PETROLEUM AND OTHER LEGISLATION AMENDMENT BILL (No. 2) 2004

Explanatory Notes

Short Title

The Act will be known as the Petroleum and Other Legislation Amendment Act (No 2) 2004.

Policy Objectives of the Bill

The purpose of the Bill is to:

- amend the *Petroleum Act 1923* to include the provisions for the make good obligations in relation to existing Water Act bores and for the holder of a petroleum tenure under the *Petroleum Act 1923* to apply for a water monitoring authority.
- amend the *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004* to correct irregularities and typographical errors.
- amend the *Coal Mining Safety and Health Act 1999* and the *Mineral Resources Act 1989* to ensure consistency of nomenclature and the way safety is to be managed in relation to the coal seam gas regime.

Reasons for the Bill

The *Petroleum and Gas (Production and Safety) Bill 2004* and *Petroleum and Other Legislation Amendment Bill 2004* were introduced into Parliament on 12 May 2004 and 16 August 2004 respectively. The Bills were passed by Parliament on 29 September 2004 and received assent on 12 October 2004. The *Petroleum and Gas (Production and Safety) Act 2004* was intended to replace the *Petroleum Act 1923* and the *Gas (Residual Provisions) Act 1965*. However, the *Petroleum Act 1923* is to be kept for some current authorities to prospect and almost all current petroleum leases.

The *Petroleum and Other Legislation Amendment Act 2004* amended the *Petroleum Act 1923* to incorporate similar provisions in the *Petroleum and*

Gas (Production and Safety) Act 2004 into the *Petroleum Act 1923* to provide a uniform legislative regime for the administration of the petroleum industry in Queensland. Preparation for the implementation of the new legislation has highlighted some omissions and irregularities as well as minor typographical errors.

The *Petroleum and Other Legislation Amendment Bill (No. 2) 2004* did not insert the make good obligation and associated provisions in relation to unduly affected Water Act bores into the *Petroleum Act 1923*. Petroleum leases will continue to be granted under the *Petroleum Act 1923* after the start of the new legislation. Currently, any impact on an existing Water Act bore arising from petroleum production after the 2004 Act start day would not be covered by a make good obligation. Also there is no ability under the *Petroleum Act 1923* to enable a tenure holder to access land outside their tenure area in order to undertake restoration measures in relation to an unduly affected bore.

Proposed amendments to address the irregularities mainly relate to:

- a period for royalty exemption for production testing;
- implementation of the coal seam gas policy framework;
- safety and health provisions in relation to an operating plant; and
- to allow for water produced as a result of authorised activities under a *Petroleum Act 1923* petroleum tenure to be made available under a water licence under the *Water Act 2000* for supply to a third party.

There is an irregularity in relation to the definition of the period under which testing can be undertaken without royalty being paid. Approval would have been given before the 2004 Act start day for production testing on an authority to prospect. If this testing period ends before the end of the 13 months after the start day, then royalty would become payable on petroleum produced before the end of this period. The new provisions provides a gradual transition to the new regime and allows for all petroleum tenure holders to adjust their testing program accordingly.

There is a need for certainty as to when and where the health and safety provisions apply, especially in relation to the area around an operating plant.

The chief inspector is able to grant an interim gas work licence or authorisation (interim authority) if the applicant has not given sufficient information to be given a licence or authorisation. If the applicant can still

not supply the required information by the end of the term of the interim authority, then the chief executive can only extend the term of the interim authority where there are exceptional circumstances. This is irrespective of whether the applicant has demonstrated the competencies and skills to hold a gas work licence or authorisation.

Currently, the holder of a petroleum tenure under the *Petroleum Act 1923* is unable to obtain a water licence under the *Water Act 2000* to be able to on-supply water to a third party. The intention is that all water produced as a result of petroleum production is to be made available for on-supply to a third party

Amendments to the *Coal Mining Safety and Health Act 1999* in the *Petroleum and Gas (production and Safety) Act 2004* have resulted in inconsistent terminology. The use of different terminology may be confusing.

There are minor inconsistencies in the interaction between the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004*. The proposed amendments in the Petroleum and Other Legislation Amendment Bill (No 2) 2004 will address these issues.

Achievement of Policy Objectives

The objectives will be achieved by:

- Chapter 2, Part 9 – Existing Water Act bores is to be incorporated with relevant modifications into the *Petroleum Act 1923*.
- The ability to apply and be granted a water monitoring authority is added to the *Petroleum Act 1923*.
- The timeframe in relation to the exemption of payment of royalty on the petroleum produced as part of production testing is to be amended to provide greater certainty
- Definition of an operating plant is to be amended to include the land around an operating plant.
- The ability of the chief inspector is to be amended to enable the holder of an interim gas work licence or authorisation to be granted a licence or authorisation if the applicant can demonstrate that they have the necessary competencies and skills to hold a licence.

- The *Water Act 2000* is to be amended to allow for water taken as a necessary part of petroleum production to be made available for on–supply to a third party for beneficial use.
- The *Coal Mining Safety and Health Act 1999* is to be amended to ensure consistency of nomenclature.
- The *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004* are to be amended to ensure consistency in the implementation of the coal seam gas regime.

Part 1—Preliminary

Short Title

Clause 1 specifies the short title of the Bill.

Commencement

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. Section 7 is taken to have commenced on 12 October 2004, which is the day of assent for the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum and Other Legislation Amendment Act 2004*.

It may be considered that there is a breach of fundamental legislative principles triggered by this clause owing to the retrospective commencement of Section 9. This section needs to be made retrospective as it amends a section that commenced on the day of assent of the *Petroleum and Gas (Production and Safety) Act 2004*. Failure for this section to apply retrospectively would result in section 741 of the *Mineral Resources Act 1989* not having the desired effect. The application of this provision does not restricted a future application being made for a special coal mining lease after the commencement of the *Petroleum and Gas (Production and Safety) Act 2004*.

