

North Stradbroke Island Protection and Sustainability and Other Acts Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the North Stradbroke Island Protection and Sustainability and Other Acts Amendment Bill 2015.

Policy objectives and the reasons for them

The main objective of the Bill is to effectively repeal the amendments made to the *North Stradbroke Island Protection and Sustainability Act 2011* by the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013* to substantively phase out sand mining by 2019.

North Stradbroke Island is the second largest sand island in the world and has a diversity of habitats including mangroves, wetlands, endangered heathlands, freshwater lakes, rainforests, old growth forests and woodlands. In addition, the island's wetlands, foreshore swamps and interconnecting land are listed as part of the Moreton Bay Ramsar site, acknowledging the rich biodiversity of the area and the role it plays in providing a habitat for vulnerable, endangered and near threatened species. Threatened species, such as the dugong and grey nurse shark, rest and feed in nearby waters.

The ancient topography of the island preserves evidence of climatic changes over thousands of years along with remnants of some of the earliest human habitation in South East Queensland.

The Quandamooka People ('people of the bay') are the traditional owners of land and waters on and surrounding North Stradbroke Island. North Stradbroke Island is also known as Minjerribah. The Quandamooka People's relationship with the island dates back thousands of years and as such the island is rich in their traditional culture. Archaeological sites show evidence of generations of the Quandamooka People using the island and the rich surrounding waters for food, work and recreation.

In July 2011, the Federal Court recognised the Quandamooka People's native title rights and interests over land and waters on and surrounding North Stradbroke Island and some islands in Moreton Bay through a native title consent determination. As a result of the determination, the Quandamooka People have non-exclusive native title rights over land under mining leases on North Stradbroke Island but these rights are suppressed while the mining leases are in force.

The Quandamooka Yoolooburrabee Aboriginal Corporation is the agent for the Quandamooka People's native title rights and interests.

Sand has been mined at North Stradbroke Island since 1949. Currently, there is only one mining company operating on the island - Sibelco Australia Limited. Its operation involves 19 mining leases, of which seven leases are active at three mines:

- Yarraman Mine (ML 1109)
- Vance Mine (ML 1108, ML 1124 and ML 7064)
- Enterprise Mine (ML 1105, ML 1117 and ML 1120).

In 2011, the former Bligh Government introduced the original framework under the *North Stradbroke Island Protection and Sustainability Act 2011* intended to substantially end mining on North Stradbroke Island by the end of 2019. Specifically, the mining interest for Yarraman Mine was to end in 2015 (which aligns with the mining operator's intentions) and Enterprise Mine was to cease operation in 2019. The expiration of the leases for Vance Mine (2025) were not amended by the legislation as the mine had a relatively small annual footprint. However, the legislation prevented these leases from being renewed to extend mining at Vance Mine past 2025.

The original *North Stradbroke Island Protection and Sustainability Act 2011* also included a restricted mine path for Enterprise Mine which limited mineral extraction¹ to a smaller area, allowing consistent mineral sand extraction until the end of 2019 (based on 2011 rates of production) whilst avoiding impacts to areas of high conservation value. This map was amended through the mechanisms provided in the legislation on 8 July 2011.

The amended restricted mine path map was annexed to the environmental authority for Enterprise Mine in reference to a condition that specified that: dredge mining could only occur within the bounds of the "Dredge Path" area identified on the map; dry mining could only occur within the bounds of the "Dry Mining" area and/or within the bounds of the "Dredge Path" area identified on the map; and disturbance not already made before the commencement of the *North Stradbroke Island Protection and Sustainability Act 2011* could not extend outside the bounds of the areas shown as "Limit of Disturbance" on the map.

The *North Stradbroke Island Protection and Sustainability Act 2011* also facilitated the staged creation of a national park to be jointly managed by the State and the Quandamooka People. The Naree Budjong Djara National Park now covers approximately 50 per cent of North Stradbroke Island.

In November 2013, the former Newman Government passed the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013*. These amendments changed the phase out of mining on North Stradbroke Island by affecting the leases for the Enterprise and Yarraman Mines meaning that:

¹ Note: the legislation refers to "winning the mineral from the place where it occurs" being limited to within the restricted mine path. The term "winning mineral from the place where it occurs" is a technical term used in the *Mineral Resources Act 1989*. It is not defined in the Act, but essentially to "win" a mineral is to make it available or accessible to be removed from the land. Consequently, for the purposes of these explanatory notes, we have referred to 'mineral extraction' to distinguish this from mining activities which only involve decommissioning and rehabilitating the mine.

- the mining operator could seek multiple renewals (from 2019) of the three leases at Enterprise Mine to enable mining on these leases until 2035. In 2035, the leases could be renewed again for 5 years with a non-winning condition (i.e. no new mineral extraction) to allow for mine site rehabilitation
- the restrictions on the mine path at the Enterprise Mine were removed and the non-winning condition was deleted, with the environmental authority amended to reflect these changes and annexed to the *North Stradbroke Island Protection and Sustainability Act 2011*
- the mining operator could renew its lease when operations ceased at Yarraman Mine in 2015, but only with a non-winning condition to enable rehabilitation of the mine site.

Neither the original *North Stradbroke Island Protection and Sustainability Act 2011* or the amendments in 2013 made changes to the operation of mining leases at Vance Mine due to its relatively small annual footprint. Sibelco Australia Limited has indicated that mineral extraction on the lease area has ended. However, the mining leases and environmental authorities for Vance Mine allow for mining at this site until 2025, so the mining operator can choose to re-activate the Vance Mine if it becomes economically viable to do so.

Rehabilitation access

An important part of substantially ending mining in 2019 is to ensure that former mine sites are rehabilitated. While the main policy objective is to ensure that mineral extraction substantially ends in 2019, it is also a policy objective of the Bill to ensure that there is certainty of access to the sites for rehabilitation and environmental management after the mining leases have ended. Certainty is required so that environmental authority holders can effectively plan and carry out necessary works to comply with their obligations in a timely way.

The environmental authority provides the environmental conditions for mining under the *Environmental Protection Act 1994* including rehabilitation requirements. The Department of Environment and Heritage Protection (the department) has published a guideline which sets out the department's expectations with respect to rehabilitation (EM1122). The rehabilitation goals specified in EM1122 were developed from the ecologically sustainable development policy framework, especially in relation to intergenerational equity, the polluter pays principle, protection of biodiversity and maintenance of essential ecological processes. The four general rehabilitation goals require rehabilitation of areas disturbed by the operation to result in sites that are:

- safe to humans and wildlife
- non-polluting
- stable
- able to sustain an agreed post-mining land use.

The rehabilitation obligations in the environmental authority continue beyond the end of mineral extraction and, usually, mining leases continue to be renewed until rehabilitation has been finalised and the environmental authority can be surrendered. This is because the environmental authority conditions the carrying out of the activity, but does not provide any right of access to the land where the activity is being carried out. Therefore, where the tenure has ended there is no right of access to complete rehabilitation and environmental management works. Authorisation of access must be gained by another method, for example

by the environmental authority holder obtaining an entry order from a Magistrates Court to enter the land to meet their environmental requirements under section 575 of the *Environmental Protection Act 1994* or a mechanism under other legislation. These alternatives can be complicated and may not provide timely access especially in the case where native title rights must be considered.

For North Stradbroke Island, in addition to delivering necessary environmental management outcomes, the rehabilitation of the former mine sites would support the staged economic transition for the island and could be used to provide retraining opportunities for mine employees as the island moves towards more sustainable, nature-based industries.

While amendments are necessary to provide certainty of access to land on North Stradbroke Island, it is the intention that any amendment should apply broadly to allow access for rehabilitation and environmental management for sites across Queensland meeting the defined criteria.

Achievement of policy objectives

The policy is to be achieved by substantively returning the *North Stradbroke Island Protection and Sustainability Act 2011* to its original form and removing the amendments made by the *North Stradbroke Island Protection and Sustainability And Another Act Amendment Act 2013*, with the exception of:

- amending the restricted mine path map for Enterprise Mine to reflect the current state of mining on the site
- amending the end date for ML 1109 so that it ends 12 months after commencement
- adding additional statutory conditions for Enterprise Mine
- amending the requirements around the ability of the Minister to amend the restricted mine path map.

Making these amendments will ensure that mining on North Stradbroke Island substantially ends by 2019.

Rehabilitation access

In terms of the policy objective to permit access to the sites for rehabilitation after mining leases have ended, a new power to grant an authorisation has been inserted into the *Mineral Resources Act 1989* which permits an authorisation to be granted to enable access to the land to meet the rehabilitation requirements under the *Environmental Protection Act 1994*. This authorisation builds upon the existing framework in chapter 13, part 4 of the *Mineral Resources Act 1989* for rehabilitation activities at abandoned mines by introducing a new type of authorisation that applies to rehabilitation required under an environmental authority.

The policy objective of this new authorisation is that it should not replace existing mechanisms, rather it should only be used to enable access where the mining lease (or other tenement) is not able to be renewed for some reason. Therefore the authorisation is restricted in design but ensures land access is available so the rehabilitation requirements under the environmental authority are able to be met. It responds to the desire of North Stradbroke Island's native title holders to regain the greatest possible use and enjoyment of their traditional lands, while providing the authority needed for an ex-leaseholder to access land to fulfil its rehabilitation obligations.

The Bill also makes consequential amendments to the *Coal Mining Safety and Health Act 1999*, the *Environmental Protection Act 1994*, the *Land Court Act 2000* and the *Mining and Quarrying Safety and Health Act 1999* as a result of the amendments to the *Mineral Resources Act 1989*.

