Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012.*

Policy objectives of the legislation and the reasons for them

The primary policy objectives of the Bill are to amend the *Environmental Protection Act 1994* to:

- introduce a licensing model proportionate to environmental risk;
- introduce flexible operational approvals;
- streamline the approvals process for mining and petroleum;
- streamline and clarify information requirements; and
- achieve the above whilst maintaining environmental outcomes.

Since its establishment, the *Environmental Protection Act 1994* has become increasingly complex for both government and business. The process for licensing environmentally relevant activities (ERAs) has not been substantially reviewed since the commencement of the *Environmental Protection Act 1994*. Regulation has been added over time as a result of emerging environmental issues and changing community expectations. Also, many of the outcomes that the legislation sought to achieve have become standard business practice. As a result of this, the regulatory environment can be simplified, and a more proportionate regulatory framework can be put in place to ensure that it is focussed on those activities that have higher environmental risk.

The Greentape Reduction project was established in response to business and government concerns that the regulatory environment had become unnecessarily complex and difficult to navigate. Through close consultation with affected businesses, peak bodies, regulators and the community, a number of initiatives were identified to simplify and improve the licensing processes under the *Environmental Protection Act 1994*, whilst maintaining environmental outcomes.

Achievement of policy objectives

The overall major change in the Bill is the replacement of Chapters 4, 5, 5A and 6 with the new Chapter 5 to create a single approval process for environmental authorities. The approval process applies to all ERAs, including resources activities such as mining and petroleum activities, with the exception of agricultural ERAs in the Great Barrier Reef. The approval process is structured similarly to the stages of the assessment process under the *Sustainable Planning Act 2009*. These stages are the application, information, notification, decision and post-decision stages. This significantly simplifies the legislation and will make it easier for applicants and assessment officers to follow the process.

The Bill will achieve the objective of introducing **a licensing model proportionate to environmental risk** by providing three different application types that are based on the risk the ERAs pose to the environment. The three different application types are standard applications, variation applications and site specific applications. Lower risk ERAs for which standard conditions have been developed will be able to make a standard application if they comply with a set of eligibility criteria. Where an activity meets the eligibility criteria the operator will automatically receive standard conditions upon application without an assessment process. To provide flexibility, where an operator cannot meet all the standard conditions, they may make a variation application to change some of the conditions. A variation application to a standard approval is assessed on the basis of the variation only, meaning that it is a much simpler and focussed assessment process. All ERAs not subject to standard conditions will be required to make a site specific application. This is the same process that currently applies for most ERAs.

One of the ways the Bill will achieve the objective of introducing **flexible operational approvals** is through the separation of the development permit and the environmental authority, and the consistent use of environmental authorities as the means for regulating all ERAs. Rather than being

attached to land through the development permit, environmental operating conditions will form an environmental authority which is held by the operator. This will enable a number of flexibility measures to be introduced.

Firstly, the consistent use of environmental authorities for regulating all ERAs, allows for single project approvals for resources activities. For example, under the current system, a mining company that wishes to sell non-mineral extracted materials requires an environmental authority for their mining activities and a development approval for the extractive activities. These two approvals have almost identical provisions but will need to be managed separately with separate fees and administrative requirements. Under the new system, the development approval will become an environmental authority and the mining company will be able to amalgamate the two environmental authorities into a single project authority. The company will have only one environmental authority, one reporting date and one annual fee requirement.

Secondly, the use of environmental authorities for all ERAs allows the introduction of an amalgamated corporate authority. The Bill provides for three types of amalgamations for environmental licences. Of these, only the amalgamated corporate authority is new. An amalgamated corporate authority enables a company holding environmental authorities at different sites, to apply to amalgamate its licences into a single environmental authority. This allows for a single set of administrative conditions, for example, a single reporting date and a single date for payment of annual returns, and the consolidation of common operating conditions across multiple sites. Variation between sites is also provided for, where necessary, by having a section for conditions that only apply to certain sites. This will particularly benefit larger businesses that handle the administration of multiple licenses from a central location. It also reduces the number of environmental authorities handled by both the administering authority and operators.

Thirdly, as all environmental operating conditions will be contained on an environmental authority, these conditions can be amended in many situations without triggering an amendment, or the requirement for a new development permit under the *Sustainable Planning Act 2009*. This change to the relationship between the development permit and the environmental authority is supported by consequential amendments to the definition of 'material change of use' under the *Sustainable Planning Act 2009* so that a new ERA or an amendment to an ERA does not always trigger a

requirement for a development permit. As a result, far fewer ERA developments will be required to be assessed under the Integrated Development Assessment System (IDAS) under the *Sustainable Planning Act 2009*.

Although the development permit will no longer be the mechanism for regulating ERAs, the integrity of IDAS is maintained by retaining the IDAS process to assess the environmental authority where a material change of use for the ERA is also required. In these cases, the decision on the environmental authority will be provided to the assessment manager as part of the concurrence response. To support and further clarify the relationship between the environmental authority and the development permit, a code for the administering authority's concurrence role will be developed before the commencement of the legislation. This code will deal with those aspects that relate to conditioning and approving the change of use to the land.

The Bill also includes provisions to provide a simpler process to ensure the ease of transferring the environmental authority between 'suitable operators'. Transfers of environmental authorities between suitable operators will be automatic. Current holders of an environmental authority or registration certificate will be automatically listed on a new register as 'suitable operators'. If the new owner is not on the register, they can apply beforehand to speed up the process and create certainty in the commercial transaction. The suitable operator register will simplify and reduce processing time for applications for an environmental authority as the suitability of operators to hold an environmental authority is assessed only once unless they have been removed from the register.

The Bill achieves the objective to **streamline the approvals process for mining and petroleum** through clarifying and simplifying the approvals process for all resources activities. 'Resource activities' are the ERAs of mining, petroleum, geothermal and greenhouse gas storage activities. As discussed above, there is now a single assessment process for all ERAs creating a much simpler process. For mining activities, in particular, the new process replaces a complex set of arrangements that provided for different processes for different types of mining tenure.

The Bill allows for all ERAs on tenure to be contained in a single environmental authority, unlike the current situation where only 'mining activities' can be included on the environmental authority. As the holder of the environmental authority for a resources activity is the holder of the resources tenure, the environmental authority can now transfer with the

tenure without the need for a separate transfer under the *Environmental Protection Act 1994*. Where the new operator wishes to change conditions, this will be done as an amendment after the transfer. This allows the business transaction to occur much more quickly and provides efficiency by recognising a transfer process in other legislation.

The Bill also streamlines application requirements by recognising documentation submitted as part of the environmental impact statement (EIS) process as automatically forming part of the application documents. Additionally, there is no longer a requirement to submit an environmental management plan (EM Plan) with the requirements of the EM Plan being merged into the application process. This addresses an issue where the EM Plan's purpose has changed over time and has essentially become another application document rather than a living planning tool. The Bill includes a formal information stage for resources activities for the first time, which provides clarity regarding assessment requirements and timeframes.

Additionally, where mining and petroleum activities have already undertaken an EIS and the assessment of environmental risks is the same for the environmental authority, the information and notification stages will be undertaken as part of the EIS process to remove the current duplication of process. The notification process is further improved for mining leases by allowing public notification to happen immediately after the application stage by advertising the application documents rather than the draft environmental authority. This has the potential to reduce the assessment process by months and reduce application documents by many pages, and will improve the draft environmental authority by allowing submissions to be considered in the preparation of the document.

Small miners are specifically benefited by the amendments in the Bill which remove the plan of operations requirements for mining operations operating under standard conditions. The necessary information (the amount of disturbance and amount of rehabilitation undertaken) will be included on the annual return form. This will further reduce the administrative costs to small miners. A further benefit is that mining claims will no longer require public notification under the *Environmental Protection Act 1994* as they are subject to standard conditions. They will continue to be notified under the *Mineral Resources Act 1985.*

The Bill achieves the objective of **streamlining and clarifying information** requirements through a number of changes. These include formalising third party certification, and clarifying the application of the standard criteria in decision making.

A rigorous and transparent framework for third party certification will be established by formalising and building upon existing administrative processes for contaminated lands. The framework will be able to be consistently applied to a range of issues under the *Environmental Protection Act 1994*, and will assist in building community and industry confidence that the framework is underpinned by robust and transparent decision making processes. The Bill provides for both a suitably qualified person and environmental auditor to undertake particular activities or functions under the *Environmental Protection Act 1994*. The Bill provides broad parameters outlining the qualifications and requirements that must be held by suitably qualified persons and environmental auditors. A higher level of experience and recognition is required for an environmental auditor than a suitably qualified person. This is reflective of the role of an environmental auditor to act independently of an applicant or operator, to provide documents on which the administering authority may make a decision without further assessment. A rigorous approval process for environmental auditors is established in the Bill. Suitably qualified persons will not be approved as documents prepared by those persons will still be assessed by the administering authority.

The standard criteria for assessment have been amended so that principles relevant to the decision process identified in the principles of ecologically sustainable development are referenced through the Intergovernmental Agreement on the Environment rather than the National Strategy for Ecologically Sustainable Development.

This objective will also be achieved by reducing the number of applications with supporting information requirements through the introduction of the standard applications, thereby reducing costs and delays.

The objective of **maintaining environmental outcomes** is achieved by focussing opportunities for achieving regulatory efficiency in the administrative processes without reducing or removing environmental standards. For example, although standard applications in the approval process will not require an individual assessment process, the standard conditions will be developed through a rigorous risk assessment process, resulting in robust conditions that operators will be required to meet. In all cases, the amendments and savings represent process improvements, which can be made without affecting environmental outcomes.

These initiatives for achieving the Bill's objectives are reasonable, appropriate and proportionate. The regulatory environment has been streamlined in a way that responds in a transparent, flexible and

proportionate manner to the environmental risks of an activity. Business will be more certain about their environmental requirements due to a much simpler and consistent licensing framework across the state. This can also lead to savings in terms of the administration and education costs to business and the government. These costs can potentially be reinvested into achieving better environmental outcomes.

The initiatives also provide a flexible framework that caters to the changing needs of modern business. Business will benefit through the ability to obtain, transfer or amend licences in a simpler and clearer manner. There will also be less administrative burden for business through the acquisition of corporate licences, and the standardisation of conditions across multiple sites.

The initiatives are effective because although the licensing framework has been made simpler and more flexible, there is still a regulatory approach to managing all activities that pose any level of environmental risk.

The Bill has retained the intent and substance of many of the provisions of the *Environmental Protection Act 1994* prior to the introduction of this Bill (i.e. the pre-amendment *Environmental Protection Act 1994*). Where this has been done, reference to the section numbers of the pre-amendment *Environmental Protection Act 1994* has been included in the notes on provisions for those sections.

Alternative ways of achieving policy objectives

Administrative changes can achieve part of the policy objectives, but without legislative change, gains are limited. Accordingly, amendments to the legislation are necessary to fully realise the policy objectives.

Estimated cost for government implementation

The Bill establishes new administrative arrangements for environmental licensing in Queensland. The costs to government in implementing this Bill will relate to the both the cost of transitioning and the ongoing administration costs.

The transitional costs will include:

- Developing and consulting on standard conditions for new approvals;
- Developing guidelines and supporting information to assist businesses with their understanding of the new administrative arrangements;

- Updating approved forms and work instructions;
- Training staff who deal with the processing of environmental licences with in the operation of the new processes;
- Providing training and templates to local governments in relation to the activities administered by local governments; and
- Upgrading the capacity of information technology systems to accommodate the new processes and to provide greater stakeholder functionality.

A major cost associated with the transition is the cost of preparing standard conditions required for the standard and variation applications. Standard and variation applications are also the greatest cost saving to business. The annual saving to business has been estimated at $11.7 million at the end of full implementation.

The preparation of standard conditions is proposed to be completed over a three year period. This period is required to allow the necessary generic risk assessments and draft conditions to be prepared and released in batches for consultation and to allow time for business and the community to comment on the documents prior to approval.

This extended implementation phase for standard and variation applications will be funded from existing departmental allocations. The cost of implementation will be offset against the savings in administration resulting from their implementation. The final regulatory assessment statement estimates that these savings will be $0.8 million per year at the end of implementation.

