

Mineral and Other Legislation Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Mineral and Other Legislation Amendment Bill 2016 (the Bill).

Policy objectives and the reasons for them

The primary policy objectives of the Bill are to amend the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) to:

- repeal yet to commence provisions within the MERC Act which limit notification and objection rights for mining projects;
- include key agricultural infrastructure within the definition of restricted land;
- enshrine the distances for restricted land in the primary legislation;
- repeal the proposed change which would have allowed a mining lease to be granted over restricted land where landholder consent has not been given and compensation has not been agreed; and
- remove the Minister's power to extinguish restricted land for mining lease applications where coexistence is not possible on proposed mining sites.

Introduced by the former government, the majority of the provisions within the MERC Act are yet to commence. While the MERC Act primarily served to establish a new common act for resources tenures, it also contained other changes to implement a range of additional policy objectives, including changes to the public notification and objection processes for mining lease applications and certain aspects of the new consistent restricted land framework.

While these changes were supported by the resources sector, they were strongly opposed by environment, agriculture and landholder groups. In response to non-mining sector stakeholders, the government made a number of commitments during the 2015 State General Election.

These commitments included:

- reinstating public notification and community objection rights to proposed mining projects;
- protecting key agricultural infrastructure under the restricted land framework;
- enshrining the distances for restricted land in the primary legislation;
- repealing changes that allowed the Minister to grant a mining lease over restricted land prior to compensation being agreed with the landholder; and

- repealing changes that allowed the Minister to extinguish restricted land where the Minister considers that the activities carried out on the restricted land cannot coexist with authorised activities under the proposed mining lease.

The Bill gives effect to these commitments and will contribute to restoring the balance between landholders and the resources sector in Queensland.

Additionally, the Bill will clarify the intended operation of some provisions including:

- the new overlapping tenure framework for coal and coal seam gas;
- transitional arrangements for restricted land;
- the requirements for entry to land to identify proposed mine boundaries without a mining tenement; and
- other minor amendments.

Achievement of policy objectives

Notification and objection rights to mining developments

The Bill will achieve its policy objective in relation to delivering the government's commitment to reinstate public notification and community objection rights by repealing yet to commence changes to the *Environmental Protection Act 1994* (EP Act) and the *Mineral Resources Act 1989* (MRA) contained in the MERCPC Act.

Repeal of these provisions will ensure:

- that existing public notification and objection rights for standard or variation applications for environmental authorities relating to mining leases under the EP Act will be retained;
- mining lease applications under the MRA will be required to be publicly notified via a newspaper notice; and
- that any entity can object to a mining lease application under the MRA on the existing grounds provided for in the un-amended section 269(4) of that Act.

Changes to restricted land framework

The Bill will achieve its policy objectives in relation to delivering the government's commitments concerning the new consistent restricted land framework by:

- repealing the provisions within the MERCPC Act which allow the Minister to extinguish restricted land for mining leases and the ability to grant mining leases over restricted land where no consent or compensation has been agreed;
- amending the definition of restricted land within the MERCPC Act to include land within 50 metres of a principal stockyard, dam, bore or artesian well and artificial water storage connected to a water supply; and
- amending the MERCPC Act to prescribe the restricted land distances within the primary legislation rather than through subordinate legislation.

Overlapping tenure for coal and coal seam gas

The Bill contains non-contentious amendments to address industry concerns and clarify the operation of provisions for the industry-developed overlapping tenure framework for coal and coal seam gas. These proposed amendments will streamline the new framework, reduce the regulatory burden on industry and the administrative burden on government, and ensure the legislation operates effectively.

The amendments contained in the Bill are technical in nature and are intended to align the legislation with the original policy intent of the industry-developed White Paper entitled, 'Maximising Utilisation of Queensland's Coal And Coal Seam Gas Resources – A New Approach to Overlapping Tenure in Queensland'.

To achieve this, the Bill includes amendments to the overlapping tenure framework to:

- only apply the requirement to have a joint development plan to situations involving overlapping production tenures (that is a Mining Lease and a Petroleum Lease);
- replace the concepts of proposed and agreed mining commencement dates with a single 'mining commencement date' which is identified by the coal resource authority holder;
- preserve existing industry commercial arrangements;
- strengthen requirements for information exchange between overlapping tenure holders;
- clarify the operation of the dispute resolution process; and
- clarify transitional provisions and other minor miscellaneous provisions.

Clarification of 600 metre rule transitional provisions

The Bill will achieve its policy objective in relation to clarifying the intended operation of transitional provisions for land access agreements by amending the current transitional provisions in the MERC Act to:

- ensure that the requirement for a conduct and compensation agreement under the 600 metre rule applies to a resource authority applied for or granted before the commencement of chapter 3 (Land Access) of the MERC Act; and
- with the exception of restricted land, the land access provisions in chapter 3 of the MERC Act are to otherwise apply to the negotiation of the conduct and compensation agreement.

These legislative amendments will ensure there is no doubt landholders fall either under the new restricted land framework or under the previous agreement requirements.

Regulatory framework for entering land to identify mining boundaries without a mining tenement

The Bill will achieve its policy objective to align the right to enter onto land to identify mining boundaries without a mining tenement by applying a legislative framework that will require entry conditions and liability for any damage caused.

Under the yet to commence section 386V of the MRA a person can enter land for the purpose of identifying the boundary of a proposed mining tenement once they have complied with the requirement of providing notice prior to entry to the owner of the land. There are presently no other provisions which regulate that entry any further.

The proposed amendments will:

- set conditions for the person's conduct during entry;
- require the person to compensate the landholder for any damage, loss or injury incurred as a result of entering land for this purpose;
- prohibit entry to restricted land without landowner consent;
- prohibit entry to fossicking areas;
- require the chief executive to investigate any report made by a landowner that entry conditions or provisions of the Act are not being complied with;
- provide powers for the chief executive to take compliance action;
- provide powers for the chief executive to impose or vary conditions, stop entry or prevent further entry;
- allow for appeal provisions for decisions made by the chief executive; and
- allow the Land Court jurisdiction to hear and determine actions, suits and proceedings arising out of activities conducted.

Alternative ways of achieving policy objectives

The MERCPC Act must be amended to give effect to the government's commitments. Failure to implement these legislative changes by 27 September 2016 will result in the automatic commencement of the unamended MERCPC Act.

Estimated cost for government implementation

No costs to government are currently envisaged for the proposed changes to the MERCPC Act. However, if any operational costs do arise they will be met from existing agency 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.

Regulatory framework for entering land to identify mine boundaries without a mining tenement

Whether the Bill has sufficient regard to the rights and liberties of individuals, and the institution of Parliament, sections 4(2)(a) and 4(2)(b) of the Legislative Standards Act 1992

Clause 101 introduces a new section 386Y to establish a process and provide for a penalty where a person entering land to mark the boundary of a mining tenement under section 386V contravenes a condition of their authority to enter land, or contravenes the MRA.

Section 386Y allows the chief executive to override the application of the section and withdraw the authority for a person to carry out activities under the section. It could be argued that this may be inconsistent with the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament.

This clause also allows the chief executive to impose a penalty that may be inconsistent with the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.

To mitigate against these potential breaches a show cause process has been introduced. This process allows the person who the chief executive reasonably believes to have breached a condition of their authority to enter land or a provision in the MRA, to give reasons to the chief executive as to why their authority to enter the land should not end and why a penalty should not be imposed.

This clause also provides for a person to appeal the chief executive's decision to the Land Court if they are given notice that their authority to enter the land under section 386V has been withdrawn and/or if a penalty has been imposed.

Overlapping tenure framework for coal and coal seam gas

Provides for an immunity from prosecution, section 4(3)(h) of the Legislative Standards Act 1992

Clause 55 amends section 177 of the MERC Act to include protections from civil monetary liability for prescribed arbitration institutes.

To facilitate overlapping resource authority holders to come to an agreement on co-development of coal and coal seam gas in an overlapping area, disputes on a limited number of matters may be referred to arbitration. Matters which may be referred to arbitration are set out under section 175 of the MERC Act.

Clause 55 provides that a prescribed arbitration institute does not incur any civil monetary liability through carrying out its obligation to nominate an arbitrator under section 177(2). The immunity does not apply if the prescribed arbitration institute has performed in a manner that is in bad faith or negligent.

Whilst the Bill confers immunity from a prosecution, there is adequate justification for this immunity (section 4(3)(h) of the *Legislative Standards Act 1992*). The Bill provides that if a prescribed arbitration institute, acting in good faith, nominates an arbitrator to an arbitration process allowed under chapter 4, part 6, division 4, the prescribed arbitration institute is not liable, civil monetarily, for nominating the arbitrator.

Normally, to avoid liability, an arbitration institute would need to establish that the parties to arbitration had agreed to the exclusion of liability, for example, by agreeing to the arbitration institute's rules in the course of appointing the arbitration institute to select an arbitrator.

This provision is considered justified because the duty to appoint an arbitrator is imposed on the arbitration institute by the MERC Act, and the prescribed arbitration institute may not have an opportunity to agree to contractual terms with the resource authority holders on the exclusion of liability.

It should be noted that nomination of an arbitrator under section 177 does not equal appointment of an arbitrator. In addition, resource authority holders can access sections 12 and 13 of the *Commercial Arbitration Act 2013* (CAA) if they find issue with the nomination of a certain arbitrator and more than one nomination by a prescribed arbitration institute may be required. These sections in the CAA set out grounds on which appointment of an arbitrator may be challenged and a default procedure for challenging the appointment or continued appointment of an arbitrator in the absence of agreement on a procedure.

In providing immunity to the prescribed arbitration institute, the liability does not transfer to the State. Further, the Government will not be involved in the dispute resolution process for overlapping tenure for coal and coal seam gas in any capacity.

Consultation

The Department of Natural Resources and Mines (the department) has undertaken targeted consultation with key stakeholder groups regarding the proposed changes to the restricted land framework, restoring community notification and objection rights for proposed mining developments and other amendments which clarify the intended operation of some provisions in the MERC Act.

Stakeholders included representatives from Queensland Farmers' Federation, AgForce, the Queensland Resources Council (QRC), the Australian Petroleum Production and Exploration Association (APPEA), the Association of Mining and Exploration Companies, the Environmental Defenders Office, the Queensland Law Society, the Local Government Association of Queensland and the Lock the Gate Alliance.

Initial feedback received from external stakeholders raised no significant points of contention. Work has been done to refine the drafting to ensure clarity of some provisions which raised questions of interpretation and operational effectiveness during the consultation forum.

Changes have been made to the Bill in response to feedback from the Department of Environment and Heritage Protection.

The department has also undertaken targeted consultation with key industry stakeholders such as the QRC and APPEA on the proposed amendments to the overlapping tenure framework for coal and coal seam gas. Broader consultation was not undertaken as the new framework does not change any existing requirements that resource authority holders must satisfy in order to gain tenure in Queensland e.g. native title, environmental approvals, and land access arrangements.

Feedback received from QRC, APPEA and industry stakeholders was considered by the department, and amendments were refined as necessary to ensure that the framework will operate effectively on commencement.

Consistency with legislation of other jurisdictions

Notification and objection rights to mining developments

The proposed changes to the notification and objection process for mining developments proposed by the Bill will ensure the continuation of the existing public notification and community objection rights, which would have been replaced by direct notification and limited standing and grounds for objections should the amendments to the MRA and EP Act to be introduced by the MERC Act commence.

While each Australian jurisdiction's notification and objection regime differs to reflect the relationship between their respective mining and environmental legislation and in some jurisdictions (such as Victoria) their planning legislation, all Australian jurisdictions include a requirement for public notification.

Queensland is the only Australian jurisdiction which allows community objection rights on broad grounds. South Australia, Western Australia, New South Wales and the Northern Territory allow members of the public to make submissions to the assessing authority; however they do not have the right to lodge an objection with the relevant court in their jurisdiction. Both New South Wales and the Northern Territory afford objection rights to affected landholders, however, in New South Wales the grounds for objections are limited on the basis that the land is classed as agricultural land.

Changes to restricted land framework

Most Australian jurisdictions have a consistent approach to restricted land (although in South Australia it is referred to as 'exempt land'). In New South Wales, Western Australia and South Australia landholders have the right to either say no to resource activities occurring within prescribed distances of certain infrastructure or to provide their written consent to the resource authority holder and negotiate compensation.

Overlapping tenure framework for coal and coal seam gas

Within Australia, Queensland has the most advanced legislative framework for managing overlapping coal and coal seam gas tenures. There is no specific legislative framework for dealing with overlapping coal and coal seam gas tenures in New South Wales, which is closest to Queensland in terms of its resource base for coal and coal seam gas.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 establishes the short title of the Act as the *Mineral and Other Legislation Amendment Act 2016*.

Act amended

Clause 2 provides that the Act amends the *Mineral and Energy (Common Provisions) Act 2014* and includes minor amendments as contained in Schedule 1 to the Act.

Part 2 Principal provisions

Amendment of ch 3, pt 2, div 5, hdg (Periodic notice after entry of land)

Clause 3 amends the heading of chapter 3, part 2, division 5 to replace 'notice' with 'report'. The purpose of this amendment is to clarify that what is to be given is a report.

Amendment of s 54 (Notice to owners and occupiers)

Clause 4 amends section 54 to clarify that what is to be given is a report, and that the report must comply with any requirements prescribed in regulation. The policy intent of this section has not changed.

Amendment of s 66 (Application of pt 4)

Clause 5 amends section 66 to clarify that part 4 (Restricted Land) is in addition to part 2 (Private Land) and part 3 (Public Land), and any requirements established under part 4 do not limit any requirements established under part 2 and part 3.

Amendment of s 67 (Definitions for pt 4)

Clause 6 amends section 67 of the MERCP Act to remove the definition for prescribed distance and to clarify the condition for exclusion of the installation of an underground pipeline or cable from the definition of prescribed activity.