Alternative ways of achieving policy objectives

For the amendments to the *North Stradbroke Island Protection and Sustainability Act 2011*, and the consequential amendments to the *Environmental Protection Act 1994* and the *Land Court Act 2000*, there are no other viable alternatives that would achieve the policy objectives other than the amendments in the Bill.

Rehabilitation access

A number of alternatives were considered as options to ensure that there was certainty of access to the sites for rehabilitation after the mining leases have ended.

The government was seeking an option for access for rehabilitation which would meet the following policy objectives:

- meeting the government's election commitments to return the phase out of mining to 2019 and to repeal the 2013 amendments to the *North Stradbroke Island Protection and Sustainability Act 2011*
- consideration of the concerns of stakeholders (including native title holders)
- the environmental authority holder has certainty of access to the land
- the holder can complete the rehabilitation in a timely manner (i.e. not be delayed by lengthy native title negotiations prior to accessing the site or other delays in access)
- liability to the State for compensation is minimised.

The grant of a permit to occupy under the *Land Act 1994* or an authorisation under the *Nature Conservation Act 1992* were considered as an option for access to unallocated State land (USL) or protected area estate for the completion of rehabilitation activities required under the environmental authority. These types of authorisation are contemplated by the Indigenous land use agreement (ILUA) for North Stradbroke Island. However, the ILUA does not apply to all of the mining leases on the Island and therefore, a new ILUA would need to be registered to cover the gap. The negotiation and registration of an ILUA is not a simple task, and it is not uncommon for this process to take years. Therefore, this option would not meet the policy objective of providing certainty of access for the environmental authority holder to complete the rehabilitation in a timely manner.

Amending the *North Stradbroke Island Protection and Sustainability Act 2011* instead of the *Mineral Resources Act 1989* was also considered. However, if such a mechanism did not apply generally to freehold tenure in other areas of the State, it would arguably be invalid with respect to native title. Consequently, it would not create any benefits above the use of the permit to occupy under the *Land Act 1994* or an authorisation under the *Nature Conservation Act 1992* (i.e. this option would not meet the policy objective of providing certainty of access for the environmental authority holder to complete the rehabilitation in a timely manner).

A right of access for rehabilitation under the *Environmental Protection Act 1994* was considered as an alternative to amending the *Mineral Resources Act 1989*. However, a right

of access has no timeframe (i.e. because it is a right and not an approval). Consequently, it would be very difficult to manage compliance and enforcement activities to ensure that the procedural and natural justice requirements are being complied with. This option was therefore not the preferred option.

The preferred option presented by this Bill is the amendments to the abandoned mines chapter of the *Mineral Resources Act 1989* (chapter 13, part 4) to create an authorisation that ensures land access for rehabilitation purposes. This option also has the advantage of ensuring that the work health and safety arrangements that would normally apply on a mining lease will continue to apply to work under the authorisation.

In addition, the alternative of not making consequential amendments to the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* was considered. Although the *Coal Mining Safety and Health Act 1999* or the *Mining and Quarrying Safety and Health Act 1999* apply to all operational mine sites in Queensland, there was doubt about whether they would apply to a mine site that has been decommissioned and is being rehabilitated without current tenure.

If these Acts do not apply, then the *Work Health and Safety Act 2011* applies to the work site (i.e. because it applies to all work sites which are not excluded by the operation of specific legislation such as the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*). In the absence of tenure, the distinction between an operational mine site (which is being decommissioned) and a mine site under rehabilitation is not clear. That is it is not clear at what point a mine site would cease to be operational and start to be in rehabilitation. This would create uncertainty about which health and safety legislation applied at any point in time. Consequently, it was considered to be the better option to clarify the legislation to ensure that the *Coal Mining Safety and Health Act 1999* or the *Mining and Quarrying Safety and Health Act 1999* applied to a former mine that is the subject of a *Mineral Resources Act 1989* authorisation to allow access for rehabilitation purposes.

Estimated cost for government implementation

While implementation of the Bill itself will not incur additional costs, the government has committed \$20 million to transition the economy of North Stradbroke Island away from mining and towards a more sustainable future.

It is anticipated that the authorisation for rehabilitation activities under the *Mineral Resources Act 1989* would only be used where other options would be inappropriate or not provide a timely outcome. Consequently, the implementation of these amendments is not expected to be significant and can be managed within existing departmental budgets.

Consistency with fundamental legislative principles

The Bill has been examined for compliance with the fundamental legislative principles outlined in section 4 of the *Legislative Standards Act 1992*. Other than those issues identified below, it is considered to have sufficient regard to the rights and liberties of individuals and the institution of Parliament.

Where fundamental legislative principles are raised, but not breached, in the content of a provision the issues are addressed in the Notes of Provisions for that provision.

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively – *Legislative Standards Act 1992*, section 4(3)(g)

The amendment to the *North Stradbroke Island Protection and Sustainability Act 2011* in clause 6 of the Bill reduces the term of a renewed mining lease (ML 1109). This amendment is retrospective since it changes the term of the renewed mining lease after it was approved.

This breach is justified because reducing the term of ML 1109 will ensure that the objective of this Bill (i.e. removing the 2013 amendments) is achievable and provides a transitional period to allow uninterrupted access to ML 1109 for rehabilitation purposes.

The effect of this breach will be minimised because under the *North Stradbroke Island Protection and Sustainability Act 2011* any renewal of ML 1109 beyond 2015 is subject to a requirement that there is no winning of a mineral from the area of the lease. Therefore the reduced term of the lease does not impact on the authority of the lease holder to win minerals. Furthermore, to the extent that the renewed lease would have provided a right of access to the land to complete rehabilitation works, this Bill includes an alternative authorisation under chapter 13, part 4 of the *Mineral Resources Act 1989* to provide access for that purpose.

It is further intended that the effect of this breach be minimised allowing the continuation of ML 1109 for 12 months after commencement to give Sibelco Australia Limited an advance period to take account of the effect of the Bill. Sibelco Australia Limited was consulted on the intent to allow continued uninterrupted access to ML 1109 for rehabilitation purposes following the early expiry of ML 1109, and informed that access could be granted via an authorisation under chapter 13, part 4 of the *Mineral Resources Act 1989*.

Legislation should not provide for the compulsory acquisition of property without fair compensation – *Legislative Standards Act 1992*, section 4(3)(i)

The amendment to the *North Stradbroke Island Protection and Sustainability Act 2011* in clause 6 of the Bill reduces the term of a renewed mining lease (ML 1109). Under section 6 of the *North Stradbroke Island Protection and Sustainability Act 2011*, no compensation is payable in relation to the operation or effect of the amendments. Consequently, this amendment breaches the fundamental legislative principle that legislation should not provide for the compulsory acquisition of property without fair compensation.

This breach is justified because reducing the term of ML 1109 will ensure that the objective of this Bill (i.e. removing the 2013 amendments) is achievable and provides a transitional period to allow uninterrupted access to ML 1109 for rehabilitation purposes. The effect of this breach will be minimised because under the *North Stradbroke Island Protection and Sustainability Act 2011* any renewal of ML 1109 beyond 2015 is subject to a requirement that there is no winning of a mineral from the area of the lease. Therefore the reduced term of the lease does not impact on the authority of the lease holder to win minerals. Furthermore, to the extent that the renewed lease would have provided a right of access to the land to complete rehabilitation works, this Bill includes an alternative authorisation under chapter 13, part 4 of the *Mineral Resources Act 1989* to provide access for that purpose.

It is further intended that the effect of this breach be minimised allowing the continuation of ML 1109 for 12 months after commencement to give Sibelco Australia Limited an advance period to take account of the effect of the Bill. Sibelco Australia Limited was consulted on the intent to allow continued uninterrupted access to ML 1109 for rehabilitation purposes following the early expiry of ML 1109, and informed that access could be granted via an authorisation under chapter 13, part 4 of the *Mineral Resources Act 1989*.

In addition, the amendments to the *North Stradbroke Island Protection and Sustainability Act 2011* in clauses 9 and 10 of the Bill reduce the available term of, and conditions associated with, renewals of particular mining leases (i.e. because the ability to renew the mining leases is being removed, and ML 1120 is again subject to a non-winning condition which prevents new mineral extraction activities).

Consequently, these amendments also raise the fundamental legislative principle that legislation should not provide for the compulsory acquisition of property without fair compensation. The former Scrutiny of Legislation Committee commented that the enactment of legislation interfering with pre-existing rights does not normally give rise to a legal claim for compensation. In addition, the holder of a mining lease does not have a right to renewal – either under the *Mineral Resources Act 1989* or the *North Stradbroke Island Protection and Sustainability Act 2011*. The holder makes an application for renewal which can only be granted in certain circumstances.

In any event, the amendments are justified because substantially ending mining on the island by 2019, instead of 2035, is a core objective of this Bill and is necessary to balance the rights of the mining lease holder against the rights of the native title holders.

In addition, clause 13 of the Bill amends the environmental authority of the Enterprise Mine to reduce the area which can be used for mineral extraction (i.e. by reinstating the restricted mine path). The restricted mine path does not impact on the area of the mining lease and other activities associated with mining (e.g. rehabilitation) can still be carried out in accordance with the current conditions of the environmental authority. In addition, the restricted mine path is substantially the same as the restricted mine path under the original *North Stradbroke Island Protection and Sustainability Act 2011* and the changes that have been made reflect the mining operator's current operating footprint. Sibelco Australia Limited was consulted on the department's intent to reinstate the restricted mine path.

Legislation should have sufficient regard to the rights and liberties of individuals and Aboriginal tradition and Island custom – *Legislative Standards Act 1992*, sections 4(2)(a) and 4(3)(j)

The amendments to the *Mineral Resources Act 1989* (in clauses 24 to 34 of the Bill) give the chief executive power to authorise the holder of an environmental authority to enter land for the purposes of carrying out rehabilitation and environmental management activities required under the environmental authority. The amendments in clauses 18, 19, 36 and 37 clarify the responsibilities of the holder of such an authorisation in relation to particular coal mines and abandoned mine sites. As the authorisation can be granted over land which is subject to native title, it could affect the rights of traditional owners on that land.

