Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016.

Policy objectives and the reasons for them

The objectives of the Bill are to:

- strengthen the effectiveness of the environmental assessment of underground water extraction by resource projects
- allow the ongoing scrutiny of the environmental impacts of underground water extraction during the operational phase of resource projects through clearer links between the *Environmental Protection Act 1994* and *Water Act 2000*
- improve the make good framework in the *Water Act 2000*
- ensure that the administering authority for the *Environmental Protection Act 1994* is the decision-maker for specific applications relating to environmental authorities
- ensure the impacts of mining projects that are advanced in their environmental and mining tenure approvals are appropriately assessed for their impact on the environment and underground water users and opportunities for public submissions and third party appeals are provided before underground water is taken in a regulated area for mine dewatering purposes
- update existing provisions in the *Queensland Heritage Act 1992* to provide for the appointment, by local government, of authorised persons to carry out compliance and enforcement activities for the local heritage provisions.

The majority of amendments to the *Environmental Protection Act 1994* and to Chapter 3 of the *Water Act 2000* respond to changes to the management of underground water made by the *Water Reform and Other Legislation Amendment Act 2014* and Water Legislation Amendment Bill 2016. These amendments also respond to experience in the administration and operation of the make good framework in Chapter 3 of the *Water Act 2000*.

Prior to commencement of the W*ater Reform and Other Legislation Amendment Act 2014* mining tenure holders were required to obtain a water licence under the water allocation, planning and use framework provided for in Chapter 2 of the *Water Act 2000* before extracting associated underground water within a regulated area. Associated water refers to underground water where the taking or interference is a necessary and unavoidable consequence of carrying out the authorised activities for the mining project, for example,

removing underground water from a mine pit (dewatering) in order to create safe operating conditions.

One of the key amendments contained in the W*ater Reform and Other Legislation Amendment Act 2014* was the creation of a limited statutory right for mining activities to take associated underground water and, consequential removal of the need for a water entitlement for these activities, in those areas where the take of underground water is regulated under the *Water Act 2000*.

There are mining projects that have proceeded part way, or completely, through the environmental authority and mining tenure application process that will not be subject to the strengthened upfront assessment requirements inserted by this Bill via amendments to the *Environmental Protection Act 1994*. Inclusion of transitional arrangements in the *Mineral Resources Act 1989* and the *Water Act 2000* will provide for a separate associated water licencing process for these mining projects. Such mining projects will be required to seek an associated water licence that will involve an environmental impact test with outcomes comparable to that which will be required for new projects through amendments to the *Environmental Protection Act 1994* inserted by this Bill. Without these transitional arrangements, these mining projects would receive a statutory right to associated underground water without a thorough upfront assessment of the consequences.

Under the *Queensland Heritage Act 1992*, the chief executive of a local government has certain functions and powers in relation to local heritage places in the local government's area. These are places that are either identified as being of local cultural heritage significance in a local heritage register made under the *Queensland Heritage Act 1992* or the local government's planning scheme. These functions and powers include giving exemption certificates under part 6, entering into local heritage agreements under part 7, and, when the local government has been prescribed in the regulation, so approved by the Governor in Council, acting on issues of essential repair and maintenance work under part 8. However, due to an oversight in the previous amendments that introduced these functions and powers, provision was not made for local government employees to be appointed as authorised persons in relation to those powers, or for the scope of the powers of these authorised persons to be appropriately defined. The purpose of the amendments to the *Queensland Heritage Act 1992* is to address this omission, without changing the provisions about authorised persons appointed by the chief executive.

Achievement of policy objectives

The objectives are achieved by:

- requiring specific information to be included in certain site specific environmental authority applications, and amendment applications, in relation to the environmental impacts of the exercise of underground water rights by resource activities
- requiring underground water impact reports to include an assessment of environmental impacts of the exercise of underground water rights and clarifying that an environmental authority may be amended in response to the content of an underground water impact report
- amending Chapter 3 of the *Water Act 2000* to:
    - require resource companies to pay the landholder's reasonable costs in engaging a hydrogeologist for the purposes of negotiating a make good agreement

  - require resource companies to bear the costs of any alternative dispute resolution in the make good agreement negotiation process
  - insert a cooling-off period for make good agreements
  - ensure that impacts on water bores as a result of free gas from coal seam gas extraction attract make good obligations
  - address issues in the make good agreement negotiation process relating to uncertainty in the cause of bore impairment
- inserting a new provision which requires the administering authority to make decisions for specific applications relating to environmental authorities
- inserting transitional arrangements in the *Mineral Resources Act 1989* and the *Water Act 2000* which will provide for a separate associated water licencing process for mining projects that are advanced in their environmental and mining tenure approvals. The associated water licensing process will:
  - provide a transparent process for decision-making
  - require public notification and allowing public submissions on underground water impacts associated with these projects
  - ensure that a decision-maker could refuse an application if the underground water take associated with the project is found to have unacceptable impacts on the environment or other water users
  - provide an opportunity for a merit-based appeal by third parties
- amending divisions 1 and 2 of part 13 of the *Queensland Heritage Act 1992* to:
  - update the existing authorised person provisions without altering the provisions as they relate to authorised persons appointed by the chief executive, other than to fix minor drafting errors
  - provide for the chief executive officer of a local government to appoint local government employees as authorised persons
  - set out the functions and powers of these local government appointed-authorised persons, as well as appropriately condition their appointment and limit their powers
  - ensure the powers and functions of these authorised persons correspond to those already provided to local government employees appointed as authorised persons under other relevant legislation.

Alternative ways of achieving policy objectives

There are no other viable alternatives that would achieve the policy objectives other than the Bill.

Estimated cost for government implementation

Any costs associated with the amendments are expected to be minimal and will be implemented within current budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with Fundamental Legislative Principles. Potential breaches of Fundamental Legislative Principles are addressed below.

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively

The proposed amendments relating to underground water impacts do not materially amend the current process. Rather, the amendments provide a different mechanism for the environmental assessment of the take of underground water by resource activities. While resource companies are under additional obligations in regards to make good agreements, this is justified because it ensures the appropriate apportionment of burden. Therefore, insofar as the amendments are regarded to impose liability, the amendments should be regarded to be fair and reasonable.