The definition of prescribed distance provided the ability to prescribe distances for restricted land in subordinate legislation. This definition has been removed as the distance from an area, building or structure for the purposes of restricted land will now be provided in section 68 of the MERCP Act (see Clause 7).

Section 67(b)(i) excludes from the definition of prescribed activity the installation of an underground pipeline or cable, including backfilling of any trench or hole required as part of the installation, provided the installation is completed within 30 days. This clause also amends section 67(b)(i) to clarify that the 30 day period commences at the start of the installation works, and does not include surveying or site preparation activities.

Amendment of s 68 (What is *restricted land*)

Clause 7 amends the definition of restricted land provided at section 68 of the MERC Act to include the distance from an area, building or structure where restricted land applies. It also amends the section to include key agriculture infrastructure within the definition of restricted land.

Section 68(1)(a) is amended to provide that where the resource authority is an exploration resource authority or a production resource authority, land within 200 metres of a permanent building used for particular purposes, or within 200 metres of an area used for particular purposes, is restricted land. This section provides that for the purpose of applying restricted land:

- a permanent building used for the purpose of a residence, a childcare centre, a hospital, a library – or for community, sporting or recreational purposes or a place of worship or business; and
- an area used for the purposes of a school, aquaculture, intensive animal feedlotting, pig keeping or poultry farming within the meaning provided under the Environmental Protection Regulation 2008, schedule 2, part 1.

Section 68(1)(a)(iii) provides that a regulation may prescribe an area, building or structure that is restricted land under section 68(1)(a).

Section 68(1)(b) is amended to provide that where the resource authority is an exploration resource authority or a production resource authority, land within 50 metres of an area used for particular purposes is restricted land. This section provides that for the purpose of applying restricted land, an area used for the purpose of an artesian well, bore, dam, water storage facility, principal stockyard, a cemetery or burial place.

Land occupied by an interconnecting water pipeline that is providing water supply to, or between an artesian well, bore, dam, water storage facility or principal stockyard is not restricted land.

Land occupied by an interconnecting water pipeline would be considered restricted land in so far as the interconnecting pipeline is connected to an artesian well, bore, dam, water storage facility or principal stockyard, and is within the 50 metre restricted land area that would apply under section 68(1)(b)(i).

Section 68(1)(b)(ii) provides that a regulation may prescribe an area, building or structure that is restricted land under section 68(1)(b).

A new section 68(1A) is inserted to provide that where the resource authority is a resource authority other an exploration resource authority or a production resource authority, restricted land is land within 50 metres of any area, building or structure as mentioned in section 68(1). The types of resource authorities that this section would apply to include a water monitoring authority, a survey licence and a data monitoring authority.

This clause also amends section 68(3) to insert definitions for an *exploration resource authority* and a *water storage facility*.

Amendment of s 69 (*Who is a relevant owner or occupier*)

Clause 8 makes a consequential amendment to section 69(c) and (d) resulting from the amendments to section 68 by Clause 7. The purpose of the amendment is to clarify the relevant person for giving consent to enter land that is restricted land.

Omission of s 71 (Consent not required for entry on particular land to carry out prescribed activities for mining lease)

Clause 9 removes section 71 of the MERC Act, restoring the requirement for the holder of a mining lease to have the written consent of each relevant owner or occupier to enter restricted land for the mining lease.

Insertion of new ch 3, pt4, div 3, hdg

Clause 10 inserts a new heading (Land court declarations) to improve the structure and clarity of the part.

Amendment of s 72 (Application to Land Court for declaration)

Clause 11 amends section 72 of the MERC Act to provide that an owner, occupier or person authorised to enter land under section 386V of the *Mineral Resources Act 1989* may apply to the Land Court for a declaration about whether land is restricted land for the purpose of entering land to carrying out the activities under section 386V.

Amendments of s 85 (Negotiations)

Clause 12 amends section 85 of the MERC Act to clarify that where the parties of a negotiation agree to a longer negotiation period under this section, the longer negotiation period becomes the minimum negotiation period under the Act. This clause also makes a minor clarifying amendment to section 85(2)(a) and renumbers the section.

Amendment of s 103 (Definitions for ch 4)

Clause 13 removes the definitions for ‘agreed mining commencement date’, ‘mining commencement date’ and ‘proposed mining commencement date’ and replaces them with a new definition for ‘mining commencement date’. This is a consequential amendment required because the Bill replaces these concepts with a single ‘mining commencement date’ concept which is identified by the coal resource authority holder (refer to amendment of section 115 under Clause 18). The new ‘mining commencement date’ concept has resulted from consultation with stakeholders on the legislative amendments contained in the Bill.

This clause also amends the definition of mining safety legislation to include the Mineral Resources Regulation 2013, chapter 2, part 4, division 4. This amendment is required because the *Water Reform and Other Legislation Amendment Act 2014* amended section 175 to also include a dispute mentioned in the Mineral Resources Regulation, section 25(3) or (4), or section 28(7). Mining safety legislation is mentioned in section 182(3)(b) of the MERC Act.

The clause also amends the definition of ‘proposed joint development plan’ (proposed JDP), by changing the reference to section 130(2) in paragraph (a) to section 130(3). This is a consequential amendment to the amendment of section 130 and does not materially change the definition of ‘proposed JDP’. This amendment to section 130 is a result of the change in requirement for only production tenure overlaps to have a JDP (refer to notes for Clause 31).

Amendment of s105 (What is an ML (coal) holder))

Clause 14 amends section 105 to clarify that the definition of a mining lease (ML) (coal) holder in chapter 4 also includes an exploration permit (coal) holder or mineral development lease (coal) holder whom has applied for a ML (coal) resource authority related to their tenure. This amendment is required to ensure the effective operation of the legislative provisions for the overlapping tenure framework.

A consequential amendment has been made to section 139(3) in Clause 37 as a result of this amendment.

Amendment of s 109 (What is an initial mining area or IMA)

Clause 15 amends section 109(1) by removing the reference to a joint development plan (JDP) and clarifying a mining lease (ML) (coal) holder may identify an initial mining area (IMA).

To ensure the legislation operates effectively after commencement, certain concepts in the framework such as IMAs, rolling mining areas (RMAs), future mining areas (FMAs), and the mining commencement date must be able to operate separately to requirements for JDPs (refer to notes on Clause 31 and Clause 39 on amendments to the requirement to have a JDP in place).

The JDP is a statutory requirement the government has included in the legislation in order to fulfil its stewardship obligations for the State's resources. Conversely, overlapping resource authority holders may use concepts such as IMAs and RMAs when negotiating arrangements for authorised activities in the overlapping area, even in relationships where a JDP is not required.

For example, overlapping resource authority holders in a ML (coal) / authority to prospect (ATP) relationship, or a petroleum lease (PL) / exploration permit (coal) (EPC) relationship, or a PL / mineral development licence (MDL) (coal) should still be able to come to agreement on the timing and location of authorised activities in the overlapping area where an IMA is identified but a JDP is not in place.

It should be noted that while the amended section 109 only refers to a ML (coal) holder, this does not prevent an EPC holder or MDL (coal) holder from identifying an area of sole occupancy or a mining commencement date for authorised activities it proposes to undertake if and when it progress to a ML (coal). This will facilitate co-development in the overlapping area from an early phase in an overlapping relationship. However, only an ML (coal) holder may establish sole occupancy in an IMA under section 113 and section 120 of the MERC Act.

Amendment of s 110 (*What is a future mining area or FMA*)

Clause 16 amends section 110(1) by removing the reference to a joint development plan and clarifying a mining lease (coal) holder may identify a future mining area.

This amendment is required as per the policy rationale for Clause 15.

Amendment of s 111 (*What is a rolling mining area or RMA*)

Clause 17 amends section 111(1) by removing the reference to a joint development plan and clarifying a mining lease (coal) holder may identify a rolling mining area.

This amendment is required as per the policy rationale for Clause 15.

Amendment of s 115 (*What is the proposed mining commencement date*)

Clause 18 removes section 115 from the MERC Act and replaces the concept and definition for 'proposed mining commencement date' with the new concept and definition of 'mining commencement date' for the overlapping tenure framework.

This amendment has resulted out of consultation with key stakeholders on the proposed legislative amendments contained in the Bill. As currently drafted, the legislation does not operate as was originally intended under the industry-developed White Paper entitled, 'Maximising Utilisation of Queensland's Coal And Coal Seam Gas Resources – A New Approach to Overlapping Tenure in Queensland' (the industry-developed White Paper).

Amendment is required because in the absence of agreement between resource authority holders on an agreed mining commencement date (as previously defined under section 116 – refer to notes for Clause 19), the mining lease (ML) (coal) holder cannot effect its right of way and establish sole occupancy in the overlapping area as it was intended under the new overlapping tenure framework.

Section 115 is amended to define a mining commencement date, which is identified by a coal resource authority holder, and is taken to be at least 11 years after the giving of an advance notice to a petroleum lease holder or at least 18 months for an authority to prospect holder for the IMA. The mining commencement date for the first RMA must be at least 10 years after the mining commencement date for the IMA to which it is contiguous, and at least 1 year after the mining commencement date for the immediately preceding RMA for each subsequent RMA.

The mining commencement date identified by the coal resource authority holder may be changed by any of the following:

- establishment of exceptional circumstances under section 127;
- truncation of the notice period through the giving of an acceleration notice under section 128; or
- agreement between resource authority holders to an alternative mining commencement date.

It should be noted the legislation also includes modification of the mining commencement date under section 142A and section 241A under certain circumstances.

Though the effect of this amendment is that the ML (coal) holder no longer requires agreement from the petroleum resource authority holder on the mining commencement date, subsections 115(2) and (3) provide the minimum notice periods which must be observed by the ML (coal) holder prior to commencing authorised activities. The timeframes associated with the minimum notice periods are negotiated outcomes between the coal and coal seam gas industries and have been designed to enable both industries to extract the economic value from the resource in the overlapping area, whilst allowing co-development.

Amendment of s116 (What is the agreed mining commencement date)

Clause 19 omits section 116 to remove the concept of 'agreed mining commencement date' from chapter 4 of the MERCPC Act as a result of the insertion of the new 'mining commencement date' concept in section 115 (refer to notes for Clause 18).

Amendment of s 117 (Mandatory requirements for participants)

Clause 20 clarifies which provisions under chapter 4 are mandatory for resource authority holders following amendments to the MERCPC Act.

There is no change to section 117(a), which makes mandatory the requirement under section 121 for the mining lease (ML) (coal) holder to give a petroleum resource authority holder an advance notice.

Sections 117(b) to (e) have been amended for restructuring and consequential purposes.

Section 117(b) as amended makes mandatory the new requirement under the new section 127(8)(b) for a ML (coal) holder to give the chief executive a notice if it overlaps an authority to prospect and exceptional circumstances is established (refer to amendment of section 127 under Clause 28). This amendment has been made mandatory to ensure the department is made aware when a ML (coal) holder's relevant development plan requires updating as a result of the establishment of exceptional circumstances.

Section 117(c), as amended, now lists compliance with part 2, division 3 of chapter 4 as mandatory for all overlapping areas. This division is in relation to the requirement to have a joint development plan in place and it is not a new mandatory requirement to comply with these provisions.

Section 117(d), as amended, now lists compliance with part 3 and part 4 of chapter 4 as mandatory, but removes reference to section 143. Complying with the provisions in part 3 or 4 is not a new mandatory requirement. The removal of reference to section 143 is as a consequence to the removal of section 143 from the MERCPC Act itself. Section 143 has been removed to streamline the legislation (refer to notes for Clause 41) and is related to the amendment of section 127 which achieves the same policy intent as section 143 (refer to notes for Clause 28).

Section 117(e) now lists compliance with part 5, excluding section 153, as mandatory. Inclusion of chapter 4, part 5 in this section now makes compliance with provisions relating to adverse effects a mandatory requirement. This amendment has been made to reflect the industry-developed White Paper that states that the conduct of authorised activities will be subject to a requirement that any activities must not adversely affect safe and efficient production activities on the overlapping production tenure.

Industry stakeholders considered that the expedited land access provision under section 153 did not need to be mandatory. This was because it would be contrary to the foundation principle in the framework that the ML (coal) may effect right of way and sole occupancy in the initial mining area; noting that right is subject to notices, observation of notice periods, exceptional circumstances, and compensation for truncation of notice periods.

Section 117(f) now lists compliance with part 6, divisions 1 and 2 of chapter 4 as mandatory requirements. Part 6, division 1 contains provisions requiring the exchange of information between overlapping tenure holders and division 2 contains provisions relating to Ministerial powers. These are not new mandatory requirements. Reference to chapter 4, part 6, division 5 has been removed as a consequence to the removal of this division from the MERCPC Act itself. This division required a copy of all notices required under chapter 4 to be provided to the chief executive. The department does not require copies of all notices to fulfil its role as steward of the State's resources and considers it an unnecessary regulatory burden for industry.

Amendment of s 120 (Sole occupancy of IMA)

Clause 21 amends section 120(1) by removing the reference to an agreed joint development plan. This will enable the provision to operate effectively for both a mining lease (ML) (coal) / petroleum lease overlap and a ML (coal) / authority to prospect overlap. This amendment is required as per the policy rationale for Clause 15.

This clause also replaces the reference to the 'agreed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

In conjunction with the new definition of 'mining commencement date', the amended drafting of this section now enables a ML (coal) holder to establish sole occupancy for the initial mining area (IMA) from the mining commencement date it identifies. However, the date on which a ML (coal) holder may establish sole occupancy for the IMA is subject to potential change through establishment of exceptional circumstances, truncation of the notice period through the giving of an advance notice, or agreement between overlapping resource authority holders to an alternative date.

Amendment of s 121 (Advance notice)

Clause 22 amends section 121 as a consequence of the change in requirement to have a joint development plan (JDP). JDPs will now only be required in a production tenure over production tenure overlap (i.e. mining lease (ML) (coal) / petroleum lease (PL)). The change in requirement to have a JDP in place has been made to better reflect the original policy intent of the industry-developed White Paper.

