

# Resources and Other Legislation Amendment Bill 2021

## Explanatory Notes

### Short title

The short title of the Bill is the *Resources and Other Legislation Amendment Bill 2021*.

### Policy objectives and the reasons for them

The Resources and Other Legislation Amendment Bill 2021 (the Bill) aims to provide certainty to industry and community stakeholders and ensure the integrity of the tenure system by clarifying the legal standing of certain historically granted tenures, activities, and entitlements under the *Mineral Resources Act 1989* and *Petroleum Act 1923*.

The Bill also aims to reduce unnecessary expenditure and regulation in the context of significant impacts of the COVID-19 pandemic on the personalised transport industry by repealing the *Personalised Transport Ombudsman Act 2019*.

Additionally, the Bill aims to enhance the water restrictions compliance and enforcement framework by ensuring water restrictions can equitably be investigated and enforced across the South East Queensland region. It also ensures that water service providers have adequate protections for the non-disclosure of critical operational information related to their cyber security procedures and protocols.

### Achievement of policy objectives

#### *Mineral Resources Act 1989*

The proposed amendments to the *Mineral Resources Act 1989* achieve their objective by validating certain mining leases that were granted between the commencement of the *Mineral Resource Act 1989* and 2010, but which may have administrative deficiencies relating to either:

- the recommendation to the Governor-in-Council that an instrument of lease be issued; or
- the issuing of the actual instrument of lease.

These amendments are necessary to ensure certainty for the holders of these mining leases and ensure that they can continue to operate with confidence.

The amendments will have retrospective effect, but do not confer any new rights or obligations on any stakeholders. They only address a narrow administrative deficiency that might affect an otherwise validly granted mining lease and do not seek to validate any other issues that may be associated with individual granted mining leases.

### *Petroleum Act 1923*

The amendments to the *Petroleum Act 1923* address issues in relation to authorities to prospect and production leases granted under that Act.

The first issue relates to an ambiguity in the provisions relating to renewals of existing production leases granted under the *Petroleum Act 1923* which was identified as part of a matter that is currently before the Land Court of Queensland. This ambiguity relates to whether a production lease continues in force where a validly made application to renew the production lease has been made, but not decided, prior to the expiry of the production lease.

The *Petroleum Act 1923* contains provisions that allow for an authority to prospect to remain in force where an application to renew has been made, but not decided prior to its expiry. Similar provisions for production lease renewals exist in the more contemporary *Petroleum and Gas (Production and Safety) Act 2004*, however, the equivalent provisions for production lease renewals under the *Petroleum Act 1923* are not expressly provided. The Department of Resources has a long-standing administrative practice which allows decisions on validly made renewal applications to be made after the expiry of the production lease.

Amendments to the *Petroleum Act 1923* are proposed to clarify that a production lease with a validly made application for renewal under the *Petroleum Act 1923* continues in force until the application is decided or is otherwise resolved. These amendments are proposed to operate both retrospectively and prospectively, to provide certainty to all stakeholders and ensure the ongoing integrity and consistency of the tenure management framework.

The second issue relates to authorities to prospect that are subject to undecided applications for production leases under the *Petroleum Act 1923* immediately before 1 November 2021.

The provisions of the *Petroleum Act 1923* relating to authorities to prospect and production lease applications expire on 1 November 2021. Additionally, all authorities to prospect still in force immediately before 1 November 2021 expire on that day. The intent was, from 1 November 2021, all authorities to prospect and new production leases would be administered under the *Petroleum and Gas (Production and Safety) Act 2004*.

However, there is currently no transitional provision provided for authorities to prospect that are subject to applications for a production lease under the *Petroleum Act 1923*, but which remain undecided on 1 November 2021. There is also no transitional provision to decide applications for production leases under the *Petroleum Act 1923* which remain undecided on 1 November 2021.

The Department of Resources is aware of a number of these authorities to prospect with associated production lease applications. In the absence of legislative intervention, these authorities to prospect will expire and the associated production lease applications will lapse if they remain undecided on 1 November 2021. If this occurs, the areas would then return to the State.

To prevent this from occurring, it is proposed to amend the *Petroleum Act 1923* to provide that these authorities to prospect will continue in force if their applications for production leases remain undecided on 1 November 2021. It is also proposed to clarify that the associated production lease applications may be decided after 1 November 2021 if required.