The transitional provisions effectively continue the current regulatory requirements under the *Water Act 2000* for a water licence to be obtained in areas where underground water is regulated and therefore there are no new regulatory requirements being imposed on proponents or industry. Process elements for associated water licensing aligns with the process elements under Chapter 2 of the *Water Act 2000*. The difference between the two processes is that the decision-making for associated water licensing is within the context of 'impact management'.

Consultation

The amendments to the underground water framework are largely in response to concerns raised during the Parliamentary Committee examinations of the Water Reform and Other Legislation Amendment Bill 2014 and Water Legislation Amendment Bill 2016. Briefings were provided to key stakeholders to receive verbal feedback and to facilitate more informed written feedback.

Extensive consultation occurred on the changes to the *Queensland Heritage Act 1992* that introduced the local heritage provisions to which the additional authorised person provisions will apply. These local heritage provisions were designed in response to concerns raised by stakeholders, in particular in relation to local governments having to be prescribed in the regulation before being able to exercise the power in part 8 about essential repair and maintenance work. The introduction of the local heritage provisions was ultimately supported. While an individual local government identified the omission being addressed by the amendments in this Bill, no other consultation has occurred.

Consistency with legislation of other jurisdictions

The overarching purpose of the Bill aligns with the legislation of most other jurisdictions of Australia. There is significant variation between jurisdictions regarding take as part of resource activities.

In other jurisdictions, decisions relating to environmental licences are generally made by administrative authorities.

The amendments to the *Queensland Heritage Act 1992* are consistent with the heritage legislation of other jurisdictions.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 states that the Act should be cited as the *Environmental Protection and Other Legislation Amendment Act 2016*.

Commencement

Clause 2 provides for commencement of this Act, with the exception of Parts 3 and 5, immediately following commencement of section 11 of the *Water Reform and Other Legislation Amendment Act 2014*. Part 3, which amends the *Queensland Heritage Act 1992*, will commence on proclamation. Part 5, which amends the *Water Reform and Other Legislation Amendment Act 2014*, will commence on assent.

Part 2 Amendment of Environmental Protection Act 1994

Act amended

Clause 3 states that Part 2 amends the *Environmental Protection Act 1994*.

Amendment of s 112 (Other key definitions for ch 5)

Clause 4 amends section 112 of the *Environmental Protection Act 1994* to insert a definition for the term 'underground water rights'. This is a consequential amendment required as a result of amendments to Chapter 5 of the *Environmental Protection Act 1994* inserted by this Bill.

For the purposes of Chapter 5, 'underground water rights' is defined by reference to the *Mineral Resources Act 1989*, *Petroleum and Gas (Production and Safety) Act 2004* and P*etroleum Act 1923*, section 87(3). This will ensure that the amendments to the *Environmental Protection Act 1994* apply to the exercise of underground water rights for mineral and petroleum activities.

Insertion of new s 126A

Clause 5 inserts a new section 126A into Chapter 5, Part 2, Division 3 of the *Environmental Protection Act 1994*. The new section 126A prescribes particular information which must be included in site-specific environmental authority applications relating to mining leases, mineral development licences and petroleum leases which will involve the exercise of underground water rights. The new information requirements ensure that the environmental impacts of the exercise of underground water rights by mining and petroleum tenure holders are appropriately assessed as part of an environmental authority application. This assessment will involve the consideration of the cumulative impacts of projects on groundwater resources in the region.

Amendment of s 207 (Conditions that may be imposed)

Clause 6 amends section 207 of the *Environmental Protection Act 1994* to make it clear that the existing power to impose conditions on an environmental authority includes a power to impose conditions which relate to the exercise of underground water rights. This is a clarifying provision only as the existing power to impose conditions under section 203(1)(a) of the *Environmental Protection Act 1994* is broad enough to allow the imposition of conditions relating to the exercise of underground water rights.

Amendment of s 215 (Other amendments)

Clause 7 amends section 215 of the *Environmental Protection Act 1994* to allow the conditions of an environmental authority for a resource activity to be amended if the administering authority considers the amendments to be necessary or desirable because of an impact or potential impact on an environmental value identified in an underground water impact report.

The amendment is related to the amendments contained in clause 33, which will require underground water impact reports under Chapter 3 of the *Water Act 2000* to report on past and predicted future impacts on environmental values. The assessment contained in the underground water impact report may then be used to review the way in which the environmental authority regulates environmental impacts relating to groundwater take by resource activities. The amendment to section 215 will ensure that consequential changes can be made to the environmental authority.

This clause also corrects a drafting error in section 215(3), which should apply to matters mentioned in both subsection (2)(d) and (2)(c).

Insertion of new s 227AA

Clause 8 inserts a new section 227AA into Chapter 5, Part 7, Division 2 of the *Environmental Protection Act 1994*. The new section 227AA prescribes particular information which must be included in particular environmental authority amendment applications involving a change to the exercise of underground water rights. The new information requirements ensure that the environmental impacts of the exercise of underground water rights by mining and petroleum tenure holders are appropriately assessed as part of an environmental authority amendment application.

The new section 227AA is similar to the new section 126A inserted by this Bill. However, it is intended that the amendment application will only need to include information relating to the changes to the proposed exercise of underground water rights which will occur, or are predicted to occur, as a result of the proposed amendment to the environmental authority. A proposed amendment may, for example, involve a change to the exercise of underground water rights where there is a change in tenure, where there is a significant change to the nature or scale of activities or volumes of water proposed to be taken or where there are likely to be different impacts on environmental values.

Only environmental authorities relating to mining leases, mineral development licences or petroleum leases for which a site-specific application would be required (i.e. an environmental authority that includes any environmental relevant activities that are ineligible ERAs) are required to include the information specified in section 227AA.

Amendment of s 683 (Effect of commencement on particular applications)

Clause 9 amends section 683, which is a transitional provision for the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, to include a note to refer to the new section 749 which is inserted by clause 10 of this Bill. The new section 749 amends the operation of section 683.

