Mines and Energy Legislation Amendment Bill 2010

Explanatory Notes

Title of the Bill

The short title of the Bill is the *Mines and Energy Legislation Amendment Bill 2010*.

Policy Objectives of the Bill

The objective of the Bill is to amend the following Acts:

- *Clean Energy Act 2008;*
- *Coal Mining Safety and Health Act 1999;*
- *Electricity Act 1994;*
- *Explosives Act 1999;*
- *Geothermal Exploration Act 2004;*
- *Greenhouse Gas Storage Act 2009;*
- *Mineral Resources Act 1989;*
- *Mining and Quarrying Safety and Health Act 1999;*
- *Petroleum and Gas (Production and Safety) Act 2004;*
- *Petroleum (Submerged Lands) Act 1982; and*
- *Queensland Competition Authority Act 1997.*

The Bill will:

- streamline the mining lease application process by removing the current requirement for the Land Court to hear mining lease applications where there are no objections;
- simplify and clarify the compliance requirements under the Clean Energy Act;

- implement two recommendations from the 'Brokering Balance: a Public Interest Map for Queensland Government Bodies' report (the Weller Review);
- enhance safety and health measures in Queensland's mining, explosives and gas industries;
- improve electricity retailer credit support arrangements and customer service obligations; and
- simplify the approvals process for pipelines that traverse both the mainland and Queensland's internal waters and ensure pipeline proponents only need to comply with the safety and health obligations under the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act).

Reasons for the Bill

Amendment to the *Clean Energy Act 2008*

Smart Energy Savings Program

The Smart Energy Savings Program (SESP) provisions of the Clean Energy Act commenced on 1 July 2009. The provisions require a 'person who operates a business or carries out an activity' and consumes energy over 100 terajoules (TJ) in the 2009-10 financial year, to register by September 2010 to report energy use within a five year cycle. About 20 industry sites will be required to register by September 2010. The Commonwealth also has a similar program.

In preparing for the commencement of the SESP provisions, a number of issues were identified, including:

- unclear provisions regarding who is required to participate in SESP, particularly in situations where there are multiple tenancy arrangements on the same site;
- potential to unfairly penalise businesses that undertake early audits or Energy Savings Plans;
- the need for further information and data from participating businesses; and
- misalignment of timeframes and confusion regarding the term 'baseline year'.

Amendments to the *Electricity Act 1994* and *Queensland Competition Authority Act 1997*

Improving electricity retailer credit support arrangements

Electricity distribution entities operate in a regulatory environment where they must provide access to their distribution networks to retail entities on behalf of customers. That is, there is an obligation to serve customers. Given this obligation, it is generally accepted that distribution entities should be able to manage their risk of exposure to non-payment for distribution services by a retail entity. This risk of non-payment may be heightened in the case of new, smaller retail entities entering the competitive retail market.

However, it is also important that any credit support required by a distribution entity is not so onerous as to impose unreasonable costs on retail entities and thus create an unreasonable barrier to entry into the electricity retail market.

In Queensland, the current regulatory arrangements for retailer credit support are set out in the Standard Coordination Agreement (SCA) appended to the Electricity Industry Code (the Code). Feedback on the existing arrangements has identified that they are ineffective in limiting the risk to which distribution entities are exposed in certain circumstances, while there has also been criticism from retail entities that the credit support required by distribution entities is overly onerous and a barrier to entry.

The existing SCA allows distribution entities to require credit support in the form of an unconditional bank guarantee. Some retail entities have refused to provide an unconditional bank guarantee to the amount required by the distribution entity, citing the requirement as unreasonable and financially onerous.

The current process for the distribution entity to enforce its right to credit support is considered unwieldy and protracted. The dispute resolution process can take many months, during which there is no means of limiting further increases to the distribution entity's credit risk exposure, as the retail entity is able to continue to sell electricity to existing and new customers.

Ensuring access to electricity

When a property of a large market customer (i.e. one who consumes more than 100 megawatt-hours per year) has been disconnected from the grid

(de-energised), and the customer's contract with its retailer has expired or ended, then that customer, or any new customer at the premises, will need to enter into a new retail contract in order to have electricity supply provided to the premises.

Currently under the Electricity Act, a large market customer at de-energised premises must seek an offer of a negotiated retail contract for the supply of electricity. However, the Electricity Act does not include an obligation on any retail entity to make an offer of contract to large market customers. Furthermore, section 55G of the Electricity Act explicitly prevents Ergon Energy Queensland from offering a contract to a large customer once the customer has entered the market.

The Department of Employment, Economic Development (DEEDI) has been notified of three cases where large market customers occupying de-energised premises in regional areas of Queensland have been unable to obtain a negotiated contract offer with a retailer. DEEDI successfully negotiated with some retailers operating in the area to offer the affected customers a negotiated contract. There is a risk the number of cases where customers are unable to secure access to electricity will increase with the sale of New South Wales Government owned retailers who operate in regional Queensland, such as Country Energy, if the new owners decide to change their target market.

This means that large market customers without a retail contract whose premises have been de-energised, or customers who have moved into de-energised premises formerly occupied by a large market customer, potentially will be unable to secure electricity retail services.

Amendments to the *Mineral Resources Act 1989*

Streamline mining lease application process

Under the *Mineral Resources Act 1989* (MRA), the Mining Registrar must currently refer all applications for mining leases and all properly made objections to the Land Court for hearing. If no formal objection to an application has been lodged, the Land Court will generally dispense with a hearing and deal with an application on the basis of the application and supporting materials. This process for the Land Court to make a recommendation can take up to six weeks, but there have been no reported instances where the Court has refused an application based on an assessment in Chambers. Between 1 January 2004 and 31 December 2008 (five year period) a total of 433 mining leases were granted and 313 attracted no public objections.

Amendments to the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*

Implementation of recommendations from the Weller Review

On 12 March 2008, the Premier, the Honourable Anna Bligh MP, announced a review of the efficiency and effectiveness of approximately 600 Government boards and statutory bodies (the Weller Review). In its report 'Brokering Balance: a Public Interest Map for Queensland Government Bodies', the Weller Review recommended the Boards of Examiners created under the *Coal Mining Safety and Health Act 1999* (CMSHA) and the *Mining and Quarrying Safety and Health Act 1999* (MQSHA) be merged as they effectively operate as a single body.

The Weller Review also recommended the current Coal Mining Safety and Health Advisory Council and Mining Safety and Health Advisory Council be retained because of the distinct nature of coal mining and metalliferous mining. The Weller Review recommended that they be renamed as 'Committees' and that membership should not be remunerated. The Government has accepted these recommendations.

Small mines safety initiative – Safety and Health Management System

Since the MQSHA came into force in March 2001, Queensland's large mines have been required to develop and maintain a fully documented Safety and Health Management System (SHMS). However, due to the significant resources and skills required to develop a SHMS at the time, small mines with ten or fewer workers were exempted from the requirement.

A 2006-07 review was conducted by DEEDI's Mines Inspectorate into fatalities at Queensland's metalliferous mines and quarries over the previous ten year period. The review found a decreasing trend in the number of fatalities at large mines and an increasing trend in fatalities in small mines and quarries.

Large mine fatalities dropped from 24 in the 1990s to eight in the 2001-2009 period, while small mine fatalities increased from five in the 1990s to eight in the 2001-2009 period. This trend is reflected in statistics for other Australian jurisdictions.

In February 2009, following an inquest into a death at a small mine, the Coroner, Mr Scott Luxton, recommended that legislation be amended to require mines with ten or fewer workers to have a SHMS.

Amendments to the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum (Submerged Lands) Act 1982*

Enhancing safety measures in the gas industry

The amendments to the safety provisions of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) are due to:

- the need to clarify the definition of a Type A and Type B gas device;
- changes to improve the efficiency of the certification of gas devices as Type A or Type B devices as a result of the national harmonisation program being pursued by the Australian and New Zealand Gas Technical Regulators Committee;
- the rapid increase in the use of hydrocarbon refrigerants in refrigeration appliances, which has resulted in more tradespeople wishing to undertake this type of work;
- the need to modify the Type B gas device approval process in line with common practice;
- the need to introduce an offence provision in response to issues arising from cases of falsification of appliance approval labelling; and
- unintended consequences and application of certain provisions.