Part 2—Amendment of Mineral Resources Act 1989

Act amended in pt 2

Clause 3 states that the *Mineral Resources Act 1989* is the Act being amended in this part.

Amendment of s 318CN (Use that may be made under mining lease of incidental coal seam gas)

Clause 4 adds 'supplying power to the grid' as being an example of a use of coal seam gas other than for mining. It is intended that if any gas is used to produce electricity and that electricity generated is connected to a transmission grid then this would be considered to be commercialising the coal seam gas.

Amendment of s 318EB (Obligation to lodge proposed later development plan)

Clause 5 provides that if a holder of a mining lease has not submitted a proposed later development plan, then the holder is to be given a notice stating that they have 20 business days to submit a proposed later development plan.

Amendment of s 739 (definitions for div 6)

Clause 6 modifies the definition of a mineral hydrocarbon mining lease to also include replacement leases provided the area is no greater than included in the currently defined leases.

Amendment of s 741 (Unfinished special coal mining lease applications)

Clause 7 modifies the existing provision to exclude the application of the section to additions of surface area to existing mining lease areas. The intention of the original provision was to only stop the grant of new mining leases under the special agreement Act. It is intended that this provision applies from the date of assent, which was the case with original provision.

Amendment of s 747 (Continuation of particular rights relating to coal seam gas under mineral hydrocarbon mining leases)

Clause 8 provides for chapters 10 to 12 to also apply in relation to coal seam gas extraction as it is intended that the full safety provisions included investigations and enforcement of the Petroleum and Gas (Production and Safety) Act.

Part 3—Amendment of Petroleum Act 1923

Act amended in pt 3

Clause 9 states that the *Petroleum Act 1923* is the Act being amended in this part.

Amendment of s 2 (Definitions)

Clause 10 provides for additions to the definitions of terms used in this Act. These additional definitions are needed following the insertion of new provisions into the Act.

Amendment of s 25M (Requirements for making application)

Clause 11 provides that if an application to renew an authority to prospect, then it is a valid application to the extent of sub-blocks that are not totally within a petroleum lease or 2004 Act lease.

Amendment of s 25U (Expiry of pt 4 and ending of authorities to prospect)

Clause 12 provides for the ending of all authorities under the *Petroleum Act 1923* on the 1 November 2021. This is unlikely to be an issue considering that the relinquishment condition will require for all the land in an authority to prospect to have been relinquished by that date.

Amendment of s 45 (Entitlement to renewal of lease)

Clause 13 provides for agreement made under the *Native Title Act 1993* (Cwlth) can be made either before or after the commencement of the paragraph for the renewal of the lease under the *Petroleum Act 1923*.

Amendment of s 74J (Penalty relinquishment if work program not completed within extended period)

Clause 14 requires the Minister to be satisfied that the penalty relinquishment corresponds to the amount of the work that has not been completed.

Amendment of s 75A (Obligation to decommission pipelines)

Clause 15 amends section 75A to allow for an operating pipeline to be transferred between the holders of different types of tenures under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*.

Insertion of new pt 6CA

Clause 16 inserts a new Part 6CA.

'Part 6CA — Existing Water Act bores

'Division 1 — Preliminary

'Simplified outline of pt 6CA

Clause 16, section '75IA 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 is 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 the 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.

'What is an *existing Water Act bore*

Clause 16, section '75IB 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 under the instrument for an authority to prospect, or the start of petroleum production for commercial purposes.

'When an existing Water Act bore is *unduly affected*

Clause 16 section '75IC 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.

Clause 16, section '75IC(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. The effects could be the result of tenure under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004* .

'When an existing Water Act bore has an *impaired capacity*

Clause 16, section '75ID defines impaired capacity for bores taking or interfering with water for a number of different purposes, including stock and domestic.

'What are *restoration measures*

Clause 16, section '75IE defines what are restoration measures for the purpose of the make good obligation.

'Reference to 1923 Act petroleum tenure holder in pt 6CA

Clause 16, section '75IF 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 an authority to prospect or when land is no longer subject to an authority to prospect owing to the grant of a petroleum lease.

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

'The make good obligation

Clause 16, section '75IG 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.

‘Provisions for application of make good obligation

Clause 16, section ‘75IH 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 water necessarily taken as part of petroleum production, 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

‘Operation of sdiv 1

Clause 16, section ‘75II states that this division provides for the fixing of a trigger threshold for aquifers in the area affected by the taking of water necessary as part of petroleum production under 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.

‘Request for trigger threshold and action on request

Clause 16, section ‘75IJ 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.

'Provisions for fixing trigger threshold

Clause 16, section '75IK 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 necessarily taking water as part of petroleum production 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.

Clause 16, section '254(2) requires the chief executive to consider a number of matters for fixing the trigger threshold. These matters relate to the characteristics of the aquifer affected by the taking of water as a necessary part of petroleum production.

'Fixed trigger threshold applies for all taking of water necessarily taken as part of petroleum production

Clause 16, section '75IL 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

‘Lodging report

Clause 16, section ‘75IM 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 necessary taking of water as part of petroleum production in one or more petroleum tenures.

‘Requirements for report

Clause 16, section ‘75IN sets out matters in relation to an underground water impact report.

Clause 16, section ‘75IN(1) details the information or matters to be contained in an underground water impact report.

Clause 16, section ‘75IN(2) provides that the underground water impact report must comply with any requirements prescribed under a regulation.

Clause 16, section ‘75IN(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.

Clause 16, section ‘75IN(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.

‘Exemption from underground water flow model

Clause 16, section ‘75IO 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

‘Power to require amendment of report

Clause 16, section ‘75IP 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 taking of water as a necessary part of the production of petroleum.