Insertion of new ch 13, pt 26

Clause 10 inserts two new transitional provisions into Chapter 13 of the *Environmental Protection Act 1994*.

The new section 748 is a consequential amendment required because of the insertion of section 126A and 227AA by this Bill. This transitional provision provides that environmental authority applications and amendment applications which are in progress upon commencement are to be decided under the old provisions. This will maintain the status quo for the assessment process for applications which have been made but not decided before commencement.

The new section 749 amends the process for the approval of environmental authority applications and amendment applications associated with mining leases which were made prior to the commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012.* Some of these applications were previously required to be decided by the Minister and, following commencement, will need to be decided by the administering authority. This will bring these decisions in line with contemporary decision-making processes and ensures that the agency with the technical expertise is the decision-maker.

Part 3 Amendment of Queensland Heritage Act 1992

Act amended

Clause 11 states that Part 3 amends the *Queensland Heritage Act 1992*.

Amendment of s 125 (Appointment and qualifications)

Clause 12 amends section 125 of the *Queensland Heritage Act 1992* to update its drafting in terms of the inspectors' powers precedent and remove an unnecessary subsection. The clause then provides for the chief executive officer of a local government to appoint a local government employee of the local government as an authorised person. Both the chief executive and the chief executive officer of a local government—or the administering executive—may appoint an authorised person only if satisfied they are appropriately qualified for appointment, use of the term 'appropriately qualified' relying on its definition in Schedule 1 of the *Acts Interpretation Act 1954*. Clause 12(4) defines the term *local government employee* to mean a local government employee under the *Local Government Act 2009* and a council employee under the *City of Brisbane Act 2010*.

Amendment of s 126 (Functions of authorised persons)

Clause 13 amends section 126 of the *Queensland Heritage Act 1992* to update its heading to better reflect that it refers to the general powers of authorised persons, as well as the functions of these persons. The clause goes on to differentiate between authorised persons appointed

by the chief executive (existing) and those appointed by the chief executive officer of a local government and the functions each perform. A new subsection is added in relation to the functions of local government-appointed authorised persons, these being: inspecting places and artefacts at places in the relevant local government area for the purpose of assessing cultural heritage significance; and conducting compliance activities in relation to the local heritage provisions for the area and assessable development under the *Sustainable Planning Act 2009* for a local heritage place in a local heritage register established under the *Queensland Heritage Act 1992*. The term *local heritage provision* is defined to mean those provisions related to local heritage places in a particular local government area that are contained in part 6 division 2 for exemption certificates; part 7 [local heritage agreements], and part 8 when local governments are prescribed in the regulation to issue repair and maintenance notices for local heritage places. Finally, with the addition of two subsections in section 126, renumbering is provided for.

Amendment of s 127 (Appointment conditions and limit on powers)

Clause 14 amends section 127 of the *Queensland Heritage Act 1992* to fix minor drafting errors in the first two subsections and to add the requirement that the instrument of appointment of an authorised person appointed by the chief executive officer of a local government state the provisions for which the person is appointed—namely the *local heritage provisions* set out in the amendments to section 126 provided for with Clause 13. The term *administering executive* replaces chief executive in the definition of the term *signed notice*. A definition of the new term being inserted into the Schedule Dictionary is inserted by this Bill.

Amendment of s 128 (Issue of identity card)

Clause 15 amends section 128 of the *Queensland Heritage Act 1992* to replace the term chief executive with *administering executive* to broaden the scope of the section's application to both types of authorised person. No change is made to the nature of the section's requirements in terms of the issue of identity cards to authorised persons.

Amendment of s 131 (Resignation)

Clause 16 amends section 131 of the *Queensland Heritage Act 1992* to replace the term chief executive with *administering executive* to broaden the scope of the section's application to both types of authorised person. No change is made to the nature of the section's requirements in terms of the resignation of authorised persons.

Amendment of s 132 (Return of identity card)

Clause 17 amends section 132 of the *Queensland Heritage Act 1992* to replace the term chief executive with *administering executive* to broaden the scope of the section's application to both types of authorised person. No change is made to the nature of the section's requirements in terms of returning identity cards. The clause establishes differing maximum penalties for failure to return an identity card depending on whether the authorised person is appointed by the chief executive or chief executive officer of a local government. The lesser penalty rate for the latter matches the penalty rates set for similar offences in the *Local Government Act 2009* and the *City of Brisbane Act 2010*, which is 10 penalty units.

Amendment of s 141 (Seizing evidence at a place that may be entered without consent or warrant)

Clause 18 amends section 141 of the *Queensland Heritage Act 1992* to ensure it does not apply to an authorised person appointed by the chief executive officer of a local government. The purpose is to limit when these authorised persons can seize evidence when entering a local heritage place, as per the amendment provided for with Clause 19.

Amendment of s 142 (Seizing evidence at a place that may only be entered with consent or warrant)

Clause 19 amends section 142 of the *Queensland Heritage Act 1992* to ensure an authorised person appointed by the chief executive officer of a local government can only seize evidence when entering a place under a warrant that states that evidence may be seized as per section 136(2). No change is intended to the power to seize evidence that section 142 provides to authorised persons appointed by the chief executive.

Amendment of s 148 (Forfeiture of seized things)

Clause 20 amends section 148 of the *Queensland Heritage Act 1992* to establish the circumstances in which things seized at a heritage place can be forfeited and to whom—for things seized by an authorised person appointed by the chief executive, this is the State (as per what is existing), or for things seized by an authorised person appointed by the chief executive officer of a local government, the local government. No change is intended in relation to existing controls placed over things seized by authorised persons appointed by the chief executive.

Amendment of s 151 (Authorised persons may use help and force in exercise of powers)

Clause 21 amends section 151 of the *Queensland Heritage Act 1992* to provide that a person engaged by the chief executive officer of a local government may help authorised persons in exercising their powers, in addition to the existing ability of the Queensland Heritage Council to engage such a person to provide help to an authorised person. The clause goes on to preclude an authorised person appointed by the chief executive officer of a local government from using force when entering a place, unless they are acting under a warrant that authorises the use of force. This matches the circumstances in which local government-appointed authorised persons can employ force as per the authorised person provisions in the *Local Government Act 2009* and the *City of Brisbane Act 2010*.