There will also be some costs for local governments transitioning to the new provisions. The state government will minimise these by providing training for local government officers and preparing guidelines, templates and other support tools for local governments to adapt to their needs. Any residual transitional costs will be offset by local governments benefiting from the reduced resources required for assessment of standard applications.

There will be no change to local government's fee charging powers as a result of the Bill. This revenue from these fees provides for the ongoing administration of the activities and for maintenance of the local governments systems. As a result of the support to be provided by the state government and there being no changes to revenue raising powers, there should be minimal cost impacts to local government as a result of the Bill.

The cost to the State of administering the Bill after the transitional period will be drawn from departmental allocations, as administration of the *Environmental Protection Act 1994* is already funded. Any remaining savings will contribute to more effective compliance programs to ensure a level playing field across businesses.

Consistency with fundamental legislative principles (FLPs)

This Bill has been examined for compliance with the fundamental legislative principles outlined in section 4 the *Legislative Standards Act 1992* and is considered to have sufficient regard to the rights and liberties of individuals and the institution of Parliament. Any issues identified have been addressed through the drafting of the Bill. Accordingly, this Bill is consistent with fundamental legislative principles.

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

Consultation

Initial consultation was undertaken from April 2010 to the start of 2011 with industry, government and community organisations to identify their main issues and concerns. These included representatives of business and commerce, primary producers, petroleum, mining and resources, as well as representatives from the waste and recycling areas. Community consultation included environment and conservation bodies, as well as community legal representatives. Departmental representatives also consulted with state and local government departments and representatives.

Industry stakeholders raised concerns about excessively complex and rigid approval processes, often for activities that posed low environmental risk. Additionally, industry indicated that information requirements were both onerous and not clearly outlined. Government also indicated that regulation was complex and resulted in significant delays and cost increases.

The next phase of consultation involved the completion of a discussion paper and regulatory assessment statement (RAS) that were both released for public comment in May 2011. These documents were published on the department's website and the community were invited to make submissions. Additionally, invitations to submit were sent to 4200 licence holders.

In order to assist the regulated community in understanding the proposals, officers from the department hosted a series of 26 information sessions at 12 localities across the state with around 600 attendees. In addition to receiving 45 written submissions on the discussion paper and RAS, a two-page feedback form was provided for completion at the information sessions. A total of 165 feedback forms were received at the end of the information sessions including 84 from industry and 81 from government attendees.

Results of Consultation

The results of consultation are summarised below. A more detailed analysis can be found in the Consultation Report on the department's website.

- **Community**

In all of the submissions received from the community, 78 different matters were raised. Of these issues, almost 25% either expressed support for the proposals or offered suggestions to improve them. Almost 25% of issues raised opposed some of the proposals with most of this opposition relating to the proposal to introduce an additional self-assessable (statutory rules) track of assessment to the integrated approval process for environmental authorities, third party certifiers and suitably qualified persons. A common theme in these submissions was concern about deregulation. A further 17% of the issues raised by the community, related to seeking further information, particularly in relation to third party certification.

The concerns raised from the community regarding third party certification have been addressed in the Bill by clearly providing parameters outlining the qualifications and requirements that must be held by suitably qualified persons and environmental auditors (previously referred to as third party certifiers). A higher level of experience and recognition is required for an environmental auditor, including a requirement to be approved to act as an environmental auditor. This is because an environmental auditor can provide documents on which the administering authority may make a decision without further assessment. Suitably qualified persons will not need to be approved, as documents prepared by those persons will still be assessed by the administering authority.

- **Local Government**

In all of the submissions received from local governments, 257 different matters were raised. Of these, 36% either expressed support for the proposals or offered suggestions to improve them. 28% of the issues raised also opposed some of the proposals with most of this opposition related to the increased administrative complexity of introducing four different assessment tracks to the approval process for environmental authorities. Specifically, local government were concerned about the statutory rules assessment track, and the potential loss of revenue that could result from this track, given that they would retain responsibility for compliance. A further 7% related to seeking further information, particularly in relation to the assessment tracks as well as third party certifiers and suitably qualified persons.

The concerns raised from local government regarding the assessment tracks have been addressed in the Bill by reducing the number of assessment tracks from four to three. Following consultation and feedback on the discussion paper and RAS, the statutory rules track has been merged into the standard conditions track, which has been varied so that there is automatic approval for all applications for standard approvals that are properly made.

- **Industry**

In all of the submissions received from industry, 148 different matters were raised. Of these, 68% either expressed support for the proposals or offered suggestions to improve them. 2% of the issues raised opposed some of the proposals related to the local government administration of statutory rules and standard approvals as well as the possible increase in costs associated with the introduction of third party certifiers. A further 6% related to seeking further information, particularly in relation to the assessment tracks and the trigger for material change of use in the *Sustainable Planning Act 2009*.

The concerns raised from industry regarding the assessment tracks have been addressed in the Bill by reducing the number of assessment tracks from four to three with the statutory rules track being merged into the standard conditions track. The allocation of ERAs into the assessment tracks is currently being undertaken by a panel and the development of the eligibility criteria and conditions for standard approvals will be undertaken by the department with opportunity for all stakeholders, including industry, to provide comment. Concerns regarding increased costs and excessive

conditioning through the introduction of third party certifiers have also been addressed through the Bill by requiring environmental auditors to work within a code of conduct and to certify documents that satisfy technical and legislative requirements. Also the department will maintain a publicly searchable register of appointed environmental auditors. This will provide clients with up to date information so that they can better match their needs to the skills and abilities of an auditor.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on Provisions

Part 1 Preliminary

Clause 1 Short title

This clause states that the Act should be cited as the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 2 Commencement

This clause provides that the Bill will commence by proclamation, other than clauses 41 and 42 of the Bill, which will commence on assent. The amendments in these clauses are not entwined with the Greentape Reduction amendments and can therefore commence immediately. The remaining sections of the Bill commence by proclamation. This is to allow sufficient time for implementation for the Greentape Reduction amendments.

Part 2 Amendment of Environmental Protection Act 1994

Clause 3 Act amended

This clause states that this part amends the *Environmental Protection Act 1994*.

Clause 4 Amendment of s 18 (Meaning of *environmentally relevant activity*)

This clause amends section 18 of the *Environmental Protection Act 1994* to reflect the new terminology of 'a resource activity' which combines mining activities (the old subsection (b)) and chapter 5A activities (the old subsection (c)). Subsections (b) to (d) are omitted and replaced with new subsections (b) and (c) to make this change.

Clause 5 Amendment of s51 (Public notification)

This clause amends section 51 of the *Environmental Protection Act 1994* to include a requirement that copies of the submitted environmental impact statement are made available on an internet website, and that this information is to be on the website from the start of the submission period until either the environmental impact statement process is terminated, or 1 year after the environmental impact statement assessment report is given. This is to assist in public access to information during the notification process and as the project goes through the environmental authority assessment process.

Clause 6 Omission of ch 4 (Development approvals and registration (other than for mining or chapter 5A activities))

This clause omits chapter 4 of the *Environmental Protection Act 1994*. Chapter 4 contained provisions for assessing and conditioning development applications under the *Sustainable Planning Act 2009*, which will become a code under the *Sustainable Planning Act 2009*. This is in line with the government's State Planning Instruments Program.

Chapter 4 also contained provisions for registration certificates. The new approvals process does not require registration certificates since the environmental authority will attach to the operator, not to the land.

The work diary provisions which were inserted into chapter 4 by the *Environmental Protection and Other Legislation Act 2011* are now at sections 138W to 318Y of the Bill.

Clause 7 Omission of chs 5-6

This clause omits the old chapters 5, 5A and 6, which are being replaced with a new chapter 5. The old chapter 5 contained the assessment process for environmental authorities (mining activities) and the old chapter 5A contained the assessment process for environmental authorities (chapter 5A activities, that is, petroleum activities (including coal seam gas), and greenhouse gas storage activities). These two assessment processes have been combined into a single assessment process. The old chapter 6 contained some miscellaneous provisions about assessment of environmental approvals, which have been rolled into the new chapter 5.

Clause 8 Insertion of new chs 5 and 5A

This clause inserts the new chapters 5 and 5A.

Chapter 5 Environmental authorities for environmentally relevant activities

Part 1 Preliminary

Division 1 Key definitions for chapter 5

Section 106 What is a *prescribed ERA*

This section defines prescribed ERAs, which are those ERAs prescribed in schedule 2 of the *Environmental Protection Regulation 2008* under section 19 of the Act. Under the old assessment system, these were referred to as 'Chapter 4 activities' and were assessed through the Integrated Development Assessment Scheme under the *Sustainable Planning Act 2009*.

Section 107 What is a *resource activity*

This section defines resource activities, which are the activities for which tenure is required under the resource legislation. Under the old assessment system, these were referred to as 'mining activities' and 'Chapter 5A activities'. These activities are:

- prospecting, exploring or mining under the *Mineral Resources Act 1989* (chapter 5); and
- petroleum (including coal seam gas), geothermal and GHG storage activities (chapter 5A activities).

Section 108 What is a *geothermal activity*

This section defines a geothermal activity as an activity which is authorised under geothermal tenure. The more extensive definition that was used under the old assessment system defined geothermal activities to include the conditions that could be imposed on the environmental authority.

These aspects of the old definition are now included in the powers to condition an environmental authority in Chapter 5, Part 5, Division 6.

Section 109 What is a *GHG storage activity*

This section defines a greenhouse gas storage activity as an activity which is authorised under greenhouse gas storage tenure. The more extensive definition that was used under the old assessment system defined greenhouse gas storage activities to include the conditions that could be imposed on the environmental authority. These aspects of the old definition are now included in the powers to condition an environmental authority in Chapter 5, Part 5, Division 6.

Section 110 What is a *mining activity*

This section defines a mining activity as an activity which is authorised under mining tenure. The more extensive definition that was used under the old assessment system defined mining activities to include the conditions that could be imposed on the environmental authority. These aspects of the old definition are now included in the powers to condition an environmental authority in Chapter 5, Part 5, Division 6.

"Authorised activity" is defined in the Dictionary of the *Mineral Resources Act 1989*.

Section 111 What is a *petroleum activity*

This section defines a petroleum activity as an activity which is authorised under the different types of petroleum tenure. The more extensive definition that was used under the old assessment system defined petroleum activities to include the conditions that could be imposed on the environmental authority. These aspects of the old definition are now included in the powers to condition an environmental authority in Chapter 5, Part 5, Division 6.

Section 112 Other key definitions for ch 5

This section defines other key elements of the chapter 5 assessment process.

For a prescribed activity, 'eligibility criteria' are made for certain activities for which a standard application process is to apply. Eligibility criteria can

be broad criteria about the type of activity that is eligible, or specific criteria about the activity that is eligible (see chapter 5A part 1). A proposed activity must meet these criteria (i.e. be an 'eligible ERA') for the standard application to apply. If the proposed activity cannot meet the eligibility criteria for the activity, or no eligibility criteria are in effect for activity (i.e. an 'ineligible ERA'), then the application must be assessed as a site-specific application.

For resource activities, 'eligibility criteria', are used to distinguish between the highest level of assessment (site-specific applications, i.e. for 'ineligible ERAs' or the old Level 1 activities) and the two lower levels of assessment (standard applications or variation applications, i.e. 'eligible ERAs' or the old Level 2 activities). Consequently, projects which comply with all of the eligibility criteria for the relevant ERAs must be assessed as standard or variation applications, while projects for ERAs without eligibility criteria, or which do not comply with the eligibility criteria, must be assessed as site-specific applications. The eligibility criteria for resource activities are currently contained in the *Environmental Protection Regulation 2008*, but may be made via the process in chapter 5A in the future.

An ERA is an 'ineligible ERA' if it relates to a significant project. 'Significant project' is defined in the Dictionary to the *Environmental Protection Act 1994* to mean a project declared under the *State Development and Public Works Organisation Act 1971*, section 26, to be a significant project. Significant projects must be assessed as site-specific applications.

An 'ERA project' may be either a 'prescribed ERA project' or a 'resource project'. A 'prescribed ERA project' is a single integrated operation for prescribed ERAs, while a 'resource project' is a single integrated operation for resource activities. 'Single integrated operation' is defined in section 113 of the Bill.