‘Decision on report

Clause 16, section ‘75IQ deals with the chief executive’s decision on the underground water impact report.

Clause 16, section ‘75IQ(1) provides that the chief executive must decide whether to accept or reject an underground water impact report lodged by a petroleum tenure holder.

Clause 16, section ‘75IQ(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

‘Obligation to lodge pre-closure report

Clause 16, section 75IR 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 as a necessary part of petroleum production 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.

'Requirements for report

Clause 16, section '75IS sets out the information or matters to be contained in a pre-closure report.

'Power to require amendment of report

Clause 16, section '75IT gives the chief executive the power to require a petroleum tenure holder to amend a pre-closure report.

'Effect of lodgement of report

Clause 16, section '75IU 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 only to these bores.

'Division 5 — Monitoring and review reports

'Operation of div 5

Clause 16, section '75IV outlines the matters required to be complied with under this division in relation to monitoring and review reports.

'Obligation to lodge monitoring reports

Clause 16, section '75IW 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 the taking of water necessarily taken as part of petroleum production under a petroleum tenure.

'Obligation to lodge review reports

Clause 16, section '75IX 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 taking of water necessarily taken as part of petroleum production under a tenure.

Clause 16, section '75IX(1) details when a review report must be lodged.

Clause 16, section '75IX(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.

'Effect of lodgement of review report

Clause 16, section '75IY states the effect of the lodgement of a review report that has been prepared in accordance with the prescribed requirements.

'Chief executive's power to change frequency of reports

Clause 16, section'75IZ 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.

'Chief executive's power to change reporting days

Clause 16, section '75IZA gives the chief executive the power to change the reporting days in relation to monitoring and review reports. The ability to change reporting days will enable for the monitoring and review reports to be combined into a single report rather than submitting two reports with duplicate information.

‘Power to require amendment of review report

Clause 16, section ‘75IZB 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

‘1923 Act petroleum tenure holder’s obligation to negotiate

Clause 16, section ‘75IZC 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

‘Application of sdiv 2

Clause 16, section ‘75IZD 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.

‘Applying to tribunal

Clause 16, section ‘75IZE allows for the owner of the bore, or one or more of the petroleum tenure holders who take water as a necessary part of petroleum production that 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 interests of all parties can be protected.

‘Provisions for making decision

Clause 16, section ‘75IZF 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 Land and Resource Tribunal can only decide matters not covered in the agreement. 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.

‘Provisions for deciding compensation

Clause 16, section ‘75IZG 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 taking of water necessarily taken as a result of petroleum production 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

‘Make good agreement or tribunal’s decision binds successors and assigns

Clause 16, section 75IZH provides for any agreement or decision of the Land and Resources Tribunal to bind successors and assigns in relation to

restoration measures for a bore. This ensures that an agreement or decision in relation to a bore remains valid.

'Reviews by tribunal

Clause 16, section '75IZI 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.

'Right of entry after 1923 Act petroleum tenure ends to comply with make good obligation

Clause 16, section '75IZJ 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.

'Advice from Water Act regulator

Clause 16, section '75IZK 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.

Amendment of s 75J (Requirements for drilling well)

Clause 17 provides that regulatory requirements may be made to prevent the drilling of a well adversely affecting the carrying out of safe and efficient mining or future mining of coal.

Amendment of 75L (Restrictions on making conversions)

Clause 18 only allows for the conversion of a petroleum well to a water supply bore if the appropriate permission has been granted under section 86.

Amendment of s 75Q (Transfer of water observation bore or water supply bore to landowner)

Clause 19 amends section 75Q to require any transfer of a water observation bore or water supply bore to the landowner will also require the approval of the Minister.

Amendment of s 75R (Transfer of a well to holder of a geothermal exploration permit or mining tenement)

Clause 20 amends section 75R to require any transfer of a well to a holder of a geothermal exploration permit to also require the approval of the Minister.

Replacement of s 75S (Transfer of water observation bore to 1923 Act petroleum tenure holder)

Clause 21 replaces section 75S.

‘Transfer of water observation bore to petroleum tenure holders or water monitoring authority

Clause 21, section ‘75S provides for any transfer of a water observation bore or water supply bore to the holder of a 1923 Act petroleum tenure to also have the approval of the Minister.

Amendment of s 75U (Obligation to decommission)

Clause 22 clarifies the obligation to decommission a petroleum well or water supply bore to only apply to those wells and bores drilled by the holder, or for the holder, of the petroleum tenure or to any well or bore that was transferred to the holder. In addition the clause modifies the section so that water observation bores or water supply bores must be plugged and abandoned in accordance as prescribed under regulation so as to minimise the possibility that decommissioning could affect the future safe and efficient mining of coal. The decommissioning requirements under section 816 and 817 of the Water Act also apply but the regulation prescribed under this Act prevails over any inconsistency.

Insertion of new pt 6D, div 5

Clause 23 inserts a new part 6D, division 5.

‘Division 5—Water monitoring authorities

‘Subdivision 1 — Obtaining water monitoring authority

‘Who may apply for a water monitoring authority

Clause 23, section ‘75WA provides for who may apply for a water monitoring authority. The restriction 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.

‘Requirements for making application

Clause 23, section ‘75WB provides for the application to be made on the approved form and where the application is to be lodged.

‘Deciding application for water monitoring authority

Clause 23, section ‘75WC 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.

'Subdivision 2 — Key authorised activities

'Operation of sdiv 2

Clause 23, section '75WD states that this division provides for the key authorised activities that can be undertaken under a water monitoring authority.

'Water monitoring activities

Clause 23, section '75WE restricts the carrying out of authorised activities to the area of the water monitoring authority.