Application of the P&G Act and the Petroleum (Submerged Lands) Act 1982 to Queensland lands, internal waters, and coastal waters

The Commonwealth has sovereignty over the territorial sea and has given the States the power to make laws in relation to that part of the territorial sea that covers the area 3 nautical miles seaward from the territorial sea baseline (TSB). The State enacted the *Petroleum (Submerged Lands) Act 1982* (PSLA) to give itself powers in relation to the territorial sea that is out to 3 nautical miles seaward from the TSB.

The PSLA's jurisdiction for pipelines has been extended to cover the State's internal waters as well as territorial waters. Queensland's internal waters are the waters between the mean low water mark and the TSB. Because of the interaction between the P&G Act and the PSLA, companies wishing to construct pipelines between Queensland and the islands located within Queensland's internal waters would currently be required to apply for and obtain pipeline licences under both the P&G Act (for the pipeline over the mainland as far as the mean low water mark) and the PSLA (for the area seaward of the low water mark including islands within the internal waters).

This would also mean that companies intending to do this would be subject to two safety and health regulatory regimes –

(a) Safety and health under the P&G Act is monitored and enforced by the Petroleum and Gas Inspectorate in DEEDI; and

(b) Safety and health under the PSLA would be the responsibility of the National Offshore Petroleum Safety Authority. While the PSLA imposes safety and health obligations on operators of pipelines, further regulations under the PSLA would most likely need to be made before construction on any pipelines could be allowed to start.

How the policy objectives will be achieved

Amendments to the *Clean Energy Act 2008*

Smart Energy Savings Program

The proposed amendments to the Clean Energy Act will provide greater certainty for, and reduce burden on, businesses required to participate in the SESP by:

- excluding all Commonwealth and Queensland agencies from the SESP;
- rewording provisions to allow for submission of audits and Energy Savings Plans completed earlier than required;
- more clearly defining which entity is a participating business in situations where business structures or tenancy arrangements make SESP responsibilities unclear or inappropriate, and allowing exemption from participation where the participating business can demonstrate that a tenant is the more appropriate participant; and
- amending timeframes for energy providers to supply site consumption data to the Regulator as part of the process of identifying potential participants.

Amendments to the *Electricity Act 1994* and *Queensland Competition Authority Act 1997*

Improving electricity retailer credit support arrangements

The proposed amendments aim to enhance the regulatory framework relating to retailer credit support so that there is less likelihood that a retail entity will refuse to provide the required credit support to a distribution

entity. Additionally, if a retail entity did refuse, there would be an effective means for early intervention and an ability to limit further credit risk for the distribution entity.

It is proposed the Queensland Competition Authority (QCA) (as an independent regulatory body) be required to prepare and publish Credit Support Guidelines (the Guidelines). The Guidelines must meet the needs of distribution entities in terms of minimising credit risk, while also ensuring the required credit support arrangements are fair and reasonable for retailers; so as to not create an unreasonable barrier to entry (e.g. specify matters such as the level and the circumstances in which credit support may be required and acceptable forms of credit support). Importantly, it is proposed that in developing the detail of the Guidelines, the QCA must consult with stakeholders to ensure all points of view are taken into account.

A distribution entity will have a right to seek credit support from a retailer and, as a condition of its retail authority, the retail entity will have an obligation to provide it if the credit support complies with QCA's Credit Support Guidelines. However, the proposed amendments will not preclude a retailer and distributor from agreeing to another form of credit support that does not comply with the Guidelines.

It is expected that credit support requirements which provide fair and reasonable options for retailers would reduce the current disincentive for retail entities to provide credit support. In addition, a clear and specific authority condition to provide credit support (any breach of which would be immediate grounds to initiate disciplinary action) would provide a strong incentive for retail entities to provide the required credit support.

Further, in the event a retail entity failed to provide credit support (and breached the authority condition), the proposed changes will allow the Regulator to intervene to limit any further credit risk to the distribution entity (using the existing processes in the Electricity Act for disciplinary action).

Ensuring electricity access

It is proposed to amend the Electricity Act to ensure large market customers can secure electricity retail services. The amendments place an obligation on the Financially Responsible Retail Entity (FRRE) to offer a Standard Large Customer Retail Contract (SLCRC) to a large market customer seeking supply at de-energised premises. The FRRE is the last retail entity responsible for paying the Australian Energy Market Operator

for electricity consumed at the premises. The obligation will not increase the current Community Service Obligation payments. DEEDI considers it would not impose a significant burden on the FRRE as it would be consistent with provisions that currently exist for large market customers whose contracts expire without renewal (i.e. large customers whose negotiated contracts have expired or ended, but have not been disconnected, are currently deemed to go onto the FRRE's SLCRC). It is proposed that this arrangement be reviewed within five years to assess the impact of changes in market conditions and the regulatory environment.

If the FRRE was only obligated to offer a negotiated contract, then there is the potential that the contract could be so adversely worded that it would effectively prevent the customer entering the market. With a SLCRC, the customer is offered the same level of protection as other large market customers whose contracts have expired and those who move into premises that have not been de-energised.

Amendments to the *Mineral Resources Act 1989*

Streamline mining lease application process

The proposed amendments aim to reduce the time delay in commencing mining projects in Queensland by amending the MRA to remove the mandatory requirement for the Land Court to assess mining lease applications with no properly lodged objections.

Where no objections to a mining lease application have been lodged, it is proposed that the merits of the application would be assessed and taken into account by the Minister responsible for the MRA (the Minister). This is consistent with the approval process used for mining claims.

The Minister will be provided with a discretionary power to refer a mining lease application to the Land Court even if there are no objections. Issues requiring referral could include decisions involving potentially controversial applications or questions over the applicant's financial resources or past dealings.

The Minister will also be given the power to refer applications to the Land Court in cases where the Minister is not satisfied that an owner of a reserve has consented to an application for a mining lease over reserve land.

Amendments to the *Coal Mining Safety and Health Act 1999* and *Mining and Quarrying Safety and Health Act 1999*

Government bodies

The proposed amendments will implement recommendations from the Weller Review relating to the Boards of Examiners and Advisory Councils. The CMSHA and MQSHA will be amended to merge the two Boards of Examiners into one body; specify the membership of the single Board of Examiners to ensure both the coal and metalliferous mining sectors are represented; rename the Advisory Councils to 'Advisory Committees'; and remove the requirement to remunerate members of the proposed Advisory Committees.

The current Advisory Council members have been advised they will not receive remuneration for their roles on the proposed Advisory Committees and they have accepted this condition.

Small mines safety initiative

The proposed amendments to the MQSHA are aimed at reducing fatalities at small mines and quarries. In New South Wales, the extension of this requirement from large to small mines has led to a reduction in fatalities in small mines since its introduction in 2001. Queensland's legislation will resemble the NSW approach, requiring small mines and quarries to develop and maintain a fully documented SHMS. Mentoring and training will be provided by the Queensland Mines Inspectorate to assist industry to meet the changed obligations. Approximately 300 small mines will be affected.

Opal and gem miners will be exempted as implementation work to date has focussed on small mines and quarries. Inclusion of opal and gem mines will be considered two years after implementation of these amendments. In the meantime, ongoing inspections of opal and gem mines will assist their safe operations.

The proposed regulatory change is part of a broader initiative to improve safety and health in small mines. This initiative has included the provision of advice and information and more frequent auditing following recruitment of additional Queensland Mines Inspectorate staff.

Amendments to the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum (Submerged Lands) Act 1982*

Enhancing safety measures in the gas industry

Currently, any Type B gas device (industrial) must be approved on a case by case basis via an individual submission made to a Type B approving body. It is proposed to allow some of the smaller 'mass produced' Type B devices to be approved by a Type A approving body under modified certification scheme rules. This provides a more sensible approach to the certification process without compromising safety standards. To achieve this, a provision is needed to allow certain types of devices to be prescribed as Type A or B and allow them to be certified under the Type A approval process.