Division 2 Single integrated operations

Section 113 Single integrated operation

This section specifies that ERAs are carried out as a single integrated operation if:

- the activities are carried out under the management of a single individual (e.g. a site or operations manager);
- the activities are operationally interrelated;
- the activities will be, or are being carried out at 1 or more places; and
- the distance between the places is short enough to make feasible the integrated day to day management of the activity.

This section uses similar criteria to section 73F of the pre-amendment *Environmental Protection Act 1994*. The criterion in section 73F(4)(d) has been split into two criteria. The activities no longer need to be carried out at 2 or more places, but may be different activities carried out at one place. Consequently, this criterion has been changed. The requirement that the integrated operation of the activities lead to a lower risk of environmental harm has been removed since it was difficult to prove and rarely relied upon in making the decision whether the activities were carried out as a single integrated operation.

Division 3 Stages of assessment process

Section 114 Stages of assessment process

This section describes the stages of the assessment process. That is, the application stage, the information stage, the notification stage, and the decision stage. As stated in subsection (2), not all stages apply to all applications, and not every part of a stage will apply to every application.

Division 4 Relationship with the Planning Act

Section 115 Development application taken to be application for environmental authority in particular circumstances

This section describes the particular circumstances when a development application under the *Sustainable Planning Act 2009* is also taken to be an application for an environmental authority under the *Environmental Protection Act 1994*. Where this is the case, most of the assessment process under Chapter 5 does not apply to the application, as the

application, information and referral, and notification stages of the Integrated Development Assessment System (IDAS) under the *Sustainable Planning Act 2009* will apply to the assessment process for the environmental authority.

The particular circumstances where the development permit is also taken to be an application for an environmental authority include where a development application relates to a prescribed ERA, and the administering authority has a referral or assessment manager role.

The development permit approves the action of changing the use of the land, while the environmental authority approves the ongoing operation of the activity. Where the application for a development permit relates to a referral role or assessment manager role for a prescribed ERA, the application for the development permit will be taken to be an application for an environmental authority. This ensures the benefits of IDAS are maintained.

For example, where an application is made for a material change of use for a medium impact industry, and it relates to a referral jurisdiction for a prescribed ERA in Schedule 7 of the *Sustainable Planning Regulation 2009*, the application for a development permit would also be taken to be an application for an environmental authority.

Part 2 Application Stage

Division 1 Preliminary

Section 116 Who may apply for an environmental authority

This section describes who may apply for an environmental authority. Basically, any person can apply for an environmental authority to carry out an environmentally relevant activity (subject to restrictions specified in sections 117 to 120 of the Bill).

Section 117 Restriction for applications for resource activities

This section specifies that a person may apply for an environmental authority for a resource activity only if the person is the applicant for a relevant tenure for the resource activity. Since the environmental authority for a resource activity is attached to the tenure, the environmental authority cannot be applied for in isolation of the tenure application process. This is the same as the restrictions that were in sections 153 and 309I of the pre-amendment *Environmental Protection Act 1994*.

Section 118 Single application required for ERA projects

This section combines the single application requirements that previously applied separately to mining and chapter 5A projects. These provisions were in sections 155 and 309J of the pre-amendment *Environmental Protection Act 1994*.

The purpose of this section is to ensure that projects are assessed as a whole, rather than separate environmental authorities being applied for and assessed at different times.

This section will not apply to prescribed ERAs where the project also requires a development approval under *Sustainable Planning Act 2009* because this chapter does not apply to those projects by virtue of section 115. An ERA project for prescribed ERAs which also requires a development approval may apply for a development approval that covers

the whole project or combine the environmental authorities into an amalgamated environmental authority after the environmental authority and the development approval are granted. For example, where a large industrial development is proposed, the applicant would usually apply for all aspects of the development and all prescribed ERAs at the same time. This could then be assessed as like an ERA project. However, if some aspects of the development are applied for at a different time (for example, because the developer purchases extra land to add to the development), then the prescribed ERAs associated with that development application would be assessed separately from the rest of the project. However, once the environmental authorities are issued, they can be amalgamated into a single project environmental authority if the project meets the criteria for a single integrated project, as defined in section 113.

Section 119 Single environmental authority required for ERA projects

This section specifies that the holder of an environmental authority for an ERA project can not apply for a separate environmental authority for additional activities. Where the operator wishes to add new ERAs to their project, this is done via an amendment application. This applies to both resource activities and prescribed ERAs. The purpose of this section is to ensure that projects are assessed as a whole and the cumulative impacts of adding a new ERA are considered in light of what has already been approved, as well as ensuring administrative efficiency through the maintenance of one environmental authority per project.

Section 120 Application for environmental authority can not be made in particular circumstances

This section specifies that an environmental authority can not be applied for if the activity requires a development permit for a material change of use for the premises under the Planning Act, and a development application for the development permit has not yet been made. This is consistent with section 115 of the Bill which specifies that an application for a development permit under the *Sustainable Planning Act 2009* is taken to an application for an environmental authority. This section is to avoid two applications being made (one under the *Environmental Protection Act 1994* and one under the *Sustainable Planning Act 2009*) for the same activities. It also ensures that an EA cannot be granted without the appropriate land use approval.

Note that if a development permit is required for the material change of use related to the environmentally relevant activity under a local planning scheme (i.e. the administering authority is not a concurrence agency for the development permit), then the applicant applies for the development permit first and then applies to the administering authority for the environmental authority.

This section also prevents an application being made for certain extractive activities in the North Stradbroke Island Region. This amendment is to complement Schedule 1, item 13 of the *Sustainable Planning Act 2009* which makes this prohibited development. Since a person cannot legally carry out an extractive activity without both a development permit and an environmental authority, this does not add to the prohibition but merely complements the existing prohibition.

This section also prevents an application being made for an environmental authority where the operator needs the Coordinator-General's permission to carry out the activity because the site is in a State development area, and that approval hasn't been given, or at least applied for. Under the *State Development and Public Works Organisation Act 1971* (the State Development Act), the approved development scheme for the State development area may state a particular use for a particular parcel of land. In this case, the operator can only carry out an activity on the land which is consistent with that use. However, if the approved development scheme does not state a particular use, then the operator must obtain the Coordinator-General's permission to carry out the activity. This section ensures that, the applicant either obtains, or applies for, that approval prior to applying for the environmental authority.

Division 2 Types of applications

Section 121 Types of applications

This section defines the different types of environmental authority which can be applied for: standard applications, variation applications, and site specific applications. These types of applications reflect the new and more proportionate approvals process that is being introduced.

Section 122 What is a *standard application*

This section defines, and stipulates the requirements for, a standard application. Standard applications can be made for eligible ERAs (i.e. activities that have been assigned eligibility criteria (either through the *Environmental Protection Regulation 2008* or a statutory instrument made under section 318 of the Bill)), and are subject to a set of standard conditions specific to the activity.

An application can only be made as a standard application if the activity meets the eligibility criteria for the activity. The eligibility criteria determine if an activity is appropriate for a standard application.

For resource activities, these applications used to be called Level 2 Code Compliant activities in the pre-amendment *Environmental Protection Act 1994*.

Section 123 What is a *variation application*

This section defines, and stipulates the requirements for, a variation application. As for standard applications, a variation application must meet the eligibility criteria for standard conditions (i.e. be an 'eligible ERA').

However, a variation application seeks to change the standard conditions that apply to the activity. The eligibility criteria cannot be changed. If an applicant cannot meet the eligibility criteria, then the applicant must make a site-specific application.

For resource activities, these applications used to be called Level 2 non-code compliant activities in the pre-amendment *Environmental Protection Act 1994*.

Section 124 What is a *site-specific application*

This section defines a site-specific application. A site-specific application for an environmental authority is one where a standard application and a variation application do not apply (i.e. where any of the activities are an 'ineligible ERA').

In the past, all development permits for 'prescribed ERAs' (previously Chapter 4 ERAs) were assessed through the *Sustainable Planning Act 2009* under a process similar to 'site specific applications'.

For resource activities, these applications used to be called Level 1 activities in the pre-amendment *Environmental Protection Act 1994*.

Division 3 Applying for environmental authorities

Section 125 Requirements for applications generally

This section specifies the requirements for all applications for environmental authorities. In addition to general requirements for all activities there are some requirements which will be different depending on the nature of the application. For example, some requirements are specific to the type of application (i.e. standard, variable or site-specific application) and some requirements are specific to the type of activity being undertaken (i.e. prescribed ERA or resource activity).

This section also states that certain application requirements are waived where an environmental impact statement (EIS) has been completed under chapter 3 of the *Environmental Protection Act 1994* which covered all of the ERAs the subject of the application, and the assessment of the environmental risks of each activity would be the same. The intention of this provision is to prevent duplicate requirements by the administering authority where the information in the EIS is sufficient to meet the content requirements for an application for an environmental authority. Consequently, if the nature or location of the environmental risks has changed, or the scope of the project has changed so the environmental risks are equivalent but different, this section would not apply, and the full content requirements would need to be met for the application to be properly made.

This section replaces the requirements for applications and the requirements for an environmental management plan in the pre-amendment *Environmental Protection Act 1994*. These requirements were previously contained in sections 154, 189, 203, 309Q, 309V, 309W, 310C and 310D(1)-(4) of the pre-amendment *Environmental Protection Act 1994*. Obsolete or duplicated requirements have been deleted.

Section 126 Requirements for site-specific applications – CSG activities

This section specifies additional information requirements that must be completed as part of an application that relates to a CSG activity. These additional requirements are related to the management of CSG water. Subsection (2) places restrictions on the use of CSG evaporation dams in

connection with a CSG activity, and requires that the applicant must look at all feasible alternatives to the use of an evaporation dam before including their use as part of the application.

These requirements were previously contained in section 310D(5)-(7) of the pre-amendment *Environmental Protection Act 1994* and have not been changed from the previous requirements.

Section 127 When application is a *properly made application*

This section specifies that a properly made application is one that meets the requirements for applications generally (section 125), and if the application is a site-specific application for a CSG activity, that the application meets the requirements for those activities (section 126). If an application is not a properly made application, then the administering authority can refuse to assess the application (see sections 128, 129 and 136).

Division 4 Notices about not properly made applications

Section 128 Notice about application that is not a properly made application

This section provides the process for the administering authority to notify the applicant that the application was not properly made.

The administering authority has 10 business days to assess the application and give the applicant the notice.

This notice must state that the application has not been properly made, why this is the case, and what action the applicant must take to comply with the requirements of a properly made application.

This process gives the applicant at least 20 business days to fix the application after being notified.

The applicant must comply with the notice, or the application will not be assessed (see section 129).

Section 129 When application lapses

This section applies if the administering authority gives an applicant notice that the application is not properly made (under section 128). In this case the applicant must take action to ensure that the application does not lapse. The applicant must take the action specified in the notice and provide the administering authority with written notice that the action has been taken. These actions must occur within a stated time period, or a period agreed to between the administering authority and the applicant. If the actions mentioned above are not taken within the required time period, then the application lapses. This means that the application will not be assessed and the applicant would have to remake their application (including paying a new application fee) if they still wish to undertake the activity.

Division 5 Joint applicants

Section 130 Nomination of principal applicant

This section states that where there are joint applicants for one or more environmental authorities, a person may be nominated as the principal applicant. The principal applicant may, on behalf of all applicants, supply to the administering authority a notice or other document related to the application. Conversely, the administering authority may give a notice, other document, or make any other requirement under this chapter to all the applicants, by giving it to the principal applicant. The principal applicant is the central point of contact.

This replaces sections 157, 158, 159, 160 and 309N of the pre-amendment *Environmental Protection Act 1994*.

Division 6 Changing applications

Subdivision 1 Preliminary

Section 131 Meaning of *minor change*

This section defines the meaning of a minor change for the purposes for changing an application. This section is based on section 302A of the

pre-amendment *Environmental Protection Act 1994* and equivalent sections in the *Sustainable Planning Act 2009*.

Subdivision 2 Procedure for changing applications

Section 132 Changing application

This section specifies the requirements for making a change to an application, before a decision on the application has been made. A person must not change the application if the change would result in the application not being a properly made application. The section further specifies the requirements when a proposed change involves changing an applicant. This section is based on section 302A of the pre-amendment *Environmental Protection Act 1994* and equivalent sections in the *Sustainable Planning Act 2009*.