'Limited right to take or interfere with underground water

Clause 23, section 75WF 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.

'Authorisation for Water Act

Clause 23, section '75WG 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.

'Water Act not otherwise affected

Clause 23, section '75WH 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*.

‘Restriction on carrying out authorised activities

Clause 23, section ‘75WI provides for an offence if the holder of a water monitoring authority interferes with the carrying out of 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.

‘No right to petroleum discovered

Clause 23, section ‘75WJ 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.

‘Subdivision 3 — Miscellaneous provisions

‘Term of authority

Clause 23, section ‘75WK 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.

‘Provisions for who is the authority holder if only 1 related petroleum tenure

Clause 23, section ‘75WL 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.

'Additional condition of relevant petroleum tenure

Clause 23, section '75WM 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.

'Amending water monitoring authority by application

Clause 23, section '75WN 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.

Amendment of s 76R (Restriction)

Clause 24 requires that the holder of an authority to prospect over a mining lease can only carry out the activity if the mining lease holder also agrees in writing to the safety management plan for the lease.

Amendment of s 76W (Applicant's obligations)

Clause 25 provides for the omission of some sections and for the renumbering of the remaining sections. The intention at renewal is the preference decision is not revisited and comment and submissions may only relate to conditions of the lease not the grant of the renewal itself.

Amendment of s 76X (Minister may require further negotiation)

Clause 26 provides for the omission of a subsection and for the renumbering of the remaining sections.

Amendment of s 77 (Submission by coal or oil shale exploration tenement holder)

Clause 27 provides for the omission of a subsection and for the renumbering of the remaining sections. There is also a requirement for the

Minister to consider any submission received in deciding conditions for the lease.

Omission of pt 6F, div 3, sdiv 2

Clause 28 provides for the omission of this subdivision. This subdivision applies where a petroleum lease has been granted over all or part of a coal mining lease or oil shale mining lease. This subdivision is not required as any petroleum leases meeting this requirement will not be renewed under this Act.

Amendment of s 77O (Requirement for giving of copy of relinquishment report)

Clause 29 provides for a reduction in the penalty from 200 to 150 penalty units.

Amendment of s 77X (Deciding amendment application)

Clause 30 will require the Minister to give a copy of the decision to approve the later development plan to the applicant and the coal or oil shale exploration tenement holder.

Replacement of pt 6F, div 6 (Proposed later development plans)

Clause 31 replaces part 6F division 6.

'Division 6 — Additional provisions for development plans

'Subdivision 1 — Additional requirements for proposed later development plans

'Operation of sdiv 1

Clause 31, section '77ZA provides for additional requirements for a later development plan for a petroleum lease.

'Statement about interests of coal or oil shale exploration tenement holder

Clause 31, section '77ZB provides that a proposed later 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 coal seam gas 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.

'Requirement to optimise petroleum production

Clause 31, section '77ZC requires that activities proposed under a later development plan for a petroleum lease are to optimise petroleum production in a safe and efficient way. Where it is commercially or technically feasible to do so, authorised activities for the petroleum lease must not adversely affect the future safe and efficient mining of coal. 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 production activities.

'Consistency with coal or oil shale mining lease, development plan and relevant coordination arrangement

Clause 31, section '77ZD 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.

‘Subdivision 2 — Other additional provisions for proposed later development plans

‘Application of sdiv 2

Clause 31, section ‘77ZE provides for this subdivision to apply when the Minister is considering approving a proposed later development plan and the area of the proposed petroleum lease includes all or part of a coal or oil shale mining tenement.

‘Additional criteria for approval

Clause 31, section ‘78 requires for the coal seam gas assessment criteria to be considered in deciding whether to approve a proposed later development plan. It is intended that the plan be consistent with the principles of those criteria and ensure that the future mining of coal is not adversely affected by the activities proposed in the development plan of the petroleum lease. It is also intended that the plan should be consistent with any relinquishment condition for the lease

Amendment of s 78B (Confidentiality obligations)

Clause 32 provides for the confidentiality obligation to extend to persons carrying out authorised activities for the recipient of the supplied information.

Amendment of s 78F (Minister’s power to require additional security)

Clause 33 corrects a typographical error to require the security to be given for a 1923 Act tenure and not a petroleum authority as there is no concept of a petroleum authority in the *Petroleum Act 1923*.

Amendment of s 78M (Requirement for entry notice to carry out authorised activities)

Clause 34 increases the penalty from 100 to 500 penalty units.

Amendment of s 79P (General liability to compensate)

Clause 35 provides for compensation to only be payable to owners and occupiers of land in the area of the petroleum tenure. Compensation is not payable to owners and occupiers of land inside the tenure area.

Amendment of s 80A (Petroleum register)

Clause 36 requires that the trigger threshold for when an existing Water Act bore can be considered to be unduly affected is to be included in the petroleum register. The inclusion of the trigger threshold in the petroleum register ensures that the trigger threshold is publicly available and can be applied uniformly.

Amendment of s 80J (Deciding application)

Clause 37 provides that if the proposed transferee does not give the required security then the application can be refused.

Amendment of s 80K (Criteria for decision)

Clause 38 provides that the section does not apply if the transfer conforms to section 80J(3) or is an exempt transfer under section 80J.

Amendment of s 80T (Types of noncompliance action that may be taken)

Clause 39 provides for an increase in the maximum penalty to 2 000 penalty units.

Amendment of s 103 (Recovery of unpaid amounts)

Clause 40 ensures that a former tenure holder will be required to pay costs associated with the exercise of remedial powers. This provision ensures that the claim of being a former tenure holder will not be reason for not paying any amount owing to the State.

Amendment of s 151 (unfinished authority to prospect applications for which a Commonwealth Native Title Act s 29 notice has been given)

Clause 41 redefines the initial work program requirements by referring to the correct clauses.

