provided under clause 18 of this Act is in conflict with the preference decision process undertaken at the time of lease application under the new regime. The "automatic right" to a lease provision may have been appropriate in the context of a special development Act introduced to promote coal development in central Queensland 40 years ago. However, it is no longer necessary, given the maturity of the coal industry and the

emergence of a coal seam gas industry. Also, it is not considered appropriate in a modern legislative framework which must consider the interests of other parties. Further, companies to which this Act applies have had ample time to exercise their rights under that Act, therefore it is considered unnecessary to provide for any compensation as a result of the provisions in this clause.

PART 25—AMENDMENT OF TORRES STRAIT ISLANDER LAND ACT 1991

Clause 978 this Part provides for amendment to the *Torres Strait Islander Land Act 1991*.

Clause 979 provides for omitting in section 3, definition "mining interest" the words "or the *Petroleum Act 1923*" and inserting the details as stated in this clause.

Clause 980 provides for omitting from section 85(1) the words "*Petroleum Act 1923*" and inserting the words "*Petroleum and Gas (Production and Safety) Act 2004*".

PART 26—AMENDMENT OF VALUATION OF LAND ACT 1944

Clause 981 this Part provides for amendment to the *Valuation of Land Act 1944*.

Clause 982 provides for inserting in section 2, definition "petroleum lease" after "*Petroleum Act 1923*" the words "or the *Petroleum and Gas (Production and Safety) Act 2004*".

Clause 983 provides for omitting from section 26(2), definition "yearly rent", from "in respect of" to "that Act" and inserting the details stated in this clause.

PART 27—AMENDMENT OF WATER ACT 2000

The amendments to the *Water Act 2000* (Water Act) are to facilitate the supply and use of associated water, residual to the needs of the petroleum tenure holder, for a purpose other than authorised petroleum activities. Under the Bill, associated water may only be used by the tenure holder for carrying out authorised petroleum activities or otherwise disposed of under the terms of the tenure or relevant environmental authority under the *Environmental Protection Act 1994* that relates to the petroleum tenure. Under this framework, a tenure holder may apply for a water licence under the Act for residual associated water to allow for the supply and use of the water for purposes other than authorised petroleum activities. It is a prerequisite, for both applying for and holding this water licence, that a tenure holder is the holder of a current tenure and is commercially producing petroleum. A water licence granted under this Act for residual associated water will not replace the need for any other approval that may be required by either the tenure holder to treat or supply the residual associated water or by the user of the water. This water licence process gives recognition that the tenure holder is being afforded an opportunity to benefit from the supply of any residual associated water (water having been taken in the course of petroleum production under the rights given in this Bill). It will be a condition of a granted water licence that the tenure holder is to allow persons, refused a water licence as a direct result of the tenure holder's extraction of water on available water reserves, a right of first call if an interest is expressed, subject to certain limitations. A water licence granted to a tenure holder under this new framework will continue only while the holder currently holds a petroleum tenure and is commercially producing petroleum.

Clause 984 this Part provides for amendment to the *Water Act 2000*.

Clause 985 makes provision for two additional definitions for this Part of the Act. A petroleum tenure holder means a person who holds a petroleum tenure under the Bill and who is not otherwise an owner as currently defined by the section. Priority group is defined to mean the group made up of persons who applied for, but were refused a water licence, for taking or interfering with underground water, if the reason for the refusal was the effect of the tenure holder's extraction of water under the Bill. The members of a priority group are to be given an opportunity to register an interest with the tenure holder, prior to the tenure holder making application for a water licence for residual associated water, of a desire to

access an amount of water equivalent to an amount that otherwise could have been granted if their water licence application had been approved.

Clause 986 amends the section about applying for a water licence.

Subclause 986(1) renumbers subsection (4)(f).

Subclause 986(2) allows for a petroleum tenure holder to be an entity who may apply for a water licence even though the tenure holder may not be the owner of any or all of the land to which the licence relates (that is, the land on which the water will be used). In general, except for limited exceptions, only an owner of land may apply for a water licence under the Act.

Subclause 986(3) renumbers subsection 206(5).

Subclause 986(5) provides that a petroleum tenure holder can only apply for a water licence for water if the water is associated water, as defined under the Bill, that is residual to the needs of the petroleum tenure holder. Associated water under the Bill is underground water necessarily or incidentally taken or interfered with from a petroleum well in the course of carrying out authorised petroleum activities for the tenure. In order to apply for this water licence, the tenure holder must be carrying out approved testing for petroleum production or petroleum production for commercial purposes.