However, while the authorisation does give the holder of the environmental authority a right to enter land owned by other persons, it is consistent with the existing rehabilitation and

environmental management obligations owed by the holder of the environmental authority. These obligations are ongoing and known, so it is consistent with the expectations of the State and the owners of the land (including traditional owners) that the holder of the environmental authority will comply with those obligations.

In addition, any impacts on native title holders is minimised by:

- the Bill requiring compensation to be paid by the holder of the authorisation to owners under the *Mineral Resources Act 1989* and to native title holders under the *Native Title Act 1993* (Cwlth)
- the right to enter being subject to the holder of the authorisation giving the owners appropriate notice before entering the land to carry out the rehabilitation activities.

The Bill does not introduce amendments which would breach the *Native Title Act 1993* (Cwlth) or the ILUA between the State and the Quandamooka People. In addition, any obligation to pay compensation to the Quandamooka People under the *Native Title Act 1993* (Cwlth) remains untouched.

**Equality under the law;
Balancing individual and community or more general interests**

The amendment to the *North Stradbroke Island Protection and Sustainability Act 2011* in clause 6 of the Bill reduces the term of a renewed mining lease (ML 1109). This amendment raises fundamental legislative principles because the mining company's approval is being ended earlier.

This breach is justified because reducing the term of ML 1109 will ensure that the objective of this Bill (i.e. removing the 2013 amendments) is achievable and provides a transitional period to allow uninterrupted access to ML 1109 for rehabilitation purposes. The effect of this breach will be minimised because under the *North Stradbroke Island Protection and Sustainability Act 2011* any renewal of ML 1109 beyond 2015 is subject to a requirement that there is no winning of a mineral from the area of the lease. Therefore the reduced term of the lease does not impact on the authority of the lease holder to win minerals. Furthermore, to the extent that the renewed lease would have provided a right of access to the land to complete rehabilitation works, this Bill includes an alternative authorisation under chapter 13, part 4 of the *Mineral Resources Act 1989* to provide access for that purpose.

It is further intended that the effect of this breach be minimised allowing the continuation of ML 1109 for 12 months after commencement to give Sibelco Australia Limited an advance period to take account of the effect of the Bill. Sibelco Australia Limited was consulted on the intent to allow continued uninterrupted access to ML 1109 for rehabilitation purposes following the early expiry of ML 1109, and informed that access could be granted via an authorisation under chapter 13, part 4 of the *Mineral Resources Act 1989*. Sibelco Australia Limited was consulted on the intent to allow continued uninterrupted access to ML 1109 for rehabilitation purposes following the early expiry of ML 1109, and informed that access could be granted via an authorisation under chapter 13, part 4 of the *Mineral Resources Act 1989*.

In addition, clause 13 of the Bill restores a restricted mine path on Enterprise Mine. It is arguable that amending the environmental authority to impose a statutory condition with a restricted mine

path means that the operator of Enterprise Mine is in an unequal position to other mine operators that are not on North Stradbroke Island.

However, restricting the mine path for Enterprise Mine is justified because it achieves the objective of removing the 2013 amendments. It will increase environmental protection for the island and minimise potential environmental harm by containing vegetation clearing, dredging and dry mining to the areas that have already been disturbed. It re-aligns with the original policy intent of the legislation: as noted in the original Explanatory Notes for the *North Stradbroke Island Protection and Sustainability Act 2011* “phasing out mining by a particular date will fail to deliver the intended protection for the environment if the rate of mining is allowed to substantially increase until that date”.

The map identified for this Bill is generally consistent with the original restricted mine path map (as amended and in use) imposed under the *North Stradbroke Island Protection and Sustainability Act 2011* prior to the 2013 amendments. However, some changes were required to the map to reflect the current mining activities on the site (e.g. the current disturbed areas and the current location of dredging and dry mining). This map was developed in consultation with Sibelco Australia Limited, so it will minimise the breach of fundamental legislative principles in this regard.

The justification for the breach is that the legislation seeks an appropriate balance between individual and community interests, including the interests of the Quandamooka People. The island’s very high conservation, biodiversity and cultural values make it uniquely important for the people of Queensland, and essential that the transition to a more economically and environmentally sustainable use of the island commence as soon as possible.

Consultation

Between April and December 2015, consultation on the policy intent of the Bill was undertaken with the Quandamooka Yoolooburrabee Aboriginal Corporation, the current mining operator (Sibelco Australia Limited), the Friends of Stradbroke Island, the Straddie Chamber of Commerce, and the Redland City Council.

In addition, further consultation was undertaken on North Stradbroke Island on 12-13 May 2015. This consultation included the Quandamooka Yoolooburrabee Aboriginal Corporation, the Quandamooka People, elders and community members.

In September and November 2015, the Quandamooka Yoolooburrabee Aboriginal Corporation was consulted with consultation versions of the Bill and a draft restricted mine path map. In September 2015, Sibelco Australia Limited was consulted on a draft restricted mine path map. In October 2015, Sibelco Australia Limited was consulted on a version of the Bill.

Results of consultation

The Quandamooka Yoolooburrabee Aboriginal Corporation is supportive of the amendments contained in the Bill that return the *North Stradbroke Island Protection and Sustainability Act 2011* to its original intent (i.e. substantially ending mining interests in the North Stradbroke Island region by the end of 2019, and ending mining in the Region altogether in 2025) and re-

instating a restricted mine path. The Quandamooka Yoolooburrabee Aboriginal Corporation does not support the Yarraman lease renewal. The Quandamooka Yoolooburrabee Aboriginal Corporation also raised concerns regarding how the *Mineral Resources Act 1989* authorisation will apply to North Stradbroke Island.

Sibelco Australia Limited does not support the non-renewal of leases and wishes to mine at Enterprise until 2027. Sibelco Australia Limited would like its exit from North Stradbroke Island to be seen as a positive one and contends that stopping mining in 2019 does not give it enough time to plan for closure and shut down, including providing transitional employment opportunities. Sibelco Australia Limited expressed initial concern regarding the operation of the *Mineral Resources Act 1989* amendment in that timely issue of the authorisation under this Act is imperative to enable certainty for planning for mine closure. Sibelco Australia Limited also noted that they have safety obligations under the *Mining and Quarrying Safety and Health Act 1999* and that the *Mineral Resources Act 1989* authorisation must allow them to fulfil these obligations.

Consistency with legislation of other jurisdictions

The *North Stradbroke Island Protection and Sustainability Act 2011* is unique in that its objective is to substantially end mining within the North Stradbroke Island region by a particular deadline. This Bill addresses policy objectives specific to North Stradbroke Island and is not intended to be consistent with, or complementary to, legislation of other jurisdictions.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 states that the Act should be cited as the *North Stradbroke Island Protection and Sustainability and Other Acts Amendment Act 2015*.

Commencement

Clause 2 states that Part 5 (Amendment of *Land Court Act 2000*) commences by proclamation.

Part 2 Amendment of North Stradbroke Island Protection and Sustainability Act 2011

Act amended

Clause 3 states that this part amends the *North Stradbroke Island Protection and Sustainability Act 2011*.

Amendment of long title

Clause 4 makes an administrative update to the long title of the *North Stradbroke Island Protection and Sustainability Act 2011* by removing the words “and to amend particular other Acts to provide for indigenous joint management of particular land in the region”.

The original Bill and Act as Passed in 2011 had two functions:

- to create the *North Stradbroke Island Protection and Sustainability Act 2011*
- to amend other legislation (e.g. the *Nature Conservation Act 1992*) to make consequential or related amendments.

Once the “other Acts” referenced in the long title were updated in accordance with the provisions of the Act as Passed, these provisions no longer formed part of the *North Stradbroke Island Protection and Sustainability Act 2011*. When this occurred, the second function referenced in the long title ceased to be part of the *North Stradbroke Island Protection and Sustainability Act 2011*.

If the long title of a principal Act refers to amending other legislation, the general drafting practice is to include an amendment of the long title of the Act to omit the reference to the amendment legislation (to be commenced when all of the amendments have commenced). The amendment of the long title was not included in the *North Stradbroke Island Protection and Sustainability Act 2011* and this drafting error was identified by the Office of the Queensland Parliamentary Counsel and is corrected via this amendment.

Amendment of s 2 (Object of Act)

Clause 5 amends section 2 of the *North Stradbroke Island Protection and Sustainability Act 2011* to ensure that the object of the Act is consistent with mining being phased out by 2019 and the removal of the ability to renew certain mining leases.

Section 2 was amended by the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013* to change the date by which mining was to be phased out. This date needs to be changed to meet the election commitment of phasing out mining by 2019.

This section was also amended by the 2013 Amendment Act to include reference to rehabilitation of land under a form of tenure. This mechanism is being removed under the provisions of this Bill, so this reference is also removed.

Amendment of s 9 (Termination of mining lease 1109 if not renewed)

Clause 6 amends section 9 of the *North Stradbroke Island Protection and Sustainability Act 2011* to change the date that the Yarraman mining lease (ML 1109) ends. The existing section 9 currently provides for the termination of ML 1109 ‘if not renewed’. The provisions which allow for the renewal of this mining lease are being removed via this Bill, but the application for the renewal of ML 1109 is intended to be approved under the existing sections 11A to 11J of the *North Stradbroke Island Protection and Sustainability Act 2011*.

The renewed ML 1109 will be for rehabilitation activities only – this is because, under the provisions of the existing section 11E of the *North Stradbroke Island Protection and Sustainability Act 2011*, the renewal is subject to a statutory condition that “the winning of a mineral from the place where it occurs in the area of the lease is not an authorised activity for the lease”.