Amendment of s 153 (Compensation)

Clause 22 amends section 153 of the *Queensland Heritage Act 1992* to provide a person whose property is damaged while a local government-appointed authorised person exercises a power under division 2 of part 12 with reasonable recourse to claim compensation from the local government. This clause effects only a minor alteration to the existing provision for persons to claim compensation from the State when damage is caused by chief executive-appointed authorised persons during their exercise of their powers. This minor adjustment simply reflects the inspectors' powers precedent.

Amendment of s 164A (Evidence)

Clause 23 amends section 164A of the *Queensland Heritage Act 1992* to provide that a certificate signed by the chief executive officer of a local government is evidence of certain matters. Some examples of matters of which such a certificate is evidence are that a stated document is a copy of or extract from the local government's local heritage register established under part 11; or an order, decision or requirement is given or made under the *Queensland Heritage Act 1992* (or a copy of it) in relation to a local heritage place. Such a certificate can also provide evidence that a stated person received a notice, order or requirement under the *Queensland Heritage Act 1992* on a stated day about a local heritage place.

Amendment of schedule (Dictionary)

Clause 24 amends the Schedule Dictionary of the *Queensland Heritage Act 1992* to define the term *administering executive*, which is employed throughout the amendments to divisions 1 and 2 of part 12 given effect by Clauses 12 to 17. For a person appointed as an authorised person by the chief executive, the chief executive is the administering executive; while for a person appointed by the chief executive officer of a local government, the administering executive is the chief executive officer.

Part 4 Amendment of Water Act 2000

Act amended

Clause 25 states that Part 4 amends the *Water Act 2000*.

Amendment of s 412 (When does a water bore have an impaired capacity)

Clause 26 amends section 412 of the *Water Act 2000* to address the circumstances in which a water bore will be taken to have an impaired capacity.

A threshold issue for make good obligations relating to impaired capacity is that the impairment should be attributable to the exercise of underground water rights by a resource tenure holder. The current section 412 implies the need for an unreasonable level of certainty that the impairment is caused by the exercise of underground water rights. The amendments clarify that the policy intent is that make good obligations will arise when there is a likelihood that the exercise of underground water rights is the cause, or a material contributing factor. The reference to materiality is intended to make it clear that the contribution required is a contribution of a causal nature and that a contribution which is particularly tenuous (so as to be immaterial) is to be ignored. The exercise of underground water rights must have been a contributing cause in more than a trivial sense.

This clause also amends section 412 so that a water bore is taken to have an impaired capacity if there is evidence of some form of damage to, or risk from, the bore and free gas from the carrying out of resource activities has, or is likely to have, caused or materially contributed to this damage.

This amendment ensures that impairment of a bore by free gas is subject to the make good obligations in the same way as impairment resulting from decline in water level. Free gas can cause issues such as damage to infrastructure, water quality and flow impacts, and bores can become impaired by free gas even while unaffected by a decline in water level.

Amendment of s 420 (What is a *make good agreement* for a water bore)

Clause 27 amends section 420 of the *Water Act 2000* to reflect that a make good agreement may be terminated during the cooling-off period, which is provided for in the new section 423A inserted by this Bill. The amendment ensures that make good agreements must state that the agreement can be terminated within the cooling-off period. If an agreement is terminated during the cooling-off period, it is no longer a make good agreement under section 420.

Insertion of new s 423A

Clause 28 inserts a new section 423A which provides that a bore owner may terminate a make good agreement without penalty within the cooling off period, which will extend to the end of the period set by section 423(2)(a). The purpose of the provision is to ensure that bore owners have a reasonable period within which to reflect and take advice on the implications of a make good agreement entered into.

Amendment of s 426 (Parties may seek conference or independent ADR)

Clause 29 amends section 426(4)(b) to reflect the amendments made by clause 35, by amending the content requirements of the election notice which is given to call for the other party to agree to enter into alternative dispute resolution. The notice must now reflect the fact that the costs of the alternative dispute resolution facilitator will be paid by the tenure holder.

Clause 29 also amends section 426 to add a new subsection (7) to specify that the tenure holder must bear the cost of the alternative dispute resolution facilitator.

Part 5 Amendment of Water Reform and Other Legislation Amendment Act 2014

Act amended

Clause 30 states that Part 5 amends the *Water Reform and Other Legislation Amendment Act 2014*, which ultimately amends the *Mineral Resources Act 1989* and *Water Act 2000*.

Insertion of new s 11A

Clause 31 inserts new section 11A of the *Water Reform and Other Legislation Amendment Act 2014* to insert a new Chapter 15, part 12 of the *Mineral Resources Act 1989*. New Chapter 15, part 12 provides transitional arrangements for the amendments to the *Mineral Resources Act 1989* made by the *Water Reform and Other Legislation Amendment Act 2014*.

This clause inserts a new section 839 to the *Mineral Resources Act 1989* which provides that the limited underground water rights established under new section 334ZP of the *Mineral Resources Act 1989* do not apply to certain holders of, or applicants for, a mineral development licence or a mining lease unless the holder or applicant obtains an associated water licence under the *Water Act 2000* to take or interfere with associated water in the area of the licence or lease.

The limited right under section 334ZP allows for the taking or interfering with associated water by the holder of a mineral development licence or mining lease. Associated water refers to water that is taken or interfered with during the course of, or as a result of, the carrying out of authorised activities under a mineral development licence or mining lease. For example, where

the holder of the licence or lease may need to remove underground water from a mine site in order to create safe operating conditions and the water extraction is therefore an unavoidable consequence of carrying out the mining activity.

This restriction under new section 839 on the entitlement to associated water will apply to mining projects that have proceeded part way, or completely, through the environmental authority application process. These mining projects will have obtained or applied for an environmental authority and/or relevant mining tenure but not secured a water licence for dewatering purposes prior to the commencement of the statutory right to take or interfere with associated water under new section 334ZP.