As overlapping resource authority holders with a production tenure over exploration tenure overlap (i.e. ML (coal) / authority to prospect (ATP), PL / exploration permit (coal), or PL / mineral development licence (coal)) will no longer be required to have a JDP in place, section 121(1)(c) has been amended to clarify that the advance notice must be accompanied by a JDP if the petroleum resource authority is a PL.

This clause also inserts the requirement that if the petroleum resource authority is an ATP, then the ML (coal) holder must list in the advance notice any initial mining area, rolling mining area, and the mining commencement dates for those areas that they have identified. This is to ensure that resource authority holders can still access other provisions within chapter 4 relating to sole occupancy and the rolling abandonment model.

Amendment of s 122 (18 months notice)

Clause 23 amends section 122 by replacing the reference to 'proposed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Amendment of s 123 (Confirmation notice)

Clause 24 amends section 123 by replacing references to 'agreed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Amendment of s 124 (Sole occupancy of RMA)

Clause 25 removes reference to an agreed joint development plan (JDP) from section 124 as a consequence to the change in requirement to have a JDP in place. JDPs will now only be required in a production tenure over production tenure overlap (i.e. mining lease (coal) / petroleum lease). The change in requirement to have a JDP in place has been made to better reflect the original policy intent of the industry-developed White Paper. This amendment is required as per the policy rationale for Clause 15.

The clause also replaces reference to the 'agreed mining commencement date' with 'mining commencement date' to reflect the amendments to sections 115 and 116 (refer to notes for Clause 18).

Amendment of s 125 (RMA notice)

Clause 26 amends section 125 by replacing references to 'agreed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Amendment of s 126 (Joint occupancy of SOZ)

Clause 27 amends section 126 by replacing the reference to 'agreed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Amendment of s 127 (Exceptional circumstances notice may be given by petroleum resource authority holder)

Clause 28 amends section 127(1)(a)(i) by removing reference to a joint development plan (JDP) in this section. JDPs will now only be required in production tenure over production tenure overlaps (refer to amendments to section 130 under Clause 31 and section 142 under Clause 39). However it was always intended that exceptional circumstances could be claimed by both petroleum lease holders and authority to prospect (ATP) holders after the giving of an advance notice. As a consequence, this amendment has been made to ensure that an ATP holder may still claim exceptional circumstances even when there is no JDP in place (i.e. a mining lease (ML) (coal) / ATP overlap).

Amendments are also included in Clause 28(2) and (3) to replace references to 'proposed mining commencement date' and 'agreed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Clause 28(4) amends section 127(2) to insert that a regulation may prescribe what information should be contained in an exceptional circumstances notice. This will ensure the effective operation of the framework once commenced.

In addition, Clause 28(5) inserts a new subsection into section 127 to ensure that government is able to carry out its role in optimisation of the State's resources.

To ensure that the department is aware of the impact to a resource authority holder's relevant development plan, the new subsection includes a new requirement under the new section 127(8)(b) for a ML (coal) holder to notify the chief executive within 20 business days when exceptional circumstances is established in a ML (coal) / ATP relationship that results in a significant delay to the commencement of authorised activities under the ML (coal) in the overlapping area. The requirement for the ML (coal) holder to give the notice is listed as a mandatory provision under section 117 (refer to notes for Clause 20). The new section requires the notice to the chief executive to state that exceptional circumstances has been established, the new mining commencement date, and any other information prescribed by regulation.

To streamline the legislation, Clause 28(5) also clarifies that a new mining commencement date following the establishment of exceptional circumstances will continue to apply even if an ATP holder has progressed to a PL. This is a consequence of removal of section 143 (Exceptional circumstances notice previously given by ATP holder when PL holder) from the MERC Act under Clause 41.

Amendment of s 128 (Acceleration notice may be given by ML (coal) holder)

Clause 29 amends section 128 by replacing the references to 'proposed mining commencement date' and 'agreed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Amendment of s 129 (Abandonment of sole occupancy of IMA or RMA)

Clause 30 removes reference to an agreed joint development plan in section 129(2)(b). This amendment is required as per the policy rationale for Clause 15.

Amendment of s 130 (Requirement for agreed joint development plan)

Clause 31 amends section 130 to reflect that the requirement to have a joint development plan (JDP) in place will only apply to a production tenure over production tenure overlap (i.e. mining lease (ML) (coal) / petroleum lease (PL)). This change in requirement to have a JDP has been made to better reflect the original policy intent of the industry-developed White Paper.

The amendment clarifies that this provision applies specifically to ML (coal) / PL overlaps. As overlapping resource authorities in a ML (coal) / authority to prospect (ATP) overlap (i.e. production tenure over exploration tenure) will no longer require a JDP, references to 'petroleum resource authority' throughout section 130 have been replaced with 'PL'. The definition of 'petroleum resource authority' under section 103 includes an ATP or a PL.

For the effective operation of the framework, Clause 31(1) amends section 130(1) to clarify the timeframe in which a JDP is required to be in place. Consultation with industry has raised that a ML (coal) holder may not be able to comply with the requirement to have a JDP in place within 12 months of the giving of the advance notice under section 130(1)(a) if the resource authority holders refer a relevant matter (i.e. size and location of an initial mining area, rolling mining area, or simultaneous operation zone) to arbitration under section 131.

This is because the process of referring a matter to arbitration under the dispute resolution process for overlapping tenure (including referring a matter to a prescribed arbitration institute, the prescribed arbitration institute nominating an arbitrator, and resource authority holders agreeing to appoint a nominated arbitrator) could itself take long enough that it pushes the finalising of the dispute resolution process beyond 12 months after the giving of the advance notice.

To account for this scenario, amendment to section 130 has been made to provide that a ML (coal) holder must ensure that a JDP is in place either:

- within 12 months after the giving of the advance notice to the PL holder; or
- within 9 months after the appointment of an arbitrator if a relevant matter is referred to arbitration under section 131(2) or (3).

To clarify operation of this provision, section 130(1)(b) (now the new section 130(2)(b)) is also amended to require the written notice to the chief executive be provided within 20 business days of a JDP being in place.

Clause 31(3) amends section 130(2)(e) (now the new section 130(3)(e)) by replacing the reference to 'agreed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Clause 31(4) replaces reference to 'subsection (1)(b)' in section 130(3)(b) with 'subsection (2)(b)' as a consequence of changes to the structure of section 130.

Amendment of s 131 (Negotiation of agreed joint development plan)

Clause 32 amends section 131 to reflect that the requirement to have a joint development plan (JDP) in place will only apply to a production tenure over production tenure overlap (i.e. mining lease (ML) (coal) / petroleum lease (PL)). As overlapping resource authorities in a ML (coal) / authority to prospect (ATP) overlap will no longer be required to have a JDP in place, references to 'petroleum resource authority holder' have been replaced with 'PL holder' under Clause 32(1). The definition of 'petroleum resource authority' under section 103 includes an ATP or a PL.

In addition, the reference to section 130(1)(b) in section 131(1) has been replaced with reference to section 130(2)(b) as a consequence of amendments to the structure of section 130 (refer to Clause 31 of the Bill).

Amendment of s 132 (Consistency with work programs and development plans)

Clause 33 amends the title of and section 132 to reflect that the requirement to have a joint development plan (JDP) in place will only apply to a production tenure over production tenure overlap (i.e. mining lease (ML) (coal) / petroleum lease (PL)). As overlapping resource authorities in a ML (coal) / authority to prospect (ATP) overlap will no longer be required to have a JDP in place, references to 'petroleum resource authority' have been replaced with 'PL'. The definition of 'petroleum resource authority' under section 103 includes an ATP or a PL.

References to work programs have also been removed as a ML (coal) or PL would have a development plan; only an ATP would have a work program.

Amendment of s 133 (Amendment of agreed joint development plan)

Clause 34 amends section 133 to reflect that the requirement to have a joint development plan (JDP) in place will only apply to a production tenure over production tenure overlap (i.e. mining lease (ML) (coal) / petroleum lease (PL)). As overlapping resource authorities in a ML (coal) / authority to prospect (ATP) relationship will no longer require a JDP (refer to amendment of section 130 under Clause 31), reference to exploration and testing activities carried out by an ATP in section 133(3)(c) is no longer required.

To streamline the legislation, the Bill contains an amendment to remove section 184 (refer to notes for Clause 58), which requires overlapping resource authority holders to jointly give written notice to the chief executive if a JDP is amended as a result of arbitration. As a consequence, this clause amends section 133 so that written notice of a change to an agreed JDP is required to be given when the change results in cessation, or significant reduction or increase of authorised activities, regardless of whether a JDP is amended as a result of agreement or arbitration. As currently drafted, this section only addresses amendment to JDPs through agreement.

Replacement of s 134 (Authorised activities allowed only if consistent with agreed joint development plan)

Clause 35 amends section 134 to reflect that the requirement to have a joint development plan (JDP) in place will only apply to production tenure over production tenure overlaps (i.e. mining lease (ML) (coal) / petroleum lease (PL)). As overlapping resource authorities in a ML (coal) / authority to prepare (ATP) overlap will no longer require an agreed JDP, references to 'petroleum resource authority' have been replaced with 'PL'. The definition of 'petroleum resource authority' under section 103 includes an ATP or a PL.

This clause makes a further amendment to clarify that sections 134(1) to (3) do not prevent the continuation of any existing authorised activities of the PL holder when it receives an advance notice from the ML (coal) holder and there is no agreed JDP yet in place. The effect of section 134 as amended is that it is only once a JDP is in place between the resource authority holders, and a notice to the chief executive is given under section 130(2)(b), that the resource authority holders must comply with only undertaking authorised activities consistent with the agreed JDP.

Amendment of s 135 (Condition of authorities)

Clause 36 amends section 135 to reflect that the requirement to have a joint development plan (JDP) in place will only apply to production tenure over production tenure overlaps (i.e. mining lease (ML) (coal) / petroleum lease (PL)). As overlapping resource authorities in a ML (coal) / authority to prepare (ATP) overlap will no longer require a JDP, references to 'petroleum resource authority' have been replaced with 'PL'. The definition of 'petroleum resource authority' under section 103 includes an ATP or a PL.

Amendment of s 139 (Definitions for pt 3)

Clause 37 removes sections 139(2) and (3) from the MERC Act to clarify the operation of chapter 4, part 3, and chapter 4 in general.

Section 139(2) is not required because the definition of a petroleum lease holder under this section is the same as that under section 106, which applies to the entirety of chapter 4.

Section 139(3) has been removed from section 139 and inserted into section 105 (refer to notes for Clause 14) to clarify that a reference in chapter 4 (and not just chapter 4, part 3) to a mining lease (ML) (coal) holder includes, if applicable, an exploration permit (coal) holder or mineral development licence (coal) holder whom has applied for a ML (coal).

Amendment of s 141 (Petroleum production notice)

Clause 38 amends section 141 to reflect that the requirement to have a joint development plan (JDP) in place will only apply to production tenure over production tenure overlaps (i.e. petroleum lease (PL) / mining lease (ML) (coal)). This change in requirement to have a JDP has been made to better reflect the original policy intent of the industry-developed White Paper.

As overlapping resource authorities in a ML (coal) / authority to prepare (ATP) overlap will no longer require a JDP, the scenario where a PL holder would provide amendments to an agreed JDP (that was in place when the PL holder was an ATP holder) when giving a petroleum production notice to a ML (coal) holder under section 141(1)(c) no longer exists and therefore the section has been removed.

Instead the requirement to have a JDP in place will only apply when an ATP progresses to a PL application and it overlaps a ML (coal). As a reflection of this, the clause amends section 141 to make no differentiation between whether the application for a PL was an ATP-related application under section 118 of the *Petroleum and Gas (Production and Safety) Act 2004* or a PL applied for through a competitive tender process under section 128 of the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 142 (Requirement for agreed joint development plan)

Clause 39 amends section 142 to reflect that the requirement to have a joint development plan (JDP) in place will only apply to production tenure over production tenure overlaps (i.e. petroleum lease (PL) / mining lease (ML) (coal)). This change in requirement to have a JDP has been made to better reflect the original policy intent of the industry-developed White Paper.

As overlapping resource authorities in a ML (coal) / authority to prospect (ATP) relationship will no longer require a JDP, section 142(1) has been amended to reflect that there is now no need to differentiate between whether the application for a PL was an ATP-related application under section 118 of the *Petroleum and Gas (Production and Safety) Act 2004* or a PL applied for through a competitive tender process under section 128 of the *Petroleum and Gas (Production and Safety) Act 2004*. Instead, Clause 39(1) clarifies that section 142 applies if a PL holder gives a petroleum production notice to a ML (coal) holder.

For the effective operation of the framework, Clause 39(1) also amends section 142(2) to clarify the timeframe in which a JDP is required to be in place. Consultation with industry has raised that a PL holder may not be able to comply with the requirement to have a JDP in place within 12 months of the giving of the petroleum production notice under section 142(2)(a) if the resource authority holders refer a relevant matter (i.e. size and location of an initial mining area, rolling mining area, or simultaneous operation zone) to arbitration under section 144.

This is because the process of referring a matter to arbitration under the dispute resolution process for overlapping tenure (including referring a matter to a prescribed arbitration institute, the prescribed arbitration institute nominating an arbitrator, and resource authority holders agreeing to appoint a nominated arbitrator) could itself take long enough that it pushes the finalising of the dispute resolution process beyond 12 months after the giving of the petroleum production notice.

To account for this scenario, amendment to section 142(2) has been made to provide that a PL holder must ensure that a JDP is in place either:

- within 12 months after the giving of the petroleum production notice to the ML (coal) holder; or
- within 9 months after the appointment of an arbitrator if a relevant matter is referred to arbitration under section 144(2) or (3).

To clarify operation of this provision, the Bill amends section 142(2)(b) so that the written notice to the chief executive must be provided within 20 business days of a JDP being in place.