Subdivision 3 Changed applications—effect on assessment process

Section 133 Effect of assessment process—minor changes and agreed changes

This section specifies that a minor change to the application or a change that the administering authority agrees to in writing, does not stop the assessment process. Further, if such a minor or agreed change occurs during or after the notification stage, the notification stage does not need to restart. This section is based on section 302A of the pre-amendment *Environmental Protection Act 1994* and equivalent sections in the *Sustainable Planning Act 2009*.

Section 134 Effect on assessment process—other changes

This section specifies the effect on the application process if a change to the application is not a minor or agreed change. Specifically, the assessment process stops on the day the administering authority receives the notice, and the process starts again from the end of the application stage.

For applications which the notification stage applies to, a change of the type mentioned in this section will require that the notification stage be repeated unless the administering authority is satisfied the change would not be likely to attract a submission objecting to the thing the subject of the change.

This section is based on section 302A of the pre-amendment *Environmental Protection Act 1994* and equivalent sections in the *Sustainable Planning Act 2009*.

Division 7 Withdrawing applications

Section 135 Withdrawing an application

This section allows for the withdrawal of an application at any time before the environmental authority is issued, by giving the administering authority written notice. This section is based on section 229 of the pre-amendment *Environmental Protection Act 1994*.

Division 8 End of application stage

Section 136 When does the application stage end

This section specifies when the application stage of the assessment process ends. This occurs either 10 business days after the administering authority receives the properly made application, or, if the applicant has been given a notice that the application is not a properly made application, the day the administering authority receives notice from the applicant.

Part 3 Information stage

Division 1 Preliminary

Section 137 Purpose of information stage

This section specifies that the purpose of the information stage is to seek the information needed to assess the application. Where information is needed after assessment, but before the commencement of the activity, this would be sought as part of the compliance stage.

Section 138 When information stage applies

This section states that the information stage applies to variation applications and site specific applications. Consequently, information cannot be sought for standard applications. This is because a standard application, where complying with the eligibility criteria, results in an automatic approval without further need for assessment, except for a standard application relating to a mining lease (see section 170).

In addition, this stage does not apply to development applications which are taken to be applications for environmental authorities under section 115 as a result of section 115(3). This is because information requests for these types of application are made through the process in the *Sustainable Planning Act 2009*.

Section 139 Information stage does not apply if EIS process complete

This section states that the information stage does not apply for an application if an environmental impact statement (EIS) has been completed under chapter 3 of the *Environmental Protection Act 1994* which covered all of the ERAs the subject of the application, and the environmental risks of the activity and the way the activity will be carried out have not changed since the EIS was completed. The intention of this provision is to prevent duplicate requirements by the administering authority where the information in the EIS is sufficient to assess the environmental risks of an activity. Consequently, if the nature or location of the environmental risks has changed, or the scope of the project has changed so the environmental

risks are equivalent but different, this section would not apply, and the information stage would apply to the application.

Division 2 Information requests

Section 140 Information request to applicant

This section states that the administering authority may require the applicant to supply further information needed to assess the application. This request must be written and is known as an information request. In the information request the administering authority must state that the application will lapse if the applicant fails to give the administering authority a response as required by section 146.

The purpose of an information request is to seek sufficient information to assess the application. If the applicant declines to provide the further information, this may be grounds for the administering authority to refuse the application or impose more strict conditions because, for example, the risks cannot be adequately assessed and the precautionary principle would indicate refusal or stricter conditions.

Section 141 Content of information request

This section specifies that the administering authority must state in the information request, the period within which the applicant must give the response. The time period must be at least 6 months for a standard information request. This time period is consistent with the requirements of the *Sustainable Planning Act 2009*.

For an EIS, the full process in chapter 3 must be completed. Consequently, the time period must be at least 2 years to give sufficient time for the chapter 3 process to be completed.

These time periods can be longer if the administering authority believes that more time will be required to respond to the information request.

The applicant can choose to reply to the information request more quickly, which would shorten the assessment timeframe.

Section 142 EIS must be required for particular applications

This section specifies where the administering authority must require an EIS. An EIS is required for certain mining activities in a wild river area, unless the activities are included in a significant project under the *State Development and Public Works Organisation Act 1971*. This is consistent with the current section 162(3A) of the pre-amendment *Environmental Protection Act 1994*. The circumstances where an EIS is required within a wild river area have not been changed.

Section 143 EIS may be required

This section specifies where the administering authority may require an EIS. The requirement for an EIS would form part of the information request.

An EIS can only be required for resource activities. This maintains the status quo, as an EIS under the *Environmental Protection Act 1994* cannot currently be required for Chapter 4 activities (now termed 'prescribed ERAs') under the pre-amendment *Environmental Protection Act 1994*.

In addition, an EIS cannot be required under this section if section 142 applies, the application relates to a significant project under the *State Development and Public Works Organisation Act 1971*, or an EIS under the *Environmental Protection Act 1994* has already been submitted. This is to ensure there is no duplication with other processes.

This section replaces section 162(1)-(3), 186 and 310E of the pre-amendment *Environmental Protection Act 1994*.

Section 144 When information request must be made

This section sets the timeframe for an information request by the administering authority. If the request relates to a site-specific application, the information request must be made within 20 business days after the day the application stage ends for the application. If the request relates to a variation application, the request must be made within 10 business days after the day the application stage ends for the application. The end of the application stage is set by section 136 and is based on when the requirements for a properly made application have been fulfilled.

Section 145 Extending information request period

This section allows the administering authority to extend the timeframe for when an information request must be made. Where an application is particularly long or complex, the administering authority may not be able to assess whether further information is required within 10 business days.

The timeframe can be further extended with the written consent of the applicant. Again, this is likely to be needed where the application is particularly long or complex to allow the administering authority to properly consider the information provided and decide whether further information is needed to properly assess the application.

Division 3 Responding to information request

Section 146 Applicant responds to any information request

This section describes how the applicant can respond to an information request. Unless an EIS is required, the applicant can give all of the information requested, part of the information requested, or none of the information requested. Where the applicant chooses to give none of the information requested, the applicant must give the administering authority written notice that they wish the application to be assessed on the information already provided. However, if the applicant declines to provide the further information, or only provides part of the information requested, this may be grounds for the administering authority to refuse the application or impose stricter conditions. This is because, for example, the environmental risks of the activity cannot be adequately assessed and the precautionary principle would indicate refusal or more strict conditions.

Where an EIS is required through an information request, the EIS process in Chapter 3 of the *Environmental Protection Act 1994* must be followed or the application will lapse. This is consistent with the current process in section 199 of the pre-amendment *Environmental Protection Act 1994* and ensures that an applicant follows the proper process where an EIS is required.

Section 147 Lapsing of applications if no response to information request

This section states that an application will lapse if the applicant has not responded to an information request within the period stated in the information request or the agreed extended period.

This section is modelled on the *Sustainable Planning Act 2009* and ensures that applications do not sit with the administering authority for an indefinite time.

This requirement is similar to the requirements of section 231 of the pre-amendment *Environmental Protection Act 1994*.

Division 4 End of information stage

Section 148 When does information stage end

This section details when the information stage ends. This is needed because the decision stage does not start until all other stages (including the information stage) have ended. The information stage ends when either the information request period has ended and the administering authority has not made an information request, or when the administering authority receives the applicant's response to the information request.

Part 4 Notification Stage

Division 1 Preliminary

Section 149 When notification stage applies

This section states that the notification stage only applies to certain types of resource activities.

Currently, the notification provisions in Chapter 5 of the pre-amendment *Environmental Protection Act 1994* apply to environmental authority applications associated with a mining lease or mining claim. This requirement is being maintained for a mining lease, but is being removed

for a mining claim. This is because environmental authorities associated with this type of tenure are low-risk and comply with the standard conditions. In addition, this type of tenure tends to be short-term, with the term of tenure being 5 years or less and is limited to 1 hectare in disturbance.

In contrast, the notification provisions in Chapter 5A of the pre-amendment *Environmental Protection Act 1994* are based on environmental risk. Currently, the notification requirements apply to Level 1 environmental authorities for petroleum, geothermal and GHG activities. This requirement is being maintained since site-specific applications for these types of activities will be required to satisfy the notification stage.

This stage does not apply to prescribed ERAs because, where these activities are impact assessable, they are required to satisfy the public notice requirements of the *Sustainable Planning Act 2009* for the entire application (including the environmental authority application).

Section 150 Notification stage does not apply if EIS process complete

This section states that the notification stage does not apply where the EIS process has been completed under chapter 3 of the *Environmental Protection Act 1994*, the environmental risks of the activity have not changed since the EIS was completed, and the administering authority is satisfied that any changes proposed would not be likely to attract a submission objecting to the change. This removes duplication since the project has already had to satisfy public notification requirements on the same basis as the public notice requirements of this stage.

A properly made submission about the EIS is also a properly made submission about the application, and must therefore be considered as part of the decision.

Section 151 When notification stage can start

This section states that the applicant can start the notification stage as soon as the application stage ends for the application. Consequently, the applicant can choose to commence the public notice process 10 business days after a properly made application is made, provided the requirements of the resource legislation are met.

This is a change for applications associated with a mining lease as it moves the public notice requirements to the front of the process, rather than having to wait for the administering authority to make information requests and then make its decision on a draft environmental authority before being able to satisfy the public notice requirements. This change also benefits the public, as submissions will be taken account of in the decision made by the administering authority about the draft environmental authority.

Division 2 Public notice

Section 152 Public notice of application

This section sets out how public notice must be given. These requirements are substantially the same as sections 211 and 310G of the pre-amendment *Environmental Protection Act 1994*.

Section 153 Required content of application notice

This section states that the public notice must be in the approved form and must contain the stated information.

For petroleum, greenhouse gas storage and geothermal activities, these requirements are more detailed than the current requirements under section 310H(1) of the pre-amendment *Environmental Protection Act 1994* but provide better advice to potential submitters about the whether the project is likely to impact upon them.

For mining activities, the public notice is now on the basis of the application documents, rather than being on the basis of a draft environmental authority. This streamlines processes as applicants will no longer have to wait until the administering authority makes a decision about the draft environmental authority before the public notice process can start. This change also benefits the public, as submissions will be taken account of in the decision made by the administering authority on the draft environmental authority. This replaces section 212(1) of the pre-amendment *Environmental Protection Act 1994*.

Section 154 Submission period for application – mining activities

This section states when the submission period ends for an application for a mining activity. This is determined by reference to section 252A of the *Mineral Resources Act 1989* since public notice for the mining lease occurs at the same time as public notice for the environmental authority. This is substantially the same as section 212(2) of the pre-amendment *Environmental Protection Act 1994.*

Section 155 Submission period for application – other resource activities

This section states when the submission period ends for an application for a resource activity other than a mining activity. This is substantially the same as section 310H(2) of the pre-amendment *Environmental Protection Act 1994*.

Section 156 Publication of application notice and documents on website

This section requires that site-specific applications which are required to comply with this stage are publicised on a website. This includes all application documents. This is to ensure that the documents are easily accessible by potential submitters. Under section 157, the administering authority is then required to link to these documents from its website.

Section 157 Public access to application

This section requires the administering authority to keep the application open for inspection and copying by a potential submitter.

This section is based on sections 213 and 310F of the pre-amendment *Environmental Protection Act 1994* but, in addition to keeping the documents at the department's head office, also requires that the department keep copies at the office nearest the site of the tenure application and online (or via a link to a website). This ensures that potential submitters can access the application documents easily to decide whether they wish to make a submission, and what they wish to make a submission about.

Section 158 Declaration of compliance

This section states that the applicant must give a declaration to the administering authority within 5 days after the submission period ends, declaring whether or not the applicant has complied with the public notice requirements. Once the declaration is given under this section stating that the applicant has complied with the requirements, the applicant is taken to have complied with the public notice. However, if the applicant declares that they have complied with the requirements and makes a false or misleading statement, the applicant has committed an offence and may be prosecuted.

The administering authority can choose to seek further submissions through section 315. This section is substantially the same as sections 214 and 310I of the pre-amendment *Environmental Protection Act 1994*.