The restriction under new section 839 on the entitlement to associated water will also apply for projects that has been notified as a coordinated project under the *State Development and Public Works Organisation Act 1971* for which an environmental impact statement was required and either the Coordinator-General has publicly notified that an environmental impact statement is required for the project and a draft terms of reference (ToR) was released under section 29 of the *State Development and Public Works Organisation Act 1971* or the ToR for the environmental impact statement (EIS) has been finalised under section 30 (3) of the Act, but not secured a water licence for dewatering purposes prior to the commencement of the statutory right to take or interfere with associated water under new section 334ZP.

However, this section does not apply if the same authorised activities that involve the taking or interfering with associated water would not have required a water licence or water permit under the *Water Act 2000* if they were carried out immediately prior to commencement of the limited statutory right under section 334ZP. This ensures that there is no requirement to obtain an associated water licence if the mining lease or mineral development licence is outside of a regulated groundwater management area.

This restriction and requirement to obtain an associated water licence is imposed to ensure the underground water impacts of these proposed mining projects are appropriately assessed and conditioned in advance of any dewatering activities commencing. The particular projects to which this section will apply have proceeded part way through the approvals process in advance of the underground water impact management framework under Chapter 3 of the *Water Act 2000* being expanded to mineral development licences and mining leases. Under the existing framework these projects would be required to obtain a water licence and permit under the *Water Act 2000* for any dewatering activities, however assessments for new projects associated water take will be part of the environmental authority and mining lease process. The requirement for an associated water licence will ensure there is appropriate opportunity for scrutiny of potential underground water impacts for these mining projects.

This section also provides that an associated water licence is considered a water licence for the purpose of section 334ZP(8) and (9). This is to ensure that the taking or interfering with underground water under the authority of the associated water licence will also be considered ‘exercising underground water rights’ and as such the holder will be subject to complying with the underground water obligations, which includes complying with obligations under the *Water Act 2000*.

Amendment of s 68 (Insertion of new ch 2)

Clause 32 amends section 53(b) of the *Water Act 2000* which is inserted by section 68 of the *Water Reform and Other Legislation Amendment Act 2014.* This amendment simply corrects a cross referencing error.

Amendment of s 87 (Amendment of s 376 (Content of underground water impact report))

Clause 33 amends section 87 of the *Water Reform and Other Legislation Amendment Act 2014* to ultimately amend section 376 of the *Water Act 2000* to require underground water impact reports to include a description of past, and predicted future, impacts on environmental values which result from the exercise of underground water rights.

There will be uncertainties inherent in predictions of environmental impacts relating to the exercise of underground water rights which are submitted as part of the application for an environmental authority (see section 126A of the *Environmental Protection Act 1994* inserted by this Bill). The amendment to section 376 of the *Water Act 2000* ensures that there can be ongoing scrutiny of such impacts during the operational phase of resource projects. Any changes in impacts, or predicted impacts, identified in the underground water impact reports may trigger an amendment of the environmental authority to ensure the appropriate assessment and management of the impacts (see clause 7).

Amendment of s 116 (Amendment of s 418 (Direction by chief executive to undertake bore assessment))

Clause 34 amends section 116 of the *Water Reform and Other Legislation Amendment Act 2014* to ultimately amend section 418 of the *Water Act 2000* to expand the circumstances in which the chief executive may issue a direction to a resource tenure holder requiring the holder to undertake a bore assessment. A bore assessment directed by the chief executive under section 418 is a trigger for requiring the tenure holder to negotiate a make good agreement with the bore owner.

The amendment enables the chief executive to direct a bore assessment in the circumstances that it is reasonably believed that a water bore may be, or has been, impaired by free gas. This will ensure that, on a case-by-case basis, resource tenure holders can be directed to undertake bore assessments of, and assume make good obligations in respect of, bores which may be impaired by free gas or otherwise have impaired capacity (see the amendments to section 412 inserted by this Bill).

Amendment of s 119 (Amendment of s 423 (Requirement to enter into make good agreement and reimburse bore owner))

Clause 35 amends section 119 of the *Water Reform and Other Legislation Amendment Act 2014* to ultimately amend section 423 of the *Water Act 2000* to require the responsible tenure holder to reimburse the bore owner for particular costs the bore owner incurs in negotiating or preparing a make good agreement.

The *Water Reform and Other Legislation Amendment Act 2014* amends section 423 to require the tenure holder to reimburse the bore owner for any accounting, legal or valuation costs reasonably and necessarily occurs, but explicitly excluded the costs of the person facilitating any alternative dispute resolution if the alternative dispute resolution was requested by the bore owner. This clause removes this exclusion to ensure that the potential to incur the costs of an alternative dispute resolution facilitator is not a barrier to bore owners calling for alternative dispute resolution.

This amendment also entitles the bore owner to be reimbursed for hydrogeology costs incurred in negotiating or preparing a make good agreement. This provision is intended to ensure that bore owners have access to such independent hydrogeology advice as is reasonable and necessary to negotiate a make good agreement, which may, for example, involve a peer review of a bore assessment or providing assistance to lawyers, accountants and valuers in understanding the implications of the bore assessment for the purposes of arriving at reasonable make good arrangements.

Amendment of section 201 (Amendment of ch 9 (Transitional provisions and repeals))

Clause 36 amends section 201 of the *Water Reform and Other Legislation Amendment Act 2014* which inserts new divisions 1, 2 and 3 into Chapter 9, part 8 of the *Water Act 2000*. This amendment provides a process for the granting of associated water licences. It also renumbers the part to establish division 4.

Division 1 Preliminary

New Division 1 contains the definitions for part 8 (new section 1250 inserted by the *Water Reform and Other Legislation Amendment Act 2014*).

Division 2 Associated water licences

Subdivision 1 Preliminary

Section 1250A Application of division

New section 1250A of the *Water Act 2000* provides for when the new division 2 applies. This division applies if prior to the commencement of the provisions of the *Water Reform and Other Legislation Amendment Act 2014* that relate to the establishment of a limited statutory water right under section 334ZP of the *Mineral Resources Act 1989*, either an environmental authority for a mining lease or a mineral development licence was granted or an application for such an environmental authority was made and not decided.