Under the terms of the existing section 11E (which is omitted by this Bill), the renewed mining lease would end on 31 December 2020. However, section 9 is amended by this clause to reduce the term of ML 1109 so that it ends 12 months following commencement. This date represents a compromise between key stakeholders. Renewing ML 1109 gives Sibelco Australia Limited certainty of access to allow continued uninterrupted rehabilitation at ML 1109 after 31 December 2015. In response to concerns expressed by the Quandamooka Yoolooburrabee Aboriginal Corporation regarding Native Title, the Bill shortens the renewal time period considerably. This interim period will also give the relevant government departments time to develop a process and guideline for the new authorisation under chapter 13, part 4 of the *Mineral Resources Act 1989*, ensuring a seamless transition when the mining lease expires, should this authorisation be required for further rehabilitation.

Consequently, ML 1109 is now stated to end 12 months after commencement, and it cannot be renewed beyond that date.

If rehabilitation has not been completed in that time, a ‘final rehabilitation site’ authorisation under section 344A(3) of the *Mineral Resources Act 1989* may be available if it is required. This is because there is no certainty that rehabilitation could be completed within the reduced term of the renewed mining lease.

This clause also removes a note from section 9 which cross-references section 11B of the *North Stradbroke Island Protection and Sustainability Act 2011*. This is because section 11B is being deleted by this Bill.

Amendment of s 10 (Particular North Stradbroke Island mining interest not to be renewed)

Clause 7 amends section 10 of the *North Stradbroke Island Protection and Sustainability Act 2011* to remove a note as a consequence of the omission of sections 11A to 11J by this Bill.

The note is being deleted because it cross-references section 11B of the *North Stradbroke Island Protection and Sustainability Act 2011* which is being deleted by this Bill.

Amendment of s 11 (Renewal of particular North Stradbroke Island mining leases)

Clause 8 amends section 11 of the *North Stradbroke Island Protection and Sustainability Act 2011* to remove the notes as a consequence of the omission of sections 11A to 11J by this Bill.

The notes are being deleted because they cross-reference sections 11A and 11B of the *North Stradbroke Island Protection and Sustainability Act 2011* which are being deleted by this Bill.

Replacement of s 11A (Mining lease 1120 no longer subject to particular condition for renewal)

Clause 9 omits sections 11A of the *North Stradbroke Island Protection and Sustainability Act 2011* and inserts a new section 11A.

The existing section 11A dealt with ML 1120 which forms part of the Enterprise Mine. Prior to the commencement of section 11A, the mining lease was subject to a non-winning condition, which meant that rehabilitation activities and ancillary activities were allowed on the site, but the holder could not win minerals² (i.e. not undertake ‘mineral extraction’). The existing section 11A, which was inserted by the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013*, removed that condition, allowing the extraction of minerals upon ML 1120.

The amendments introduced by this Bill restore the restricted mining path for the Enterprise Mine (clause 13), which means that mineral extraction will not be permitted on ML 1120 as it is outside of the restricted mine path on the restricted mine path map (approved by the chief executive of the Department of Environment and Heritage Protection and current on commencement). Consequently, section 11A is being deleted and a new provision is inserted by this clause to ensure that ML 1120 is again subject to the non-winning condition, to the extent that is relevant.

² Note: the term “winning mineral from the place where it occurs” is a technical term used in the *Mineral Resources Act 1989*. It is not defined in the Act, but essentially to “win” a mineral is to make it available or accessible to be removed from the land.

The new section 11A ensures that only those parts of ML 1120 that are outside the restricted mine path are subject to the non-winning condition. While the restricted mine path on commencement did not include any parts of ML 1120, because this Bill inserts provisions that allow an application to be made to amend the restricted mine path for an Enterprise Mine lease (which includes ML 1120 – see clause 13), there is the possibility that parts of this mining lease may be within the restricted mine path in the future. These parts of the mining lease may be the subject of mineral extraction, while those parts that remain outside of the restricted mine path will continue to be subject to the non-winning condition.

Omission of ss 11B to 11J

Clause 10 omits sections 11B to 11J of the *North Stradbroke Island Protection and Sustainability Act 2011*. These sections were inserted into the *North Stradbroke Island Protection and Sustainability Act 2011* by the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013*. The policy intent of the Act (as amended) is that mining on the island should substantially cease by the end of 2019 and that the mining leases should not be renewed.

Sections 11B to 11J all dealt with the ability of the holder to renew the mining leases and therefore are being deleted.

This amendment does not breach fundamental legislative principles since the mining operator has never had a right of renewal.

Amendment of s 14 (Prohibition on grant of North Stradbroke Island mining interest)

Clause 11 amends section 14 of the *North Stradbroke Island Protection and Sustainability Act 2011* to replace subsection (2). Currently, subsection (1) of this section states that a ‘NSI mining interest’ (which is defined in the Dictionary) cannot be granted. This ensures that future mining leases are not granted on North Stradbroke Island. The current subsection (2) was inserted by the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013* so that the prohibition against the granting of NSI mining interests did not apply to the renewal of a mining lease. The provisions of the *North Stradbroke Island Protection and Sustainability Act 2011* about renewals of mining leases are being deleted by this Bill and therefore, subsection (2) is no longer required.

The new subsection (2) ensures that the definition of NSI mining interest does not include an authorisation for rehabilitation under section 344A of the *Mineral Resources Act 1989*. The definition of NSI mining interest in the Dictionary is very broad and would arguably include a section 344A authorisation. Since the amendments to section 344A of the *Mineral Resources Act 1989* are being made to facilitate rehabilitation on North Stradbroke Island, it is necessary to limit the definition so that section 14(1) does not apply to those authorisations.

Amendment of s 15 (Purpose of div 3)

Clause 12 amends section 15 of the *North Stradbroke Island Protection and Sustainability Act 2011* to change the purpose of division 3.

Division 3 originally allowed for the imposition of a statutory condition which restricted the mine path for the Enterprise Mine. This purpose was changed by the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013* in order to remove the mine path restriction and provide for the replacement of the environmental authority.

Consequently, this amendment returns division 3 to its original purpose.

Replacement of s 17 (Replacement of environmental authority MIN100971509)

Clause 13 replaces section 17 of the *North Stradbroke Island Protection and Sustainability Act 2011* so that the environmental authority is not attached to the legislation and the restricted mine path is restored.

Sections 15 to 17 of the original *North Stradbroke Island Protection and Sustainability Act 2011* provided for the imposition of a statutory condition which restricted the mine path for the Enterprise Mine. These sections were omitted and replaced by the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013* to remove the mine path restriction and replace the existing environmental authority with a new environmental authority inserted in Schedule 2A of the Act.

These sections are being replaced to return to the original drafting with some changes, including referring to the current environmental authority number and referring to the new restricted mine path map.

Sections 18 to 20 of the *North Stradbroke Island Protection and Sustainability Act 2011* provided for a process to change the restricted mine path within two months of commencement of the Act. These sections were removed by the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013*. The original sections 18 to 20 are reinserted, with some changes, to enable the holder of the mining lease to make an application to amend the restricted mine path map within four months of the commencement of the legislation.

16 Definitions for division

Section 16 defines particular terms used in division 3.

‘Limit of disturbance’ refers to the area marked ‘limit of disturbance’ on the restricted mine path map. This is the only area on the Enterprise Mine lease in which disturbance can occur (section 17). As the limit of disturbance may be amended under section 19, the definition ensures that, if there has been an amendment, any references to limit of disturbance are taken to be a reference to the amended limit of disturbance.

‘Restricted mine path map area’ refers to the dredge path, dry mining area, or limit of disturbance. Definitions for all of these terms are inserted by this Bill. The area covered by both the dredge path and dry mining area is known as the ‘restricted mine path’ (definition inserted by clause 16).

‘Threatened ecosystem’ refers to particular ecosystem classes in the Regional Ecosystem Description Database.

17 Statutory conditions of environmental authority for Enterprise Mine

Section 17 reinserts the statutory conditions to the environmental authority that were inserted by the *North Stradbroke Island Protection and Sustainability Act 2011*. These conditions provide that mineral extraction for Enterprise Mine may only take place within the restricted mine path, and only until the end of 2019.

Section 17 also includes statutory conditions that there were not in the 2011 Act. These additional statutory conditions ensure that dredge mining within the restricted mine path can only be conducted in the areas marked 'dredge path' on the restricted mine path map and that any disturbance of land is restricted to the area marked 'limit of disturbance' on the restricted mine path map. While the restricted mine path map that accompanied the 2011 Act was marked with a dredge path and limit of disturbance, there was nothing in the Act itself that required compliance with these. There were some provisions in the environmental authority, however these are not in the current environmental authority. Therefore, additional statutory conditions are inserted to ensure that the environmental authority is consistent with the intent. The statutory conditions will prevent the mining lease holder from carrying out dredge mining in the areas marked for dry mining (i.e. ensure that dredge mining can only be carried out in the areas marked for dredge mining) and will also prevent any disturbance occurring outside of the areas marked for disturbance. Disturbance is defined to include mining and ancillary activities, such as the construction of roads and removal of vegetation. It is the nature of the mining activities on the Enterprise Mine site that disturbance for ancillary activities is required from time to time outside the winning area to facilitate connections to existing infrastructure, such as current access tracks and water supply.

The new section 17 also includes a provision which allows the statutory conditions to be incorporated into the environmental authority and allows other amendments to the environmental authority which are necessary to ensure that the environmental authority is consistent with the statutory conditions. This is an administrative measure which enables the environmental authority to be amended to change any environmental authority conditions which are inconsistent with the statutory conditions.