In addition, Clause 39(2) replaces 'petroleum resource authority holder' in section 142(3)(a) with 'PL holder'. The definition of 'petroleum resource authority' under section 103 includes an ATP or a PL.

Clause 39(3) inserts reference to a ML (coal) holder in section 142(3)(b) to clarify matters to be included in an agreed JDP and ensure consistency with section 130.

This clause also amends section 142(3)(d) by replacing the reference to 'agreed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Amendment of s 142A (Petroleum production notice given more than 6 months after advance notice)

Clause 40 amends section 142A by inserting a new section 142A(3)(a) to clarify that the mining commencement date set out in the current section 142A(2) may be amended through agreement between resource authority holders to an alternative date, or exceptional circumstances or truncation of notice periods by the giving of an advance notice. This clarification is required because section 142A is a mandatory provision, and resource authority holders would not have access to section 115(1)(b) or (c) (as amended; refer to notes for Clause 18) otherwise.

This clause also removes the current section 142A(3)(c) from the MERCPC Act as a consequence of the change in requirement to have a joint development plan (JDP) in place to apply to only production tenure over production tenure overlaps (refer to amendment of section 130 under Clause 31). Originally this section was drafted when a JDP was required for a mining lease (ML) (coal) / authority to prospect (ATP) scenario. However, as a consequence to the change in requirement to have a JDP in place, section 142(3)(c) should no longer apply.

This is because the relationship for this section would have been a ML (coal) / ATP overlap at the time of the giving of the advance notice. As JDPs are now only required for production tenure over production tenure overlaps, the requirement to have a JDP will instead be triggered when the ATP holder progresses to a petroleum lease and is required to give the ML (coal) holder a petroleum production notice under section 141. Therefore, the requirement to have a JDP in place will apply under section 142 instead of section 130.

This amendment does not change the right of the petroleum resource authority holder to give an advance notice under section 127 and the right of the ML (coal) holder to give an acceleration notice under section 128. These are provided for in the current (pre-amended) section 142A(3), and are now in the new (amended) section 142A(3)(b) and (c).

Omission of s 143 (Exceptional circumstances notice previously given by ATP holder when PL holder)

Clause 41 removes section 143 from the MERC Act to streamline the legislation. Amendment to section 127 under Clause 28 of the Bill achieves the same policy intent as section 143, whereby a new mining commencement date established due to exceptional circumstances when a petroleum resource authority is an authority to prospect (ATP) continues in force when that ATP progresses to a petroleum lease.

Amendment of s 144 (Negotiation of agreed joint development plan)

Clause 42 amends section 144(1) to reflect that the requirement to have a joint development plan (JDP) in place will only apply to a production tenure over production tenure overlap (i.e. petroleum lease (PL) / mining lease (ML) (coal)). As overlapping resource authorities in a ML (coal) / authority to prospect (ATP) overlap will no longer be required to have a JDP in place, reference to 'agreed joint development plan' has been removed from section 144(1). This is because a PL holder and a ML (coal) holder would not be negotiating on amendments to an agreed JDP, because an agreed JDP would not have been made between the PL holder and ML (coal) holder when the PL holder was previously an ATP holder.

In addition, the references to section 133(4) and section 142(2) have been replaced with reference to section 142(2)(b) as a consequence of amendments to the structure of section 142 under Clause 39.

Amendment of s 146 (Amendment of agreed joint development plan)

Clause 43 amends section 146 to streamline the legislation. The Bill contains an amendment to remove section 184 (refer to notes for Clause 58), which requires overlapping resource authority holders to jointly give written notice to the chief executive if a joint development plan (JDP) is amended as a result of arbitration. As a consequence, this clause amends section 146 so that written notice of a change to an agreed JDP is required to be given when the change results in cessation, or significant reduction or increase of authorised activities, regardless of whether a JDP is amended as a result of agreement or arbitration. As currently drafted, this section only addresses amendment to JDPs through agreement.

Amendment of s 147 (Authorised activities allowed only if consistent with agreed joint development plan)

Clause 44 amends section 147 to clarify that section 147 does not prevent the continuation of any existing authorised activities of the mining lease (coal) holder when it receives a petroleum production notice from a petroleum lease holder and there is no agreed joint development plan (JDP) yet in place. The effect of section 147 as amended is that it is only once a JDP is in place between the resource authority holders and a notice to the chief executive is given under section 142(2)(b) that the resource authority holders must comply with only undertaking authorised activities consistent with the agreed JDP.

Replacement of s 149 (Concurrent notice may be given by ATP holder)

Clause 45 firstly amends section 149(2) to clarify the purpose of a concurrent notice. It is intended that a concurrent notice given by an authority to prospect (ATP) holder, captured under this provision, to a coal resource authority holder will state that the ATP holder intends to apply for a petroleum lease within six months of receiving the advance notice from the coal resource authority holder.

Section 149 is also amended under *Clause 45(2)* as a consequence of changes to the requirement for resource authority holders to have a joint development plan (JDP) in place (refer to amendment of section 130 under *Clause 31*) and as a consequence to changes to the mining commencement date (refer to amendment of sections 115 and 116 in *Clause 18*).

Originally, this section was drafted when a JDP was required for a mining lease (ML) (coal) / ATP overlap. However, as a consequence to the change in requirement to have a JDP, in this overlapping scenario section 149(5)(a) as drafted is no longer operative. This is because resource authority holders in a ML (coal) / ATP overlap would have previously begun negotiating for the JDP as soon as practicable after the giving of the advance notice. However, with the change in requirement to have a JDP only in a production tenure over production tenure overlap, resource authority holders in a ML (coal) / ATP overlap would not be required to negotiate for a JDP at all.

As a result, the requirement to have a JDP in place is instead triggered when the ATP holder progresses to a petroleum lease (PL) and gives the ML (coal) holder a petroleum production notice in accordance with section 141. However, section 149(4) requires that chapter 4 must be applied, to the greatest extent possible, as if the ATP holder were already a PL holder when they received the advance notice.

To account for this, the new section 149(5)(a) provides that the mining commencement date for the initial mining area given in the advance notice is taken to be at least 11 years after the date on which the advance notice is given, instead of potentially being only 18 months after the giving of the advance notice as required under section 115(2)(a). This aligns with section 115(2)(b) which requires the mining commencement date for a ML (coal) / PL overlap to be at least 11 years after the date on which the advance notice is given.

To provide flexibility to resource authority holders, the new section 149(5)(b) clarifies that the mining commencement date may still be changed through:

- agreement between resource authority holders to an alternative mining commencement date; or
- the establishment of exceptional circumstances; or
- truncation of the notice period by the giving of an acceleration notice.

The new section 149(5)(c) clarifies that the ATP holder may give an exceptional circumstances notice at the same time as it gives a concurrent notice, providing the exceptional circumstances notice is given in accordance with section 127 i.e. within 3 months of receiving an advance notice from the ML (coal) holder.

The new section 149(6) modifies the timeframe in which the JDP is required after the giving of an advance notice, for this scenario. As noted above, the trigger for having a JDP, in this scenario, is when the ATP progresses to a PL but the ATP holder must be treated as if it was a PL holder at the giving of the advance notice. To account for this, the new section 149(6) provides that a ML (coal) holder must ensure that a JDP is in place either within 12 months after receiving the petroleum production notice from the ATP holder or 9 months after the appointment of an arbitrator when a dispute is referred under section 131(2) or (3). This timeframe to have the JDP in place applies in this scenario rather than the timeframe set out in section 130(2).

Amendment of s150 (Requirements for holder of EP (coal) or MDL (coal) if concurrent PL application)

Clause 46 amends section 150 as a consequence to amendment of section 130 (refer to notes for Clause 31). The reference to section 130(1) in section 150(3) has been changed to section 130(2). The requirement to have an agreed joint development plan in place within 12 months of the giving of the advance notice by an exploration permit (coal) holder or mineral development licence (coal) captured under this provision still applies.

This clause also amends section 150(2) by replacing the reference to 'proposed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Amendment of s153 (Expedited land access for petroleum resource authority holders)

Clause 47 amends section 153 by clarifying that the right for a petroleum resource authority holder to exercise expedited land access to the overlapping area in accordance with section 153(2) does not apply to any initial mining area or simultaneous operations zone that are identified by the mining lease (ML) (coal) holder.

This provision only applies to scenarios where the underlying landholder is also a ML (coal) holder. Amendment to section 153 has been made as a result of consultation with stakeholders on amendments contained in the Bill.

Amendment of s 154 (Resource authority holders must exchange information)

Clause 48 includes a new mechanism that provides a trigger for the commencement of information exchange between overlapping resource authority holders. In addition to the requirement to exchange information at least once during each year that the resource authorities for the overlapping area are in force, resource authority holders must also exchange information within 20 business days of an overlapping area coming into existence.

This ensures that information is exchanged between overlapping resource authority holders in a timely manner, even when relevant notices are not required for specific overlaps. For example, when an authority to prospect application is lodged after a mining lease (ML) (coal) application is lodged there is no requirement for the ML (coal) holder to give an advance notice, or when an exploration permit (coal) application is lodged after a petroleum lease (PL) application is lodged there is no requirement for the PL holder to give a petroleum production notice.

An overlapping area comes into existence on the date on which land becomes the subject of both a coal resource authority and a petroleum resource authority, as per the definitions for coal resource authority and petroleum resource authority under section 103 and the definition of overlapping area under section 104(4).

Amendment of s 158 (Amendment of agreed joint development plan)

Clause 49 amends section 158(2)(a) by replacing 'maximise the benefit for all Queenslanders' with 'optimise the development and use of the State's coal and coal seam gas resources' as a consequence of amendment to section 178 under Clause 56 of the Bill to ensure consistency across the legislation.

This clause also removes reference to 'work program' in section 158(2)(d) as a consequence to the change in requirement to have a joint development plan (JDP) in place. This change is addressed under Clause 31, whereby the requirement to have a JDP will only apply to a production tenure over production tenure overlap (i.e. mining lease (coal) / petroleum lease). As this section no longer applies to an authority to prospect (ATP) tenure, and it is only an ATP that is required to have a 'work program', reference to 'work program' is removed.

Amendment of s 159 (Request for information)

Clause 50 amends section 159(a) by removing 'to maximise the benefit for all Queenslanders' as a consequence of amendment to section 178 under Clause 56 to ensure consistency across the legislation.

Amendment of s 167 (Liability of ML (coal) holder to compensate PL holder)

Clause 51 amends section 167(2)(e) to reflect the amendments made to sections 115 and 116 relating to the new 'mining commencement date' (refer to notes for Clause 18).

The original intent of this sub-section has not changed. That is the mining lease (ML) (coal) holder is liable to compensate the petroleum lease (PL) holder for additional costs incurred by the PL holder if an acceleration notice has been given and the ML (coal) holder subsequently delays the mining commence date to a date later than the date identified on the acceleration notice.

This clause also amends section 167(4)(b) by replacing the reference to 'agreed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Amendment of s 172 (Reconciliation payments and replacement gas)

Clause 52 amends section 172 as there is no definition in the MERC Act for 'compensation payment'. To ensure effective operation of the framework, references to 'compensation payment' throughout section 172 have been replaced with references to 'payment or an amount of coal seam gas' and 'amount received' in relation to meeting a compensation liability. A 'compensation liability' is defined under sections 167 and 168. This amendment has been made as a consequence to the amendment to section 174 under Clause 53 of the Bill.

Replacement of s 174 (Availability of dispute resolution)

Clause 53 clarifies under the new section 174(1) that the dispute resolution process is only available to overlapping resource authority holders where a dispute arises concerning the quantum of compensation liability, rather than disputes on entitlement to compensation.

Restructuring of the section is required to ensure misinterpretation of the entitlement to compensation is not inferred as a cause for dispute resolution. The provisions relating to compensation under chapter 4, part 6, division 3 have been drafted in such a manner whereby there should be no question over the entitlement to compensation.

In addition, amendment to section 174 is required as there is no definition in the MERC Act for 'compensation payment'. To ensure effective operation of the framework, the term 'compensation payment' has been replaced with references to 'payment of an amount to meet a compensation liability' and 'amount of the payment to meet the compensation liability'.

The matters on which a petroleum resource authority holder or mining lease (coal) holder may apply for arbitration of have not changed.

Amendment of s 175 (Application of div 4)

Clause 54 amends section 175 as its current drafting limits the availability of arbitration to 'a dispute... about compensation' under section 174. However, section 174 also relates to other matters (i.e. reconciliation payments and replacement gas). It is the intent that all matters under section 174 may be taken to arbitration; therefore amendment has been made to achieve this intent.

Amendment of s 177 (Nomination of arbitrator)

Clause 55 provides that a prescribed arbitration institute does not incur any civil monetary liability through carrying out its obligation to nominate an arbitrator under subsection 177(2). This provision is limited in that immunity from liability does not apply when the prescribed arbitration institute performs in a manner that is in bad faith or negligent.

Amendment of s 178 (Arbitrator's functions)

Clause 56 amends section 178 to ensure the criteria for arbitrators in deciding the award is objective.

Stakeholders have advised through consultation that arbitrators ought to have regard to objective criteria in deciding the rights of parties. Unless the parties (or an Act) appoint the arbitrator to use their sense of equity in making an award, the arbitrator is not entitled to apply their sense of equity or fairness. Rather, objective criteria should be employed in the decision-making process.

As drafted, section 178(2) imposes the duty to decide 'consistent to the greatest extent possible' what will '[optimise] the development and use of the State's coal and coal seam gas resources to maximise the benefit for all Queenslanders'. This statement is not objective in nature as currently drafted. Clause 56(1) therefore amends this provision to remove opportunity for subjective decision-making in the dispute resolution process for overlapping tenures. To ensure effective operation of the framework, it is intended that arbitrators will also have reference to criteria for 'optimising the development and use of the State's coal and coal seam gas resources'.