This division will also apply if, prior to the commencement of the provisions of the *Water Reform and Other Legislation Amendment Act 2014,* no application for an environmental authority was made under the *Environmental Protection Act 1994* for a project that has been notified as a *coordinated project* under the *State Development and Public Works Organisation Act 1971* for which an EIS was required and the coordinator-general has either publicly notified that an EIS is required for the project and a draft terms of reference (ToR) was released under section 29 of the *State Development and Public Works Organisation Act 1971* or the ToR for the EIS has been finalised under section 30 (3) of the Act, but not secured a water licence for dewatering purposes prior to the commencement of the statutory right to take or interfere with associated water under new section 334ZP.

Additionally, this division will only apply if the mining tenure holder did not hold, but would have been required to hold, a water entitlement to take or interfere with underground water in a regulated underground water area.

This division provides the process for the chief executive to grant an associated water licence to these particular mining tenure holders to which the division applies. An associated water licence is required in order to authorise the taking or interfering with underground water that is an unavoidable consequence of the authorised activities of the tenure in advance of the associated water right under section 334ZP of the *Mineral Resources Act 1989* applying in

relation to the mining tenure. Importantly, while an associated water licence is similar to other water licences granted under the *Water Act 2000*, an associated water licence is considered in the context of 'impact management' consistent with the underground water impact management framework under Chapter 3, rather than the context of 'sustainable management'.

Section 1250B Definitions for division

New section 1250B provides that an 'associated water licence' means a licence granted under this division. The new section also defines a 'dealing' to mean a dealing mentioned in section 1250H.

Section 1250C Associated water licence

New section 1250C provides guidance as to what an associated water licence is and what dealings can occur in regards to an associated water licence.

An associated water licence authorises the taking or interfering with underground water that happens during the course of, or results from, the carrying out of the authorised activities for a mining tenure. This authority is intended to reflect the authority to take or interfere with underground water described as associated water under new section 334ZP of the *Mineral Resources Act 1989*. This includes, for example mine dewatering to the extent necessary to achieve safe operating conditions in the mine.

Importantly, an associated water licence does not attach to land and may only be granted in relation to a mining tenure to which this division applies.

Should a mining tenure holder to which this division applies wish to take or interfere with underground water other than associated water, the mining tenure holder would need to ensure they are otherwise authorised to take or interfere with the water under the *Water Act 2000*. For example, the mining tenure holder may wish to take underground water for water supply at a mining camp or for processing ore. In regulated underground water areas, a water entitlement or water permit may be required under Chapter 2 of the *Water Act 2000*.

Subdivision 2 Obtaining associated water licences

Section 1250D Applying for an associated water licence

New section 1250D allows mining projects to which this division applies to apply to the chief executive for an associated water licence and that applications must be accompanied by the fee prescribed by regulation for water licences.

The application is required to include sufficient information so that the criteria mentioned in section 1250E (c) to (i) are addressed.

As associated water licences are similar in process to water licences under Chapter 2 of the *Water Act 2000* the fee for water licences has been applied for the purposes of associated water licences.

It also states that sections 111 and 112, other than section 112(2), apply to applications, or applicants for, an associated water licence as if it were an application, or applicant for a water licence made under section 68 of the *Water Reform and Other Legislation Amendment Act 2014*.

Section 111 of the *Water Act 2000* (inserted by the *Water Reform and Other Legislation Amendment Act 2014*) provides for the chief executive to require an applicant for an associated water licence to give additional information about the application. It also enables the chief executive to require a person who has made a submission about an application to give additional information about the submission. The chief executive may also require any information submitted to be verified by statutory declaration. The chief executive may exercise discretion to require further information at any time prior to deciding the application.

Section 111(2) provides that the application may lapse if the applicant fails without a reasonable excuse to provide the information requested within the required timeframe.

Section 112 of the *Water Act 2000* (inserted by the *Water Reform and Other Legislation Amendment Act 2014*) sets out requirements for public notification of an application. Section 112(2) is excluded for the purposes of new section 1250D because it is not relevant to associated water licences.

The purpose of the *Water Act 2000* as it relates to sections 111 and 112 is not relevant for the application of section 111 and 112 in this division.

Section 1250E Criteria for deciding application for water licence

New section 1250E provides the criteria which the chief executive must consider when making a decision on an application for an associated water licence. The criteria include:

- the application and additional information given in relation to the application
- all properly made submissions made about the application
- existing water entitlements and authorities to take or interfere with water
- any environmental assessments carried out in relation to the mining tenure, including any conditions imposed on the mining tenure or on the environmental authority granted in relation to the mining tenure; and any report prepared by the Coordinator-General under the *State Development and Public Works Organisation Act 1971*, section 34D
- any information about the effects of taking, or interfering with water on natural ecosystems
- any information about the effects of taking, or interfering with, water on the physical integrity of watercourses, lakes, springs or aquifers
- strategies for the management of impacts on underground water, including the impacts caused by dewatering
- strategies and policies for the relevant coastal zone
- the public interest.

Section 1250F Deciding application

New section 1250F provides direction to the chief executive on how to decide an application for an associated water licence and how to notify the applicant of the decision, including the circumstances which would support granting, granting in part, or refusing an application.

The chief executive must, within 30 business days of deciding the application, give the applicant and any person who made a properly made submission an information notice about the decision. Each person who receives an information notice is considered an interested person for the application of Chapter 6, Reviews and Appeals of the *Water Act 2000*.

Where the chief executive grants the application, or grants the application in part, with or without conditions, the chief executive must, within 30 business days of granting the application, give the applicant the associated water licence in the approved form. Where an applicant for the associated water licence ceases to be the holder of the mining tenure to which the application relates, the chief executive must give the associated water licence to the person who is the holder of mining tenure when the chief executive gives the associated water licence.

This section also provides that the associated water licence takes effect from the day an information notice is given to the applicant.