Imposing a statutory condition restricting the mine path may be considered a breach of fundamental legislative principles. However, this breach is justified as the purpose of the legislation is to phase out mining on North Stradbroke Island. Continuing to allow mining in the areas within the restricted mine path would be inconsistent with this purpose.

Note: while the existing section 17 is omitted by this clause, the operation of this provision (and the related schedule 2A) in creating the environmental authority is saved by sections 20 and 20A of the *Acts Interpretation Act 1954*. That is, despite the omission of section 17 and schedule 2A, the environmental authority continues in force as amended under the *Environmental Protection Act 1994*.

18 Application by Enterprise Mine lease holder to amend restricted mine path map area

Section 18 enables an application to be made to seek an amendment of the restricted mine path (i.e. the dredge path and/or dry mining area) and/or the limit of disturbance.

An application can be made to add and/or remove areas of land from the restricted mine path and/or limit of disturbance marked on the restricted mine path map on commencement. Subsection (2) makes it clear that only one such application can be made.

The Enterprise Mine leaseholder may apply within four months of commencement for this amendment. This timeframe is an extension on that provided for under the 2011 Act. This is because there are additional application requirements that must be met that were not in the 2011 Act, including providing a cultural heritage study for all areas proposed to be added to the restricted mine path map area. The cultural heritage study will take time to prepare, making it unreasonable to require the leaseholder to meet the original timeframe of two months. The requirement to provide a cultural heritage study has been added to enable the Minister to assess the additional impacts that the addition of area will have on Aboriginal cultural heritage, as compared with the impacts under the existing restricted mine path map.

The new section 18 also includes a provision requiring the application to include a map showing the location of any threatened ecosystems that may be affected by the proposed amendment of the restricted mine path map area. This will assist the Minister to determine whether to refuse or grant the application in light of the obligation on the Minister to only approve an application if it will not significantly increase the impacts on a threatened ecosystem (section 19).

Aboriginal cultural heritage and environmental values need to be considered in determining the location of all new disturbance areas and mineral extraction areas.

The other requirements of the 2011 Act have not been changed. This means that the application must be in the approved form for an amendment to an environmental authority under the *Environmental Protection Act 1994*, and supported by enough information for the Minister to make the decision. There is no application fee.

19 Minister to decide application

Section 19 provides that the Minister must decide an application to amend the restricted mine path map area within 20 business days. The decision-making period in the 2011 Act was a reference to the period stated in the *Environmental Protection Regulation 2008* (which was four weeks), but this has since been removed from the regulation.

The Minister may add an area of land (which may or may not be the same area specified in the application) to the restricted mine path map area only if all of the following are satisfied:

- the land does not include a threatened ecosystem, as defined in section 16
- the Minister is satisfied that the addition of area is not likely to result in significantly greater adverse effects on Aboriginal cultural heritage or a threatened ecosystem compared to the impact under the unamended restricted mine path map area.
- the amendment would not result in the restricted mine path or limit of disturbance expanding to a size greater than their area on commencement

- the addition of the area is consistent with the Enterprise Mine environmental authority
- there has been an application under the *Native Title Act 1993* (Cwlth) for registration of an ILUA that regulates future acts on the land.

The 2011 Act did not provide for any ability to refuse an application on the grounds of cultural heritage considerations. This requirement is added to provide for the protection of Aboriginal cultural heritage by preventing amendments that would significantly increase impacts on significant Aboriginal areas, Aboriginal objects or evidence of Aboriginal occupation of an area. A proposed amendment to the restricted mine path map area which, if approved, would likely result in greater cultural heritage impacts, in comparison to the impacts that could occur under the existing restricted mine path map, must not be approved.

The 2011 Act also did not require consideration of the impacts of the amendment of the restricted mine path map on threatened ecosystems. While the original section 19 stated that the amendment must not involve the addition of an area that is a threatened ecosystem, a threatened ecosystem may be impacted by activities that are carried on outside of the area of the threatened ecosystem itself. Therefore, section 19 has been changed to prevent the Minister from approving an application to add an area to the restricted mine path map area if the Minister is not satisfied that the addition will not significantly increase impacts on a threatened ecosystem. A proposed amendment to the restricted mine path map which would likely result in greater threatened ecosystem impacts, in comparison to the impacts that could occur under the existing restricted mine path map, must not be approved.

A requirement has also been inserted which prevents the Minister from amending the restricted mine path to add an area of land unless there is an ILUA which regulates future acts on the land. Given that an ILUA can take a considerable length of time to be registered on the Register of Indigenous Land Use Agreements (the Register) following the lodgement of an application for registration, section 19 does not require that the agreement be entered on the Register but instead requires that there be an application for registration of the ILUA under the *Native Title Act 1993* (Cwlth). The requirement for an ILUA will ensure that native title matters in the area to be added to the restricted mine path are appropriately considered before the restricted mine path is amended. It is intended that this ILUA will be executed by the Quandamooka Yoolooburrabee Aboriginal Corporation and the mining lease holder (and any other relevant party). The ILUA should include the parties' consent to future acts. This should provide for greater certainty regarding the relationship between native title rights and interests and other rights and interests on the land.

Under the original section 19 there was also a requirement that the rate of production be considered in deciding whether to amend the restricted mine path. However, the rate of production may not reflect the rate of disturbance, which is the real issue that should be addressed in deciding whether to amend the restricted mine path map. The reinsertion of sections 18 to 20 are not intended to enable any increase in the size of the mining operations at Enterprise Mine lease. Any increase in the total area of the restricted mine path or limit of disturbance would result in undesirable environmental impacts. Therefore, the new section 19 provides that the Minister can only amend the restricted mine path map to add an area of land to the restricted mine path or limit of

disturbance if the addition does not result in these areas increasing in total size. This assumes that, in order for the Minister to approve an amendment to add an area, the restricted mine path or limit of disturbance would need to be amended to remove an area and add a different area that is not greater in size than the area removed.

20 Steps after making decision

Section 20 reinserts the original section 20, with some minor necessary changes to reflect changes in drafting practices. This section provides for administrative processes to be followed if the amendment application is granted and states when the amendment takes effect.

21 Application to amend environmental authority under the Environmental Protection Act

The new section 21 clarifies that the inclusion of the process to amend the restricted mine path map area described above does not prevent applications for amendments to the environmental authority under chapter 5, part 7 of the *Environmental Protection Act 1994*. This provision does, however, impose restrictions on the ability to amend the environmental authority. This includes where an amendment would result in the restricted mine path map area being amended (subsection 2(a)). While this Bill allows this area to be amended by the Minister under section 19, there is no other authority given to amend the restricted mine path map area.

This section ensures that the usual options are available for applications for amendment of the environmental authority, excluding amendments to the restricted mine path map area and statutory conditions.

Omission of ss 23 and 24

Clause 10 omits section 23 (Approved forms) of the *North Stradbroke Island Protection and Sustainability Act 2011* which provided for the making of approved forms for use under this Act. Any sections which required the use of an approved form (except for the insertion of new section 18 which uses an approved form under the *Environmental Protection Act 1994*) are being removed by this Bill, therefore this section is no longer needed.

This clause also omits section 24 (Regulation-making power) of the *North Stradbroke Island Protection and Sustainability Act 2011* which provided a regulation making power for certain aspects of the renewal process. With the deletion of sections 11A to 11J by this Bill, all references to matters which may be prescribed by regulation have been removed. Consequently, the regulation making power is no longer needed.

Omission of sch 2A (Environmental authority EPML00575913)

Clause 11 omits schedule 2A of the *North Stradbroke Island Protection and Sustainability Act 2011*. This amendment is consequential to the replacement of section 17 by this Bill.

Amendment of sch 3 (Dictionary)

Clause 12 amends schedule 3 of the *North Stradbroke Island Protection and Sustainability Act 2011* to omit an obsolete definition for ‘commencement’ and to insert new definitions for the purposes of this Bill.

‘Dredge path’ refers to the area marked ‘dredge path’ on the restricted mine path map. This is the only area on the Enterprise Mine lease within which dredge mining may occur. Both dredge and dry mining activities are undertaken at Enterprise Mine, but this Bill inserts restrictions on the areas where dredge mining can occur (section 17). As the dredge path may be amended under section 19, the definition ensures that, if there has been an amendment, any references to dredge path are taken to be a reference to the amended dredge path.

‘Dry mining area’ refers to the area marked ‘dry mining’ on the restricted mine path map. As the dry mining area may be amended under section 19, the definition ensures that, if there has been an amendment, any references to dry mining area are taken to be a reference to the amended dry mining area.

‘Enterprise Mine lease’ refers to ML 1105, ML 1117 and ML 1120. These are the mining leases on which mineral extraction is to be allowed. While the restricted mine path does not currently include ML 1120, there is the potential that this mining lease may be added to the restricted mine path through an amendment under section 19.

The definition of ‘environmental authority’ was deleted by the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013* and is reinstated by this Bill.

A definition of ‘holder’ of a mining lease is inserted to clarify that it refers to the holder as defined under the *Mineral Resources Act 1989*.

‘Restricted mine path’ refers to the areas marked ‘dredge path’ and ‘dry mining’ on the restricted mine path map. This is the only area within which mineral extraction (i.e. dredge/ dry mining) can occur (section 17). As the restricted mine path can be amended by amending the dredge path and/or dry mining area under section 19, the definition ensures that, if there has been an amendment, any references to restricted mine path are taken to be a reference to the amended restricted mine path.

‘Restricted mine path map’ refers to the map titled ‘NSI 3’ approved by the chief executive and held by the Department of Environment and Heritage Protection. Sibelco Australia Limited has advised that the Enterprise Mine is not currently operating within the bounds of the restricted mine path (as amended) that was in place prior to the commencement of the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013*. Consequently, the restricted mine path map has been updated to reflect the current mining conditions on the site (map ‘NSI 3’). Since the new restricted mine path map will be consistent with these current mining conditions, no transitional provisions are required in order to put provisions about the restricted mine path and restricted mine path map into effect.