In addition, the generic appliance approval requirements under section 733 of the P&G Act will be modified to recognise the difference between the typical type test certification approach for Type A devices and the more involved submission and industrial review approach for Type B devices. The Type A products are certified as a part of the manufacturing process prior to sale, whereas the Type B approval occurs often after the sale or as a part of the installation process. In recognition of this, the practicalities of undertaking an approval of an industrial Type B device have been addressed by removing the requirement for approval before sale but retaining the requirement before the appliance is installed or used. However to ensure compliance the supplier will be required to provide notice of the required approval process to the person being supplied the device.

The certification process will also be improved with an offence provision in response to issues arising from cases of falsification of appliance approval labelling.

It is proposed that the licence type for hydrocarbon refrigerant gas work be changed from the current requirement for an organisation authorisation to an individual occupational licence. This change will better reflect that it is an individual with particular trade qualifications who will undertake this type of work. This work is similar to the licensing arrangements for domestic Type A gas appliance work. An organisation authorisation is generally used for installing complex industrial appliances carried out by multiple persons. Licensing hydrocarbon refrigerant gas work also aligns with the Council of Australian Government's agenda to establish a national licensing scheme by 2011-12.

Application of the P&G Act and the PSLA to Queensland lands, internal waters, and coastal waters

The proposed amendments to the P&G Act and the PSLA will allow one regulatory framework to apply and will not require additional regulations to be made. The proposed amendments only affect internal waters and do not affect the application of the PSLA to coastal waters, in respect of which the Commonwealth has given the State the power to make all laws that could be made if the coastal waters were within the State's internal waters. The amendments will ensure companies will only have to apply for and obtain pipeline licenses under the P&G Act and only have to comply with the safety and health obligations under the P&G Act. This will significantly reduce the regulatory burden on companies and the government.

Alternative method of achieving policy objectives

Amendments to the *Clean Energy Act 2008*

Smart Energy Savings Program

There is no alternative option. If proposed legislative amendments are not made, the current ambiguity and unintended application of certain provisions will remain. This may cause unnecessary burden for the Regulator such as monitoring, administering and if necessary, prosecuting for non-compliance in circumstances in which participating businesses meet the intent of the SESP.

Amendments to the *Electricity Act 1994* and *Queensland Competition Authority Act 1997*

Improving electricity retailer credit support arrangements

There is no alternative option. The likely outcome of not proceeding with the proposed Electricity Retailer Credit Support amendments is that some retail entities will continue to refuse to provide the required credit support to distribution entities, resulting in the distribution entities having to utilise the existing dispute resolution process under the SCA. This process is protracted, and may result in the distributors being exposed to increased credit risk, as retail entities are able to continue to sell electricity to existing and new customers while the process is ongoing. In addition, it is likely the current credit support provisions under the SCA will continue to be viewed by electricity retailers as an unreasonable barrier to entry into the Queensland electricity retail market

Ensuring access to electricity

There are two alternative options available for ensuring large market customers can secure electricity retail services, both of which require legislative amendments. These options both require an obligation to be imposed on Ergon Energy Queensland (EEQ).

Option 1- Obligation on EEQ to offer a Standard Large Customer Retail Contract (SLCRC)

Under this option, large market customers that have been de-energised and are unable to secure a contract with a retailer would be allowed to revert to non-market status, gain access to the uniform tariff, and an obligation would be placed on EEQ to offer a SLCRC. However, this is inconsistent with the 'non-reversion' policy decision made by the Government in 2007, and could significantly increase the Government's community service obligation payments to EEQ.

With the introduction of competition into the electricity market, the policy of 'non-reversion' of large customers was established. 'Non-reversion' means that once a large customer has gone to 'market', they cannot revert back to access notified prices. This policy was established to support effective competition in the electricity market.

Option 2 - Obligation on EEQ to offer a market contract

Under this option, an obligation would be placed on EEQ to offer a market contract to such large customers. However, under section 55G(4) of the *Electricity Act 1994*, EEQ can only provide retail services to a non-market customer. This provision gives effect to the Queensland Government's commitment that EEQ would remain a non-competitive retailer. Therefore imposing such an obligation on EEQ would be against this Government's commitment made at the introduction of full retail competition.

Furthermore, EEQ has advised it no longer has the systems or expertise in place to offer market contracts. If such an obligation was imposed on EEQ, it would need to re-establish staffing, resources and systems in order to manage the contract load and also comply with parts of the Electricity Industry Code that currently do not apply to EEQ.

Ergon Energy Corporation Limited (EECL), the distributor, has a ring-fencing waiver from the QCA allowing them to share confidential information with EEQ. This means it does not have to have separate IT systems, call centres, business structures etc. EECL only received this waiver because EEQ could not offer market contracts (i.e. compete for

customers). If this new obligation is imposed, the QCA may reconsider and withdraw the waiver.

This would result in significant costs for EECL as it would need to separate out all functions so that there was no sharing of information between EECL and EEQ.

Due to the reasons outlined above, neither of the two options is recommended.

Amendments to the *Mineral Resources Act 1989*

Streamlining mining lease application process

An alternative option is to maintain the status quo. While no parties would be adversely affected by this option, this system appears unnecessarily complicated. The benefit of the proposed amendment is the significant reduction of the workload of the Land Court and the significant reduction of up to six weeks in processing uncontested applications for a mining lease.

Amendments to the *Coal Mining Safety and Health Act 1999* and *Mining and Quarrying Safety and Health Act 1999*

Small mines safety initiative

The alternative option is to maintain the status quo and continue to exempt mines with ten or fewer workers from the requirement to develop and maintain a fully documented SHMS. Over the last ten years, the safety record for small mines and quarries has diminished and regulatory intervention is required to improve safety and health performance in the small mines sector of the mining industry.

Amendments to the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum (Submerged Lands) Act 1982*

Clarify and align petroleum and gas safety provisions with national standards

There is no alternative option for implementation. The majority of amendments proposed to the safety provisions of the P&G Act are to provide clarity and consistency to existing provisions. If amendments are not made, uncertainty and inconsistency will remain.

If amendments regarding licensing for hydrocarbon refrigerant gas work are not made it will provide a greater risk to tradespersons and the general public as untrained tradespersons would be performing work that could

result in ignition of unplanned gas releases. Also, to provide for an efficient transition to any future national licensing scheme, the proposed amendments to the P&G Act are necessary.

Application of the P&G Act and the PSLA to Queensland lands, internal waters, and coastal waters

The only alternative option to the proposed amendments to the P&G Act and PSLA is to retain the status quo of internal waters being administered under the PSLA. This may require a proponent proposing a point-to-point pipeline licence application, between the mainland of Queensland and islands located within Queensland's internal waters, to submit two pipeline licence applications:

- for that area from the mainland of Queensland to the mean low water mark off the coast of mainland Queensland (under the P&G Act), and
- for that area from mean low water mark off the coast of mainland Queensland to the island (under the PSLA).

This adds to the administrative burden of the proponent and DEEDI. Further, while the PSLA imposes safety and health obligations on operators of pipelines, there are no regulations covering the construction and operation of pipelines, water lines, secondary lines, pumping stations, tank stations or valve stations and the carrying on of operations, and the execution of works, for any of those purposes, nor any safety and health regulations relating to such provisions.

Estimated cost for Government implementation

Amendments to the *Electricity Act 1994* and *Queensland Competition Authority Act 1997*

Improving electricity retailer credit support arrangements

The retailer credit support amendments will assist in reducing the exposure of electricity distribution entities, ENERGEX Ltd and EECL, to the risk of electricity retail entities not paying for use of distribution network services. As the distribution entities are Government owned corporations, any loss of their revenue is ultimately reflected in the dividends paid to the State.