Section 159 Substantial compliance may be accepted

Under this section, where the applicant has not complied with the public notice requirements, or provides a declaration regarding compliance with the public notice requirements, but not within 5 business days after the submission period ends, the administering authority may decide to allow the application to proceed if the applicant has substantially complied with the requirements.

This decision must be made within 10 business days of the end of the submission period. If the decision is that the application cannot proceed, the administering authority has a further 10 business days to give the applicant notice of its decision and what steps are required to fix the deficiency.

This section is substantially the same as sections 215 and 310J of the pre-amendment *Environmental Protection Act 1994*. It is designed to ensure that a technical error does not hold up the assessment process.

Division 3 Submissions about applications

Section 160 Right to make submission

This section states that an entity may make a submission about the application. The requirements for a properly made submission are contained in section 161.

This section is substantially the same as sections 216 and 310K of the pre-amendment *Environmental Protection Act 1994*.

Section 161 Acceptance of submission

This section provides for when the administering authority must accept a submission. A submission that complies with the requirements of subsection (1) is a properly made submission. However, the authority may accept a written submission even if it is not a properly made submission. This ensures that basic information is obtained about a submission so that the submission can be properly considered as part of the decision stage.

This section is substantially the same as sections 217 and 310L of the pre-amendment *Environmental Protection Act 1994*.

Section 162 Amendment of submission

This section sets out the process for amendment of a submission by a submitter. This ensures that submitters can accurately represent their views to the administering authority before the decision is made under the decision stage.

This section is substantially the same as section 218 of the pre-amendment *Environmental Protection Act 1994*.

Section 163 Particular submissions apply for later applications

This section provides that a properly made submission about an earlier application is also a properly made submission for the purposes of a later application. This is to preserve submitter rights where an application is withdrawn and replaced by another application for essentially the same project.

This section is substantially the same as section 230 of the pre-amendment *Environmental Protection Act 1994*.

Division 4 End of notification stage

Section 164 When does notification stage end

This section states when the notification stage for an application to which the notification stage applies ends. Essentially, the notification stage ends when the public notice requirements have been satisfied, or the administering authority has accepted that substantial compliance has been achieved.

Part 5 Decision stage

Division 1 Preliminary

Section 165 When does decision stage start—general

This section provides for when the decision stage starts. This section applies only if the application does not relate to a development application under the *Sustainable Planning Act 2009*, or if the application is not related to a site specific application relating to a significant project.

Essentially, the decision stage starts when all other stages have ended. This is because both the information stage and the public notice stage are largely applicant driven, so the administering authority should not be required to decide the application until the applicant has met all of their obligations.

Section 166 When does decision stage start—application relating to development applications

This section applies if a development application has been made and under section 115 the application is also deemed to be an application for an environmental authority.

The day the decision stage begins is specified under the *Sustainable Planning Act 2009*. If the administering authority is the assessment manager, then the decision day starts on the day the decision stage for the development application begins under the *Sustainable Planning Act 2009*.

In most cases, the administering authority is a concurrence agency, and the decision stage begins the day the referral agency's assessment period begins under the *Sustainable Planning Act 2009*. This ensures that the process under the *Environmental Protection Act 1994* is aligned with the Integrated Development Assessment System under the *Sustainable Planning Act 2009*.

Section 167 When does decision stage start—site-specific application relating to significant project

This section states that the decision stage for site-specific applications that relate to a significant project under the *State Development and Public Works Act Organisation Act 1971* starts the day the Coordinator-General gives the proponent a copy of the Coordinator General's Report.

Division 2 Deciding application

Subdivision 1 Decision period

Section 168 When decision must be made—generally

This section and section 169 specify the timeframe for the decision stage. This is known as the decision period. When section 169 does not apply, the decision must be made within 20 business days after the decision stage starts.

This period may be extended by the administering authority by 20 business days without the permission of the applicant. The applicant must be given a notice of this extension, and only 1 extension and notice may be given. However, the period may be extended further at any time before the decision is made if the applicant agrees in writing.

This ensures that decisions on environmental authorities are made in a timely manner, but ensures that, where applications are particularly long and/or complex, or relate to, for example, emerging environmental issues, the administering authority has sufficient time to make an informed decision.

This section is similar to section 310M of the pre-amendment *Environmental Protection Act 1994*.

Section 169 When decision must be made—particular applications

This section applies if a development application has been made and under section 115 the application is also deemed to be an application for an environmental authority.

If the administering authority is the assessment manager for the development application, the decision must be made within the decision-making period specified in the *Sustainable Planning Act 2009*.

In most cases, the administering authority is a concurrence agency for the development application. Where this is the case, the decision must be made within the referral agency's assessment period. This ensures that the process under the *Environmental Protection Act 1994* is aligned with the Integrated Development Approval System under the *Sustainable Planning Act 2009*.

Subdivision 2 Decision

Section 170 Deciding standard application

This section outlines what the decision is for a standard application.

In most cases, a standard application will be approved automatically – i.e. approved on the standard conditions.

However, in the case of an environmental authority attached to a mining lease, the public notice stage applies to the environmental authority, so the administering authority must assess whether the submissions from the submitters (if any) justifies changing the standard conditions. The criteria for this decision are contained in section 175.

The documentation issued as a result of this decision is either:

- For an application for an environmental authority attached to a mining lease—a draft environmental authority; or
- In every other case—the environmental authority.

When an application is for a mining activity associated with a mining lease, the applicant is issued with a draft environmental authority along with the notice of decision issued under section 181. This draft environmental authority will be issued as the environmental authority if the decision is not referred to the Land Court under this part.

This is because applications associated with a mining lease have a particular process where they may be referred to the Land Court before the final decision is made by the administrative authority. Consequently, the decision on the application (under this section) is a draft environmental authority, which may be subject to the court process before the final decision is made and the environmental authority is issued.

This section replaces sections 164, 170(1)-(3), 171(1) and 309R of the pre-amendment *Environmental Protection Act 1994*.

Section 171 Deciding variation application

This section outlines what the decision is for a variation application.

For a variation application, the administering authority must decide whether to grant the variation or not. Consequently, the decision is to either:

- grant the variation and issue the environmental authority with some non-standard conditions, or
- refuse the variation and issue the environmental authority with the standard conditions.

The criteria for this decision are contained in section 176.

The decision about the variation relates to the variation application, and not just the conditions which the applicant is seeking to vary. For example, some variation to the standard conditions may impact upon the suitability of other standard conditions. If the operator cannot meet the standard conditions, they may choose to surrender the environmental authority, seek an amendment to the standard conditions, or seek the approval of a transitional environmental program to transition to compliance with the environmental authority.

The documentation issued as a result of this decision is either:

- For an application for an environmental authority attached to a mining lease—a draft environmental authority; or

- In every other case—the environmental authority.

This is because applications associated with a mining lease have a particular process where they are referred to the Land Court before the final decision is made by the administrative authority. Consequently, the decision on the application (under this section) is a draft environmental authority, which may be subject to the court process before the final decision is made and the environmental authority is issued.

This section replaces section 309X of the pre-amendment *Environmental Protection Act 1994*.

Section 172 Deciding site-specific application

This section outlines what the decision is for a site-specific application.

For a site-specific application, either all or part of the application does not have or does not meet the relevant eligibility criteria. Consequently, the administering authority must decide whether to grant the application and issue an environmental authority with conditions (possibly with some standard conditions and some non-standard conditions), or to refuse the application and not grant an environmental authority.

The criteria for this decision are contained in section 176.

Where the decision is to approve the application, the documentation issued as a result of this decision is either:

- For an application for an environmental authority attached to a mining lease—a draft environmental authority; or
- In every other case—the environmental authority.

This is because applications associated with a mining lease have a particular process where they are referred to the Land Court before the final decision is made by the administrative authority. Consequently, the decision on the application (under this section) is a draft environmental authority, which may be subject to the court process before the final decision is made and the environmental authority is issued.

This section replaces sections 176(1), 193(1) and 310M of the pre-amendment *Environmental Protection Act 1994*.

Section 173 When particular applications must be refused

This section states when the administering authority must refuse an application for an environmental authority.

An environmental authority must be refused if the administering authority refuses a related application which is for a material change of use to the land under the *Sustainable Planning Act 2009*. These decisions are interrelated and it would be pointless to approve the ongoing operation of the activity if the related development approval is not permitted.

Section 174 Applications relating to wild river areas

This section ensures that any decisions related to applications for an environmental authority for a prescribed ERA comply with any applicable code mentioned in the wild rivers declaration for the area.

The primary objectives of wild rivers legislation is to preserve the natural values of wild rivers through: a process for a river and all or part of its catchment to be declared as a wild river area; and a framework to provide for the regulation of activities and resource allocations so that the natural values of wild rivers are preserved. It is important that activities that could potentially adversely affect the natural values of a wild river are managed. Sections such as this one are required to ensure that the objectives of wild rivers legislation and wild rivers declarations are considered when making decisions under the *Environmental Protection Act 1994*.

However under this section, some environmentally relevant activities are exempt from the wild rivers requirements. These include environmentally relevant activities that are related to the treatment of waste or drinking water (i.e. ERA63 sewage treatment and ERA64 water treatment) when these activities are carried out in areas designated under a wild rivers declaration as a designated urban area. In addition, the *Environmental Protection Regulation 2008* prescribes other activities which are exempt from wild rivers requirements when carried out in a designated urban area (exempt prescribed ERAs). These activities include motor vehicle workshops and most prescribed ERAs which do not have an aggregate environmental score since they have a low impact on the receiving environment.

For sewage and water treatment ERAs in a wild river high preservation area, the administering authority must be satisfied there is no viable location for the activity outside of the wild river high preservation area.

To the extent the application relates to development in the wild river preservation area which is not prohibited under the *Sustainable Planning Act 2009*, the assessment manager and any concurrence agency for the application, in assessing the application must comply with the applicable code for the development, mentioned in the wild river declaration. This provision ensures the code requirements are applied to all applications. This is similar to the approach taken by the *Vegetation Management Act 1999* to ensure strict compliance with an approved code.

This section is similar to and replaces section 73AA of the pre-amendment *Environmental Protection Act 1994*.

Section 175 Criteria for decision – standard application

This section states the criteria the administering authority must consider in deciding a standard application for an environmental authority attached to a mining lease. For other standard applications, there are no criteria because the decision is an automatic approval.

In deciding whether to change the standard conditions, the administering authority must comply with any relevant regulatory requirement and, subject to complying with the relevant regulatory requirements, must have regard to the application, the relevant standard conditions and the standard criteria. The standard criteria are defined in the Dictionary and include all submissions made by the applicant and any submitters, best practice environmental management for the activities, and the public interest.

Section 176 Criteria for decision – variation or site-specific application

This section states the criteria the administering authority must consider in deciding a variation or site-specific application.

In deciding the application including what conditions to impose, the administering authority must comply with any relevant regulatory requirement and, subject to complying with the relevant regulatory requirements, must have regard to the application, the relevant standard conditions and the standard criteria. The standard criteria are defined in the Dictionary and include any environmental impact assessment, all submissions made by the applicant and any submitters, best practice environmental management for the activities, and the public interest.

If the application is a variation application, the administering authority only considers these matters to the extent they relate to the subject of the condition proposed to be changed. For example, if the condition being changed is about air quality, then the regulatory requirements about water quality do not need to be considered.

This section consolidates and replaces sections 170(4), 171(2), 176(2), 193(3), 210(7), 309Y, 310N of the pre-amendment *Environmental Protection Act 1994*.

Section 177 Automatic decision for standard application in particular circumstances

This section states that if a decision for a standard application is not made within the decision timeframes, then the administering authority is taken to have approved the application, and the relevant standard conditions apply for the activity. With the exception of environmental authorities attached to mining leases, this decision is an automatic approval in any case – see section 170 of the Bill.

Section 178 Automatic decision for variation application in particular circumstances

This section states that if a decision for a variation application is not made within the decision timeframes, then the administering authority is taken to have refused the variation, and the relevant standard conditions would apply for the activity.

If the operator cannot meet the standard conditions, they may choose to surrender the environmental authority, seek an amendment to the standard conditions, or seek the approval of a transitional environmental program to transition to compliance with the environmental authority.

This section replaces section 171A of the pre-amendment *Environmental Protection Act 1994*.