For the avoidance of doubt, any authority to prospect under the *Petroleum Act 1923* that is not subject to an application for a production lease will expire on 1 November 2021.

*Personalised Transport Ombudsman Act 2019 and Transport Operations (Passenger Transport) Act 1994*

The proposed repeal of the *Personalised Transport Ombudsman Act 2019* achieves the objective of reducing unnecessary government expenditure and ensures that there is no unnecessary regulatory burden placed on the personalised transport industry while the sector recovers from the impacts of the COVID-19 pandemic.

The former Public Works and Utilities Committee recommended establishing an ombudsman, or equivalent entity, with the responsibility for dealing with disputes in the personalised transport industry as part of its consideration of the *Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017*. The Queensland Government supported the recommendation and committed to establishing an ombudsman, or equivalent entity, for the personalised transport industry.

In 2019, the government delivered on its commitment by providing for the establishment of the Personalised Transport Ombudsman through the *Personalised Transport Ombudsman Act 2019*. The Personalised Transport Ombudsman was expected to be appointed in 2020 but the appointment and commencement of the legislation was deferred due to the impacts of the COVID-19 pandemic on the personalised transport industry.

The Department of Transport and Main Roads has since reviewed the objectives of the *Personalised Transport Ombudsman Act 2019*, focusing on issues raised by the former Transport and Public Works Committee and industry submissions during committee consideration (the Review). The key issues raised included:

- the exclusion period for industry participants to be eligible to hold the office of the Personalised Transport Ombudsman;
- the Personalised Transport Ombudsman's limited powers to make binding decisions; and
- whether there were sufficient mechanisms to protect consumer rights and the role of the Personalised Transport Ombudsman in protecting them.

The Review also considered expanding the Personalised Transport Ombudsman's remit.

However, the Review found that appropriate mechanisms already exist to effectively deal with disputes in the personalised transport industry, including customer complaints lines and existing services provided by other State and Commonwealth agencies and bodies, including Workplace Health and Safety Queensland, the Fair Work Ombudsman or Fair Work Commission, the Office of Fair Trading, the Australian Competition and Consumer Commission and the Australian Taxation Office.

Government considered the appropriateness of introducing new regulations while the sector is recovering from the impacts of the COVID-19 pandemic. The Review considered the costs to government of funding of the Personalised Transport Ombudsman, and determined that the costs would outweigh any potential benefits to the personalised transport industry and users of personalised transport.

The repeal of the *Personalised Transport Ombudsman Act 2019* responds to industry views and results in cost savings for the government. The Department of Transport and Main Roads will establish channels for mediation of personalised transport matters and enhance existing complaints frameworks to ensure systemic issues which may arise are monitored on an ongoing basis.

#### *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*

The *Water Supply (Safety and Reliability) Act 2008* enables water service providers to set restrictions for the volume of water, hours of use and the way water is used. It is an offence to contravene a water service provider's water restriction with penalties attached.

The Bill delivers the policy objectives by providing investigation and enforcement powers for water restrictions to the distributor-retailers in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*. The powers available to distributor-retailers will align with powers local government water service providers already have under the *Local Government Act 2009*. Equitable powers between all water service providers will ensure consistency in the imposition, investigation and enforcement of water restrictions.

Specifically the Bill gives distributor-retailers, Urban Utilities and Unitywater, appropriate powers to support the implementation, monitoring, investigation and enforcement of water restrictions in their geographic service areas.

#### *Water Supply (Safety and Reliability) Act 2008*

In 2017, the Queensland Audit Office conducted an audit to assess water service providers' ability to identify and manage the risks associated with monitoring, treating and distributing drinking water in their service areas. To action the recommendations from the audit, the water supply regulator (the Chief Executive responsible for administering the *Water Supply (Safety and Reliability) Act 2008*) issued a report requirement notice to require cyber security information and metrics to be included in key documents, such as a water service provider's drinking water quality management plan and annual reporting requirements.

In September 2019, when the first annual reports with the new cyber security information were required, it was identified there was significant risk to urban water security throughout Queensland. The risk was the result of key water service provider documents, which now contained highly sensitive cyber security information, being required to be made publicly available under sections 575 and 575A of the *Water Supply (Safety and Reliability) Act 2008*.