Amendments to the *Mineral Resources Act 1989*

Streamlining mining lease application process

DEEDI expects there will be an increase to its administrative cost due to the transfer of assessment of certain mining lease applications from the Land Court to DEEDI. Administrative and financial savings to the Land Court would however be expected as the Land Court will not be required to consider applications without objections, unless referred by the Minister.

Amendments to the *Coal Mining Safety and Health Act 1999* and *Mining and Quarrying Safety and Health Act 1999*

Government bodies

The amendment to remove remuneration from members of the Coal Mining Safety and Health Advisory Council and the Mining Safety and Health Advisory Council will reduce the financial burden on Government.

Small mines safety initiative

The compliance costs for small mines are estimated to be minimal and equivalent to normal occupational health and safety compliance costs for any industry in other jurisdictions in Australia.

Consistency with Fundamental Legislative Principles

The following amendments raise fundamental legislative principle issues.

- Clauses 20, 21, 65 and 66

Amendments to the CMSHA and MQSHA will remove the entitlement for members and substitute members of the Coal Mining Safety and Health Advisory Council and the Mining Safety and Health Advisory Council (to be renamed as advisory committees) to be remunerated. They will still be entitled to be reimbursed for reasonable expenses and travel allowances. This was recommended by the Weller Review.

The Weller Review concluded that advisory committees should not be remunerated except for the limited instances where professionally qualified expert membership of an advisory council essentially provides a service to the government through the professional, scientific or technical expertise it applies to the specific tasks delegated to it.

The Coal Mining Safety and Health Advisory Council and the Mining Safety and Health Advisory Council contain a membership which promotes and advocates ‘stakeholder positions’ on various matters rather

than provide 'professional, scientific and technical expertise'. The current Advisory Council members have been advised they will not receive remuneration for their roles on the proposed Advisory Committees and they have accepted this condition.

- Clauses 80, 86 and 87

Clauses 80, 86 and 87 amend the P&G Act and introduces new penalties. Clause 80 amends section 707 and introduces a penalty for failing to restrict access to incident sites. Failure to restrict access to incident sites is a serious offence as it compromises the inspectorate's ability to investigate incidents and to protect public safety. The severity of the offence is comparable to failure to comply with section 708 (Offence to enter or remain in incident site if access restricted), which also includes a maximum penalty of 500 penalty units.

Clauses 86 and 87 insert new penalties for failing to comply with the requirements for supplying, installing and using gas devices or gas fittings and affixing false or misleading labels to gas devices. The purpose of these amendments is similar to existing section 733 and therefore the severity of the penalty (maximum 200 penalty units) is equivalent to the penalty in existing section 733.

- Clause 47

Clause 47 amends the *Greenhouse Gas Storage Act 2009* (GHG Act) by inserting a new section 432A to remove two sub-blocks from the area of the new greenhouse gas permit taken to be granted to Zerogen Pty Ltd on commencement of section 432 of the GHG Act. The original list of blocks and sub-blocks for the new GHG permit agreed to with Zerogen Pty Ltd did not include Clermont block 3436, sub-blocks "d" and "e". The amendment proposes to omit these two sub-blocks from the area of the new GHG permit. Zerogen has confirmed it has not carried out any authorised activities in the areas covered by the two sub-blocks.

Consultation

Amendments to the *Clean Energy Act 2008*

Smart Energy Savings Program

Consultation has been carried out with industry associations and individual organisations, particularly electricity and gas energy consumers using from 30TJ to 500TJ of energy per year, during information sessions in September and October 2008 and June 2009 with respect to clarification of

the SESP requirements and alignment of reporting requirements with national standards.

The information sessions identified the need for clarifying provisions of the *Clean Energy Act 2008* to assist implementation. Some of the legislative amendments proposed address the issues raised at the information sessions held with industry associations and individual organisations.

Further consultation with industry groups was undertaken in December 2009 with regard to adding provisions for "commercial complexes" in the *Clean Energy Act 2008*. The proposed amendments are intended to better define participation by commercial entities which share multiple tenancy arrangements, and are run by a lessor or owner. No objections were raised in relation to the proposed amendments.

Amendments to the *Electricity Act 1994* and *Queensland Competition Authority Act 1997*

Improving electricity retailer credit support arrangements

Consultation with the QCA and electricity distribution entities, ENERGEX Ltd and EECL, indicates that they agree with the proposed electricity retailer credit support amendments to the *Electricity Act 1994*. Queensland Treasury (Resources Branch, Treasury Office and Office of Government Owned Corporations) is supportive of the proposed electricity retailer credit support amendments. Electricity retailers are also supportive of the proposed electricity retailer credit support amendments, with most that responded during the consultation process expressing interest in participating in the development of Credit Support Guidelines with the QCA, if the proposed amendments are made.

Ensuring access to electricity

EECL and its subsidiary retail business Ergon Energy Queensland (EEQ) have been consulted regarding the proposed obligation for the Financially Responsible Retail Entity to offer contracts to large customers at de-energised premises. Queensland electricity retailers have also been consulted and provided with an opportunity to comment on the proposed amendment.

Amendments to the *Mineral Resources Act 1989*

Streamlining mining lease application process

The Department of Justice and Attorney-General, Land Court and the Queensland Resources Council have been consulted regarding these amendments and support the amendments.

Amendments to the *Coal Mining Safety and Health Act 1999* and *Mining and Quarrying Safety and Health Act 1999*

Small mines safety initiative – Safety and Health Management System

Consultation through members of the Mining Safety and Health Advisory Council in May 2008 (which includes union, industry and Government representatives) has occurred about the proposed amendments to implement the small mines safety initiative.

Consultation has also taken place by:

a. a letter from the Chief Inspector to all small mines in January 2009 with advice on the proposed SHMS; and

b. 'Introduction to Safety Management' workshops held to introduce operators to a Small Mines Safety Management Kit and to encourage them to develop and implement a SHMS. A second workshop 'Refining Your SHMS' provides additional insight into critical components of implementing a SHMS. As at 31 August 2009, 22 workshops have been held across Queensland.

The small mines industry has responded positively to the small mines initiative and the amendments to the *Mining and Quarrying Safety and Health Act 1999*. The small mines industry has shown its support through participation in the 'Introduction to Safety Management' workshops. The proposal was endorsed by the Mining Safety and Health Advisory Council in May 2008.

Amendments to the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum (Submerged Lands) Act 1982*

Enhancing safety measures in the gas industry

The DEEDI Petroleum and Gas Inspectorate has regular meetings with Liquefied Petroleum Gas Australia Queensland Subcommittee and also 'trade night' meetings with gas fitters. Some of the proposed amendments have been discussed at these forums. In regard to the hydrocarbon refrigerant licensing issues, the key industry associations have been advised of the proposed arrangements.

Application of the P&G Act and the PSLA to Queensland lands, internal waters, and coastal waters

Santos Limited has been consulted as a likely proponent of a coal seam gas to liquefied natural gas plant that will be built on Curtis Island.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 establishes the short title of the Act as the *Mines and Energy Legislation Amendment Act 2010.*

Commencement

Clause 2 provides the commencement details for the provisions in the Act.

Part 2 Amendment of Clean Energy Act 2008

Act amended

Clause 3 provides that Part 2 amends the *Clean Energy Act 2008*.

Replacement of ss6 and 7

Clause 4 replaces existing sections 6 and 7 with new sections. New section 6 more clearly links the energy use threshold to the definition of "participating business". That is, included in the definition of a participating business is a person who operates a business or controls a commercial complex, such as shopping centres and office buildings, which

uses an amount of energy that falls within the energy use thresholds outlined in the new section 7.

New section 6(3) sets out the entities that are not required to participate in the Smart Energy Savings Program (SESP).

New section 7 amalgamates the current sections 7 and 10(2)(b) so that references to both the energy use threshold levels and dates on which they are triggered are referenced together.

Insertion of new ss7A and 7B

Clause 5 inserts new sections 7A and 7B.