Section 179 Automatic decision for site-specific application in particular circumstances

This section states that if a decision for a site-specific application is not made within the decision timeframes, then the administering authority is taken to have refused the application. This ensures that projects which should not operate are not approved.

Division 3 Applications for mining activities relating to a mining lease

Subdivision 1 Preliminary

Section 180 Application of div 3

This section states that this division only applies to an application for an environmental authority which is attached to a mining lease. This is because applications associated with a mining lease have a particular process where they are referred to the Land Court before the final decision is made by the administrative authority. This is unlike any other decision, where the court process is called an appeal and happens after the final decision is made by the administrative authority.

Subdivision 2 Notice of decision

Section 181 Notice of decision

This section sets out how the process of referral to the Land Court starts. Under this section, the administering authority must give the applicant and any submitters notice of its decision on the application.

This notice must state the decision and reasons for the decision, and that the applicant or any submitter may, by written notice to the administering authority, request that the authority refer the application to the Land Court. In practice, this notice will also be accompanied by a form, which the applicant or submitter may complete as a simple way of referring the application to the Land Court.

In addition, unless the decision was to refuse the environmental authority, the notice must be accompanied by a copy of the draft environmental authority.

This ensures that the applicant and submitters have notice about the basis of the decision and the conditions which the operator would have to comply with before making a decision whether to progress through to the court process.

This section is based on sections 175 and 208 of the pre-amendment *Environmental Protection Act 1994*.

Section 182 Submitter may give objection notice

This section applies where a notice has been given under section 181.

A submitter may request that its submission be taken to be an objection to the application by giving the administering authority an objection notice. This can simply be the completed form which accompanied the notice of decision under section 181.

The objection notice must be given to the administering authority within 20 business days after the notice of decision is given under section 181 and state the grounds for the objection.

If the objection notice is withdrawn by giving written notice to the administering authority and the Land Court, then the objection notice ceases to have effect.

This process ensures that only the submitters who want to progress their concerns as objections to the application before the Land Court become parties to the court process. If a submitter does not choose to become an objector, their submission can still be considered by the Land Court (if referred) as part of the documents upon which the decision by the administering authority was made. Where this is the case, the submitter still does not become a party to the court proceeding.

This section replaces sections 216, 217 and 218 of the pre-amendment *Environmental Protection Act 1994*.

Section 183 Applicant may request referral to Land Court

This section states that the applicant may, by written notice to the administering authority, request that the administering authority refer the application to the Land Court. This can just be the completed form which accompanied the notice of decision under section 181.

The request must be given to the authority within 20 business days after the notice of decision is given under section 181.

Subdivision 3 Referrals to Land Court

Section 184 Application of sdiv 3

This section states when a matter must be referred to the Land Court. The administering authority must refer the matter to the Land Court where it receives an objection notice under section 182, or where the applicant requests referral to the Land Court under section 183.

This is similar to section 219(1) of the pre-amendment *Environmental Protection Act 1994*.

If no objection notice or request for referral is received, then the administering authority must issue the environmental authority under section 195 of the Bill.

Section 185 Referral to Land Court

This section sets out how a matter is referred to the Land Court by the administering authority. The referral must be made within 10 business days after the latter of the receipt or either the last objection notice under section 182, or a request for referral under section 183.The section then states the contents of the application that must be filed with the registrar of the Land Court. The referral then starts a proceeding before the Land Court for it to make the objections decision.

This section replaces section 219(1)-(3) of the pre-amendment *Environmental Protection Act 1994*.

Section 186 Parties to Land Court proceedings

This section states that the parties to the Land Court proceeding are the administering authority, the applicant, any objector for the application and anyone else decided by the Land Court.

This section replaces section 219(4) of the pre-amendment *Environmental Protection Act 1994*.

Section 187 Notice of referral

This section states that the administering authority must, within 10 business days after making the referral give the applicant a copy of the notice mentioned in section 185, and any objection notice and the

submission to which the objection notice relates. The authority must also give an objector a copy of the notice mentioned in section 183 within the 10 business days after making the referral.

This section replaces section 219(5) of the pre-amendment *Environmental Protection Act 1994*.

Section 188 Objections decision hearing

This section sets out what interim orders the Land Court can make as part of the court process. The Land Court may make orders or directions it considers appropriate for a hearing for the objections decision (the objections decision hearing).

The Land Court may make an order or direction that the objections decision hearing happen at the same time as a hearing under the *Mineral Resources Act 1989* for the relevant mining tenure. This ensures that the related applications are not heard separately as the operator must have both the environmental authority and the tenure approved in order to operate.

This section replaces section 220 of the pre-amendment *Environmental Protection Act 1994*.

Section 189 Land Court mediation of objections

Under this section, the Land Court may conduct or provide mediation of the matter at the request of any party to the proceeding.

This section replaces section 221 of the pre-amendment *Environmental Protection Act 1994*.

Section 190 Nature of objections decision

This section gives the range of recommendations that the Land Court can give to the administering authority after an objections decision has been made.

The Land Court can recommend that the application be refused, or that the draft environmental authority become the environmental authority for the application, or that the environmental authority be approved with other conditions.

This keeps the Land Court's powers very broad and does not limit its discretion.

This section replaces section 222 of the pre-amendment *Environmental Protection Act 1994*.

Section 191 Matters to be considered for objections decision

This section states what the Land Court must consider in making the objections decision for the application.

This section replaces section 223 of the pre-amendment *Environmental Protection Act 1994*.

Section 192 Notice of objections decision

This section states that as soon as practicable after the objections decision is made, the Land Court must give a copy of the decision to the Minister administering the *Mineral Resources Act 1989*, and if a relevant mining lease is, or is included in, a significant project – the Minister administering the *State Development and Public Works Organisation Act 1971*.

This section replaces section 222(3) of the pre-amendment *Environmental Protection Act 1994*.

Section 193 Advice from MRA and State Development Ministers about objections decision

This section applies if the MRA Minister and State Development Minister are given a copy of the objections decision under section 192. The MRA Minister or State Development Minister must advise the administering authority about any matter the MRA Minister or State Development Minister considers may help the administering authority to make a decision under subdivision 4 (Final decision on application) about the application.

The advice must be given either within 10 business days after the copy of the decision is received or if the relevant Minister and the administering authority have, within the 10 business days, agreed to a longer period- the longer period. In giving the advice, the MRA Minister or State Development Minister may seek advice from any entity. A contravention of this section does not invalidate a decision made about an application under subdivision 4 or an environmental authority given under division 4 for the application.

This ensures that the relevant decision makers make consistent decisions as a result of the Land Court's recommendation.

This section replaces section 224 of the pre-amendment *Environmental Protection Act 1994*.

Subdivision 4 Final decision on application

Section 194 Final decision on application

This section applies for an application if an objections decision has been made about the application or if all objections have been withdrawn before an objections decision is made.

The administering authority must make a final decision based on the recommendation of the Land Court and the advice received under section 193.

Essentially, the administering authority must decide whether to change its original decision under section 170, 171 or 172. Consequently, the administering authority either:

- Refuses to grant the environmental authority;
- Approves the draft environmental authority as an environmental authority; or
- Approves an environmental authority which is different from the draft environmental authority. This section includes approving an environmental authority when the original decision was to refuse the application).

A final decision must be made by the administering authority 10 business days after either: the timeframe for advice from the MRA Minister or State Development Minister has ended under section 193; or the administering authority receives the last notice that the last objection is withdrawn under section 182(4).

In making the final decision on the application, the administering authority must have regard to:

- any objections decision;
- any advice given by the MRA Minister or the State Development Minister to the administering authority under section 193; and

- a draft environmental authority if one was given for the application.

If a draft environmental authority was not given for the application then the administering authority must comply with any regulatory requirement, and have regard to: the application; any standard conditions for the relevant activity or authority; any response given for the information request; and the standard criteria.

If the decision is to approve an environmental authority that was originally refused, then the administering authority must consider the criteria in section 176.

This section raises the fundamental legislative principle that legislation should make rights and liberties, or obligations, dependant on administrative powers only if subject to appropriate review. Specifically, there is no right of appeal against the final decision. While it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process, an absence of a provision for such a right of review may be justified by the overriding significance of the objectives of the legislation. Such a justification applies in this case and the absence of an appeal right is deliberate. The administering authority in the cases where this section applies must first make a preliminary decision and the preliminary decision may be referred to the Land Court for its recommendation about the preliminary decision. The administering authority is then required to have regard to the Land Court's recommendation in making its final decision. In effect, the Land Court's review of the preliminary decision is a merits review with all relevant parties being able to put their case forward. Consequently, the lack of appeal against this decision point is justified as the case has already been considered by the courts.

This section replaces section 225 of the pre-amendment *Environmental Protection Act 1994*. Terminology and phraseology has been updated to reflect current drafting, but the intention of the section is the same.

Division 4 Steps after deciding application

Section 195 Issuing environmental authority

This section applies when:

- For an application for an environmental authority attached to a mining lease:
    - A draft environmental authority has been given and no objections notices or requests for referral to the Land Court have been received by the administering authority; or
    - The final decision under section 194 is to approve an environmental authority; or
- Otherwise:
    - A standard or variation application is decided; or
    - A site-specific application is approved.

In these circumstances, the administering authority must issue an environmental authority to the applicant.

This section also sets out the timeframe for issuing the environmental authority.

Where the application for the environmental authority is made under the *Sustainable Planning Act 2009*, the environmental authority must be issued at the same time as the decision under the *Sustainable Planning Act 2009* is given. This ensures that the applicant receives notice about the entirety of their obligations at the same time.

Where the application is for an environmental authority attached to a mining lease, the environmental authority must be issued 5 business days after the final decision or 25 business days after the draft environmental authority is issued. This timeframe takes account of the 20 business days for the administering authority to receive an objection notice or a request for referral to the Land Court by the applicant.

If neither of the above two scenarios applies, the environmental authority must be issued within 10 business days after the decision in section 170, 171 or 172 is made.

This section replaces sections 171B(1)-(2), 194(1)-(2), 226(1)-(3), 228(1)-(2) 309S(1)-(2), 310, and 310P of the pre-amendment *Environmental Protection Act 1994*.

Section 196 Copy of environmental authority to be given to assessment manager in particular circumstances

This section applies where the application for the environmental authority is made under the *Sustainable Planning Act 2009*. In that case, the administering authority must also give the assessment manager a copy of any environmental authority at the same time it issues the environmental authority to the applicant.

Section 197 Inserting environmental authority in register

This section provides for the insertion of a copy of the environmental authority in the relevant register.

This section replaces sections 194(3), 171B(3), 226(4)-(5), 228(3), 309S(3), 310 and 310P of the pre-amendment *Environmental Protection Act 1994*.

Section 198 Information notice about particular decisions

This section applies when the administering authority decides to either refuse an application, or decides to impose a condition on an authority which the applicant has not agreed to in writing. In this case, the administering authority must give the applicant an information notice about the decision. This enlivens the review and appeal rights in chapter 11 part 3 of the *Environmental Protection Act 1994*.

Equally, if the administering authority approves an application for a site-specific application, it must give any submitter an information notice and the right to seek review and appeal the decision. This only applies to site-specific applications since it is only site-specific applications which are required to do public notice under the *Environmental Protection Act 1994* and therefore enliven submitters' rights. Where public notice is required under the *Sustainable Planning Act 2009* (i.e. for impact assessable development), the review and appeal rights are also under the *Sustainable Planning Act 2009.*

This section does not apply for a decision about an environmental authority attached to a mining lease because the Land Court process in division 3

applies to these types of applications and that process amounts to an appeal prior to the final decision.

This section replaces sections 171C, 195, 310A, and 310Q of the pre-amendment *Environmental Protection Act 1994*.

Division 5 Environmental authorities

Section 199 Requirements for environmental authority

This section states that an environmental authority must be in the approved form, contain all conditions imposed on the authority, and identify any conditions that are standard conditions.

The conditions must be identified as standard conditions because the provisions which relate to amendment of conditions are different depending on whether the condition being amended is a standard condition or a non-standard condition.

This section replaces sections 165 and 168A of the pre-amendment *Environmental Protection Act 1994*.

Section 200 When environmental authority takes effects

This section states when an environmental authority takes effect under different circumstances.