Part 3 Amendment of Coal Mining Safety and Health Act 1999

Act amended

Clause 17 states that this part amends the *Coal Mining Safety and Health Act 1999*.

Amendment of s 9 (Meaning of coal mine)

Clause 18 amends section 9 of the *Coal Mining Safety and Health Act 1999* to ensure that the Act continues to apply to a coal mine which does not have current tenure, but has an authorisation to enter land under the new section 344A(3) of the *Mineral Resources Act 1989*. This is consequential to the insertion of section 344A(3) by this Bill.

Currently, the *Coal Mining Safety and Health Act 1999* applies to ex-mine sites that are being secured after abandonment (unless the work is being done by or for the State).

Where the work is being done with access granted under an authorisation under section 344A(3) of the *Mineral Resources Act 1989*, then the *Coal Mining Safety and Health Act 1999* should continue to apply. Therefore, this amendment is made to remove any uncertainty as to whether the *Coal Mining Safety and Health Act 1999* or the *Work Health and Safety Act 2011* applies to a site which does not have a current tenure but has an authorisation under section 344A(3) of the *Mineral Resources Act 1989*.

Amendment of s 70 (Responsibility for protecting abandoned coal mines)

Clause 19 amends section 70 of the *Coal Mining Safety and Health Act 1999* to ensure that the holder of an environmental authority for mining activities under the *Environmental Protection Act 1994* also has the responsibility to ensure the abandoned mine is safe and made secure.

The purpose of the existing section 70 is to place obligations on a holder of a coal mine to make the site safe and secure before ‘abandoning’ the site. Abandoned mine has a wide meaning in the *Coal Mining Safety and Health Act 1999*, and also applies when a mine is put into care and maintenance.

The usual or expected scenario is that rehabilitation is completed whilst there is still mining tenure, so section 70 does not currently apply to situations where an authorisation is granted under chapter 13, part 4 of the *Mineral Resources Act 1989*. For the existing category of abandoned mine for a section 344A(1) authorisation, where the work is being done by or for the State, the *Coal Mining Safety and Health Act 1999* does not apply, and instead the *Work Health and Safety Act 2011* applies. In contrast, a coal mine with a section 344A(3) authorisation must comply with the *Coal Mining Safety and Health Act 1999*.

Consequently, the intent is that the holder will have obligations under this section whether they are carrying out the work under the tenure, or whether the work is being carried out under the environmental authority for mining activities where there is also an authorisation under the new section 344A(3) of the *Mineral Resources Act 1989*. The section is amended so that the meaning of “holder” for the coal mine in this section includes the holder of an environmental authority to carry out operations for land on which the coal mine is located.

Note: “on-site activities” is defined in section 10 of the *Coal Mining Safety and Health Act 1999* to effectively have the same meaning as “mining activities” under the *Environmental Protection Act 1994*. This means that the holder of a non-mining environmental authority over the land will not be inadvertently captured by the amendment to this section.

Part 4 Amendment of Environmental Protection Act 1994

Act amended

Clause 20 states that this part amends the *Environmental Protection Act 1994*.

Amendment of sch 4 (Dictionary)

Clause 21 amends the Dictionary in schedule 4 of the *Environmental Protection Act 1994* to insert a new subsection (4A) into the definition of ‘holder’. The definition of ‘holder’ ties the environmental authority for a resource activity to the relevant tenure for the authority. The holder of the relevant tenure is generally the person recorded as holding the tenure in the tenure registration system. Arguably, this would mean that where the relevant tenure has expired or been cancelled, the last person recorded as the holder of the tenure would still be the holder for the purposes of this definition, and therefore the holder of the environmental authority. However, this conclusion is reached through consideration of a number of definitions in the *Environmental Protection Act 1994* and in the resources legislation. Consequently, in order to clarify the intent, the new subsection (4A) inserted by this clause makes it clear that the person who held the tenure immediately before it expired or was cancelled remains as the holder of the environmental authority.

This amendment was necessary as a consequence of the amendments to the *Mineral Resources Act 1989*. Since the authorisation under section 344A(3) can only be granted to the holder of an environmental authority, it was necessary to clarify that the holder of the environmental authority is the person who last held the mining lease before it expired.

Note: this scenario only arises when the tenure expires on its terms or is cancelled. It does not arise when the tenure is surrendered, since the relevant legislative provisions require that the environmental authority must have been first surrendered.

Part 5 Amendment of Land Court Act 2000

Act amended

Clause 13 states that this part amends the *Land Court Act 2000*.

Insertion of new pt 6, div 6

Clause 14 inserts new section 98 into the *Land Court Act 2000* as a consequential amendment to the insertion of the new sections 345 to 348 into the *Mineral Resources Act 1989*.

The *State Development and Public Works Organisation and Other Legislation Amendment Act 2015* received assent on 22 July 2015. That Act progressed a number of amendments to the *Land Court Act 2000* to address issues arising from the Supreme Court decision in *BHP Billiton Mitsui Coal Pty Ltd v Isdale & Ors* [2015] QSC 107.

In the case referred to above, the Supreme Court determined that the Land Court did not have power to require disclosure under chapter 7 of the *Uniform Civil Procedure Rules 1999* in hearing objections to mining lease applications and associated environmental authorities referred to the Land Court under the *Mineral Resources Act 1989* and the *Environment Protection Act 1994*. This was because the court found that these matters were not “proceedings” for the purposes of the *Land Court Rules 2000*.

The Supreme Court decision created some uncertainty about the scope of section 35 of the *Land Court Act 2000* which provides protection and immunity for the Land Court members in presiding over “proceedings”. It also created doubt about the application of other provisions of the *Land Court Act 2000* and the *Land Court Rules 2000* that refer to “proceedings” to a range of matters referred to the Land Court under various statutes (referral matters). These referral matters are matters in relation to which, based on the Supreme Court decision, there may be a level of uncertainty as to whether they would be classified as “proceedings” for the purposes of the *Land Court Act 2000* or the *Land Court Rules 2000*.

The *State Development and Public Works Organisation and Other Legislation Amendment Act 2015* included amendments to the *Land Court Act 2000* to address these issues, including through the insertion of a new transitional regulation-making power (section 97) which enables transitional regulations to be made applying specific *Land Court Act 2000* provisions (in particular, provisions which reference “proceedings”) to the referral matters listed in section 97(1). The referral matters listed in section 97(1) include the compensation provisions under the *Mineral Resources Act 1989* (e.g. sections 279, 270A and 281).

The proposed new sections 345 and 346 of the *Mineral Resources Act 1989* provide for the payment of compensation for the authorisation for rehabilitation access under section 344A(3) of the *Mineral Resources Act 1989* and referral to the Land Court for determination if compensation cannot be agreed between the parties. The new provisions are modelled on sections 279 to 281 of the *Mineral Resources Act 1989*, and for the same reasons, there may be uncertainty as to their status and whether they would be construed to be “proceedings” for the purposes of the *Land Court Act 2000* or *Land Court Rules 2000*.

Accordingly, this section essentially includes the new compensation provisions in sections 345 and 346 of the *Mineral Resources Act 1989* in the matters listed in section 97(1) of the *Land Court Act 2000* to allow appropriate transitional regulations to be made which apply specific *Land Court Act 2000* provisions to these referral matters.

Part 6 Amendment of Mineral Resources Act 1989

Act amended

Clause 15 states that this part amends the *Mineral Resources Act 1989*.

Amendment of ch 13, pt 4 hdg

Clause 16 amends the heading for chapter 13, part 4 of the *Mineral Resources Act 1989* so that it refers to both abandoned mines and final rehabilitation sites.

Amendment of s 344 (Definitions for pt 4)

Clause 17 amends section 344 of the *Mineral Resources Act 1989* to amend the definition of ‘abandoned mine’ and to create a new definition for ‘final rehabilitation site’. Due to the proposed amendments to section 344A, the definition of ‘abandoned mine’ is amended to clarify that an abandoned mine is one where both the tenure and the environmental authority for the mining activity are no longer current.

This means that a new definition needs to be inserted for a ‘final rehabilitation site’ for when there is no tenure, but there is still a current environmental authority for the mine. This will remove any perception of overlap between an authorisation under this part and management of land by the Department of Natural Resources and Mines under the Abandoned Mines Lands Program.

This clause also amends the definition of ‘authorised person’ since the existing authorisation (in section 344A(1)) authorises the carrying out of the rehabilitation activities, while the new authorisation (in section 344A(3)) authorises the entry to land only – the environmental authority is the document which requires and approves the type of activities being carried out.

This clause also inserts a definition of ‘holder’ for an environmental authority, which is defined by reference to the *Environmental Protection Act 1994* definition. Consequently, for the purposes of these provisions, the holder of an environmental authority is the holder of the mining lease or mining claim immediately before the tenure ended.

This clause also amends the definition of ‘rehabilitation activities’ to make it clear that the rehabilitation activities described in section 344A(1) and 344A(3) are both types of rehabilitation activities (i.e. the definition in subsection (1) does not limit the definition in subsection (3) and vice versa). However, the intent is that the types of rehabilitation activities under each type of authorisation will still be separate by definition. That is:

- a section 344A(1) authorisation can only authorise rehabilitation activities which are listed in paragraphs (1)(a) to (f) and not any additional rehabilitation activities
- a section 344A(3) authorisation can only authorise entry for those rehabilitation activities which are required or approved under the environmental authority, not any additional rehabilitation activities which may be listed in section 344A(1)(a) to (f).