New section 7A states the verification year for a registered participating business. The verification year indicates the year in which the business must measure the amount of electricity and processed natural gas usage to verify whether or not it consumes enough energy (under the energy use threshold provision, section 7) to be captured in the program. This will replace the term "baseline year" described in existing section 9(1) with "verification year" to avoid confusion between the use of the term "baseline" in another context (such as where the business measures its energy use, or 'energy baseline', during the audit stage of the program).

Reference to a one year period replaces reference to a financial year to allow participating businesses to present their energy audits outside the financial year period. For example, if an audit is completed in March 2009, the business may wish to nominate the one year period prior (i.e. March 2008 – February 2009) as its verification year.

New section 7B provides the definition of a commercial complex. This new section specifies the owner or lessor of the complex as the responsible "participating business" that must register in SESP if the complex consumes energy above the energy use threshold. Commercial complexes include mixed use buildings (residential and commercial tenancies) where the majority of the premises is commercial (i.e. there are more commercial tenants to residential tenants). Section 7B links into new exemption (section 12) and de-registration (section 13) provisions and is intended to better define participation by commercial entities which share multiple tenancy arrangements, with one or more buildings, which are owned by one or more persons, or leased by a single entity, or comprise a single community title scheme.

Amendment of s8 (Energy provider must give regulator information about energy use)

Clause 6 amends existing section 8 by renumbering existing subsections (2) and (3), omitting existing subsection (1) and inserting new subsections (1) and (2). The new subsections (1) and (2) provide that an energy provider is only required to provide consumption data when the Regulator writes requesting the information. This differs from the current provision which requires the energy providers to provide consumption data whether or not they are asked to do so. The reason for the change is to reduce burden on energy providers, such as requiring multiple retailers to produce data that can be obtained from one or two energy distributors.

A maximum penalty of 200 penalty units can be imposed if energy providers fail to provide the requested information within 14 days after the end of the period stated in the notice. This penalty is the same as the existing penalty.

The Regulator can receive consumption information before the financial year so as to give the Regulator enough time to write to potential participating business by 1 July each year to ask them to collect energy consumption data (under section 9).

Amendment of s9 (Obligation to record total energy consumption)

Clause 7 amends existing section 9(1) and (2) by outlining that the Regulator may write to both potential participating businesses and registered (but exempt) participating business requiring them to provide the regulator with information to establish their total energy use in a one year period.

Amendment of s10 (Smart Energy Savings Register)

Clause 8 provides that registration may occur for businesses that are registered but also for those that "may be registered" to allow the Regulator to keep track of potential participants such as businesses that have deregistered or successfully applied for an exemption but who may be required to register in the future.

In addition to current requirements for information, participating businesses and potential participating businesses must provide a business website (if any), the business' Australian Corporations Number and a

contact phone number. This information will assist the regulator to ensure that letters, notices and other information reach the business.

Replacement of s11 (Registration of a person as participating business)

Clause 9 replaces existing section 11 with a new section to provide that a "person" may register to become a participating business. This allows for voluntary registration by businesses that do not fall within the definition of "participating business" in new section 6, such as businesses that have not exceeded the energy use threshold or who are exempt from the program such as those already registered for the Commonwealth Energy Efficiency Opportunities program.

Amendment of s12 (Exemption from registration)

Clause 10 amends section 12 to provide an additional exemption provision which allows the "primary business" in a commercial complex, which is the lessor or owner of the complex, to apply for an exemption. The primary business can apply for exemption where there is a "secondary business", such as a tenant or tenants, which would fall within the energy use threshold in their own right and without the secondary business, the primary business would not be required to participate in the program because it does not use enough energy to trigger the energy use threshold.

The purpose of this provision is to give the primary business the opportunity for an exemption if it can show that there is a more appropriate participating business on the site that uses an amount of energy within the energy use thresholds.

Amendment of s13 (Deregistration)

Clause 11 amends section 13 to provide an additional deregistration provision which allows the "primary business" in a commercial complex, that is the lessor or owner of the complex, to apply for deregistration. The primary business can apply for deregistration where there is a "secondary business", such as a tenant or tenants, which would fall within the energy use threshold in their own right and without the secondary business, the primary business would not be required to participate in the program because it does not use enough energy to trigger the energy use threshold.

The purpose of this provision is to allow the commercial complex to deregister from the program where it is not the main energy user on the site i.e. is not using an amount of energy within the energy use thresholds.

Amendment of s15 (Participating business must carry out energy use audit)

Clause 12 amends section 15 to provide greater clarification of wording and replaces "baseline year" with "verification year".

Amendment of s16 (Participating business must give regulator energy savings plan)

Clause 13 amends section 16 to provide greater clarification of wording and replaces "baseline year" with "verification year".

Amendment of s18 (Review of energy savings plan)

Clause 14 removes reference to "financial year" to accommodate where the participating business nominates its cycle to be based on an alternative 12 month period and replaces "baseline year" with "verification year".

Amendment to s19 (Publication of energy savings plan implementation)

Clause 15 amends section 19 to remove reference to "financial year" to allow a participating business to nominate its cycle based on an alternative 12 month period and replaces "baseline year" with "verification year".

Amendment of sch 2 (Dictionary)

Clause 16 deletes the term "baseline year" from the dictionary and includes "approved form" and "verification year". It also amends the definition of "registered participating business" as a consequence of amendments to section 11 (clause 10).

Part 3 Amendment of Coal Mining Safety and Health Act 1999

Act amended

Clause 17 provides that Part 3 and the schedule amend the *Coal Mining Safety and Health Act 1999*.

Insertion of new s73BA

Clause 18 inserts new section 73BA to provide that the chief executive may appoint eligible persons to act in the office of the Commissioner for Mine Safety and Health when the office is vacant or when the person holding the office is absent. This does not limit the Governor in Council's powers under the *Acts Interpretations Act 1954* (section 25(1)(b)(ii), (iv) or (v)) to appoint persons to act in the office of the Commissioner when the office is vacant or when the person holding the office is absent.

Amendment of s76 (Functions of council)

Clause 19(1) amends section 76 to replace references to 'council' with 'committee'. This amendment is a result of renaming the Coal Mining Safety and Health Advisory Council to Advisory Committee as recommended by the Weller Review.

Clause 19(2) replaces existing section 76(2) with a new section. The effect of this amendment is that s76(2)(b) is omitted. Section 76(2)(b) requires the Coal Mining Safety and Health Advisory Council to review within 3 years of the commencement of the Act (2001), the effectiveness of the Board of Examiners and the need for the continuation of its functions. The Council has completed the review confirming the effectiveness of the Board of Examiners and the need to continue its functions and this section is now redundant.

Amendment of s82 (Conditions of appointment)

Clause 20 amends section 82(1) to provide that members of the Coal Mining Safety and Health Advisory Committee are not entitled to remuneration other than reimbursement of reasonable expenses and travel allowances. This was recommended by the Weller Review.

Amendment of s83A (Substitute members)

Clause 21 amends section 83A(6)(a) to provide that substitute members of the Coal Mining Safety and Health Advisory Committee are not entitled to remuneration other than reimbursement of reasonable expenses and travel allowances. This amendment is consistent with the amendment to section 82(1).

Replacement of s91 (Committees)

Clause 22 replaces section 91 with a new section as a result of changing the name of the Coal Mining Safety and Health Advisory Council to Advisory Committee as recommend by the Weller Review. New section 91 provides that the Advisory Committee can appoint subcommittees to advise it on particular issues.

Amendment of s185 (Functions of board of examiners)

Clause 23 amends section 185 by inserting a new subsection (e) to provide that the functions of the Board of Examiners will include other functions given to it under the provisions of the *Coal Mining Safety and Health Act 1999* (CMSHA) and the *Mining and Quarrying Safety and Health Act 1999* (MQSHA). This amendment is a result of a recommendation in the Weller Review. The Weller Review recommended that the Boards of Examiners established under the CMSHA and MQSHA be merged as they effectively operate as a single body.

Amendment of s186 (Membership and conduct of board proceedings)

Clause 24 replaces existing section 186(3) to (6) to prescribe the membership for the Board of Examiners. As a result of the merging of the Boards of Examiners, the membership of the single board will include representatives from the coal and metalliferous mining sectors.