Insertion of new pt 10, sdiv 9A

Clause 42 inserts a new subdivision 9A into the *Petroleum Act 1923*.

'Subdivision 9A — Provisions for existing Water Act bores

'Exemption from, or deferral of, reporting provisions for existing 1923 Act petroleum tenures

Clause 42, section '165A requires a holder of a 1923 Act petroleum tenure in force on the 2004 Act start day to provide a statement in respect to a need to produce an impact report for their tenure. The chief executive may after considering the statement require the petroleum tenure holder to produce an impact report by a specified reasonable time. The ability of the chief executive to require an impact report ensures that an impact report is produced only for tenures where petroleum production is likely to have an effect on existing water act bores.

'Make good obligation only applies for existing Water Act bores on or from the 2004 Act start day

Clause 42, section '165B provides that all Water Act bores existing or come into existence after the 2004 Act start day are eligible for the make good obligation. The extension of the make good obligation to all existing bores on the 2004 Act start day is needed as it is impossible to always determine the date of construction of a bore and thereby its eligibility for the make good obligation.

Amendment of s 181 (Confidentiality obligations)

Clause 43 provides for the confidentiality obligation to extend to a person carrying out authorised activities for the recipient of the supplied information.

Insertion of new pt 11

Clause 44 inserts part 11.

‘Part 11—Transitional provisions for Petroleum and Other Legislation Amendment Bill (No 2) 2004

‘S 86 water bores

Clause 44, section ‘183 provides that if a bore was drilled as a result of a permission under section 86 then that bore is taken to be a water supply bore. A licensed water bore driller did not construct any of these bores. This provision allows for the transfer of these bores to the landowner without the bores having to be constructed by a licensed water bore driller.

‘Decommissioning of wells and bores

Clause 44, section ‘184 provides a transitional period of 6 months before the plugging and abandonment procedures required by section 75U apply. It is recognised that a transitional period is needed for wells or bores, given that drilling activities for next year may have already been planned for under exiting requirements. In the transitional period, the provisions of the *Petroleum Act 1923* and *Petroleum Regulations 1966* as they were on 31 December 2004, apply.

Amendment of schedule

Clause 45 amends the schedule to provide for where appeals of decision under the stated sections are to be made.

Part 4—Amendment of Petroleum and Gas (Production and Safety) Act 2004

Act amended in pt 4

Clause 46 states that the *Petroleum and Gas (Production and Safety) Act 2004* is the Act being amended in this part.

Amendment of s 11 (Meaning of *LPG* and *fuel gas*)

Clause 47 changes the definition of LPG and fuel gas to be predominantly propane, propylene or butane.

Amendment of s 78A (Penalty relinquishment if work program not completed within extended period)

Clause 48 provides for when the holder must meet their obligation in relation to a penalty relinquishment if they failed to complete their work program during the extended period.

Amendment of s 89 (Compliance with Acts etc)

Clause 49 has the incorrect title and should be labelled 'Applying for potential commercial area'. This error will be corrected later. This section requires for the prescribed fee to accompany the application of a potential commercial area.

Amendment of s 117 (Who may apply)

Clause 50 amends section 117 to allow for the holder of an authority to prospect under the *Petroleum Act 1923* to make an ATP-related application for a petroleum lease under the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 121 (Requirements for grant)

Clause 51 amends section 121 to require the applicant to pay the annual rent for the first year and to give the required security. This ensures that all payments of money have been made before the petroleum lease is granted.

Amendment of s 227 (Storage rent payable by current owner)

Clause 52 clarifies when the owner of petroleum or a storage gas is no longer required to pay storage rent.

Amendment of s 234 (Arrangement to coordinate petroleum activities)

Clause 53 amends section 234 to no longer allow an applicant for a 1923 Act lease to enter into a coordination arrangement. Once a lease is granted, then the holder can enter into a coordination arrangement. The ability of an

applicant for a 1923 Act lease to enter into a coordination arrangement may be considered to be a right not currently enjoyed by the holder of an authority to prospect under the *Petroleum Act 1923*. The extent of the coordination arrangement can be inconsistent with, or not provided for under the leases or their conditions, is being limited to the production commencement day, the development plan for the lease or any special conditions.

Amendment of s 236 (Ministerial approval of proposed coordination arrangement)

Clause 54 provides that any coordination arrangement involving any combination of coal or oil shale mining tenement, and a petroleum lease under either the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004* must identify the safety responsibilities of each party with respect to activities to be undertaken on the overlapping land between the different leases.

Amendment to s 246 (When an existing Water Act bore is *unduly affected*)

Clause 55 provides that an existing Water Act 2000 bore can become unduly affected through the production of petroleum from a combination of a petroleum tenure under the *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 250 (The make good obligation)

Clause 56 provides for the make good obligation to continue to apply even if a petroleum tenure is divided into two or more tenures. The extent of the liability in relation to the make good obligation is as if the obligation arose on the basis of the holders of the divided authorities to prospect exercised separately under the divided tenures.

Amendment of s 251 (Provisions for applications of make good obligation)

Clause 57 ensures that if the make good obligation arises from taken water necessarily taken as part of petroleum production under either the *Petroleum Act 1923* or *Petroleum and Gas (Production and Safety) Act*

2004, then all the holders are jointly and severally liable to undertake restoration measures.

Amendment of s 255 (Fixed trigger threshold applies for all underground water rights)

Clause 58 provides for consideration of a trigger threshold set for a petroleum tenure under either the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004.*

Amendment of s 257 (Requirements for report)

Clause 59 provides for the contents of an impact report that also relates to activities under the *Petroleum Act 1923*. The ability to lodge a combined report is intended to provide an integrated assessment of the impact of activities irrespective of the tenure under which they were conducted and reduced the number of individual reports to be submitted.