Issues have also been raised with section 178(4) in that an arbitrator 'may' consider matters prescribed in regulation. This is also not objective and may provide opportunity for review of an award for jurisdictional error. Therefore Clause 56(2) amends the section to clarify that the arbitrator 'must' consider matters prescribed in regulation.

Amendment of s 182 (Effect of arbitrator's decision)

Clause 57 amends section 182 to ensure the provision is not in contradiction with the supervisory role of the Courts under the Constitution.

As currently drafted, sections 182(1) and 182(2) may attempt to render the arbitrator's award immune from the supervisory jurisdiction of the Courts, including for review of jurisdictional error. As the MERC Act compels resource authority holders to take matters to arbitration in some instances, removing jurisdiction of the State Supreme Court to review a decision of an inferior court or tribunal for jurisdictional error would likely be inconsistent with the role envisaged for State Courts in the Constitution.

Therefore, Clause 57 clarifies that the effect of an arbitrator's decision under section 182 does not limit the power of the Supreme Court to decide if a decision of an arbitrator is affected by jurisdictional error.

Omission of s 184 (Notice to chief executive after arbitration)

Clause 58 removes section 184 to streamline the legislation. The requirement to notify the chief executive of an amendment to a joint development plan as a result of arbitration will now be covered under section 133 and section 146 (refer to notes for Clause 34 and Clause 43).

Omission of ch 4, pt 6, div 5 (Miscellaneous provision)

Clause 59 removes chapter 4, part 6, division 5 from the MERCCP Act to reduce regulatory burden for industry and administrative burden for the department. The department does not require a copy of all notices that are exchanged between overlapping tenure resource authority holders. Notices relating to the government's role as steward of the State's resources, which the department will require, are specified within the relevant provisions.

The requirement to give a copy of all notices to the chief executive was previously mandatory. As the requirement no longer exists, section 117 has been consequentially amended by Clause 20 to remove reference to this division.

Replacement of ch7, pt 3 (Provisions for land access)

Clause 60 removes and replaces chapter 7, part 3 Savings and transitional provisions for land access in the MERCCP Act. This amendment serves two purposes; firstly to clarify the application of the existing Savings and transitional provisions, and secondly to insert new transitional provisions relating to the continued requirements of the 600 metre rule in certain circumstances, consent to enter restricted land under the pre-amended *Mineral Resources Act 1989*, and consent to enter restricted land under the pre-amended *Geothermal Energy Act 2010*.

A new section 217 is inserted to provide definitions that will apply to the new part.

Section 218 makes minor drafting amendments for clarity. The policy intent of this provision has not changed. This section provides that that the Land Access Code made under section 24A of the *Petroleum and Gas (Production and Safety) Act 2004* continues in force, despite the repeal of section 24A, until a new Code is made under the MERCCP Act.

Section 219 provides a transitional provision to continue the requirement for a conduct and compensation agreement for particular resource authority holders following the repeal of the 600 metre rule and the introduction of a new restricted land framework by the MERCCP Act.

The pre-amended Resource Acts establish a requirement for a resource authority holder to enter into a conduct and compensation agreement to enter private land to carry out any authorised activity (including preliminary activities) under a resource authority, where the resource authority holder is seeking to carry out the authorised activity within 600 metres of a school or an occupied residence (known as the '600 metre rule').

Section 219 provides that in the circumstance where:

- a resource authority was applied for before commencement - whether granted before or after commencement; and
- the holder was required to enter into a conduct and compensation agreement with the landholder to enter private land as a result the holder seeking to carry out an authorised activity under the resource authority within 600 metres of a school or an occupied residence;

the requirement to enter into a conduct and compensation agreement continues under the new land access provisions as if the authorised activities are advanced activities for the purpose of entry into private land under the MERCPC Act.

Section 219 also provides definitions of *conduct and compensation agreement requirement* and *new land access provisions* that apply to this section.

Section 220 has been amended to clarify its application to entry notices given to an owner or occupier of private land or a public land authority for public land under the pre-amended Resource Acts. The policy intent of this provision has not changed. This section provides that an entry notice still in force, and given prior to commencement continues in force according to the terms of the entry notice, and is taken to be an entry notice issued under the MERCPC Act.

Section 221 has been amended to clarify its application to a waiver of entry notice to private or public land given under the pre-amended Resource Acts. The policy intent of this provision has not changed. This section provides that a waiver of entry notice given to a resource authority holder prior to commencement that is still in force immediately before commencement continues in force according to the terms of the waiver of entry notice, and is taken to be a waiver of entry notice under the MERCPC Act.

Section 222 has been amended to apply to a deferral agreement entered into under the pre-amended Resource Acts and in force immediately before commencement. A deferral agreement made prior to commencement will continue to have effect under the MERCPC Act. There is no requirement for a deferral agreement made under the pre-amended Resource Acts to comply with any requirements that may be prescribed by regulation under section 44(2) of the MERCPC Act.

Section 223 has been amended to apply to access agreements entered into under the pre-amended Resource Acts and in force immediately before commencement. An access agreement made prior to commencement will continue to have effect under the MERCPC Act according to its terms and conditions, and is taken to be an access agreement for the parties to the agreement. The requirements of the MERCPC Act will apply to an access agreement being negotiated and not yet made immediately prior to the commencement of this clause.

Section 224 has been amended to clarify its application to conditions imposed by a public land authority for entry to public land under the pre-amended Resource Acts. The policy intent of this provision has not changed. This section provides that any conditions imposed by a public land authority prior to commencement that are still in force immediately before commencement are to continue in force, and are taken to be conditions imposed under the MERC Act. There is no requirement for a public land authority to give an information notice under section 59(8) of the MERC Act for a condition to continue to be in force.

Section 225 has been amended to clarify its application to a road use direction given by a public land authority under the pre-amended Resource Acts. The policy intent of this provision has not changed. This section provides that a past road use direction given to a resource authority holder under the pre-amended Resource Acts before commencement that is still in force immediately before commencement, continues in force according to its terms and is taken to be a road use direction under the MERC Act. There is no requirement for a public land authority to give an information notice under section 64(4) of the MERC Act for the existing road use direction to be valid.

Section 226 has been amended to clarify its application to consent given to a resource authority holder under the pre-amended Resource Acts. The policy intent of this section has not changed. This section provides that written consent given under the pre-amended Resource Acts to a resource authority holder to enter land that is outside the area of the resource authority and in the area of another resource authority, that is given before the commencement of this clause, is taken to be consent to enter land for the MERC Act. All conditions of the existing consent continue to apply.

Section 227 has been amended to apply to a conduct and compensation agreement entered into under the pre-amended Resource Acts and in force immediately before commencement. The section provides that a conduct and compensation agreement made prior to commencement and that is in force immediately before the commencement of the MERC Act will continue to have effect under the MERC Act. There is no requirement for a conduct and compensation agreement made under the pre-amended Resource Acts to comply with any requirements that may be prescribed by regulation under section 83(4) of the MERC Act.

Section 227(4)(a) requires that a resource authority holder that is a party to a conduct and compensation agreement give the registrar notice of the conduct and compensation agreement six months after the commencement of this clause. This requirement is a condition of the resource authority.

Section 227(4)(b) establishes this requirement as a condition of the resource authority. A compensation agreement made under section 923 of the pre-amended *Petroleum Act 1923* cannot be the subject of an application under section 101 to the Land Court for review of compensation.

The requirements of the MERCP Act will apply to the negotiation of a conduct and compensation agreement where a conduct and compensation agreement is being negotiated immediately before commencement, and prior to the commencement of the MERCP Act an agreement is not yet made; or the resource authority holder has not issued a notice of intent to negotiate under the old land access framework.

Section 228 establishes a new transitional arrangement to continue to apply the old land access provisions where the parties have commenced the negotiation process under the pre-amended Resource Acts. The section applies where a resource authority holder has given a negotiation notice under the pre-amended Resource Acts and an agreement has not been made prior to the commencement of the new land access provisions in the MERCP Act.

The negotiation process commenced under the pre-amended Resource Acts will continue, meaning that a minimum negotiation period or period for the conduct of conference or alternative dispute resolution, commenced under the pre-amended Resource Acts will continue.

If the negotiations result in the making of a new conduct and compensation agreement or deferral agreement, this agreement is taken to be a conduct and compensation agreement or deferral agreement under the MERCP Act.

If the negotiations result in a decision by the Land Court under the old land access provisions, the decision is considered a Land Court decision under the new land access provisions.

Section 228A has been amended to clarify its application to a compensation agreement for road use entered into under the pre-amended Resource Acts. The policy intent of this provision has not changed. This section provides that the compensation agreement that is in force immediately before commencement continues in force and is taken to be a road use compensation agreement under the MERCP Act. There is no requirement for a compensation agreement for road use entered into under the pre-amended Resource Acts to comply with any requirements that may be prescribed by regulation under section 94(2) of the MERCP Act.

Section 228B establishes a new transitional arrangement to continue to apply the restricted land requirements under the pre-amended *Mineral Resources Act 1989* to the holder of a prospecting permit, an exploration permit, and a mineral development licence, where the application for the resource authority is made before commencement of the MERCP Act.

Section 228C establishes a new transitional arrangement to continue to apply the restricted land requirements under the pre-amended *Geothermal Energy Act 2010* to the holder of a geothermal permit and a geothermal lease licence, where the application for the resource authority is made before the commencement of the MERCP Act.

Insertion of new s 231A and ch 7, pt 4, div 1A

Clause 61 inserts a new section 231A into the transitional provisions for the overlapping tenure framework in chapter 4 of the MERC Act. This new section provides recognition of existing rights and obligations of resource authority holders contained in commercial arrangements at commencement.

The new section 231A(1) clarifies that this section applies when there is an inconsistency between a term in an existing agreement between resource authority holders and a non-mandatory provision in chapter 4. An existing agreement, for the application of this section, is a written legally binding agreement in force at commencement. A non-mandatory provision, for the application of this section, is defined as a provision, or part of a provision, in chapter 4 that is not listed in section 117(1). Section 117(1) provides the minimum mandatory requirements that apply to all overlapping areas captured under the new overlapping tenure framework.

Under the new section 231A(2), resource authority holders are deemed to have agreed under section 117(2) that the non-mandatory provisions in chapter 4 do not apply. The intent of this provision is to preserve the terms set out in existing agreements.

However, the new section 231A(3) provides that resource authority holders may choose to agree that the non-mandatory provisions in chapter 4 do apply, despite the new section 231A(2).

It should be noted that all resource authority holders in the new overlapping tenure framework must comply with the mandatory provisions set out in section 117(1) (as amended), regardless if they had made or were deemed to have made an agreement under section 117(2).

Clause 61 also inserts a new chapter 7, part 4, division 1A that transitions all exploration tenure over exploration tenure overlaps existing at commencement into the new overlapping tenure framework in chapter 4. As provided in the new section 231B(2), it will apply to granted exploration resource authorities and applications for exploration resource authorities that overlap either another granted exploration resource authority or another exploration resource authority application.

The new section 231B(3) provides that the new overlapping tenure provisions in chapter 4 will apply to exploration resource authorities captured by this provision, which are mainly relating to adverse effects and information exchange.

To effectively transition exploration tenure over exploration tenure overlaps into the new overlapping tenure framework, the new section 231B(4) clarifies that the overlapping area comes into existence on commencement. Resource authority holders will therefore be required to comply with the overlapping tenure provisions in chapter 4 from commencement onwards.

This scenario has not yet been captured by the existing transitional provisions and will effectively clarify the requirements for exploration resource authorities at commencement. For example, transitioning exploration tenure over exploration tenure overlaps will align chapter 4 and chapter 7, part 4 of the MERC Act with the safety and health requirements for joint interaction management plans that were set out in the *Water Reform and Other Legislation Amendment Act 2014*.

In addition, providing this transitional provision will strengthen the requirement for exploration tenures to exchange information. While information exchange currently occurs under the existing overlapping tenure regime set out in the *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004*, it is not a mandatory requirement as it is under chapter 4 of the MERC Act.

Amendment of s 232 (Coal resource authority granted over existing PL)

Clause 62 amends section 232 so that resource authority holders captured by this provision may jointly choose to opt-in into the new overlapping tenure framework under chapter 4 of the MERC Act. Written notice must jointly be provided to the chief executive if the overlapping resource authority holders apply the new overlapping tenure provisions.

Currently, the circumstance of a coal resource authority overlapping a petroleum lease that was granted prior to commencement would fall under the pre-amended *Mineral Resources Act 1989*. However, providing the opportunity for resource authority holders to agree to opt-in to the new overlapping tenure framework may result in better outcomes for the resource authority holders and the State in terms of co-development of coal and coal seam gas resources.

Amendment of s 233 (Petroleum resource authority granted over existing ML (coal))

Clause 63 amends section 233 so that resource authority holders captured by this provision may jointly choose to opt-in into the new overlapping tenure framework under chapter 4 of the MERC Act. Written notice must jointly be provided to the chief executive if the overlapping resource authority holders apply the new overlapping tenure provisions.

Currently, the circumstance of a petroleum resource authority overlapping a mining lease (coal) that was granted prior to commencement would fall under the pre-amended *Petroleum and Gas (Production and Safety) Act 2014*. However, providing the opportunity for resource authority holder to agree to opt-in to the new overlapping tenure framework may result in better outcomes for the resource authority holders and the State in terms of co-development of coal and coal seam gas resources.

Insertion of new ch 7, pt 4, div 2A

Clause 64 inserts a new division to provide for a transitional scenario which has yet to be recognised in chapter 7, part 4 of the MERCPC Act.

The new section 233A(1) sets out that this provision applies to the scenario where there was no overlapping area when a mining lease (ML) (coal) application was lodged prior to commencement of the framework, and the ML (coal) application had yet to be granted at commencement. Rather, an overlapping area was only created when an authority to prospect (ATP) was lodged and granted in the period between lodgement of the ML (coal) application and commencement.

As per the new section 233A(2), the new overlapping tenure provisions set out in chapter 4 of the MERCPC Act will apply.