Section 1250G Contents and conditions of associated water licence

New section 1250G states that sections 117 and 118 of the *Water Act 2000* apply to an associated water licence as if it were a water licence under section 68 of the *Water Reform and Other Legislation Amendment Act 2014*. This provides the mandatory attributes of an associated water licence. The licence must state the period for which the licence is issued and it must state the water to which it relates and the location at which that water may be taken or interfered with.

This new section provides that an associated water licence is subject to conditions prescribed by regulation or imposed by the chief executive. There is no limit to conditions which may be imposed by the chief executive, however, this section makes it clear that an associated water licence may include a condition to require the holder of the licence to carry out a management strategy to manage the impacts on natural ecosystem, including springs. The section also makes it clear that the holder of the associated water licence may be required to undertake a baseline assessment of water bores in the area of the mining tenure.

The purpose of the *Water Act 2000* as it relates to sections 117 and 118 is not relevant for the application of section 117 and 118 in this division.

Subdivision 3 Dealings with associated water licences

Section 1250H Dealings

New section 1250H provides for the types of changes which are considered dealings under this subdivision.

Section 1250I Applications for dealings

New section 1250I states that sections 121(1), (2), (3)(b) and (c)(i) and 122(1) of the *Water Act 2000* apply to a dealing with an associated water licence as if it were a water licence under section 68 of the *Water Reform and Other Legislation Amendment Act 2014*.

The purpose of the *Water Act 2000* as it relates to sections 121 and 122 is not relevant for the application of section 121 and 122 in this division.

Section 1250J Application to renew, or reinstate expired, associated water licence

New section 1250J states that sections 124 and 125 of the Water Act 2000 apply to a renewal or reinstatement of an associated water licence as if it were a water licence under section 68 of the *Water Reform and Other Legislation Amendment Act 2014.*

Reference to 'an application mentioned in section 121(3)(c)' in section 125(1) are to be read as though the words were replaced by 'an application to reinstate an associated water licence that has expired'.

The purpose of the *Water Act 2000* as it relates to sections 124 and 125 is not relevant for the application of section 124 and 125 in this division.

Section 1250K Additional information may be required for application for dealings

New section 1250K states that section 128 of the *Water Act 2000* applies to a dealing with an associated water licence as if it were a water licence under section 68 of the *Water Reform and Other Legislation Amendment Act 2014*.

The purpose of the *Water Act 2000* as it relates to section 128 is not relevant for the application of section 128 in this division.

Section 1250L When dealing must be assessed as if it were for a new associated water licence

New section 1250L provides criteria for when an application for a dealing with an associated water licence is required to be assessed as if was an application for a new associated water licence. It is intended that any dealing that would result in a change to the impact of the taking or interfering with water under the associated water licence would need to be assessed as a new application.

Section 1250M Recording other dealings

New section 1250M requires the chief executive to record a dealing with an associated water licence within 30 business days of receiving an application, if the chief executive is satisfied that the requirements for the application have been met. This section does not apply to dealings mentioned in section 1250L.

The chief executive must also issue, if required, one or more new associated water licences. If the dealing is not recorded by the chief executive, the chief executive must provide the applicant with notice of the decision and the reasons for the decision. If a new associated water licence is granted to replace an associated water licence, then the replaced licence expires on the day the replacement licence takes effect.

Section 1250N Actions chief executive may take in relation to associated water licences

New section 1250N states that section 132 of the *Water Act 2000*, as inserted by section 68 of the *Water Reform and Other Legislation Amendment Act 2014,* applies to an associated water licence as if it were a water licence. This allows the chief executive to:

- amend an associated water licence to correct a minor error or to make a change that is not of substance
- amend an associated water licence following a show cause process
- cancel an associated water following a show cause process
- repeal an associated water licence if the licence is no longer required to authorise the taking or interfering with water.

The purpose of the *Water Act 2000* as it relates to sections 132 to 135 is not relevant for the application of section 132 to 135 in this division.

Section 1250O Amendment of associated water licence after show cause process

New section 1250O states that section 132 (1)(b) and 134 (3) to (7) of the *Water Act 2000*, as inserted by section 68 of the *Water Reform and Other Legislation Amendment Act 2014,* applies to an associated water licence as if it were a water licence.

It also places limits on the types of amendments the chief executive can make to an associated water licence through a show cause process, for example the chief executive must not make an amendment which increases or changes the interference with water authorised under the licence.

The purpose of the *Water Act 2000* as it relates to sections 132 and 134 is not relevant for the application of section 132 and 134 in this division.

Section 1250P Cancellation or surrender of associated water licence

New section 1250P requires the chief executive to apply provisions of section 132 (1)(c) and 134 of the *Water Act 2000*, as inserted by section 68 of the *Water Reform and Other Legislation Amendment Act 2014,* to the cancellation of an associated water licence under section 1250O as if it were a water licence. Reference in that section to an amendment of the licence is to be considered a reference to the cancellation.

This section also provides for the holder of an associated water licence to surrender the licence by giving the chief executive a notice of surrender. The surrender takes effect on the day the surrender notice is received by the chief executive.

Note, as per new section 1250R, following the grant of an associated water licence the holder is not taken to have sufficiently complied with the underground water obligations for the purposes of section 334ZP of the *Mineral Resources Act 1989* until such time as all avenues for review and appeal of that decision have been exhausted. As such, the holder cannot exercised the underground water rights under the authority of section 334ZP other than under the authority of the associated water licence.

The purpose of the *Water Act 2000* as it relates to sections 132 and 134 is not relevant for the application of section 132 and 134 in this division.

Subdivision 4 Other matters

Section 1250Q Application for water licence made but not decided before commencement

New section 1250Q applies in the circumstance where the holder of a mining tenure to which this division applies has made an application for a water licence to authorised the taking or interfering with associated water but the application was not decided before the commencement of the provisions of this new division in the *Water Reform and Other Legislation Amendment Act 2014*. Such an application is taken to be and will be dealt with as if it were an application for an ‘associated water licence’ under the amended act and will be decided under this division.