Amendment of s 261 (Obligation to lodge pre-closure report)

Clause 60 provides for the contents of a pre-closure report that also relates to activities under the *Petroleum Act 1923*. The ability to lodge a combined report is intended to provide an integrated assessment of the impact of activities irrespective of the tenure under which they were conducted and reduce the number of individual reports to be submitted.

Amendment of s 264 (Effect of lodgement of report)

Clause 61 amends section 264 to state that this section applies only if the holder of the petroleum tenure was required to submit a pre-closure report. Otherwise all holders of petroleum tenure would be required to submit a pre-closure report irrespective of whether or not a report was required. Failure to submit a report would have raised the possibility of the petroleum tenure holder becoming liable for a bore that becomes unduly affected after the tenure ends even though the tenure holder may not have affected the bore.

Amendment of s 273 (Application of sdiv 2)

Clause 62 provides for the Land and Resources Tribunal to be able to consider a dispute in relation to the make good obligation if one of the

tenure holders is a holder of a petroleum tenure under the *Petroleum Act 1923*. This amendment reflects the possibility of combined petroleum production under the *Petroleum and Gas (Production and Safety) Act 2004* and *Petroleum Act 1923* resulting in a Water Act bore becoming unduly affected.

Amendment of s 274 (Applying to tribunal)

Clause 63 provides for either the bore owner or a tenure holder under the *Petroleum and Gas (Production and Safety) Act 2004* or *Petroleum Act 1923* to be able to apply to the Land and Resources Tribunal to decide how the make good obligation is to be complied with.

Amendment of s 275 (Provisions for making decision)

Clause 64 provides for the Land and Resources Tribunal to be able to decide contributions of a holder of a petroleum tenure under the *Petroleum Act 1923* if the taking of water as a necessary part of petroleum production as well as the exercise of underground water rights under the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 277 (Make good agreement or tribunal's decision binds successors and assigns)

Clause 65 provides that if a make good agreement or a decision of the Land and Resources Tribunal relates to a petroleum tenure under the *Petroleum Act 1923* then that agreement or decision binds subsequent holders of that tenure.

Amendment of s 281 (Requirements for drilling petroleum well)

Clause 66 provides that regulatory requirements may be made to prevent the drilling of a well adversely affecting the carrying out of safe and efficient mining or future mining of coal. The inclusion of this provision is consistent with the optimisation of the production of both petroleum and coal resources.

Amendment of s 292 (Obligation to decommission)

Clause 67 clarifies the obligation to decommission a petroleum well or water supply bore to only apply to those wells and bores drilled by the holder, or for the holder, of the petroleum tenure or to any well or bore that

was transferred to the holder. In addition the clause modifies the section so that water observation bores or water supply bores must be plugged and abandoned in accordance as prescribed under regulation so as to minimise the possibility that decommissioning could affect the future safe and efficient mining of coal. The decommissioning requirements under section 816 and 817 of the Water Act also apply but the regulation prescribed under this Act prevails over any inconsistency.

Amendment of s 306 (Content requirements of CSG statement)

Clause 68 modifies section 306 because it is not intended that a proposed safety management plan that has to accompany a petroleum lease application overlapping a coal or oil shale, comprise the full safety management plan. It is intended that only those parts of the proposed plan that relate to activities of the plant that may affect possible future safe and efficient mining of coal accompany the application.

Amendment of s 378 (Applied provisions for making and deciding renewal application)

Clause 69 clarifies that in the adopted provisions applying to renewals, references to initial development plans should be references to later development plans.

Amendment of s 386 (Requirements for consultation with particular coal or oil shale mining tenement holders)

Clause 70 provides for only relevant parts of the proposed safety management plan to be given to a mining tenement holder. It is only intended that only those parts of the proposed plan that relate to activities of the plant that may affect possible future safe and efficient mining of coal be provided to the tenement holder.

Amendment of s 531 (General liability to compensate)

Clause 71 provides for compensation to only be payable to owners and occupiers of land in the area of the petroleum authority. Compensation is not payable to owners and occupiers of land inside the area of the petroleum authority or access and for the authority.

Amendment of s 546 (End of tenure report)

Clause 72 provides for an end of tenure report to be submitted in relation to a water monitoring authority. The requirement of an end of tenure report is to ensure that all activities in relation to the water monitoring authority have been properly documented to ensure there is adequate information on potential hazards to future safe and efficient coal mining.

Amendment of s 559 (Obligation to decommission pipelines)

Clause 73 provides that the obligation to decommission a pipeline does not apply if the pipeline is subject to another petroleum authority. For example, a point-to-point pipeline licence may end by the pipeline being included into an area pipeline licence. Decommissioning of a pipeline under these circumstances would be inappropriate as the pipeline is still to be used.

Amendment of s 569 (Prohibited dealings)

Clause 74 provides that a transfer of a data acquisition authority, or a share in a data acquisition authority is permissible only by the operation of law. This restriction is needed as a data acquisition authority is linked directly to a petroleum tenure. There should be no separation of this link and therefore it should not be possible to transfer the interest separate from that of the petroleum tenure.

Amendment of s 573 (Deciding application)

Clause 75 provides that if the proposed transferee does not give the required security then the application can be refused.

Amendment of s 574 (Criteria for decision)

Clause 76 provides that the section does not apply if the transfer conforms to section 573(3) or is an exempt transfer under section 573.

Amendment of s 576 (Requirements for making surrender application)

Clause 77 provides for report on and the results of authorised activities undertaken in the area subject to the surrender application to accompany the application. The submission of this report ensures that all reporting requirements have been met before the petroleum authority is surrendered.