New subsection (3) provides the minimum qualifications for members of the board. Members must have at least ten years practical experience in the mining industry and a certificate of competency under the CMSHA or MQSHA.

New subsection (4) provides that at least two and no more than three members must be inspectors. Of these members, at least one must hold a first class certificate of competency for an underground coal mine and at

least one must hold a first class certificate of competency for an underground mine under the MQSHA.

New subsection (5) provides that at least six of the members must be currently engaged in the mining industry. At least one of those members must be employed by a coal mine operator and hold a first class certificate of competency for an underground coal mine and at least one must be employed by a mine operator and hold a first class certificate of competency for an underground mine under the MQSHA.

New subsection (6) lists inspectors, industry safety and health representatives and district workers' representatives under the MQSHA as people that are taken to be currently engaged in the mining industry as mentioned in new subsection (5).

Replacement of s193 (Committees)

Clause 25 replaces existing section 193 to provide that the Board of Examiners may appoint subcommittees to advise it on particular issues. Currently, the Board may appoint 'committees'. This amendment is a result of renaming the Coal Mining Safety and Health Advisory Council to Advisory Committee. 'Committee' will be defined as the Coal Mining Safety and Health Advisory Council under the amended section 75. In order to avoid confusion, section 193 will be replaced.

Amendment of s250 (Proof of appointments and authority unnecessary)

Clause 26 amends section 250(1)(a) and (b) to include commissioner. The result of this amendment will mean it is not necessary to prove the appointment or authority of the commissioner to carry out functions etc included in the CMSHA, except when reasonable notice is given that the appointment of authority is to be challenged.

Amendment of s 251 (Proof of signatures unnecessary)

Clause 27 amends section 251 to include commissioner. This means there is no requirement to verify the signature of the commissioner.

Amendment of s 252 (Evidentiary aids)

Clause 28 amends section 252(5) to include commissioner in the definition of 'certificate'.

Replacement of pt 20, div 1, hdg (Definitions)

Clause 29 replaces the heading for Part 20, division 1 with a new heading and includes a heading for subdivision 1.

Amendment of s 283 (Definitions for pt 20)

Clause 30 amends the heading for section 283 and makes clear the definitions apply to the division only.

Replacement of pt 20, div 2, hdg (Transitional matters)

Clause 31 replaces the Division 2 heading with a new heading titled Subdivision 2 Transitional matters.

Replacement of pt 20, div 3, hdg (Repeals)

Clause 32 replaces the Division 3 heading with a new heading titled Subdivision 3 Repeals.

Insertion of new pt 20, div 2

Clause 33 inserts a new heading under part 20. The new part 20 contains new sections 299-301.

New section 299 contains definitions for part 20.

New section 300 provides that from the commencement, a reference in an Act or document to the coal mining safety and health advisory council is taken to be a reference to the coal mining safety and health advisory committee, if the context permits.

New section 301 provides that the coal mining safety and health advisory council continues as the coal mining safety and health committee and the members of the advisory council are taken to be members of the committee.

Amendment of sch 3 (Dictionary)

Clause 34 amends the dictionary by omitting and inserting certain definitions as a result of amendments made to the Act.

Part 4 Amendment of Electricity Act 1994

Act amended

Clause 35 provides that Part 4 amends the *Electricity Act 1994*.

Amendment of s48E (When non-area retail entity must provide the services to an applicant)

Clause 34 amends section 48E(1)(b) by splitting it into 2 options i.e 'the customer is (i) a small customer for the premises; or (ii) a large market customer for the premises and supply to the premises has been disconnected'.

Clause 34(2) amends the 'note' under section 48E. The purpose of this is to recognise the obligation on non-area retail entities to provide customer retail services to large market customers at disconnected premises, who apply for customer retail services.

Insertion of new s55DC

Clause 37 inserts new section 55DC.

New section 55DC(1) makes it a condition of a retail authority that its holder must provide and maintain credit support with, or to the benefit of, the relevant distribution entity if requested by the distribution entity.

New section 55DC(2) clarifies that the condition for a retail entity to provide credit support only applies if the credit support requested is either consistent with credit support guidelines, or is agreed to in writing by the distribution entity and the retail entity.

New section 55DC(3) defines the terms *credit support*, *distribution non-network charges*, *network charges* and *relevant distribution entity*, for the purposes of this section.

Insertion of new ch 5, pt 1B

Clause 38 inserts new section 120ZN in the new Part 1B 'Credit Support Guidelines'.

New section 120ZN(1) directs the Queensland Competition Authority (QCA) to make credit support guidelines. The credit support guidelines must be about the circumstances when a retail entity should be required to provide credit support, the form and amount of that credit support, when and how credit support provided should be reviewed or revised, and any other matters relating to credit support that the QCA considers relevant.

New section 120ZN(2) requires the QCA to consult with distribution entities and retail entities before making credit support guidelines.

New section 120ZN(3) requires that QCA publish the credit support guidelines on its website.

New section 120ZN(4) provides that the credit support guidelines take effect on the day of effect stated in the credit support guidelines.

New section 120ZN(5) provides that the definition of credit support is as previously defined in section 55DC(3).

Amendment of sch 5 (Dictionary)

Clause 39 amends Schedule 5 and inserts the definition of credit support guidelines, referring to the definition outlined in new section 120ZN(1).

Part 5 Amendment of Explosives Act 1999

Act amended

Clause 40 provides that Part 5 amends the *Explosives Act 1999*.

Amendment of s76 (Report of offences)

Clause 41 amends section 76 by adding the commissioner for mine safety and health to the list of statutory authorities mentioned. This will enable the board of inquiry to report any suspected offences disclosed during the inquiry and to make available relevant material to the commissioner for

mine safety and health in addition to the appropriate persons or body currently listed.

Amendment of s118 (Proceeding for offence)

Clause 42 replaces section 118(1) to provide that the commissioner for mine safety and health; or a person authorised for the purpose by the Minister; or the Attorney-General may commence a proceeding for an offence against the *Explosives Act 1999*.

Amendment of s133 (Evidentiary provision)

Clause 43 amends section 133(3) by adding the commissioner for mine safety and health to the list of statutory authorities mentioned. This means there is no requirement to verify the signature of the commissioner.

Part 6 Amendment of Geothermal Exploration Act 2004

Act amended

Clause 44 provides that Part 6 amends the *Geothermal Exploration Act 2004*.

Amendment of s13 (Prohibition on geothermal exploration without permit)

Clause 45(1) amends the heading of section 13 by inserting 'or authorisation'.

Clause 45(2) replaces existing sections 13(a) and (b) with a new subsection to provide that a person must not carry out geothermal exploration unless a geothermal exploration permit is in force and the person may carry out the exploration under section 35 or 36.

Clause 45(3) renumbers section 13(c) as 13(b).

Part 7 Amendment of Greenhouse Gas Storage Act 2009

Act amended

Clause 46 provides that Part 7 amends the *Greenhouse Gas Storage Act 2009*.

Insertion of new s432A

Clause 47 inserts new section 432A to correct the description of Zerogen's greenhouse gas permit described in section 432 by removing sub-blocks 'd' and 'e' from block 3436 of the Clermont block identification map.

Part 8 Amendment of Mineral Resources Act 1989

Act amended

Clause 48 provides that Part 8 and the schedule amend the *Mineral Resources Act 1989*.

Amendment of s72 (Referral to Land Court of application and objections)

Clause 49 amends section 72(2) to correct an anomaly in calculating the time frame in which the Mining Registrar must refer a mining claim application to the Land Court.

Amendment of s265 (Referral of application and objections to Land Court)

Clause 50 amends section 265 by renumbering subsections (2) to (4) as (3) to (5). It also omits sub-section (1) and inserts new sub-sections (1) and (2) to provide that only mining lease applications in respect of which objections have been properly lodged shall be referred to the Land Court. The mining registrar must refer the application and all properly made objections to the Land Court within five business days after the last

objection day for the application; or after the time for lodging an objection under section 260(2) ends.