Clause 987 inserts a new section requiring a petroleum tenure holder to carry out a preliminary process to notify members of the priority group of the tenure holder's proposal to apply for a water licence for the residual associated water and to submit certain information with the water licence application. The purpose of the notification is to inform the priority group members about the potential availability of this water in the event the tenure holder is granted the water licence.

Subclause 987(1) provides that the requirement of this clause applies to the tenure holder if the tenure holder proposes to apply for a water licence.

Subclause 987(2) requires the chief executive to give the holder, if the holder requests, a notice stating who the members of the priority group are. This information will be known to the chief executive.

Subclause 987(3) requires the tenure holder, once it is known to the holder who the priority group members are, to give each member a notice in the approved form, inviting the member to inform the holder, within the stated period in the notice, if they have an interest in having access to some of the water under the water licence.

Subclause 987(4) provides that the stated period must be at least 20 business days.

Subclause 987(5) requires the tenure holder to include certain information or documents with the water licence application. A copy of the petroleum tenure is required to satisfy the prerequisite the holder has a current and valid petroleum tenure. Any expression of interest received from a priority group member must be included. A copy of the relevant environmental authority relating to the holder's tenure is required so that the chief executive can consider if there are any overriding environmental conditions regulating the disposal, or other dealing, with the associated water that may be relevant as part of the assessment of the water licence application.

Clause 988 amends this section to provide that the chief executive may decide this particular application for a water licence (for associated water) by a petroleum tenure holder without publishing a notice of the application under section 208 of the Act. This provision to enable the chief executive to decide this application without publishing recognises the particular circumstances where the associated water is water already taken (as part of the authorised petroleum activities).

Clause 989 amends this section to include a petroleum tenure holder as an entity for which a water licence (in this case a water licence for residual associated water) does not attach to the licensee's land. This allows a tenure holder to hold a water licence for the residual associated water regardless of whether the holder owns the land where the water is used.

Clause 990 amends this section about the conditions the chief executive may impose on the water licence, for residual associated water, granted to a petroleum tenure holder.

Subclause 990(1) provides that the chief executive may impose conditions on the licence about the supply of water to the priority group members who expressed an interest in accessing some of the residual associated water. For a priority group member that wishes to access the water, the holder must supply to that member a volume or rate as stated by the chief executive. However this stated volume or rate must only be equivalent to (as nearly as practicable) the volume or rate that would have applied if the member had been granted the water licence under the application which the chief executive previously refused. In addition, the holder is limited in what can be charged for the holder's costs of supply of the water to the priority group member. The costs of supply is to reflect the holder's supply costs to the member and any cost of treating the water to make it fit for the purpose for which it is supplied.

Subclause 990(2) renumbers sections 214(4) and (5).

Subclause 990(3) provides for how the chief executive determines the stated volume of water or stated rate of water to be supplied to a priority group member as a condition of the holder's granted water licence. At the time the chief executive decided to refuse the water licence application, previously lodged by an applicant now a member of the priority group, the chief executive will have considered what volume or rate of water could have been taken under a water licence if the application could have been approved but for the effect of the tenure holder's extraction of underground water.

Clause 991 amends this section limiting transfers of a water licence for residual associated water by a petroleum tenure holder.

Subclause 991(1) renumbers sections 222(2) to 222(4).

Subclause 991(2) provides that a tenure holder can only transfer a water licence for residual associated water to another petroleum tenure holder for the tenure.

Clause 992 amends this section to provide for when the chief executive may cancel a water licence, held by a petroleum tenure holder, for residual associated water.

Subclause 992(1) renumbers s 227(2).

Subclause 992(2) provides that, without limiting subsection (1), the chief executive may cancel this water licence in a number of circumstances. If the petroleum tenure ends, by way of expiry or surrender by the holder or cancellation, the chief executive may cancel the licence. If the tenure holder ceases to carry out either approved testing for petroleum production or petroleum production for commercial purposes, the chief executive may also cancel the licence. The intention of the water licence is to make available associated water from petroleum production or testing.

Clause 993 includes two new defined terms in the dictionary.

Schedule 1 sets out the decisions subject to review, and the decisions, other than review decisions that are subject to appeal.

Schedule 2 is the dictionary for the definitions used in the Act.