The Bill delivers on the policy objective by removing the current requirement for water service providers to make publicly available highly sensitive cyber security information and reporting metrics.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

## Estimated cost for government implementation

Implementation of the proposed amendments to the *Mineral Resources Act 1989* and the *Petroleum Act 1923* will not present additional administrative or capital costs to government. Any implementation costs will be absorbed from existing resources.

The proposed repeal of the *Personalised Transport Ombudsman Act 2019* will provide cost savings for government of approximately \$5 million over three years.

There are no additional costs to government to implement the water restriction enforcement amendments to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*. The water restrictions framework already exists. The proposed amendments refine the existing framework to ensure it is robust and enforceable. The changes focus on ensuring consistency in when and how the restriction schedule is triggered and that all providers are required, when notified, to implement and enforce the schedule within their service areas.

There are no additional costs to government to implement the amendments to water service provider reporting requirements under the *Water Supply (Safety and Reliability) Act 2008*.

## Consistency with fundamental legislative principles

The proposed amendments relating to validating certain mining leases under the *Mineral Resources Act 1989* and production lease renewals under the *Petroleum Act 1923* potentially engage the fundamental legislative principle outlined in section 4(3)(g) of the *Legislative Standards Act 1992* in that they have retrospective effect and could be considered by some to have adverse effect on their rights.

Whilst the amendments could be considered to breach this fundamental legislative principle by adversely affecting rights and liberties, or imposing obligations, retrospectively, the actual effect is:

- to clarify that existing rights and obligations of mining lease holders are not impacted by a procedural deficiency; and
- to confirm the validity of a long-standing administrative practice in relation to the renewal of production leases under the *Petroleum Act 1923*.

Neither of these proposed amendments confer new rights or obligations on stakeholders and merely confirm that existing rights and obligations are not impacted by procedural deficiencies or legislative ambiguity. As such it is considered that the proposed amendments do not adversely affect rights and liberties, or impose obligations, retrospectively.

The amendments to the *Transport Operations (Passenger Transport) Act 1994* and to repeal the *Personalised Transport Ombudsman Act 2019* are consistent with fundamental legislative principles.

The Bill also inserts a new section 53E to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* which provides for compliance powers of entry for water restriction officers.

The new compliance powers include a right to enter: an open place of business the subject of a water approval, an open public place, where the occupier consents or by a warrant. These powers are consistent with the existing powers in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009* for discharge officers and connection officers. Appropriate limitations have been placed on these powers of entry. They do not include the power to enter a building or structure used for residential purposes unless there is a warrant.

## Consultation

The proposed amendments to the *Mineral Resources Act 1989* and the *Petroleum Act 1923* have not been released for consultation. The Parliamentary Committee process will provide an appropriate forum for stakeholders to raise issues in relation to the amendments.

Industry consultation on the repeal of the *Personalised Transport Ombudsman Act 2019* was undertaken with the following key personalised transport stakeholders:

- Taxi Council of Queensland
- Limousine Association of Queensland
- Limo Action Group
- Uber
- Transport Workers' Union.

These personalised transport stakeholders were supportive of the proposed repeal but provided feedback that access to mediation services for industry participants is important.

Extensive community and industry consultation had also previously occurred during the drafting and committee consideration of the Bill for the *Personalised Transport Ombudsman Act 2019*.

Key feedback from industry and stakeholders during this consultation was that the Personalised Transport Ombudsman would be ineffective due to its limited powers in making and enforcing binding decisions, and in reviewing government policies or decisions. This was despite the Personalised Transport Ombudsman's prescribed powers being consistent with a number of other ombudsmen schemes, such as the Queensland Ombudsman. Although the Personalised Transport Ombudsman could reduce costs, time and stress in providing the timely resolution of disputes, these savings may be minimal if there is limited engagement by customers and industry due to the Personalised Transport Ombudsman's limited powers.

Consultation was undertaken with both Seqwater and the council-owned distributor-retailers, Urban Utilities and Unitywater on the amendments to the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*. There was unanimous support for the proposal to consistently apply, investigate and enforce water restrictions in South East Queensland.

Consultation was undertaken with 84 drinking water service providers, the Queensland Water Directorate and the Local Government Association of Queensland on the removal of requirements to make highly sensitive cyber security information publicly available. There is broad support for the removal of the requirement to include this information in publicly available drinking water documents and reports. There is no change to the requirement for cyber security information to be reported to the water supply regulator.