As a consequence, where no objection has been lodged to a mining lease application, the mining lease application will not be referred to the Land Court.

Omission of s270 (Procedure where no objections lodged)

Clause 51 omits section 270 (Procedure where no objections lodged) as a consequence of the amendment to section 265. Where no objection has been lodged to a mining lease application, the application will not be heard by the Land Court so a provision for the Land Court to deal with such applications will not be needed.

Replacement of s271 (Minister to consider recommendation made in respect of application for grant of mining lease)

Clause 52 amends section 271 as a consequence of the amendment to section 265. The current provision requires the Minister to consider every recommendation of the Land Court but as the Land Court will not be making recommendations in respect of mining lease applications where no objections have been lodged, the amendment requires the Minister to consider every mining lease application. The section has been redrafted to conform with current drafting style which includes removing the requirement to issue an instrument of lease.

Amendment of s279 (Compensation to be settled before grant or renewal of mining lease)

Clause 53 amends section 279(5) as a consequence of the amendment to section 265. It makes provision for calculating the time frame within which the issue of compensation must be referred to the Land Court. Where no objection has been lodged to the mining lease application, the 3 month period is calculated from the last date that an objection could have been lodged.

Amendment of s285 (Mining lease may be specified it is not renewable)

Clause 54 provides that as a consequence of the amendment to section 271, which removed the requirement to issue an instrument of lease, the

qualifying statement "if the lease has been issued" is inserted into section 285.

Replacement of s289 (Mining lease where area not surveyed)

Clause 55 provides that, as a consequence of the amendment to section 271 removing the requirement to issue an instrument of lease at grant, section 289 is omitted and a new section is inserted to provide that the Minister may issue an instrument of lease (even if the land has not been surveyed). The new section is a redrafting of the current section to conform with current drafting style.

Amendment of s300 (Assignment, mortgage or sublease of mining lease)

Clause 56 amends section 300(8) by inserting after the words "instrument of lease", the qualifying words "if the lease has been issued". This amendment is a consequence of amendments to sections 271 and 289.

Amendment of s309 (Surrender of mining lease)

Clause 57 amends section 309(7) by now providing that when a mining lease is partially surrendered, the details of the partial surrender are recorded in the register and endorsed on the instrument of lease if the lease has been issued.

Amendment of s671 (Combined hearing)

Clause 58 amends section 671(1) to clarify the wording and amends 671(3) as a consequence of the omission of section 270, to provide that a hearing under that section must take place unless a negotiated agreement has been reached.

Insertion of new pt 19, div 12

Clause 59 inserts a new division, Division 12, into Part 19 providing transitional provisions for mining lease applications lodged, but not determined, at the date of commencement of the amendments.

Part 9 Amendment of Mining and Quarrying Safety and Health Act 1999

Act amended

Clause 60 provides that Part 9 and the schedule amend the *Mining and Quarrying Safety and Health Act 1999*.

Amendment of s38 (Obligations of operators)

Clause 61(1) replaces section 38(3) with a new subsection. The new subsection (3) provides that subsection (1)(d) to (f) will not apply to an opal or gem mine that employs no more than 10 workers at the mine.

Clause 61(2) amends section 38(4) to provide that a regulation can specify that subsections (1)(d) to (f) and (2) can apply to an opal or gem mine mentioned in subsection (3).

Amendment of s39 (Obligations of site senior executive for mine)

Clause 62(1) amends section 39(2) to provide that section 39(1)(c) does not apply to a site senior executive of an opal or gem mine that employs no more than 10 workers at the mine.

Clause 62(2) amends section 39(3) to provide that a regulation can specify that section 39(1)(c) can apply to an opal or gem mine.

Amendment of s65 (Purposes of pt 6)

Clause 63 amends section 65 by changing the name of the Mining Safety and Health Advisory Council to Mining Safety and Health Advisory Committee. This was recommended in the Weller Review.

Amendment of s67 (Functions of council)

Clause 64 amends section 67 to replace references to 'council' with 'committee'. This amendment is a result of renaming the Mining Safety and Health Advisory Council to Advisory Committee as recommended by the Weller Review.

Clause 64(2) amends section 67(2). The effect of this amendment is that section 67(2)(b) is omitted. Section 67(2)(b) requires the Mining Safety and Health Advisory Council to review within 3 years of the commencement of the Act (2001), the effectiveness of the Board of Examiners and the need for the continuation of its functions. The Council has completed the review confirming the effectiveness of the Board of Examiners and the need to continue its functions.

Amendment of s73 (Conditions of appointment)

Clause 65 amends section 73(1) to provide that members of the Mining Safety and Health Advisory Committee are not entitled to remuneration other than reimbursement of reasonable expenses and travel allowances. This was also recommended by the Weller Review and is consistent with the amendment in clause 21 to section 82(1) of the CMSHA.

Amendment of s74A (Substitute members)

Clause 66 amends section 74A(6)(a) to provide that substitute members of the Mining Safety and Health Advisory Committee are not entitled to remuneration other than reimbursement of reasonable expenses and travel allowances. This amendment is consistent with the amendment to section 73(1).

Replacement of s82 (Committees)

Clause 67 replaces section 82 with a new section as a result of changing the name of the Mining Safety and Health Advisory Council to Advisory Committee as recommend by the Weller Review. New section 82 provides that the Advisory Committee can appoint subcommittees to advise it on particular issues.

Replacement of pt 10 (Board of examiners)

Clause 68 replaces existing part 10 with a new part 10.

New section 179 states the purpose of the part is to state the functions of the board of examiners under the *Coal Mining Safety and Health Act 1999*.

New section 180 lists the functions of the board of examiners in the same way as existing section 182.

New section 181 requires a person to have appropriate qualifications and experience before they can assess an applicant for a certificate of competency in the same way as existing section 191. The maximum penalty is 100 penalty units. This is the same as the existing penalty.

New section 182 replicates existing section 192 and provides that a person must not obtain or attempt to obtain a certificate of competency by giving false information. If the board is satisfied that the holder of a certificate for competency obtained it by providing false information to the board, the board may cancel the certificate of competency by giving notice to the holder. The maximum penalty is 400 penalty units. This is the same as the existing penalty.

New section 183 replicates existing section 193 and provides that a person must return a certificate of competency if the Board of Examiners has cancelled it because of false information or an industrial magistrate has suspended or cancelled the certificate under section 237, unless the holder has a reasonable excuse. The maximum penalty is 400 penalty units. This is the same as the existing penalty.

Amendment of s229 (Proof of appointments and authority unnecessary)

Clause 69 amends section 229(1)(a) and (b) by replacing the reference to 'chief executive' with a reference to the commissioner and the chief executive. This effectively adds the Commissioner for Mine Safety and Health to the list of officers mentioned in section 229. The amendment means it is not necessary to prove the appointment or authority of the commissioner.

Amendment of s 230 (Proof of signatures unnecessary)

Clause 70 amends section 230 by replacing the reference to 'chief executive' with a reference to the commissioner and the chief executive. This effectively adds the Commissioner for Mine Safety and Health to the list of officers mentioned in section 230. This means a signature purporting to be a signature of the commissioner is evidence that it is the signature.

Amendment of s 231 (Evidentiary aids)

Clause 71 amends section 231 by replacing the reference to 'chief executive' with a reference to the commissioner and the chief executive.

This effectively adds the Commissioner for Mine Safety and Health to the list of officers mentioned in the definition of 'certificate'.

Replacement of pt 19, hdg (Transitional provisions and repeals)

Clause 72 replaces the heading for part 19 with a new heading.

Insertion of new pt 20

Clause 73 inserts a new part 20 into the Act. The new part 20 contains new sections 274 – 278.

The new section 274 contains definitions for part 20.

New section 275 provides that a certificate of competency issued by the former board of examiners under the previous section 182 and in force at the commencement is taken to be a certificate of competency granted by the board of examiners.