In practical terms, the default position is that the environmental authority takes effect either:

- when the development permit is granted (for prescribed ERAs); or
- when the tenure is granted (for resource activities); or
- when the approval from the Coordinator-General takes effect (for certain activities in a State development area).

However, the environmental authority will need to specify that this is a 'stated event' for the purposes of subsection (1)(b) to put this into effect.

However, the operator may choose to select a later date for the environmental authority to take effect, for example, where the development is staged development and the ERA will not commence until one of the later stages. In that case, either the environmental authority can state the

day or event when the environmental authority takes effect, or the environmental authority for a prescribed ERA will have no effect until the administering authority receives written notice that the holder has commenced the activity. The applicant must nominate whether they wish to take advantage of one of these exceptions to the default position as part of their application for an environmental authority.

If the holder neglects to give the administering authority the written notice, then they are operating the activity without an environmental authority and can be prosecuted under the *Environmental Protection Act 1994*.

If none of these circumstances apply, then the environmental authority will take effect on the date of issue.

This section replaces sections 73G, 303 and 312V of the pre-amendment *Environmental Protection Act 1994*.

Section 201 Term of environmental authority

This section provides that an environmental authority continues in force until it lapses, or is cancelled, surrendered or suspended under this chapter. The majority of environmental authorities have no end date, so must be cancelled or surrendered in order for them to come to an end.

This section replaces section 310R of the pre-amendment *Environmental Protection Act 1994*.

Section 202 Environmental authority includes conditions

This section provides that an environmental authority includes the conditions in the authority. Therefore, a document which requires compliance with the environmental authority, also requires compliance with the conditions of the environmental authority.

Division 6 Conditions

Section 203 Conditions generally

This section provides when the administering authority may impose a condition on an environmental authority.

In most cases, the administering authority may impose any condition which it considers is necessary or desirable.

However, where the application for the environmental authority was made through the *Sustainable Planning Act 2009*, the condition can only be imposed if it relates to the carrying out of the prescribed ERA, i.e. the operational component of the activity. This is because the authorisation for the use of the land for that activity is contained in the development permit under the *Sustainable Planning Act 2009*.

Also, note that under section 292 of this Bill, the administering authority may impose a condition on an environmental authority which requires payment of a financial assurance before the operator may commence carrying out the activities authorised by the environmental authority.

This section replaces sections 170(5), 176(3), 193(2), 210(1), and 309Z(1)-(2) of the pre-amendment *Environmental Protection Act 1994*.

Section 204 Conditions that must be imposed for standard or variation applications

This section provides that a condition must be imposed on an environmental authority for a standard or variation application that requires the relevant activity to comply with the relevant eligibility criteria. This condition is taken to be a standard condition.

This section ensures that these ERAs continue to meet the eligibility criteria over the term of the authority. If an activity no longer meets the eligibility criteria, the operator must either take action to bring the activity back to compliance with the eligibility criteria, or make a site specific application so that a full assessment of the impacts of the activity on the receiving environment can be made. However, there will be circumstances when an activity becomes non-compliant with the eligibility criteria, and the holder has taken all reasonable steps to ensure continued compliance with the eligibility criteria. In that case, the holder will not have to make a site-specific application or take steps to ensure the activity complies with the eligibility criteria. An example is when the eligibility criteria require that the activity does not cause environmental nuisance at the nearest sensitive receptor and an existing activity is encroached upon by a residential development. In this example, there may be little that an existing operator can do to prevent environmental nuisance experienced by the encroaching residential development.

Section 205 Conditions that must be imposed for site-specific applications

This section ensures that, for an application related to a significant project, conditions for the authority stated in the Coordinator-General's report for the relevant activity are imposed on the authority. Any other conditions imposed on the authority cannot be inconsistent with a condition in the Coordinator-General's report.

This section replaces sections 210(2), 309T, and 310O(5) of the pre-amendment *Environmental Protection Act 1994*.

Section 206 Conditions that must be imposed for environmental authorities for particular resource activities

This section deems a condition on all existing and new environmental authorities for resource activities, other than for mining activities, to prohibit the use of 'restricted stimulation fluids'. 'Restricted stimulation fluids' are fluids used for the purpose of stimulation, including fracturing (fraccing), which contain petroleum hydrocarbons containing benzene, toluene, ethylbenzene or xylene (B-TEX), or chemicals which are likely to produce B-TEX as they break down in the environment.

This section replaces section 312W of the pre-amendment *Environmental Protection Act 1994* and has not changed the requirements which were in place.

Section 207 Conditions that may be imposed

This section sets out in more detail some of the conditions which may be imposed, including conditions regarding statements of compliance, environmental offsets, access to land, rehabilitation and remediation, and actions to prevent environmental harm because of a relevant activity.

A statement of compliance allows for the prioritisation of the information that is necessary to grant an environmental authority. Once approval is given, other technical aspects which are not material to determining the application would be considered at a later stage by the applicant demonstrating compliance with relevant codes or technical standards prior to commencement of the ERA. Examples of activities that may be subject to compliance codes include technical engineering reports for liners of landfills and containment structures for regulated waste storage.

Compliance assessment will provide a quick process for purely technical issues. This also simplifies the information requirements, and delays the costs of the technical assessment until needed, ensuring that money and effort are not wasted if the proposal does not proceed.

This section further specifies that the administering authority may require an environmental offset condition. An environmental offset condition may only be imposed if the administering authority is satisfied that the applicant has demonstrated that all cost effective on-site measures to avoid and/or minimise any negative impacts of the development on the natural environment are being, or will be, carried out. These conditioning powers are administered through the Queensland Government Environmental Offsets Policy, which commenced on 1 July 2008, and the specific-issue offsets policies which sit beneath the QGEOP, such as the Queensland Biodiversity Offsets Policy.

The other conditions that may be imposed under this section include those that relate to: access to land on which the relevant activity is being carried out; rehabilitating or remediating environmental harm because of the relevant activity; and action taken to prevent environmental harm because of the relevant activity. These used to form part of the definition of 'mining activity', 'petroleum activity', 'geothermal activity', and 'GHG storage activity'.

The section further provides that a condition can be imposed that states that a condition can continue to have effect after the authority has ended or ceased to have effect. An example of where such a condition would be appropriate is where rehabilitation of the site is required after the activity has ceased.

This section consolidates and replaces sections 210(10), 309Z(1)-(2), 305(3), 309Z(4), and 310O(4).

Section 208 Condition requiring statement of compliance

This section applies if a condition on an environmental authority requires the holder to give the administering authority a statement of compliance as mentioned in new section 207. This section specifies further requirements that the condition must state if such a condition is imposed.

A statement of compliance allows for the prioritisation of the information that is necessary to grant an environmental authority. Once approval is given, other technical aspects which are not material to determining the

application would be considered at a later stage by the applicant demonstrating compliance with relevant codes or technical standards prior to commencement of the ERA. Examples of activities that may be subject to compliance codes include technical engineering reports for liners of landfills and containment structures for regulated waste storage. Compliance assessment will provide a quick process for purely technical issues. This also simplifies the information requirements, and delays the costs of the technical assessment until needed, ensuring that money and effort are not wasted if the proposal does not proceed.

Section 209 Environmental offset conditions

This section provides that the administering authority may require that an environmental offset condition be imposed if it is satisfied that the applicant has demonstrated that all cost effective on-site measures to avoid and/or minimise any negative impacts of the development on the natural environment are being, or will be, carried out. This reflects the "avoid, minimise, offset" hierarchy in the Queensland Government Environmental Offsets Policy. This subsection was modelled on section 127ZL of the NSW *Threatened Species Conservation Act 1995*.

An environmental offset condition may require: that works or activities be carried out, on-site or off-site from the site of the environmental authority; that the applicant may meet their offset requirement by making a financial contribution to an environmental offsets trust; or that the environmental authority holder may enter into an agreement about the environmental offset.

If an environmental offsets agreement is used to secure the offset, then the terms and conditions of the environmental offsets agreement must usually be complied with as a condition of the environmental authority. The environmental authority holder can enter into agreements with the administering authority or another entity (e.g. an adjoining local government) to establish the obligations, or secure the performance, of a party to the agreement about the condition. If the environmental authority holder enters into an agreement regarding an environmental offset, then the holder must enter into this agreement before the environmental authority is issued.

This section replaces sections 210(3)-(6), 210(9), 305(5)-(10), and 310O(6)-(10) of the pre-amendment *Environmental Protection Act 1994*.

Section 210 Inconsistencies between particular conditions

This section clarifies which conditions prevail when particular conditions are inconsistent.

If there is an inconsistency between a standard condition, and a non-standard condition in an environmental authority, the non-standard condition prevails to the extent of the inconsistency. This is a catch all provision as this scenario is unlikely to occur since the administering authority can check for consistency when a condition is varied or amended.

In addition, if there is an inconsistency between a condition of the environmental authority and a native title issues condition, the native title issues condition prevails to the extent of the inconsistency. This only occurs when the activity is 'mining' as defined by the *Native Title Act 1994 (Cwlth)*. This is because the native title rights override the mining rights to the extent of inconsistency.

This section replaces sections 306 and 306A of the pre-amendment *Environmental Protection Act 1994*.

Part 6 Amending environmental authorities by administering authority

Division 1 Amendments

Section 211 Corrections

This section provides that the administering authority may amend an environmental authority to correct a clerical or formal error if the amendment does not adversely affect the interests of the holder of the environmental authority or anyone else. An example of such an error might be an incorrect address or a misspelt name. The administering authority must provide the holder with written notice of the amendment.

Section 212 Amendment of particular environmental authorities to reflect NNTT conditions

This section provides the administering authority with the power to amend a granted environmental authority for a mining or petroleum activity to ensure compliance with any conditions included in a determination made by the National Native Title Tribunal (NNTT) under section 38(1)(c) of the *Native Title Act 1993* (Cwlth). This only occurs when the activity is 'mining' as defined by the *Native Title Act 1994* (Cwlth) which may include both mining activities and petroleum activities under the *Environmental Protection Act 1994*.

This section is needed because native title rights override mining rights to the extent of inconsistency. The NNTT determination may be made after the environmental authority is granted, so the administering authority has the power to change the inconsistent conditions to ensure that the environmental authority reflects the NNTT determination.

This section replaces section 290A of the pre-amendment *Environmental Protection Act 1994*.

This section raises the fundamental legislative principle that legislation should make rights and liberties, or obligations, dependant on administrative powers only if subject to appropriate review. Specifically, there is no right of appeal for the decision to amend an environmental authority so that it complies with any conditions of a determination made by the NNTT under this section. While it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process, an absence of a provision for such a right of review may be justified by the overriding significance of the objectives of the legislation. Such a justification applies in this case and the absence of an appeal right is deliberate. Under section 40 of the *Native Title Act 1993* (Cwlth) (No re-opening of issues previously decided), a determination of the NNTT is not to be re-opened by the negotiation parties, without the leave of the NNTT. An appeal right of the power conferred under this provision would represent an ability to re-open a decision of the NNTT. This is expressly prohibited by the *Native Title Act* (Cwlth). Consequently, there is no appeal right for an amendment under this section.

Section 213 Amendment of environmental authorities to reflect new standard conditions

This section specifies the circumstances when the administering authority may amend the standard conditions on an environmental authority.

Under section 318C of this Bill, proposed standard conditions will generally only apply to new applications for environmental authorities.

If the chief executive has determined that the proposed standard conditions to apply to existing environmental authorities, the notice of proposed standard conditions must specify this fact. In addition, the chief executive must give written notice about the proposed standard conditions to each holder of an environmental authority which would be affected by the retrospective proposed standard conditions. This notice is part of a consultation process which allows a current holder of an authority to make a submission about the proposed changes to the standard conditions. This process is included to ensure current holders are able to have input during the development of changed standard conditions, and new standard conditions are imposed on current holders only with ensuring appropriate consultation.

If the proposed standard conditions become standard conditions, the administering authority can amend the standard conditions on an existing environmental authority to reflect the new standard conditions.

The administering authority must give written notice of the amendment to the holder and the amended authority does not take effect until 1 year after the administering authority gives the holder the notice. This delayed commencement is to give the holder time to make any operational changes needed to meet the new condition, or to seek a variation of the standard conditions which can not be met. In addition, if the holder needs more time to meet the new standard condition, the holder can seek the approval of a transitional environmental program to transition to compliance with the conditions.