## **Consistency with legislation of other jurisdictions**

The amendments are specific to the legislative framework of the State of Queensland, and are not uniform with or complementary to legislation of the Commonwealth or another State.

## Notes on provisions

### Part 1 – Preliminary

*Clause 1* provides that, when enacted, the Bill will be cited as the *Resources and Other Legislation Amendment Act 2021*.

### Part 2 – Amendment of Mineral Resources Act 1989

*Clause 2* provides that Part 2 amends the *Mineral Resources Act 1989*.

*Clause 3* inserts new section 334ZOA into the *Mineral Resources Act 1989*. Section 334ZOA validates the grant of certain mining leases between 1989 and 2010 where either or both of the following administrative deficiencies apply:

- i. the Minister did not comply with the requirement under former section 271(1)(a) to recommend to the Governor in Council that an instrument of lease be issued to the applicant for the lease with respect to the whole or part of the land the subject of the application for the lease; or
- ii. an instrument of lease was not issued to the holder of the lease.

Any mining lease granted with either or both of these administrative deficiencies is taken to be, and always to have been, as valid as they would have been if both requirements had been met.

New section 334ZOA(3)(a) provides that anything done under or in relation to a mining lease is, and was, as valid as if both requirements had been met.

New section 334ZOA(3)(b) provides that anything required or allowed to be done in relation to an instrument of lease issued for a mining lease that was not done is, and was, as valid as if both requirements had been met.

New section 334ZOA(3)(c) clarifies that the rights and liabilities of all persons are taken to be, and to have been, for all purposes the same as they would have been if both requirements had been met.

### Part 3 – Amendment of Petroleum Act 1923

*Clause 4* provides that Part 3 amends the *Petroleum Act 1923*.

*Clause 5* insert new sections 45A and 45B into the *Petroleum Act 1923*. New section 45A clarifies that a production lease under the *Petroleum Act 1923* remains in force in the circumstance where a valid application for renewal has been made under section 45 but has not been decided prior to the expiry date for the lease.

Despite the ending of the term, the production lease remains in force until the start of any renewed term, a refusal of the application takes effect, the applicant withdraws the application, or the lease is cancelled under the *Petroleum Act 1923*.



New section 45A(3) works with new section 45B to clarify when the term of any renewed production lease commences if the previous lease was continued in force under new section 45A. It provides that if the production lease is renewed after the date it expired, new section 45A(2) is considered to have never applied for the period from the end of the lease to the time it was renewed. This is because under new section 45B, a production lease that is renewed after the expiry date is taken to commence immediately after the previous term.

New section 45B(2) provides that if the application for the renewed production lease is decided before the term stated in the lease that is being renewed, the term of the renewed lease starts from the end of the previous term.

New section 45B(3) provides that if the application for the renewed production lease is decided after the term stated in the lease that is being renewed, the term of the renewed lease starts immediately after the previous term. However, the conditions for the renewed production lease do not start until the lease holder is given notice of them and the conditions of the previous lease continue to apply until such time as the notice is given.

*Clause 6* inserts new section 52B into the *Petroleum Act 1923*. This new section addresses the lack of transitional provisions for authorities to prospect that are subject to production lease applications validly made under section 40 of the *Petroleum Act 1923*, but which remain undecided on 1 November 2021. It is intended to ensure that these authorities to prospect do not expire and the associated production lease applications can be decided, if required, after 1 November 2021.

New section 52B provides that, if a valid application for a production lease is made over an authority to prospect, and the application remains undecided before the end of 1 November 2021, Part 4 and section 40 of the *Petroleum Act 1923* continue to apply to the authority to prospect despite their expiry on 1 November 2021. Section 40 continues to apply so that the Minister may grant any undecided production lease applications after 1 November 2021.

It also clarifies that section 40A continues to apply to the authority to prospect so that it remains in force until either the start of the term of the production lease that has been applied for, or the application is withdrawn by the applicant.

*Clause 7* inserts new Part 18 into the *Petroleum Act 1923*. This Part contains new sections 210 and 211 which clarify that the new sections 45A and 45B apply to renewals of production leases under the *Petroleum Act 1923* made before the commencement of new sections 45A and 45B, whether the lease was granted, an application for the renewal of the lease was made, or the lease was renewed, before or after the commencement.