The new section 233A(3) sets out how the overlapping tenure provisions in chapter 4 are modified in this particular scenario. This includes in the new section 233A(3)(a) that the overlapping area is deemed to come into existence at commencement of the provision.

A ML (coal) captured by this provision would not be required to comply with sections 115(2) and 120 of the MERCPC Act to establish their right of way in the overlapping area. This means that a ML (coal) holder captured by this scenario would not be required to provide an advance notice or 18 months notice to the ATP holder as required under section 120 to establish sole occupancy in the initial mining area (IMA). Nor would the ML (coal) holder have to identify a mining commencement date for the IMA that was at least 18 months after the date the advance notice was given to comply with section 115(2). Instead, the ML (coal) holder must comply with requirements set out in the new section 233A(4).

The new section 233A(3)(c) provides that the date in the notice given under the new section 233A(4)(b) is taken to be the mining commencement date as defined under section 115. However, the new section 233A(3)(d) clarifies that the mining commencement date cannot be the mining commencement date as changed by the establishment of exceptional circumstances. This has been included to expressly provide that exceptional circumstances cannot be claimed by the ATP holder in this scenario as the establishment of exceptional circumstances would impede on the ML (coal) holder's ability to establish sole occupancy in the IMA at any time (subject to compliance with the new section 233A(4)).

The notice required under the new section 233A(4) must state the date (i.e. the mining commencement date as per the new section 233A(3)(c)) the ML (coal) holder will take sole occupancy of and intends to start carrying out authorised activities in the IMA, as well as any other information prescribed by regulation.

In addition, the new section 233A(4)(d) requires the notice to be given to the ATP holder at least three months prior to the mining commencement date, or within a period otherwise agreed between the ML (coal) holder and ATP holder. This will ensure that the ATP holder will always have sufficient notice, regardless of the mining commencement date.

As a result, the ML (coal) holder will not be required to wait any more than three months (post-commencement) to undertake authorised activities in the IMA. The reason being that an ATP holder would have been well aware of an existing ML (coal) application and would have planned their activities around those proposed by the ML (coal) in their application. When the ATP holder progresses to a petroleum lease, it will be required to comply with chapter 4, part 3.

As the new overlapping tenure provisions apply, the new section 233A(3)(e) provides modification to section 138 to enable the ML (coal) holder to still comply with the requirements when making an offer of diluted incidental coal seam gas from the IMA to the ATP holder. To account for the removal of the 18 months notice under the new section 233A(3)(b), the offer of diluted incidental coal seam gas under section 138(2)(b)(ii) will be required as early as practicable after the overlapping area is taken to come into existence (i.e. commencement). This will ensure optimisation of the development of the State's resources and may facilitate pre-mining gas drainage.

This amendment has been designed to align with the industry-developed White Paper as close as reasonably possible, and ensures that transitional provisions do not impact on the economic viability of already existing coal projects progressing towards production.

Amendment of s 234 (Application for ML (coal) over land in area of ATP (without consent))

Clause 65 amends section 234 by replacing the reference to 'proposed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Amendment of s 235 (Application for ML (coal) over land in area of ATP (with consent))

Clause 66 amends section 235 by replacing the reference to 'proposed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Replacement of s 238 (Application for PL over land in area of coal exploration authority (without consent))

Clause 67 merges section 238 and section 239 to streamline the transitional provisions for the overlapping tenure framework set out in chapter 4 of the MERC Act. A review of the sections highlighted that the requirements for resource authority holders under both sections were identical. In merging the sections together, no material change has been made to the requirements that resource authority holders are obligated to satisfy.

Omission of s 239 (Application for PL over land in area of coal exploration authority (with consent))

Clause 68 omits section 239 as it has been merged with section 238 (refer to notes for Clause 67).

Replacement of s 240 (Application for PL over land in area of ML (coal) (without consent))

Clause 69 merges sections 240 and 241 to streamline the transitional provisions for the overlapping tenure framework set out in chapter 4 of the MERCPC Act. A review of the sections has highlighted that the requirements for resource authority holders captured under these provisions are identical. In merging the sections together, no material change has been made to the requirements that resource authority holders are obligated to satisfy.

Omission of s 241 (Application for PL over land in area of ML (coal) (with consent))

Clause 70 omits section 241 as it has been merged with section 240 (refer to notes for Clause 69).

Amendment of s 241A (Application for ML (coal) and application for PL both undecided before commencement)

Clause 71 amends section 241A(3) to provide that the pre-amended *Mineral Resources Act 1989* and the pre-amended *Petroleum and Gas (Production and Safety) Act 2004* will continue to apply to the circumstance of the overlap, if a relevant coordination arrangement approved by the Minister under section 236 of the *Petroleum and Gas (Production and Safety) Act 2004* is in place immediately prior to the commencement of the section.

However, this clause also provides that despite being pulled back into the old overlapping tenure regime, resource authority holders may choose to agree to opt-in to the new overlapping tenure provisions within chapter 4 of the MERCPC Act. If the resource authority holders choose to opt-in to the chapter 4 provisions, they must notify the chief executive of their agreement in writing.

If the overlapping resource authority holders choose to opt-in to the new overlapping tenure provisions or do not have a relevant coordination arrangement approved by the Minister in place at commencement, then the new overlap provisions as they are currently drafted in section 241A(4) to (7) will apply.

This clause also replaces reference to the 'proposed mining commencement date' under section 241A(5) with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Amendment of s 243 (Requirements for advance notice and acceleration notice)

Clause 72 amends section 243 by replacing the reference to 'proposed mining commencement date' with 'mining commencement date' to reflect the amendments made to sections 115 and 116 (refer to notes for Clause 18).

Amendment of sch 2 (Dictionary)

Clause 73 amends schedule 2 of the MERC Act to amend or insert various definitions.

Part 3 Provisions amending Environmental Protection Act 1994

Omission of s 259 (Amendment of s 149 (When notification stage applies))

Clause 74 removes section 259 from the MERC Act which would have amended section 149 of the *Environmental Protection Act 1994*. By removing the amendments to section 149 this clause reinstates the requirement that all applications for an environmental authority for a mining activity related to a mining lease to undergo the public notification stage.

Omission of ss 261 (Amendment of s 152 (Public notice of application))

Clause 75 removes section 261 from the MERC Act which would have amended section 152 of the *Environmental Protection Act 1994*. By removing the amendments to section 152 this clause reinstates the requirement for environmental authority applications to undergo public notification simultaneously with the associated resource tenure application.

Replacement of s 262 (Omission of s 154 (Submission period for application—mining activities))

Clause 76 replaces section 262 to make a consequential amendment to the note for that section. This clause also amends section 262 to no longer remove section 154 from the *Environmental Protection Act 1994*. Reinstating this section will restore the link between the submission period for a submission relating to an application for an environmental authority for a mining activity and the last objection day under the *Mineral Resources Act 1989*.

Omission of ss 263 to 273

Clause 77 removes sections 263 to 273 from the MERC Act which would have amended various sections of the *Environmental Protection Act 1994* relating to the notification and decision stages of an application for an environmental authority in chapter 5, parts 4 and 5 of the *Environmental Protection Act 1994*. Reinstating these sections will restore the public notification and objection processes for an application for an environmental authority for a mining activity.

Omission of s 278 (Amendment of s 195 (Issuing environmental authority))

Clause 78 removes section 278 from the MERC Act. The consequential cross-referencing amendment to section 195 of the *Environmental Protection Act 1994* provided in this section is no longer required as the originating amendment to section 170 of the *Environmental Protection Act 1994* is being removed by Clause 77 of this Bill.

Amendment of s 280 (Amendment of s 232 (Relevant application process applies))

Clause 79 is a consequential amendment due to the removal of section 233 of the *Environmental Protection Act 1994* by section 280 of the MERC Act.

Amendment of s 282 (Amendment of s 234 (Submission period))

Clause 80 amends section 282 of the MERC Act to amend section 234 of the *Environmental Protection Act 1994* to omit subsection (2). This is a consequential amendment due to the reinstating of notification and objection rights for standard and variation environmental authorities associated with mining tenure applications. *Clause 76* of this Bill reinstates section 154 of the *Environmental Protection Act 1994* which links the submission period for the environmental authority application with the objection period for the mining tenure application under the *Mineral Resources Act 1989*. Section 234 requires the submission period for the application to be fixed by the administering authority despite sections 153(1)(g) and 154.

Amendment of ss 283 and 284

Clause 81 removes section 283 which inserted a new section 718 in the *Environmental Protection Act 1994*. This transitional provision is no longer required as the originating amendments to section 149 and section 152 of the *Environmental Protection Act 1994* are being removed by *Clause 74* and *Clause 75* of this Bill.

This clause also omits section 284 which amended Schedule 2 of the *Environmental Protection Act 1994*. This amendment is consequential to the removal of section 271 of MERC Act which would have prevented a submitter from lodging an objection relating to a Coordinator-General's condition. Retaining this amendment to an original decision in Schedule 2 is redundant. This clause also omits section 284 which amended Schedule 2 of the *Environmental Protection Act 1994*. This amendment is consequential to the removal of section 271 of MERC Act which would have prevented a submitter from lodging an objection relating to a Coordinator-General's condition. Retaining this amendment to an original decision in Schedule 2 is redundant.

Part 4 Provisions amending Mineral Resources Act 1989

Amendment of s 362 (Amendment of s 318AAK (Requirements for transferring, mortgaging or subleasing mining leases))

Clause 82 amends section 362 of the MERC Act which amends section 318AAK of the *Mineral Resources Act 1989* to correct the reference in section 318AAK(1) from mining 'licence' to mining 'lease'.

Insertion of new ss 408A and 408B

Clause 83 inserts two new sections 408A and 408B into the MERC Act. Section 408A amends section 3A of the *Mineral Resources Act 1989* to add a note. The note establishes a cross reference to the new section 386W that provides the dispute resolution provisions.

Section 408B amends section 10A of the *Mineral Resources Act 1989* by inserting a new subsection (4). This new subsection provides that where a person enters land for the purpose of carrying out an activity under section 386V, a reference to owner of land in section 386X and schedule 1 includes a registered native title body corporate or registered native title claimant under the Commonwealth Native Title Act. This does not apply for the purpose of schedule 1, section 4 (Consent of owner of reserve).

Amendment of s 412 (Amendment of s 51 (Land for which mining claim not to be granted))

Clause 84 amends section 412 of the MERC Act which amends section 51 of the *Mineral Resources Act 1989*. This amendment restores the original requirement under the pre-amended *Mineral Resources Act 1989* that a mining claim can only be granted over the restricted land when each owner of the land has provided written consent.

In addition, the applicant for the mining claim must lodge the written consent of each relevant owner with the chief executive before the last objection day. Consent provided by the owner cannot be withdrawn once the applicant has lodged it with the chief executive.

The new section also provides a definition for relevant owner being that in section 69 of the MERC Act.

Insertion of new ss 421A and 421B

Clause 85 inserts new sections 421A and 421B in the MERC Act. Sections 421A and 421B amends sections 133 and 135 of the *Mineral Resources Act 1989* respectively. Section 133 is amended to include the new boundary identification terminology. Section 135 is omitted as a consequence of the amendments to section 133.

Replacement of s 425 (Amendment of s 189 (Abandonment of application for mineral development licence))

Clause 86 amends section 425 of the MERC Act to clarify the amendment to section 189 of the *Mineral Resources Act 1989*. The purpose of this amendment is to remove uncertainty and to better align the terminology in the section with the new boundary identification terminology.

Replacement of s 431 (Omission of s 238 (Mining lease over surface of restricted land))

Clause 87 inserts a new section 431 into the MERCPC Act. The new section 431 reinserts section 238 of the *Mineral Resources Act 1989*. The intent of section 238 is consistent with that of the section in the pre-amended *Mineral Resources Act 1989*.

The new section 238 restores the requirement under the pre-amended *Mineral Resources Act 1989* that a mining lease can only be granted over restricted land at the time of application when each relevant owner has provided written consent.

In addition, the mining lease applicant must lodge the written consent of each relevant owner with the chief executive before the last objection day. Consent provided by a relevant owner for the inclusion of restricted land in the grant of a mining lease cannot be withdrawn once the applicant has lodged it with the chief executive.

The new section also provides a definition for relevant owner being that in section 69 of the MERCPC Act.

Replacement s 434 (Replacement of s 245 (Application for grant of mining lease))

Clause 88 replaces section 434 of the MERCPC Act to replace section 245 of the *Mineral Resources Act 1989*. The new section 245 restores the intent of the pre-amended section.

The new section 245 has been amended to make amendments consequential to the repeal of provisions that placed limits on Land Court objection rights relating to the assessment of proposed mines, the removal of the Minister's power to extinguish restricted land, and to restore the requirement for a landholder to consent in writing to grant a mining lease over restricted land.

The new section 245 includes some structural changes with the aim of improving clarity and minor drafting amendments to apply the new boundary identification terminology.

Section 245(1)(a) to (f) replicates existing section 245(1)(a) to (d) with existing subsection (d) being separated into three subsections for clarity.

Subsection (1)(g) requires that the applicant identify the boundary of the proposed mining lease in accordance with section 386R which is the new methodology for how mining leases are identified.

Subsection (1)(h) requires that the applicant provide the chief executive with a definition of the boundary of any surface area of land to be included in the mining lease area, any restricted land, and land required for access to the proposed mining lease area.

Subsection (1)(i) requires that that applicant must identify the purpose for which they propose to use the surface area of land identified in subsection (1)(h).

Subsection (1)(j) requires that the applicant must provide a visual representation of the proposed mining lease boundaries, including any restricted land and land outside the proposed lease area which will be used as access land.

Subsection (1)(k) provides that the applicant must provide reasons why the lease should be granted with reference to the proposed size and shape.

Subsection (1)(l) requires the applicant to identify the mineral/s or purpose for which the proposed mining lease is sought.

Subsection (1)(m) provides that the applicant must nominate the length of the lease and reasons for the proposed term.