Should a mining tenure holder to which this division applies wish to take or interfere with underground water other than associated water, the mining tenure holder would need to ensure they are otherwise authorised to take or interfere with the water under the *Water Act 2000*. For example, the mining tenure holder may wish to take underground water for water

supply at a mining camp or for processing ore. In regulated underground water areas, a water entitlement or water permit may be required under Chapter 2 of the *Water Act 2000*.

Section 1250R Compliance with underground water rights on granting of licence

New section 1250R applies to the tenure holder an associated water licence. This section provides that the tenure holder with an associated water licence is taken to have not complied with holder's underground water obligations for the purposes of *Mineral Resources Act 1989* section 334ZP, until all rights of review and appeal in relation to the granting of the associated water licence have been exercised.

As the underground water rights under section 334ZP are subject to the mining tenure holder having complied with the underground water rights, this ensures the tenure holder is not authorised to take or interfere with associated water under section 334ZP of the *Mineral Resources Act 1989* until all appeal rights and processes are completed in relation to the associated water licence.

As a result, until all appeal rights and processes are completed in relation to the associated water licence, the holder may only take or interfere with associated water under the authority of the associated water licence. This would be subject to any stays of the associated water licence decision that could be made under Chapter 6 of the *Water Act 2000* should the decision become the subject of a review or appeal.

This section is intended to ensure that if an associated water licence is surrendered prior to any rights of review and appeal being exhausted, the mining tenure holder could not access the statutory right to take water under 334ZP of the *Mineral Resources Act 1989* unless they obtained another associated water licence for which the rights of review and appeal are then exhausted. This would apply to a mining tenure to which this division applies regardless of whether a cumulative management area is declared that applies to the tenure.

To remove any doubt, it is declared that this section does not prevent the holder of the associated water licence taking or interfering with underground water under the licence.

Section 1250S Associated water licence taken to be water licence for particular provisions

New section 1250S provides that an associated water licence is taken to be a water licence for the purposes of several sections of the *Water Act 2000*, and *Mineral Resources Act 1989*.

It is necessary to provide that an associated water licence is considered a water licence for the purposes of sections 394A and 369A of the *Water Act 2000* to ensure that an associated water licence holder will be exempt from the requirement to prepare an underground water impact report or undertake a baseline assessment in accordance with Chapter 3 of the *Water Act 2000* while they continue to take water under the authority of their associated water licence. Note though a mining tenure holder would be required to comply with these requirements if the chief executive declares a cumulative management area or calls-in the specific tenure. This is consistent with the exemptions provided to existing holders of dewatering licences under the *Water Act 2000* on commencement of the *Water Reform and Other Legislation Amendment Act 2014*. However, as per proposed provisions in 1250G(2)(b), the holder of the associated water licence may be required to undertake baseline assessment of water bores in the area of the holder's mining tenure.

It is necessary to provide that an associated water licence is considered a water licence for the purpose of 334ZP of the *Mineral Resources Act 1989* to ensure that the taking or interfering with underground water under the authority of the associated water licence will also be considered 'exercising underground water rights'. This will ensure particular obligations under Chapter 3 of the *Water Act 2000* will also apply to the holder of an associated water licence. This includes for example, the general obligation to enter make good agreements under section 406 as well as direction powers of the chief executive to undertake bore assessments. This is consistent with the obligations for existing mining tenure holders operating under the authority of a water licence for dewatering purposes prior to commencement of the *Water Reform and Other Legislation Amendment Act 2014*. Further this ensures that if the mining tenure holder wishes to cease operating under the authority of the associated water licence, they first need to be in compliance with the underground water obligations, which includes submitting an underground water impact report to the chief executive.

This section also requires that the holder of an associated water licence must not contravene and must comply with all the conditions in the licence.

Section 1250T Consideration when making decisions about associated water licence

New section 1250T provides that any decisions made about an associated water licence, including a decision about granting an associated water licence, will be based on 'impact management' criteria consistent with the purpose of the *Water Act 2000* as stated in section 2(1)(c) rather than in the context of 'sustainable management' which is the purpose as it applies to water licensing decisions made under Chapter 2 of the *Water Act 2000*. Further this section makes it clear that the operation of this division about associated water licences is not part of the framework for planning, allocation and use of water under the *Water Act 2000*.

By explicitly stating that this division is not part of the framework for planning, allocation and use of water is intended to put beyond doubt that an associated water licence, including decisions and dealings, are independent of any considerations of the water planning framework under Chapter 2 of the Water Act, including anything under a water plan or instruments to implement a water plan, as well as any reserves of unallocated water or rules associated with the sustainable management of underground water specified in a regulation. However, the associated water licensing process will still require transparent consideration of the impacts on the environment and other water users.

Section 1250U Agreement between holder of mining tenure and water bore

New section 1250U relates to any existing agreements or agreements that may be entered into between the holder of a mining tenure that is also the holder of an associated water licence and the owner of a water bore about a water bore affected, or likely to be affected, by the taking or interfering with underground water by the tenure holder. This might include, for example, agreements that are required to be entered as a requirement of a condition imposed on an associated water licence.

This provision provides that such agreements are recognised as make good agreements under Chapter 3 part 5. This is to enable the provisions for negotiation of variations and for dispute resolution to apply to such agreements, and for the agreements to be binding on the parties, their successors and assigns. Such make good agreements is taken to have already complied with the obligation to conduct a bore assessment, as otherwise this obligation could lead to a requirement to negotiate another agreement.

Division 3 Other transitional provisions

A new division is inserted which will contain new section 1280B inserted by this Bill and other sections inserted by the *Water Reform and Other Legislation Amendment Act 2014.*

Section 1280B Content of underground water impact report

New section 1280B of the *Water Act 2000* is a transitional provision which ensures that the amendments to section 376 of the *Water Act 2000* inserted by this Bill will not apply to underground water impact reports submitted within three months of commencement. This is intended to ensure that underground water impact reports which are advanced in their preparation are not caught by the new content requirements.

Division 4 Regulation-making power for transitional purposes

A new division is inserted which will contain section 1281 inserted by the *Water Reform and Other Legislation Amendment Act 2014.*