Amendment of s 589 (Recovery of unpaid amounts)

Clause 78 ensures that a former tenure holder will be required to pay costs associated with the exercise of remedial powers. This provision ensures that the claim of being a former tenure holder will not be reason for not paying any amount owing to the State.

Replacement of s 591 (General exemptions from petroleum royalty)

Clause 79 replaces section 591.

'General exemptions from petroleum royalty

Clause 79, section '591 provides clarity in relation to petroleum used in the production of petroleum is to be exempt from royalty. The exemption is only to apply to the extent that the petroleum is used to recover petroleum to the surface of the ground. This exemption is to apply to production under either a *Petroleum Act 1923* or *Petroleum and Gas (Production and Safety) Act 2004* petroleum tenure. The exemption also applies to coal seam gas used for the mining of any coal associated with mining of the gas. It is intended that this applies where the holder of a mining lease has taken out a petroleum lease to commercialise their coal seam gas. In this case, the exemption only applies to gas used to mine the coal from which the gas is or has been extracted, and does not extend to other separate mining operations on the lease such as open cut operations.

However, as certain existing mining operations may have an expectation that the exemption would apply to gas used for any mining on the mining lease, the clause provides that to be the case for those mining leases where underground mining has commenced on 31 December 2004. If these lease holders obtain a petroleum lease in the future, this extended exemption will apply.

The clause also clarifies that the exemption applies to gas used to produce electricity for the purposes of mining the relevant coal, but only to that proportion of the electricity that relates to the relevant mining.

Replacement of s 591A (Exemption for production testing)

Clause 80 replaces section 591A.

'Exemption for production testing

Clause 80, section '591A provides for a royalty exemption for petroleum produced as a result of production testing. The exemption applies for 12 months of approved production testing or until an amount of 3 000 000 cubic metres of gas has been produced. This period and production limit is considered sufficient for the holder of a petroleum tenure to obtain the information required to determine whether petroleum can be produced in commercial quantities.

Amendment of s 602 (Interest on unpaid petroleum royalty or additional royalty payment)

Clause 81 provides for when the interest on unpaid royalty or additional royalty is added to the debt owing to the State.

Amendment of s 670 (What is an *operating plant*)

Clause 82 amends section 670 to extend the definition of an operating plant to include any part of a petroleum tenure under the *Petroleum and Gas (Production and Safety) Act 2004* or *Petroleum Act 1923* on which the plant is operated. This amendment will ensure that the tenure holder has safety responsibilities along with individual operators of operating plant.

Amendment of s 673 (Who is the *operator* of an operating plant)

Clause 83 amends section 673 to provide for the case where a petroleum tenure or a 1923 Act tenure is an operating plant. In this case the operator of the operating plant is the tenure holder. By including the tenure holder, it is intended that both the tenure holder and any separate operators of operating plant on the tenure will have safety responsibilities and obligations, including a requirement to have a safety management plan.

Amendment of s 674 (Requirements of have safety management plan)

Clause 84 provides that if there is a requirement for a principal hazard management plan then that plan forms part of the safety management plan. It is intended that a principal hazard management plan is part of a safety management plan and all provisions relating to safety management plans would also apply to principal hazard management plans.

Amendments of s 675 (Content requirement for safety management plans)

Clause 85 requires the safety management plan to address any interaction between other operating plant and contractors. It is very important that the risks associated with multiple contractors or multiple operating plant operating in the one vicinity and particularly when on a petroleum tenure, that their interactions, the risks of those interactions and the safety responsibilities of each operator including the tenure holder are clearly identified in the plan. The clause also ensures that the training program links back to the skills assessment.

Amendment of s 687 (Who is the *executive safety manager* of an operating plant)

Clause 86 provides for the senior managing officer of the principle tenure holder to be the nominated executive safety manager. This clause provides clarity in respect to safety responsibility where there is more than one holder of a petroleum authority.

Insertion of new ch 9, pt 4, div 7

Clause 87 inserts Division 7 into Chapter 9, Part 4 of the *Petroleum and Gas (Production and Safety) Act 2004*.

'Division 7—Obligation to comply with safety requirements and instructions

'Offence not to comply with safety requirement

Clause 87, section '708A requires for a person to comply with all safety requirements. This provision does not apply in relation to sections where there is already a specific obligation to comply with a safety requirement which includes sections 696, 687, 733 and 734.

'Chief inspector may issue safety alerts and instructions

Clause 87, section '708B provides for the chief inspector to issue a safety alert or instructions (safety announcement) to a particular person or the general public. The Chief Inspector already has such powers and this provision provides for a more transparent and robust use of the powers.

The provision clarifies the way a safety announcement is to be issued. The intention is that alerts and instructions provide a quick response to new or emergent issues or incidents, which may have more widespread implications. The objective is to be able to alert, advise or instruct persons to ensure safety outcomes. For this reason, the section provides that where the instruction is inconsistent with any safety requirement then the instruction prevails. This is required because safety requirements may be silent or may been subsequently found to be deficient and quick response is needed.

It is intended that safety instructions only be effective for 6 months until other action could be taken or safety requirements are revised in the regulations.

Amendment of s 724 (Types of gas device)

Clause 88 omits section 724(3)(d).

Amendment of s 728 (Who may apply)

Clause 89 enables a gas work licence to be endorsed to allow the applicant of carry out work in relation to gases other than fuel gas. This licensing of gas work other than fuel gas ensures that a licensed person undertakes all gas work.

Replacement of s 728B (Interim licence or authorisation)

Clause 90 replaces section 728B.

'Interim licence or authorisation

Clause 90, section '728B that the chief inspector may grant interim gas work licences or authorisation in situations where a licence holder has not demonstrated all necessary competencies. The interim licence provides a defined period during which the full competencies must be obtained. For many applicants this will be the standard way of obtaining a licence as competencies are gained.