Subsection (1)(n) provides that an application lodged must be accompanied by a statement which outlines:

- the proposed mining program and method of operation;
- the proposed infrastructure requirements; and
- the estimated human, financial and technical resources the applicant proposes to commit to the mining project during the term of the lease, if granted.

Subsection (1)(o) provides that the application must be accompanied by a statement which details the applicant's financial and technical resources.

Subsection (1)(p) provides that the application must be accompanied by:

- proof of the applicant's identity;
- the number of additional copies of the application and other documents the chief executive requires; and
- the application fee.

Subsection (1)(q) provides that the application must be lodged.

Subsection (2) provides that the requirement for an application for a mining lease to include information on the proposed mining program is not required if a proposed development plan is included with the application. This provision replicates the existing requirement under subsection 1A.

Subsection (3) provides that the chief executive must not accept a mining program that is inconsistent with the provisions of the Act. This provision replicates the existing requirement under subsection 3 and merely updates the cross referencing.

Replacement of s 436 (Replacement of ss 252—252D)

Clause 89 replaces section 436 of the MERCP Act to replace sections 252 to 252D of the *Mineral Resources Act 1989*. The new section 436 replicates the existing section in so far as it omits sections 252 (Certificate of application etc.), 252A (Issue of certificate of public notice), 252B (Applicant's obligations for certificate of public notice), 252C Declaration of compliance with obligations), and 252D (Continuing obligation to notify) from the *Mineral Resources Act 1989* and replaces them with new sections.

The new sections 252 (Issue of mining lease notice), 252A (Giving and publication of mining lease notice and other information), 252B (Declaration of compliance with obligations), and 252C Continuing obligation to notify) have been amended to reflect the restored requirement for the broader notification of mining lease applications resulting from the repeal of the provisions by this Bill that would have limited the notification of mining lease application to directly affected persons.

Section 252 requires the chief executive to issue a mining lease notice once they are satisfied that the applicant is eligible to make the application for a mining lease, and that the applicant has complied with the Act when making the application.

Subsection (3) establishes what must be included in a mining lease notice. The mining lease notice must identify the number of the proposed lease; the date and time the application was lodged; the document that must be given to an affected person identified under section 252A; and the last objection day for the application which must be at least 20 business days after the mining lease notice is given to the applicant.

Section 252A requires the applicant to give each affected person a copy of the mining lease notice, the mining lease application (excluding any documents which are commercial in confidence or state the applicant's financial and technical resources) and any documents mentioned in subsection (3)(c). Subsection (2) provides that these documents must be given within 5 business days of the mining lease notice being given to the applicant.

Subsection (3) establishes the requirement for an applicant for a mining lease to publish certain information in an approved newspaper. Subsection (4) provides that the publication of this information must take place at least 15 business days before the last objection day, unless a shorter period has been approved by the chief executive before the last objection day. Consequential amendments are made to subsection (5) (previously subsection (4)). This subsection is also amended to allow the chief executive to decide an additional or substituted way for the giving or publication of a mining lease notice and other information under this section. Subsection (7) contains consequential amendments to remove the definitions of adjoining land, infrastructure and private land from this section. A new definition for approved newspaper has been included in subsection (7).

The section heading has been amended to reflect both the giving of the mining lease notice and its publication.

This clause also inserts a replacement section 252B and 252C. These sections remain unchanged from those currently in the MERCP Act.

Omission of s 438 (Replacement of s 260 (Objection to application for grant of mining lease))

Clause 90 removes amendments to section 260 of the *Mineral Resources Act 1989* contained in section 438 of the MERCP Act. Section 438 is repealed to remove the limit on the parties who can lodge an objection to an application for the grant of a mining lease application and restore the broader community objection rights to those that existed in the pre-amended *Mineral Resources Act 1989*.

Replacement of s 439 (Replacement of s 265 (Referral of application and objections to Land Court))

Clause 91 replaces the amendments to section 265 of the *Mineral Resources Act 1989* contained in section 439 of the MERCP Act to restore the public notification and objection rights and processes to those that existed in the pre-amended *Mineral Resources Act 1989*.

Subsections (2) to (3) require the chief executive to refer the following matters to the Land Court if:

- a properly made objection is made for the mining lease application; and
- the application relates to an application for an environmental authority under the *Environmental Protection Act 1994*; and
- either an objection notice relating to the environmental authority application is given under section 182(2) of the *Environmental Protection Act 1994* or the applicant for the environmental authority application has requested under section 183(1) of the *Environmental Protection Act 1994* that the application be referred to the Land Court.

Subsections (4) to (5) require the chief executive to refer the following to the Land Court if:

- a properly made objection is made for the mining lease application; and
- the mining lease does not relate to an application for an environmental authority relating to a mining lease under the *Environmental Protection Act 1994*.

The chief executive must refer the matter within 10 business days of the latest date of the stated time period and provide the relevant materials and documents as per subsections (3) or (6).

Subsection (7) requires the Land Court to set a date for the hearing once it receives the referral and immediately give a written notice of that hearing date to the chief executive, the applicant, each party who lodged a properly made objection and if there have been submitters who have lodged an objection notice that has been referred to the Land Court, the submitter. Subsection (8) specifies the date of the hearing must be at least 20 business days after the last objection day for the mining lease.

Subsection (9) provides for the Land Court to make an order to give directions that a hearing under the *Mineral Resources Act 1989* to hear the properly made objections under section 268 must occur at the same time as an objections hearing under the *Environmental Protection Act 1994*.

Subsection (10) provides that if after the Land Court sets a hearing date all properly made objections under the *Mineral Resources Act 1989* are withdrawn or struck out before the hearing is held, the Land Court may remit the matter to the chief executive.

Amendment of s 442 (Amendment of s 269 (Land Court's recommendation on hearing))

Clause 92 removes the limitations on the matters the Land Court can consider when hearing objections to proposed mining leases and the parties who can raise these matters with the Land Court. This clause also reinstates the ability for the Land Court to consider matters from any party on broad grounds including:

- whether the provisions of the Act have been complied with;
- whether the lease sought is appropriate for the mineral or purpose;
- whether the use of the proposed lease will represent an acceptable level of development and utilisation of the mineral resources in the area;
- the likely impacts the operations will have on the land;
- the appropriateness of the term of lease sought;
- the technical and financial capacity of the applicant to operate the mining lease;
- the previous performance of the applicant;
- the potential disadvantage for existing holders of or applicants for mineral development licences or exploration permits over the same area;
- conformity to sound land use management;
- any potential adverse environmental impacts;
- maintaining public right and interest;
- whether there is any good reason why the mining lease should be refused;
- and
- whether the current and prospective uses of the land are appropriate land use.

Omission of s 443 (Amendment of s 271 (Criteria for deciding mining lease application))

Clause 93 is consequential amendment due to changes to section 269 of the *Mineral Resources Act 1989* which reinstate the broad range of matters the Land Court can consider when hearing objections. Changes introduced by the original MERC Act transferred the following additional matters to the Minister from the Land Court when considering the grant of a mining lease. These matters included whether:

- the area proposed for the mining lease is mineralised or the other purposes for which the lease is sought are appropriate;
- the use of the proposed lease area will represent an acceptable level of development and utilisation of the mineral resources in the area;

- the applicants financial and technical capabilities to carry on the mining operations and their past performance has been satisfactory;
- there will be any disadvantage to either an applicant for or holder of a mineral development licence or exploration permit for the area; and
- the public right and interest will be prejudiced.

Consideration of these matters will be returned to the Land Court who can make recommendations based on these factors to the Minister regarding whether to grant or refuse a mining lease application.

Omission of s 448 (Amendment of s 279 (Compensation to be settled before grant or renewal of mining lease))

Clause 94 removes amendments to section 279 of the *Mineral Resources Act 1989* under section 448 from the MERCPC Act. These amendments to section 279 would allow the Minister to grant a mining lease over restricted land in circumstances where compensation had not been agreed between the parties. The removal of these amendments supports the government's commitment to remove the power for the Minister to extinguish restricted land.

Insertion of new s 449A

Clause 95 is a consequential amendment due to changes to section 252 of the *Mineral Resources Act 1989* by *Clause 89* of this Bill. This amendment replaces the redundant terminology of 'certificate of public notice' with 'mining lease notice'.

Omission of ss 453 and 454

Clause 96 omits sections 453 and 454 of the MERCPC Act that would have amended section 318AAD and section 318AAE of the *Mineral Resources Act 1989*. These amendments are no longer necessary as they have been superseded by amendments to these sections included in the Mineral Resources (Aurukun Bauxite Resource) Amendment Bill 2016.

Amendment of s 457 (Amendment of s 318AT (Applicant's obligations))

Clause 97 amends section 457 of the MERCPC Act to make a consequential cross-referencing amendment to section 318AT of the *Mineral Resources Act 1989* resulting from the amendments to section 245 of that Act under section 434 of the MERCPC Act.

Insertion of new s 457A-457D

Clause 98 inserts new sections 457A to 457D into the MERCPC Act.

Section 457A amends section 318AY of the *Mineral Resources Act 1989* as a result of changes to section 252 of the *Mineral Resources Act 1989* by *Clause 89* of this Bill. This is a consequential amendment which replaces the redundant terminology of 'certificate of public notice' with 'mining lease notice'.

Section 457B amends section 318AZ of the *Mineral Resources Act 1989* due to changes to section 252 of the *Mineral Resources Act 1989* by Clause 89 of this Bill. This is a consequential amendment which replaces the redundant terminology of 'certificate of public notice' with 'mining lease notice'.

Section 457C amends section 318B of the *Mineral Resources Act 1989* due to changes to section 252 of the *Mineral Resources Act 1989* by Clause 89 of this Bill. This is a consequential amendment which replaces the redundant terminology of 'certificate of public notice' with 'mining lease notice'.

Section 457D amends section 318C of the *Mineral Resources Act 1989*. This is a cross-referencing amendment resulting from amendment to section 245 (Application for grant of mining lease) under section 434 of the MERCP Act.

Amendment of s 458 (Amendment of s 318CB (Restriction on issuing certificate of public notice and additional requirements for grant))

Clause 99 amends section 458 of the MERCP Act to make a consequential amendment to the heading of section 318CB of the *Mineral Resources Act 1989* to reflect mining lease notice terminology.

Insertion of new ss 458A and 458B

Clause 100 inserts new sections 458A and 458B in the MERCP Act.

Section 458A amends section 318ELBP of the *Mineral Resources Act 1989*. This amendment corrects the definition of parties to refer to prospecting permit.

Section 458B amends section 363 of the *Mineral Resources Act 1989* to ensure the Land Court has jurisdiction to hear and determine any matters resulting from entry to land to identify proposed mining lease boundaries under section 386V of the *Mineral Resources Act 1989*.

Amendment of s 460 (Insertion of new ss 386R-386V)

Clause 101 removes and reinserts an amended section 460 of the MERCP Act. The new section 460 inserts section 386V (Carrying out activity on land for boundary definition purposes), 386W (Dispute about carrying out activity under s 386V in area of prospecting permit or non-mining resource authority), 386X (Report about activity under s 386V to chief executive by owner or occupier of land), and 386Y (Person carrying out activity under s 386V contravening condition or this Act) into the *Mineral Resources Act 1989*. This clause also makes a consequential amendment to the heading of section 460.

Section 386V provides that a person may enter land for the purpose of identifying the boundary of a proposed mining tenement without a pre-requisite mining tenure such as a prospecting permit. This section also applies if a person has been issued with a notice under sections 386J, 386S or 386T or if a person is required to remove a physical monument under section 386U where the application has been withdrawn, refused, rejected or abandoned.

Subsection (2) allows a person to:

- enter or leave the land using a vehicle;
- cross other land to access the land to be subject to the mining tenement application; and
- any other activities on the land that are necessary for identifying the boundary of the proposed mine e.g. installing a survey peg.

Subsections (3) and (4) provide that when entering the land, the person must comply with the conditions:

- stated in Schedule 1 of the *Mineral Resources Act 1989*; and
- prescribed by regulation; and
- imposed by the Minister under section 386W of the *Mineral Resources Act 1989*; and
- imposed by the chief executive by a notice issued under section 386J, 386S or 386T of the *Mineral Resources Act 1989*.

Subsection (5) provides for a person who is dissatisfied with a condition imposed by the chief executive to lodge an appeal with the Land Court.

Subsection (6) provides for sections 39 to 42 of the *Mineral Resources Act 1989* to apply to the appeal.

Subsection (7) prohibits entry to a fossicking area under section 386V.

Section 386W establishes a process for resolving disputes between a person entering land under section 386V and the holder of a prospecting permit or a non-mining resource authority which is held over the land.

Subsection (2) allows for either party to ask the Minister by written notice to resolve the dispute.

Subsection (3) requires the Minister to give each party the opportunity to provide information within a specified timeframe before a decision is made. Subsection (4) requires the Minister to consider any submission from the parties when making a decision and for the Minister to provide a written notice of the decision to each party.

Subsections (5) and (6) provide for the Minister's decision to be binding on all parties to the dispute and allow the Minister to impose conditions if entry is allowed if required.

Subsection (7) provides a definition of a non-mining resource authority.

Section 386X (1) and (2) provide for an owner or occupier of land, whose land is being entered by another person under section 386V, to report a matter to the chief executive if they believe that the person entering the land:

- does not have the authority to enter the land; or
- is breaching a condition of entry or a provision in the *Mineral Resources Act 1989*.

Subsection (3) obligates the chief executive to investigate any report received under this section and advise the owner or occupier who reported the matter of the outcome of their investigation.

Section 386Y (1) and (2) allows the chief executive after investigating a matter reported under section 386W to issue a written notice to a person entering land under section 386V if they reasonably believe they have breached either a condition of entry or a provision of the *Mineral Resources Act 1989*.

This notice is required to state that the chief executive believes that the person has not complied with a condition or the requirements of the Act and invite the person to show cause as to why their authority to enter under section 386V should not be withdrawn.