This retrospective application is necessary to provide certainty to holders of production leases under the *Petroleum Act 1923* that any renewals decided before the commencement of new sections 45A and 45B were validly made even where the renewal occurred after the expiry date for the lease.

## **Part 4 – Amendment of South-East Queensland Water (Distribution and Retail Restructuring) Act 2009**

*Clause 8* provides that Part 4 amends the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

*Clause 9* amends the heading of Chapter 2C to include water restrictions officers as authorised persons.

*Clause 10* amends Chapter 2C Part 1 heading to introduce water restriction officers as authorised persons in addition to discharge officers and water connection officers.

*Clause 11* amends section 53CK to include a water restriction officer as authorised persons in addition to discharge officers and water connection officers.

The amendment introduces a new type of authorised officer for distributor-retailer water service providers with the specific role and function to monitor, investigate and enforce non-compliance with water restrictions within their service area.

*Clause 12* inserts new section 53CLB that sets out the functions of water restrictions officers to enable them to monitor, investigate and enforce water restrictions within their service area.

*Clause 13* inserts new Chapter 2C, Part 6, which provides for powers of water restriction officers. This Part contains new sections 53E and 53F.

New section 53E sets out the general powers water restrictions officers have in order to enter a place, but not any building or structure where a person resides, for the purpose of monitoring, investigating and enforcing water restrictions.

New section 53F provides for Chapter 2 Part 2 Division 3 to 8 to apply to water restrictions officers. This includes, but is not limited to, powers to enter a place under an approved inspection plan; enter a place with consent; enter under a warrant; conduct a range of investigation activities at the place to substantiate whether non-compliance with a water restriction has occurred, including testing, sampling, taking photographs or filming; compel a person suspected of contravening a water restriction to provide their personal details and to endeavour to minimise the disruption to the place entered. The water restrictions officer is not empowered to enter any building or structure where a person resides.

*Clause 14* inserts new definitions for a water restrictions officer and for a distributor-retailer in certain circumstances.

## **Part 5 - Amendment of Transport Operations (Passenger Transport) Act 1994**

*Clause 15* provides that Part 5 amends the *Transport Operations (Passenger Transport) Act 1994*.

*Clause 16* amends the definition of relevant offence in Schedule 3 of the *Transport Operations (Passenger Transport) Act 1994* as a consequence of the repeal of the *Personalised Transport*

*Ombudsman Act 2019*. A relevant offence for Chapter 11, Part 4B or 4C of the *Transport Operations (Passenger Transport) Act 1994* will include an offence against section 143AC in force before the section was repealed on 9 March 2020.

## **Part 6 - Amendment of Water Supply (Safety and Reliability) Act 2008**

*Clause 17* provides that Part 6 amends the *Water Supply (Safety and Reliability) Act 2008*.

*Clause 18* amends section 575. The amendments provide that if a service provider removes cyber security information from a document listed in section 575(1) the service provider is still compliant with that subsection. Removing the requirement for a service provider to make cyber security information available for inspection and purchase improves the level of protection afforded to service providers against potential, malicious security threats.

Examples of ways cyber security may be removed from a document include:

- i. omitting the cyber security information from the document; and
- ii. redacting the cyber security information from the document.

*Clause 19* amends section 575A. The amendment provides that if a service provider removes cyber security information from a document listed in section 575A(1) the service provider is still compliant with that subsection. Removing the requirement for a service provider to publish cyber security information improves the level of protection afforded to service providers against potential, malicious security threats.

Examples of ways cyber security may be removed from a document include:

- i. omitting the cyber security information from the document; and
- ii. redacting the cyber security information from the document.

*Clause 20* amends Schedule 3 to insert a new definition for cybersecurity information. Cybersecurity information means information that could be used to interfere with, damage, disrupt, or destroy:

- i. an electronic system owned or controlled by the State or a service provider, including for example, a system used for the delivery of a sewerage service or a water service; or
- ii. data owned or controlled by the State or a service provider.

## **Part 7 – Repeal**

*Clause 21* repeals the *Personalised Transport Ombudsman Act 2019*. This will ensure that a Personalised Transport Ombudsman cannot be appointed, and the Office of the Personalised Transport Ombudsman is not established.