There may be some overlap between the two types of rehabilitation activities (i.e. the environmental authority may authorise rehabilitation activities that are mentioned in section

344A(1)(a) to (f)), but all relevant activities must still be approved or required under the environmental authority if entry to land to carry out those activities is to be authorised by a section 344A(3) authorisation.

The use of the common tag term ‘rehabilitation activities’ for both types of authorisation is merely a drafting mechanism. It does not create a defined term for either the section 344A(1) authorisation or the section 344A(3) authorisation. Those provisions are clear in what can be authorised under the two types of authorisation. However, the tag term is needed because later provisions refer to the rehabilitation activities as a whole. Where the distinction needs to be maintained, the legislation has been drafted to refer to either a section 344A(1) authorisation or a section 344A(3) authorisation.

Amendment of s 344A (Authorised person to carry out rehabilitation activities)

Clause 18 amends section 344A of the *Mineral Resources Act 1989* to ensure that an authorisation under this part can provide access to land to complete all of the rehabilitation activities required under the environmental authority.

Generally, the holder of mining tenure will continue to renew the tenure until the rehabilitation requirements under the environmental authority have been completed and both the tenure and the environmental authority can be surrendered.

However, in the case of the mining leases on North Stradbroke Island, since the leases were ended early, the holder cannot renew their mining leases and there is uncertainty about land access to complete the rehabilitation requirements. This is also an issue in other circumstances where the tenure has ended, but the rehabilitation requirements have not been completed (e.g. where the tenure otherwise ends on its terms and is not renewed).

As noted by the native title holders on North Stradbroke Island (the Quandamooka Yoolooburrabee Aboriginal Corporation), an alternative way of ensuring that the mining operator (or its rehabilitation contractor) has access to the land to carry out the required rehabilitation could be to use chapter 13, part 4 of the *Mineral Resources Act 1989*, as “this option would not require further Native Title authorisation”³. This is because, although issuing the authorisation could be considered to be a future act under the *Native Title Act 1993* (Cwlth), it would satisfy the ‘freehold test’ because an authorisation can be issued over land with any type of ownership, including where the land is owned under freehold title.

However, there was some doubt as to whether the current definition of ‘rehabilitation activities’ for the grant of an abandoned mine authorisation in the current section 344A is sufficiently broad to cover the full range of rehabilitation requirements under the environmental authority. The Department of Environment and Heritage Protection’s rehabilitation guideline (EM1122) sets out the rehabilitation goals which require rehabilitation of areas disturbed by the operation to result in sites that are:

- safe to humans and wildlife
- non-polluting
- stable
- able to sustain an agreed post-mining land use.

³ Note: this statement was provided in correspondence with the Office of the Minister for Environment and Heritage Protection and the Minister for National Parks and the Great Barrier Reef.

Consequently, section 344A is amended to allow the chief executive to authorise the holder of an environmental authority to enter the land to carry out rehabilitation or environmental management required of the holder under any relevant environmental requirement under the *Environmental Protection Act 1994* at land on which mining activities have been carried out, but where there is no current tenure. Since the holder of the environmental authority (i.e. the mining operator) will often be a company, or will contract out for the rehabilitation activities to be undertaken, the officers, employees and contractors of the holder are also authorised to enter the land to undertake the rehabilitation activities.

For the administration of the *Mineral Resources Act 1989*, the activities in (a) to (f) of the current section 344A (which are normally carried out by or on behalf of the State) are distinguished from those required under a current environmental authority (i.e. where the activity will normally be carried out by or on behalf of the holder of the environmental authority). The new authorisation for rehabilitation in section 344A(3) can only be issued for the activities authorised by the environmental authority, and not for anything additional in (a) to (f) of the current section 344A.

The intent is that, where the activities are required under a current environmental authority, the power to issue the authorisation will be delegated to the Department of Environment and Heritage Protection. However, this does not remove the ability for officers of the Department of Natural Resources and Mines to issue the authorisation if needed.

It should be noted that the new authorisation is not intended to replace the current usual process of renewing the mining tenement until the rehabilitation requirements under the environmental authority have been met. The new subsection (5) limits the ability to issue the authorisation to circumstances where the mining tenement is not able to be renewed for a reason which is beyond the control of the operator.

The policy intent of the new authorisation for rehabilitation is that it should only be used where other options would be inappropriate or not provide a timely outcome to provide access for rehabilitation, and the new authorisation should not replace renewal of the underlying tenure (e.g. a mining lease) as the preferred method of access, where available.

To ensure that the new authorisation does not replace the current standard practice of completing rehabilitation pursuant to a mining lease, this section limits the circumstances where an authorisation can be granted to where:

- there is a statutory prohibition which prevents an application for the renewal of the tenement being made during the ‘renewal period’ (e.g. section 10 of the *North Stradbroke Island Protection and Sustainability Act 2011* which prevents the renewal of mining leases on North Stradbroke Island)
- the application for renewal of the tenement has been refused for reasons other than non-compliance (i.e. for a mining lease – the ground of refusal was not section 286A(1)(a); and for a mining claim – the ground of refusal was not section 93(3)(b)(i) or (ii)).

If the mining lease has been cancelled, there is no ability for an authorisation to be issued. An example of where a mining lease renewal has been refused is Papillon Mining’s application to renew a gold mining lease north of Yandina. The Minister made the decision on the basis that

the company did not have the financial or technical resources to carry on mining operations and he was not satisfied that the public interest would not be adversely affected by the renewal. As the decision was the subject of a judicial review application, the facts of the matter are public record (see *Papillon Mining & Exploration P/L v Minister for Mines and Energy* [2009] QSC 97).

The chief executive may only provide the authorisation for sites where the mining tenement has expired. In situations where a mine operator requires that there be uninterrupted access to the site, the authorisation can be issued immediately upon the expiry of the mining tenement. This is a particular concern for operations at the Yarraman and Enterprise mine sites on North Stradbroke Island. To ensure that Sibelco Australia Limited has undisturbed rights of access, and that there is no demobilisation of their workforce or equipment, a section 344A(3) authorisation can be provided for the Yarraman and Enterprise mine sites immediately following the expiry of the mining leases (12 months after commencement and on 31 December 2019 respectively). This will provide for a seamless transition from production to closure without any gap in land access.

The authorisation must be in writing, and it must specify the area of the authorisation, and the period for which access is authorised. Both the area of the authorisation, and the time period for which it is granted, should not be greater than what is needed in order to complete the required rehabilitation activities. For example, there may be areas of the former mining lease where rehabilitation has been completed, so it is not necessary for the authorisation to include those areas. However, both the time and area required can vary greatly depending on the nature of the mine and the extent of rehabilitation required. Consequently, the department is intending to develop a guideline to assist the chief executive, and any departmental officers who would be briefing the chief executive, in deciding what the appropriate area and period of the authorisation should be in the specific circumstances of the case.

In relation to mining claims, the term ‘renewal period’ is defined by reference to section 93(1) of the *Mineral Resources Act 1989*. For mining leases, the definition of ‘renewal period’ is taken from section 286(3) of the *Mineral Resources Act 1989*.

Amendment of s 344B (Entering land to carry out rehabilitation activities)

Clause 19 amends section 344B of the *Mineral Resources Act 1989* to make a consequential amendment to ensure that the section applies to both abandoned mines and final rehabilitation sites.

The intent is that this power of entry would be effective against native title and that it would satisfy the freehold test under the *Native Title Act 1994* (Cwlth). However, if the entry to land interferes with native title interests, then the intent is that the authorisation holder could be liable for compensation under the relevant provisions of the *Native Title Act 1994* (Cwlth).

However, as mentioned above, the policy intent of the new authorisation for rehabilitation is that it should only be used where other options would be inappropriate or not provide a timely outcome to provide access for rehabilitation

This clause also amends section 344B to extend the timeframe so that an entry notice must be given to the owner or occupier every six months, instead of every two weeks. This

amendment reflects feedback from the administering agency and will improve the operation of this section.

The Department of Natural Resources and Mines indicated the current 10 business day timeframe is too short and a longer, more practicable timeframe should be allowed. This is because the authorisation may be granted for a number of months or even years (to fulfil all of the rehabilitation requirements under the *Environmental Protection Act 1994* it is likely that a number of years would be required). If the authorisation holder⁴ was required to give notice to the land owner every two weeks, this would be a burdensome impost on both the authorisation holder and the owner. Six months is a more realistic timeframe and is consistent with the land access provisions (see the *Mineral Resources Act 1989*, schedule 1, section 6).

If after six months more work is required, then the authorised person would need to give another notice to the owner of the land.

Amendment of s 344C (Notice of entry)

Clause 20 amends section 344C of the *Mineral Resources Act 1989* to require that, for an authorisation to comply with rehabilitation requirements under an environmental authority (i.e. a section 344A(3) authorisation), the notice of entry must be given 10 business days before entering the land. The current requirement for giving a notice of entry for abandoned mines is unchanged.

Insertion of new ss 345-348

Clause 30 inserts new sections 345 to 348 into the *Mineral Resources Act 1989* to enable a landholder to seek compensation from a mining operator who receives an authorisation for rehabilitation access under the new section 344A(3) of the *Mineral Resources Act 1989*.

Compensation is not payable for authorisations granted under the abandoned mines' power in section 344A(1). This is considered to be appropriate because the work is being carried out by or for the State in the interests of the safety of persons who may use the land.

However, in the case of the section 344A(3) authorisation power, the authorisation can be granted where an environmental authority is still in force and, ordinarily, the rehabilitation would occur under a mining claim or mining lease. Therefore, it is appropriate that landholders have a right to compensation from the holder of the authorisation. This compensation right is similar to the compensation that a land holder is paid for a mining lease or mining claim issued over their land or for an entry order under section 579 of the *Environmental Protection Act 1994*.