Amendment of s 876 (Conversion on 2004 Act start day)

Clause 91 corrects a typographical error.

Amendment of s 881 (Additional conditions for renewal application)

Clause 92 provides that if an application to renew a converted authority to prospect, then it is a valid application to the extent of sub-blocks that are not totally within a petroleum lease or 1923 Act lease. This amends the current provision where an application could not be made if there was a whole sub-block within a petroleum lease or 1923 Act lease.

Insertion of new s 911A

Clause 93 inserts section 911A into the *Petroleum and Gas (Production and Safety) Act 2004*.

'Provisions for continuance of 1923 Act make good obligation

Clause 93, section 911A ensures that if a replacement tenure is granted then the make good provision continues to apply as if the original tenure continues. This section ensures that the granting of a replacement tenure does not in any way remove or change the timing in relation to the petroleum tenure holder's make good obligation.

Amendment of s 926 (Provisions for petroleum royalty)

Clause 94 provides that royalty is payable on petroleum produced before the 2004 Act start day but the liability to pay royalty had not arisen before that day. This could arise if petroleum was produced before the 2004 Act start day but sold after that day. Petroleum flared under an approval under the 1923 Act is also exempt from royalty.

Amendment of s 927 (Corresponding approvals and decisions under 1923 Act for a converted petroleum authority)

Clause 95 amends section 927 to ensure that if an approval or decision under the *Petroleum Act 1923* was made after the 2004 Act start day then that approval or decision would continue to have effect. This provision is required to cover a potential gap in relation to the period between the 2004 Act start day and the grant of a replacement tenure.

Amendment of s 931 (References in Acts and documents to 1923 Act)

Clause 96 provides that a reference in an Act or document to the 1923 Act is a reference to the *Petroleum and Gas (Production and Safety) Act 2004*. This reference is inappropriate if the petroleum tenure continues under the *Petroleum Act 1923* even if this tenure eventually becomes a replacement tenure under the *Petroleum and Gas (Production and Safety) Act 2004*.

Omission of s 935 (Continuation of petroleum royalty exemption for flaring or venting under 1923 Act)

Clause 97 omits section 935 as this is provided for under section 926 as amended by this Bill.

Amendment of s 937 (Existing operating plant)

Clause 98 clarifies that the requirements for Chapter 9 Parts 2 and 4 (except for division 7) do not apply until 1 July 2005. This provides a transitional period of 6 months for all operating plant to comply with the safety management plan and other obligations. It is recognised that a transitional period is needed for all plant, not just those operating immediately before the commencement date, given the extent of the requirements and that plant activities for next year may have already been planned for under exiting requirements.

Insertion of new ch 15, pt 5

Clause 99 inserts chapter 15, part 5 into the *Petroleum and Gas (Production and Safety) Act 2004*. This provision addresses transitional issues arising from this Bill.

'Part 5—Transitional provisions for Petroleum and Other Legislation Amendment Bill (No 2) 2004

'Pipeline licences

Clause 99, section '938A provides that a pipeline licence under the *Petroleum Act 1923* becomes a point-to-point pipeline licence under the

Petroleum and Gas (Production and Safety) Act 2004 on the commencement of this Bill. This clause removes uncertainty in relation to original transitional provision. The clause does not limit the way the pipeline can be licensed in the future. This is consistent with the form of a pipeline licence under the *Petroleum Act 1923*.

'Requests for pipeline licences

Clause 99, section '938B provides that if a request for a pipeline licence was received before the 2004 Act start day and the request has not been decided, then the application is considered to be an application for a point-to-point licence under the *Petroleum and Gas (Production and Safety) Act 2004*. This is consistent with the form of a pipeline licence under the *Petroleum Act 1923*.

'1923 Act water bores

Clause 99, section '938C provides that if a bore was drilled as a result of a permission under section 86 then that bore is taken to be a water supply bore. A licensed water bore driller did not construct any of these bores. This provision allows for the transfer of these bores to the landowner without the bores having to be constructed by a licensed water bore driller.

'Decommissioning wells and bores

Clause 99, section 938D provides for a transitional period of 6 months before the plugging and abandonment procedures required by section 292 apply. It is recognised that a transitional period is needed for wells or bores, given that drilling activities for next year may have already been planned for under exiting requirements. In the transitional period, the provisions of the *Petroleum Act 1923* and *Petroleum Regulations 1966* as they were on 31 December 2004, apply.

Amendment of sch 2 (Dictionary)

Clause 100 inserts additional terms into the Dictionary.

Part 5—Amendment of Water Act 2000

Act amended in pt 5

Clause 101 states that the *Water Act 2000* is the Act being amended in this part.

Amendment of s 203 (Definitions for pt 6)

Clause 102 amends the definition 'priority group' to include the effect of taking water a part of petroleum production under the *Petroleum Act 1923*.

Amendment of s 206 (Applying for water licence)

Clause 103 provides for water necessarily taken as part of authorised petroleum activities under the *Petroleum Act 1923* then this water can also be made available under this type of water licence. The insertion of this provision ensures that all water necessarily taken as part of petroleum production is covered by a water licence for on-supply to a third party.

Amendment of s 227 (Cancelling water licence)

Clause 104 provides that for water from a petroleum tenure under the *Petroleum Act 1923* is to be made available under a water licence, then this water licence will end when the petroleum tenure ends. This is consistent with the provisions in relation to a petroleum tenure under the *Petroleum and Gas (Production and Safety) Act 2004*.

Part 6—Minor amendments

Minor amendments

Clause 105 makes minor amendments to the *Coal Mining Safety and Health Act 1999*, *Mineral Resources Act 1989*, *Petroleum Act 1923* and *Petroleum and Gas (Production and Safety) Act 2004*.

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