Subsection (3) provides for when the chief executive still reasonably believes that a breach of condition or provision has occurred, to issue a written notice to the person. Subsection (3) also specifies this notice will state the following:

- that the chief executive considers that a condition or provision has been breached by the person;
- that further entry by the person for boundary definition purposes is prohibited; and
- if the chief executive considers it reasonable in the circumstances, that a penalty is imposed (which should not exceed 5 penalty units).

Subsection (4) provides a head of power to remove a person's authority to enter the land under section 386V and to impose a fine if they have been issued a notice under subsection (3).

Subsection (5) provides for a person who is given a notice under subsection (3) who is aggrieved by the chief executive's decision, to lodge an appeal with the Land Court. Subsection (6) provides that sections 39 to 42 of the *Mineral Resources Act 1989* will apply to the appeal.

Insertion of new ss 460A-460E

Clause 102 inserts new sections 460A to 460E in the MERCPC Act that amend sections 393, 397, 397A, 397B, and 399 of the *Mineral Resources Act 1989* respectively. The purpose of these amendments is to apply these sections to a person who enters land to carry out an activity under section 386V of the *Mineral Resources Act 1989*.

Section 460A amends section 393 of the *Mineral Resources Act 1989*. This provision excuses the holder of or applicant for the grant of a mining tenement from complying with the requirement of the Act if they have done everything they can to comply but are prevented due to the neglect or default of the Minister, chief executive, Land Court, tribunal or an authorised officer.

This amendment extends this excusal to include a person entering land for boundary definition purposes under section 386V. This provision excuses the holder of or applicant for the grant of a mining tenement from complying with the requirement of the Act if they have done everything they can to comply but are prevented due to the neglect or default of the Minister, chief executive, Land Court, tribunal or an authorised officer. This amendment extends this excusal to include a person entering land for boundary definition purposes under section 386V.

Section 460B amends section 397 of the *Mineral Resources Act 1989*. This provision limits civil liability of an owner or occupier of land when someone else is carrying out an authorised activity under a mining tenement. This section is being amended to include the activities of a person entering land for boundary definition purposes under section 386V. This provision limits civil liability of an owner or occupier of land when someone else is carrying out an authorised activity under a mining tenement. This section is being amended to include the activities of a person entering land for boundary definition purposes under section 386V.

Section 460C amends section 397A of the *Mineral Resources Act 1989*. This provision places a duty on a person who is carrying out an authorised activity for a mining tenement to not interfere with anyone else carrying out a lawful activity. This provision is being amended to extend this duty to a person entering land for boundary definition purposes under section 386V. This provision places a duty on a person who is carrying out an authorised activity for a mining tenement to not interfere with anyone else carrying out a lawful activity. This provision is being amended to extend this duty to a person entering land for boundary definition purposes under section 386V.

Section 460D amends section 397B of the *Mineral Resources Act 1989*. This provision makes it an offence to obstruct a holder of a mining tenement from carrying out any authorised activity without reasonable excuse. This amendment extends this offence to include obstructing a person from carrying out an activity when entering land for boundary definition purposes under section 386V. This provision makes it an offence to obstruct a holder of a mining tenement from carrying out any authorised activity without reasonable excuse. This amendment extends this offence to include obstructing a person from carrying out an activity when entering land for boundary definition purposes under section 386V.

Section 460E amends section 399 of the *Mineral Resources Act 1989*. This provision specifies how notices or other documents required by the Act are to be given or served by a holder, or applicant for the grant of, a mining tenement to an owner of land. This amendment extends this requirement for giving documents to the owner of land to include a person entering land for boundary definition purposes under section 386V. This provision specifies how notices or other documents required by the Act are to be given or served by a holder, or applicant for the grant of, a mining tenement to an owner of land. This amendment extends this requirement for giving documents to the owner of land to include a person entering land for boundary definition purposes under section 386V.

Insertion of new s 461A

Clause 103 inserts new section 461A in the MERCCP Act that amends section 404 of the of the *Mineral Resources Act 1989*. The purpose of this amendment is to apply this section to a person who enters land to carry out an activity under section 386V of the *Mineral Resources Act 1989*.

This provision provides the chief executive, or an authorised officer with the power to require the holder of a mining tenement, to give information about activities carried out under a mining tenement. This provision is being extended to empower the chief executive or an authorised officer to give a notice to a person who is entering land under section 386V for boundary definition purposes to provide information about the activities which are being undertaken.

Amendment of s 463 (Insertion of new ss 827 to 832)

Clause 104 amends section 463 of the MERCCP Act to remove sections 831 to 832A of the *Mineral Resources Act 1989*. These sections are transitional provisions which related to:

- objections to applications for grant of mining lease before commencement;
- new applications for the inclusion of restricted land in a mining lease granted before or after commencement; and
- the inclusion of restricted land in an application for a mining lease not decided before commencement.

Transitional provisions for dealing with objections to applications for grant of a mining lease before commencement are no longer required as the changes to the notification and objection process for mining leases provided for in the MERCCP Act that were to limit the grounds and standing of parties objecting the granting of a mining lease are being repealed.

Transitional provisions regarding the inclusion of restricted land in the grant of a mining lease where consent has not been provided by the landowner and compensation has not yet been agreed are no longer required. The provisions in the MERCCP Act which were to amend the *Mineral Resources Act 1989* to allow the inclusion of restricted land in the grant of the mining lease without the land owners consent and the Ministerial power to extinguish restricted land when coexistence is not possible are being repealed.

Amendment of s 464 (Amendment of sch 2 (Dictionary))

Clause 105 amends section 464 of the MERCCP Act to make a consequential cross-referencing amendment to the definition of *last objection day* in Schedule 2 of the *Mineral Resources Act 1989*.

Replacement of s 473 (Amendment of s 271 (Criteria for deciding mining lease application))

Clause 106 omits and replaces the section 473 of the MERCPC Act that amends section 271 of the *Mineral Resources Act 1989*. Section 473 previously omitted section 271(d) instead of section 271(c). This clause corrects this error.

Insertion of new s 477A

Clause 107 inserts a new Schedule 1 into the *Mineral Resources Act 1989* which places conditions upon a person entering land under section 386V of the *Mineral Resources Act 1989* for boundary definition purposes.

Section 1 states the requirements for giving an entry notice to owners of land a person is proposing to enter for boundary definition purposes under section 386V of the *Mineral Resources Act 1989*.

Before entry the person entering the land under section 386V must give the owner of the land written notice of entry. If the owner cannot be easily be located, for example if they are overseas, then an occupier maybe given notice of entry.

Notice must be given at least 5 days before access is intended or a shorter time acceptable to the owner or occupier endorsed by them on the notice.

The chief executive may dispense with the requirement for the person entering land under section 386V to give notice to the owner or occupier if the chief executive is satisfied that to give a notice to them is not practical.

If the chief executive requires the person to publicly notify the proposed entry, the person must undertake public notification of entry as directed.

Section 2 requires a person proposing to enter restricted land for boundary definition purposes under section 386V of the *Mineral Resources Act 1989* to obtain the written consent of each owner or occupier of the land. Each owner or occupier may when giving consent attached conditions to this consent.

Consent cannot be withdrawn during the period stated in the written consent.

Section 3 requires a person proposing to enter occupied land at night under section 386V of the *Mineral Resources Act 1989* to obtain the written consent of the owner of the land. When giving consent the owner may impose conditions.

Where the land is owned by more than one party as either joint tenants or tenants in common, the consent of one owner is taken to be the consent of all owners.

If the owner cannot be easily located, for example if they are overseas, then an occupier may give consent to entry of occupied land at night.

Section 4 requires a person proposing to enter the surface of reserve land under section 386V of the *Mineral Resources Act 1989* to obtain the written consent of the owner of the reserve before entry.

Section 5 requires a person entering land under section 386V of the *Mineral Resources Act 1989* to obtain the written consent of an exploration permit holder when the land being entered is within 50 metres laterally of activities being carried out under an exploration permit.

Where the land to be entered is already subject to a mining claim, mineral development licence or mining lease or an application for a mining claim, mineral development licence or mining lease, the person entering under section 386V of the *Mineral Resources Act 1989* must obtain the written consent of the holder or applicant prior to entry.

Section 6 requires a person entering land under section 386V of the *Mineral Resources Act 1989* on land which is subject to a prospecting permit or a resource authority which not a mining tenement i.e. has been issued under a resource act other than the *Mineral Resources Act 1989* can do so, only if the activities do not adversely affect the holder of the resource authority.

Section 7 imposes a compensation liability on the part of the person entering land under section 386V of the *Mineral Resources Act 1989* to owner or occupier for:

- any damage caused;
- injury suffered; or
- loss incurred as a result of the activity.

Amendment of s 479 (Amendment of sch 2 (Dictionary))

Clause 108 amends the dictionary definition of other mining legislation to include the MERCPC Act. *The Mineral Resources Act 1989* contains several references to 'other mining legislation' mostly in the context of considering compliance in decision-making. As the MERCPC Act has relevant provisions that must be complied with that were previously part of the *Mineral Resources Act 1989*, this definition requires amendment to include reference to the MERCPC Act to maintain the existing framework in this regard.

Part 5 Provisions amendment other Acts

Division 1 Geothermal Energy Act 2010

Amendment of s 305 (Amendment of sch 2 (Dictionary))

Clause 109 amends section 305(1) of the MERCPC Act to clarify and update the removal of various definitions from the Dictionary at schedule 2 of the *Geothermal Energy Act 2010*. The removal of these definitions is a consequence of the repeal of provisions relating to the land access framework from the *Geothermal Energy Act 2010* by the MERCPC Act.

Section 305 also inserts a number of new definitions at subsection (1A).

Division 2 Petroleum and Gas (Production and Safety) Act 2004

Amendment of s 567 (Amendment of s 734E (What happens if a party does not attend))

Clause 110 amends section 567 of the MERCP Act to correct a cross-referencing error.

Amendment of s 613 (Insertion of new ch 2, pt 2, div 5, sdiv 1, hdg)

Clause 111 amends section 613 of the MERCP Act that inserts section 150B into the *Petroleum and Gas (Production and Safety) Act 2004*.

Section 613 of the MERCP Act provides, among other things, that the Minister's approval to carry out production testing past the 'end date' (further authority to prospect (ATP) production testing), for a petroleum well when it was in the area of an ATP, continues in force if the well is located in a petroleum lease (PL) that is granted from the area of this ATP in which the well was located.

Consequently, inserted section 150B provides for when this circumstance applies, being when the Minister has approved:

- the carrying out of further ATP production testing by an ATP holder for a petroleum well within an area; and
- the Minister grants the holder a PL under section 120 of the *Petroleum and Gas (Production and Safety) Act 2004* for the area, or a part of the area containing the petroleum well.

However, as a PL may also be granted from the area of an ATP under section 340 of the *Petroleum and Gas (Production and Safety) Act 2004*, that part of section 613 of the MERCP Act that inserts section 150B into the *Petroleum and Gas (Production and Safety) Act 2004*, is being amended to reflect this.

Insertion of new s 615A

Clause 112 inserts a new section 615A in to the MERCP Act. The new section 615A omits section 152 of the *Petroleum and Gas (Production and Safety) Act 2004*. This is as a consequence of sections 603 and 613 of the MERCP Act, that insert sections 71A to 71C and sections 150A to 150E into the *Petroleum and Gas (Production and Safety) Act 2004*.

While the MERCP Act has provided for the omission of section 73 of the *Petroleum and Gas (Production and Safety) Act 2004*, it has not provided for the omission of section 152 of the *Petroleum and Gas (Production and Safety) Act 2004*.

The omission of section 152 of the *Petroleum and Gas (Production and Safety) Act 2004* is required, otherwise upon commencement of section 613 there will be a conflict of requirements in relation to production or storage testing for a petroleum well within the area of a petroleum lease.

Insertion of new s 627A

Clause 113 inserts a new section 627A into the MERCPC Act. Section 627A omits section 404(2) of the *Petroleum and Gas (Production and Safety) Act 2004*. This omission is as a consequence of the MERCPC Act amending the *Petroleum and Gas (Production and Safety) Act 2004* so that, among other things, ‘transmission pipeline’ would no longer be defined.

The MERCPC Act also provided amendments to the *Petroleum and Gas (Production and Safety) Act 2004* that would require the construction or operation of a pipeline, that generally transports petroleum, fuel gas, produced water or prescribed storage gases and is not a distribution pipeline, to be authorised under a pipeline licence (PPL) under the *Petroleum and Gas (Production and Safety) Act 2004*.

While most references to ‘transmission pipeline’ have been omitted from the *Petroleum and Gas (Production and Safety) Act 2004* by amendments made in the MERCPC Act, section 404 of the *Petroleum and Gas (Production and Safety) Act 2004* has not been amended, even though a ‘transmission pipeline’ is referred to in this section.

Section 404(2) of the MERCPC Act provides that an area PPL cannot be granted for a transmission pipeline. This is problematic, because the *Petroleum and Gas (Production and Safety) Act 2004* will omit the definition of ‘transmission pipeline’ from the *Petroleum and Gas (Production and Safety) Act 2004*. Consequently, section 404(2) is being omitted from the *Petroleum and Gas (Production and Safety) Act 2004* by this amendment.

Note that the omission of section 404(2) from the *Petroleum and Gas (Production and Safety) Act 2004* does not necessarily mean that pipelines, that would have fitted the broad definition of a ‘transmission pipeline’, may now be authorised to be constructed or operated under an area PPL.

The Minister may still exercise the Minister’s discretion under section 410 of the *Petroleum and Gas (Production and Safety) Act 2004* to refuse to grant an area PPL, if the Minister is of the opinion that it will be granted for a type of pipeline that reflects what was the broader definition of a ‘transmission pipeline’.

Part 6 Minor amendments

Clause 114 inserts Schedule 1 which contains minor amendments to the MERCPC Act.