Section 279A of the *Mineral Resources Act 1989* requires compensation to be settled prior to the renewal of a mining lease. If the compensation cannot be agreed within 3 months of the mining lease expiring, then the matter can be referred to the Land Court to be resolved. The Land Court can determine the compensation to be paid on specified grounds (see section

⁴ The authorisation holder is the person who is either responsible for the rehabilitation, or is carrying out the rehabilitation. For example, for a section 344A(3) authorisation, the authorisation holder would be Sibelco Australia Limited for rehabilitation on North Stradbroke Island, or could be Papillon Mining in the example referred to above.

281(3)(a) of the *Mineral Resources Act 1989*). The Land Court can consider these grounds individually or as a whole in determining the amount of compensation payable (see for example, *Smith v Cameron* (1986) 11 QLCR 64 at 74).

The authorisation for rehabilitation access under section 344A(3) can also be issued where a mining claim cannot be renewed. Section 85 of the *Mineral Resources Act 1989* also requires payment of compensation for renewal of a mining claim – subsections (7) to (9) outline the grounds for compensation determined by the Land Court (i.e. if agreement cannot be reached). The process for working out compensation (i.e. by agreement or determination of the Land Court) is very similar to the process outlined above for mining leases.

The policy intent is that, whatever compensation would be payable for the renewal of a mining claim or a mining lease, equivalent compensation should be payable for an authorisation for rehabilitation access under section 344A(3) of the *Mineral Resources Act 1989*.

If compensation must be paid to a freehold owner, then the native title holders will have equivalent rights to compensation. Where compensation is payable under the *Native Title Act 1993* (Cwlth), that compensation is payable by the State unless the law of the State clearly overrides that assumption and makes compensation payable by another person. The intent is that the compensation in this instance is not payable by the State, but is payable by the authorisation holder. The authorisation holder can minimise the compensation payable by minimising their impact on the landholder so it is appropriate that the compensation is paid by them.

Section 345 Compensation

This section provides for the payment of compensation in line with the policy intent outlined above. This section provides that:

- each person who is the owner of land the surface of which is the subject of the authorisation has a right to compensation
- compensation can be agreed between the authorised entrant and each owner, but it must be contained in an agreement which is in writing, signed by the parties, and filed with the Department of Natural Resources and Mines
- if compensation is not agreed, either party may request that the chief executive for the Department of Natural Resources and Mines refer the matter to the Land Court for determination.

Unlike the renewal process, the compensation for an authorisation is negotiated or determined after the authorisation has been granted. This is because:

- the authorisation is only for rehabilitation activities – so it is to remediate the damage done by the previous mining activities, not for new winning of the mineral (which could cause a greater extent of damage)
- the authorisation may need to grant immediate access to the land to ensure that further environmental harm is not caused.

This section is based on section 85 (for a mining claim) and sections 279 and 281 (for a mining lease). Other than the changes in policy intent outlined above, the only

alterations are to match contemporary drafting style and are not intended to change the intent or interpretation.

Section 346 Land Court's decision about compensation

This section outlines the process for the Land Court to determine the amount of compensation after a matter has been referred to it. The grounds of compensation for a Land Court determination are the same as those that would apply to the renewal of the relevant tenement (i.e. section 85 for a mining claim, or section 281 for a mining lease). The process around the Land Court fixing a date for the hearing is also modelled on sections 85 and 281 of the *Mineral Resources Act 1989*. Only section 281 is referenced in this section as the processes in sections 85 and 281 are broadly the same.

Section 347 Application of particular provisions about compensation

This section ensures that the same rules about appeals against the Land Court's determination of compensation for a renewal apply to a determination of compensation for an authorisation. This section applies sections 282 and 283 of the *Mineral Resources Act 1989* which are about mining leases. However, sections 86 and 87 of the *Mineral Resources Act 1989* which is about mining claims are exactly the same, so the same rules apply to an authorisation whether the expired mining tenement is a mining lease or a mining claim.

Note: sections 282A and 86A will also apply due to the application of section 282 to this process.

Section 348 Liability for payment of compensation to native title holders

This section ensures that any compensation payable to native title holders under the *Native Title Act 1993* (Cwlth) as the result of the issue of an authorisation under section 344A(3) will be paid by the holder of the authorisation and not by the State.

Since any liability for compensation to 'owners' under section 345 is payable by the authorisation holder, it is reasonable for compensation to native title holders under the *Native Title Act 1993* (Cwlth) to be payable by the authorisation holder.

Section 24MD(4) of the *Native Title Act 1993* (Cwlth) provides that the compensation under Subdivision M for acts attributable to the State is generally recoverable from the State. However, it also provides that the legislation can make the compensation recoverable from another person instead. The reference to 'the compensation' in section 24MD(4) is arguably interpreted as referring to compensation under the *Native Title Act 1993* (Cwlth) rather than compensation under another Act. Therefore, in order to ensure that liability for compensation falls on the authorisation holder, it is necessary for the legislation to specifically include a provision like this section.

Amendment of s 363 (Substantive jurisdiction)

Clause 31 amends section 363 of the *Mineral Resources Act 1989* to add a subsection to ensure that the Land Court has jurisdiction to make a determination about compensation for an authorisation under the new section 344A(3) of the *Mineral Resources Act 1989*. This is a consequential amendment from the insertion of sections 345 to 347 into the *Mineral Resources Act 1989* by this Bill.

Amendment of s 398 (Delegation by Minister and chief executive)

Clause 32 amends section 398 of the *Mineral Resources Act 1989* to clarify that the chief executive may delegate the power to issue an authorisation to the chief executive of the Department of Environment and Heritage Protection. This power to delegate is only for the issuing of an authorisation under section 344A(3) (i.e. the authorisation for rehabilitation activities required under an environmental authority) and any associated enforcement powers. The intention is that this delegation power will confer sufficient power to enforce provisions related to carrying out unlicensed activities, for example, where the entry to land does not comply with any conditions or limitation on the authorisation.

Amendment of s 411 (Indemnity against liability)

Clause 33 amends section 411 of the *Mineral Resources Act 1989* to make it clear that the authorisation to enter land under section 344A(3) does not attract any indemnity. The situations in section 411 are unlikely to arise in any event, since the section 344A(3) authorisation does not authorise the rehabilitation activities themselves – it merely authorises the entry to land to carry out the rehabilitation activities which are required under the environmental authority.

However, since the holder of the authorisation in these circumstances is not carrying out the rehabilitation activities as an agent of the State, it is not appropriate for the indemnity against liability in this section to apply.

Amendment of sch 2 (Dictionary)

Clause 34 amends the Dictionary in schedule 2 of the *Mineral Resources Act 1989* to include a cross-reference to the definition of ‘final rehabilitation site’ and ‘holder’ in section 344 (as inserted by this Bill).

Part 7 Amendment of Mining and Quarrying Safety and Health Act 1999

Act amended

Clause 35 states that this part amends the *Mining and Quarrying Safety and Health Act 1999*.

Amendment of s 9 (Meaning of *mine*)

Clause 36 amends section 9 of the *Mining and Quarrying Safety and Health Act 1999* to ensure that the Act continues to apply to a mine which does not have current tenure, but has an authorisation to enter land under the new section 344A(3) of the *Mineral Resources Act 1989*. This is consequential to the insertion of section 344A(3) by this Bill.

Currently, the *Mining and Quarrying Safety and Health Act 1999* applies to ex-mine sites that are being secured after abandonment (unless the work is being done by or for the State).

Where the work is being done with access granted under an authorisation under section 344A(3) of the *Mineral Resources Act 1989*, then the *Mining and Quarrying Safety and Health Act 1999* should continue to apply. Therefore, this amendment is made to remove any uncertainty as to whether the *Mining and Quarrying Safety and Health Act 1999* or the *Work Health and Safety Act 2011* applies, to a site which does not have current tenure but has an authorisation under section 344A(3) of the *Mineral Resources Act 1989*.

Amendment of s 61 (Responsibility for protecting abandoned mines)

Clause 37 amends section 61 of the *Mining and Quarrying Safety and Health Act 1999* to ensure that the holder of an environmental authority for mining activities under the *Environmental Protection Act 1994* also has the responsibility to ensure the abandoned mine is safe and made secure.

The purpose of the existing section 61 is to place obligations on a holder of a mine to make the site safe and secure before ‘abandoning’ the site. Abandoned mine has a wide meaning in the *Mining and Quarrying Safety and Health Act 1999*, and also applies when a mine is put into care and maintenance.

The usual or expected scenario is that rehabilitation is completed whilst there is still mining tenure, so section 61 does not currently apply to situations where an authorisation is granted under chapter 13, part 4 of the *Mineral Resources Act 1989*. For the existing category of abandoned mine for a section 344A(1) authorisation, where the work is being done by or for the State, the *Mining and Quarrying Safety and Health Act 1999* does not apply, and instead the *Work Health and Safety Act 2011* applies. In contrast, a metalliferous ‘final rehabilitation site’ must comply with the *Mining and Quarrying Safety and Health Act 1999*.

Consequently, the intent is that the holder will have obligations under this section whether they are carrying out the work under the tenure, or whether the work is being carried out under the environmental authority for mining activities where there is also an authorisation under the new section 344A(3) of the *Mineral Resources Act 1989*. The section is amended so that the meaning of “holder” for the mine in this section includes the holder of an environmental authority to carry out operations for land on which the mine is located.

Note: “operations” is defined in section 10 of the *Mining and Quarrying Safety and Health Act 1999* to effectively have the same meaning as “mining activities” under the *Environmental Protection Act 1994*. This means that the holder of a non-mining environmental authority over the land will not be inadvertently captured by the amendment to this section.