New section 276 provides that a decision or assessment made by the former board of examiners established under previous section 181 and in force or effect immediately before the commencement, is taken to be a decision or assessment made by the board of examiners.

New section 277 provides that from the commencement, a reference in an Act or document to the mining safety and health advisory council is taken to be a reference to the mining safety and health advisory committee, if the context permits.

New section 278 provides that the mining safety and health advisory council continues as the mining safety and health advisory committee and the members of the advisory council are taken to be members of the committee.

Amendment of sch 2 (Dictionary)

Clause 74 amends the dictionary by omitting and inserting certain definitions as a result of amendments made to the Act.

Part 10 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Act amended

Clause 75 provides that Part 10 amends the *Petroleum and Gas (Production and Safety) Act 2004*

Amendment of s5 (Application of Act to coastal waters of the State)

Clause 76 amends section 5 to remove the note to this section. This amendment is a consequence of the amendments to the *Petroleum (Submerged Lands) Act 1982* which limit the application of that Act to the coastal wasters of the State.

Amendment of s670 (What is an *operating plant*)

Clause 77 amends section 670 to include "a distribution pipeline" at section 670(2)(d) into the definition of an operating plant. This amendment is intended to capture a small and specific set of pipelines currently not included, but for which safety management plan obligations should apply.

Amendment of s675 (Content requirements for safety management plans)

Clause 78 replaces existing section 675(1)(q) to add a requirement for safety management plans to include a mechanism for implementing any recommendations or findings from an investigation or review at the plant. This is an area where plans have been found to be deficient.

Amendment of s706 (Requirement to report prescribed incident)

Clause 79 removes the definition of a gas related device from section 706. This definition is now located in the dictionary at schedule 2.

Replacement of s707 (Action to restrict access to incident site)

Clause 80 replaces section 707 to include a specific obligation (and offence) for prescribed incident sites where immediate notification is required to be secured until an inspection directs otherwise. Failure to restrict access to incident sites compromises the Petroleum and Gas Inspectorate's ability to investigate incidents and to protect public safety. The power to take action or request action be taken to restrict access or to protect the site is provided.

Amendment of s708 (Offence to enter or remain in incident site if access restricted)

Clause 81 amends section 708(1) to clarify that the site referred to is the site of the incident.

Amendment of s724 (Types of gas devices)

Clause 82 modifies section 724 to clarify the definitions of Type A and Type B devices. Type A devices are now defined as those used or designed or intended for use for the purposes mentioned and also prescribed under regulation. It is intended that the regulation list the various categories of appliances that are Type A devices. This will allow the inclusion of certain "mass produced" simple devices that may have previously fallen under the Type B category to be prescribed as Type A (and hence be approved under a Type A certification approval process).

It also removes reference to certification or approval from the definition as that is a separate process and should not impact on whether a device is captured by the definition.

The section also clarifies that gas flares are Type B devices despite the purpose not being to produce heat, light or power using fuel gas. The types of gas flares to be included will be prescribed in regulation. Thermal oxidisers using fuel gases are included.

The section also clarifies that a liquefied gas facility (including an LNG facility) is not in its own right a fuel gas refrigeration device. It was never intended that the refrigeration process of these large facilities fall under the Type B definition. Any gas burning or other Type B gas devices at the facility remain as Type B devices.

Amendment of s726 (Gas devices (type A))

Clause 83 amends the heading of section 726 to more accurately reflect the sections purpose. The amendment also includes gas work for fuel gas refrigeration devices as requiring a gas work licence. This type of work is now to be licensed rather than 'authorised' under a gas work authorisation.

Amendment of s727 (Gas devices (type B))

Clause 84 amends the heading of section 727 to more accurately reflect the sections purpose. The amendment also excludes gas work for fuel gas refrigeration devices under a gas work authorisation. This type of work is now to be licensed rather than 'authorised' under a gas work authorisation.

As fuel gas refrigeration is specialised work undertaken by skilled individuals, it is more appropriate that the work be licensed to individuals rather than organisations. This aligns with the Council of Australian Governments agenda to establish a national licensing scheme by 2011-12.

The new section also excludes the requirement for relevant gas work at a major hazard facility to be authorised under a gas work authorisation. This replicates the current provision in relation to gas work at operating plant.

Amendment of s728 (Who may apply)

Clause 85 amends section 728 by making consequential amendments about who may apply for a licence and authorisation in light of the changes to fuel gas refrigeration device gas work.

Replacement of s733 (Certification of gas device or gas fitting)

Clause 86 replaces section 733 with a new section called 'Requirements for supplying, installing and using gas device or gas fitting'.

Changes have been made to the certification process for Type B devices in recognition that these are typically constructed or built in situ and that the certification cannot always be provided before the device is supplied to the customer. Approval of a Type B device is now no longer required before the device is supplied (only before installation or use). However the supplier is obligated to provide the person to whom the device is supplied a notice in regard to the requirement for approval of the device before the installation and use can occur.

Insertion of new s733A

Clause 87 inserts a new section 733A 'False or misleading labels or records'.

The new section 733A makes it an offence for falsely labelling or attaching a false compliance plate to an appliance. This is to ensure that appliances are labelled correctly as the labelling and compliance plate requirements are a critical link in the safety approval process for the installation and use of gas appliances. Unapproved appliances can pose a significant safety risk to the public.

The maximum penalty of 200 penalty units is similar to not having the appliance approved under section 733.

Amendment of s734 (Requirements for gas system installation)

Clause 88 amends section 734(3) to allow the timing of when installers must issue gas compliance certificates to be prescribed under a regulation.

Insertion of new ch 15, pt9

Clause 89 inserts a new chapter 'Transitional provisions for Mines and Energy Amendment Act 2010'

Transitional provisions are provided to allow a six month period for persons holding a gas work authorisation in relation to fuel gas refrigeration work to gain a gas work licence. The transitional provisions also provide a six month period for authorisation holders to obtain a licence to undertake gas work on a device that was previously a Type B device and becomes a Type A device.

The notice provisions of section 733 also will not apply for three months to allow suppliers time to prepare notices so as to be complaint.

Part 11 Amendment of Petroleum (Submerged Lands) Act 1982

Act amended

Clause 91 provides that Part 11 amends the *Petroleum (Submerged Lands) Act 1982*.

Amendment of s 4 (Definitions)

Clause 92 amends section 4(1), the definition of *the adjacent area*. The effect of the amendment is that the *Petroleum (Submerged Lands) Act 1982* will apply only to the coastal waters of the State, which, at the time of the amendment, covers the area three nautical miles seaward from the Territorial Sea Baseline.

The term Territorial Sea Baseline refers to the line from which the seaward limits of Australia's Maritime Zones are measured, as per section 7(2)(b) of the *Seas and Submerged Lands Act 1973 (Cwlth)*.

For further clarification of the effect of the amendment, an example that might be used is that of a person wishing to apply for a pipeline licence. If the proposed pipeline was to start on mainland Queensland, traverse land and internal waters (internal waters being from the mean low water to the Territorial Sea Baseline), and its end-point was within Queensland's internal waters, a pipeline licence would need to be applied for under the *Petroleum and Gas (Production and Safety) Act 2004*.

If the proposed pipeline was to start on mainland Queensland, traverse land, internal waters and coastal waters, and its end-point was within Queensland's coastal waters, an application for a pipeline licence for the pipeline would need to be applied for under both the *Petroleum Submerged Lands Act 1982* (for that part of the pipeline within coastal waters) and the *Petroleum and Gas (Production and Safety) Act 2004* (for that part of the pipeline NOT within coastal waters).

Part 12 Amendment of the Queensland Competition Authority Act 1997

Act amended

Clause 93 provides that Part 12 amends the *Queensland Competition Authority Act 1997*.

Amendment of s10 (Authority's functions)

Clause 94 amends section 10 to make it a function of the QCA to make credit support guidelines under the *Electricity Act 1994*.

Schedule Acts amended

The schedule contains minor consequential amendments that are needed as a result of amendments contained in the Act.