This provision ensures a level playing field for all operators of the same activity, while providing a transparent and rigorous process for the amendment of existing environmental authorities. To impose more stringent conditions on new applications while allowing existing activities to continue to operate under the old conditions could create inequalities between different operators.

This section replaces section 73HB of the pre-amendment *Environmental Protection Act 1994*.

This section raises the fundamental legislative principle that legislation should make rights and liberties, or obligations, dependant on administrative powers only if subject to appropriate review. Specifically, there is no right of appeal against the decision of the administering authority to amend an environmental authority to replace the existing standard conditions with new standard conditions. However, the current holder of an environmental authority is not prejudiced by the absence of this appeal right due to the existence of a number of other means to either make submissions on the proposed new standard conditions, or to amend an authority before the new conditions come into effect.

The holder of an environmental authority has the opportunity to make submissions on the standard conditions during the consultation process under sections 318C and 318D. This process is included to ensure current holders are able to have input during the development of changed standard conditions, and that new standard conditions are not imposed on current holders without allowing them to make submissions on the proposed changes. In addition, the new standard conditions do not apply for 1 year after the administering authority gives the holder notice of the amendment, so the holder has time to either adjust their operations to meet the obligations of the new standard conditions, or, if they are unable to comply, apply to have their environmental authority amended by varying the standard conditions. A decision to refuse to amend the environmental authority is appellable under the *Environmental Protection Act 1994*.

Section 214 Amendment of particular environmental authorities relating to development applications

This section applies when an environmental authority is applied for under the *Sustainable Planning Act 2009* under section 115 of this Bill. Where there is more than one concurrence agency, the Minister for the *Sustainable Planning Act 2009* has the power to resolve conflicts between conditions imposed by different concurrence agencies under section 420 of the *Sustainable Planning Act 2009*. Section 420 is amended by this Bill to allow the Minister for the *Sustainable Planning Act 2009* to also resolve conflicts between the conditions of the development approval and conditions of the environmental authority. This section allows the administering authority to change the environmental authority to reflect the

direction of the Minister for the *Sustainable Planning Act 2009* to resolve the conflicting conditions. The administering authority must inform the assessment manager of the decision and give an information notice about the amendment to the holder of the authority. This then enlivens review and appeal rights under chapter 11 part 3 of the *Environmental Protection Act 1994*.

Section 215 Other amendments

This section specifies the other instances where the administering authority can amend an environmental authority.

The administering authority must either have the holder's consent in writing to the amendments, or have grounds to amend and follow the process in division 2 which provides the holder with the opportunity to say why the amendment should not be made.

The specific grounds on which the administering authority may amend the environmental authority without the holder's consent are set out in this section. These grounds are the same as the equivalent grounds in the pre-amendment *Environmental Protection Act 1994* except to add the following grounds:

- That the activity does not comply with the eligibility criteria (subsection (2)(b)). This only applies for an environmental authority issued for a standard or variation application (i.e. on the grounds that it complied with the eligibility criteria); and
- That a replacement tenure has been issued (subsection (2)(k)); and
- To reflect a partial surrender (subsection (2)(l)).

The amendment of an environmental authority to reflect a partial surrender was previously contained in the surrender provisions. However, it is more appropriate to co-locate all grounds in one section for the administering authority to amend the environmental authority.

Similarly, the amendment of an environmental authority due to the issue of a replacement tenure was previously dealt with under the surrender provisions as a conditional surrender. However, this ground only applied to environmental authorities for mining activities.

This ground has been expanded to apply to all resource activities. Expanding this ground of amendment to all resource activities, rather than just mining activities, removes the requirement for resource companies to

prepare and lodge amendment applications. This removes an administrative burden with no adverse environmental outcome since the activities and locations are unchanged from the tenure being replaced. For example, if an Authority to Prospect issued under the *Petroleum Act 1923* is replaced with an Authority to Prospect under the *Petroleum and Gas (Production and Safety) Act 2004*, or if a Petroleum Survey Licence that automatically expires after twelve months is replaced with another Petroleum Survey Licence, these provisions could be used to amend the environmental authority to refer to the new tenure.

This section provides a process for the review of environmental authorities which are not meeting best practice environmental management standards or have been proven to be insufficient to protect environmental values, for example, in response to a report prepared by the department.

This section consolidates and replaces sections 74H, 73HA, 269A, 290, 292, 312D, and 312E of the pre-amendment *Environmental Protection Act 1994*.

Division 2 Procedure for particular amendments

Section 216 Application of div 2

This section specifies that this division applies if the administering authority proposes to amend an environmental authority without the written agreement of the environmental authority holder, other than an amendment to:

- Correct a clerical or formal error (section 211);
- Reflect NNTT conditions (section 212);
- Reflect new standard conditions (section 213); or
- Change an environmental authority which was applied for through the *Sustainable Planning Act 2009* because of a submission under the *Sustainable Planning Act 2009* (section 214).

This section consolidates and replaces sections 294 and 312G of the pre-amendment *Environmental Protection Act 1994*.

Section 217 Notice of proposed amendment

This section states the requirements of a written notice (the proposed amendment notice) that must be given to an environmental authority holder if the administering authority proposes to make an amendment.

This notice must specify that the holder may, within a stated period of at least 20 business days after the holder is given the proposed amendment notice, make a written representation why the proposed amendment should not be made. The proposed amendment notice must also be accompanied by a copy of the environmental authority for the original application showing the changes. This provides the holder with due process and the opportunity to be heard where the amendment will benefit the administering authority or the community, but may not benefit the holder.

This section consolidates and replaces sections 295 and 312H of the pre-amendment *Environmental Protection Act 1994*.

Section 218 Considering representations

This section requires the administering authority to consider any written representations made by the environmental authority holder when making its decision whether or not to amend the environmental authority. This ensures that the holder's views are considered before taking unilateral action to amend the environmental authority.

This section consolidates and replaces sections 296 and 312I of the pre-amendment *Environmental Protection Act 1994*.

Section 219 Decision on proposed amendment

This section states that the administering authority may make the amendment if it still believes the ground exists to make the proposed amendment after considering any representations made by the holder. The administering authority must give the holder notice of its decision whether or not to amend the environmental authority.

This section replaces sections 297 and 312J of the pre-amendment *Environmental Protection Act 1994*.

Section 220 Notice of amendment decision

This section specifies that if the administering authority's decision is to amend the environmental authority, then it must give holder an information

notice, which enlivens review and appeal rights under chapter 11 part 3 of the *Environmental Protection Act 1994*.

This section replaces sections 298 and 312K of the pre-amendment *Environmental Protection Act 1994*.

Division 3 Steps for amendments

Section 221 Steps for amendment

This section states the steps that must be taken to put the amendment decision into effect.

If the environmental authority is amended because of a properly made submission under the *Sustainable Planning Act 2009* (see section 214 of this Bill), the administering authority must also give a copy of the amended environmental authority to the assessment manager for the development application.

This section replaces sections 73HE, 299, 299A, 300, 301, 311, 311B, 312L, 312M, and 312N of the pre-amendment *Environmental Protection Act 1994*.

Part 7 Amendment of environmental authorities by application

Division 1 Preliminary

Section 222 Exclusions from amendment under pt 7

This section specifies when an amendment application cannot be made. This is usually because there is another mechanism to achieve the change sought.

In the case of a partial surrender for a mining, petroleum or geothermal activity, this change should be made through the provisions in part 10 of chapter 5 since the environmental authority cannot be changed to partially surrender part of the activities without the corresponding change being

made to the tenure. This is the same as the requirement in section 237 of the pre-amendment *Environmental Protection Act 1994*.

Where the holder seeks to amalgamate their environmental authorities, the appropriate process is set out in part 8 of chapter 5. Part 8 also contains the criteria upon which the decision to approve or refuse this application would be made. A holder may seek to amend the environmental authorities at the same time as an amalgamation is sought, but this is two separate processes and should be treated as such.

Similarly, the transfer of all or part of an environmental authority is processed under Chapter 5 Part 9 of the amended *Environmental Protection Act 1994*, rather than by amendment.

Also excluded from amendments under part 7 is a transfer of all or part of an environmental authority to a person. The appropriate process for such a process is part 9 of this chapter.

Section 223 Definitions for pt 7

This section defines what is meant by a 'major amendment' and a 'minor amendment' for the purpose of this part.

Specifically, the circumstances which constitute a minor amendment are defined, and a major amendment is anything which is not a minor amendment. The onus will be on the applicant to provide enough information to show that their proposed amendment is minor. This avoids the difficulties experienced under other legislation where a change which is clearly insignificant has had to go through the full amendment process.

Minor and major amendments are differentiated so that simple minor amendments do not go through the more thorough processes that major amendments must undergo. Depending on the circumstances, a major amendment may also trigger a material change of use application under the *Sustainable Planning Act 2009*.

Since the definition of 'major amendment' is any amendment which is not a 'minor amendment', this incorporates the concept of significant increase which required a higher level of assessment under section 247A of the pre-amendment *Environmental Protection Act 1994* and substantial increase in the risk of harm which required a higher level of assessment under section 310W of the pre-amendment *Environmental Protection Act 1994*.

Division 2 Making amendment application

Section 224 Who may apply

This section states that the holder of an environmental authority may apply to the administering authority to amend the environmental authority. This is called an 'amendment application'.

This section consolidates and replaces elements of sections 73HC, 238, 239, 310S, and 310T of the pre-amendment *Environmental Protection Act 1994*.

Section 225 Amendment application cannot be made in particular circumstances

This section specifies the circumstances when an amendment application cannot be made. An amendment application can not be made if the proposed amendment involves changes to the relevant activity, and if a development permit for a material change of use is necessary under the planning scheme, and a development application has not been made.

Section 226 Requirements for amendment application generally

This section states the specific requirements for an amendment application. An application which does not meet the requirements of this section would not be a valid application and the administering authority is not required to make a decision about the amendment being sought. Consequently, the onus is on the applicant to ensure that all of the information required by this section is provided.

This section consolidates and replaces sections 240 and 310U of the pre-amendment *Environmental Protection Act 1994*.

Section 227 Requirements for amendment application—CSG activities

This section provides that certain environmental authorities for CSG activities are required to provide additional information which meets the requirements in section 126(1) and section 126(2) in relation to CSG water management. This is required as a change in the activity may significantly affect the amount and quality of the water produced and the regime

necessary to manage it. This is consistent with the principles of adaptive management.

This requirement has not been changed from section 310U of the pre-amendment *Environmental Protection Act 1994* since it was inserted very recently by the *South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010*. This requirement will still only apply to those CSG environmental authorities which were level 1 environmental authorities under the pre-amendment *Environmental Protection Act 1994* (i.e. environmental authorities for ineligible ERAs). However, some general requirements that were included in old section 310U that apply to all amendment applications have been moved to section 226. This is so that these general requirements that apply to all amendment applications are in the same section to reduce unnecessary repetition.

Division 3 Assessment level decisions

Section 228 Assessment level decision for amendment application

This section states that the administering authority must decide if the amendment is a major amendment or a minor amendment within 10 business days of receiving the amendment application. This decision is called the assessment level decision.

This concept has been carried over and expanded out from section 246 of the pre-amendment *Environmental Protection Act 1994*.

Section 229 Notice of assessment level decision

This section states that the administering authority must, within 10 business days after the assessment level decision is made, give the applicant a notice stating the decision, and if the decision is that the proposed amendment is a major amendment, the reasons for the decision.

This section simplifies and broadens the scope of section 249 of the pre-amendment *Environmental Protection Act 1994*.

Section 230 Administering authority may require public notification for particular amendment applications

This section provides that the notice of the assessment level decision may also state that there are notification requirements for resource activities other than mining activities. This section may apply if the amendment will be a major amendment and is likely to lead to a substantial increase in the risk of environmental harm due to a substantial change as specified by this section.

The section further specifies some circumstances which are taken to be a substantial change. If the notice of assessment level decision also indicates that the notification stage applies, then the notice must also include the reasons for this decision.

This section ensures that for major amendments to resources activities (other than mining activities), the public has the opportunity to make submissions. This ensures that the public notice requirements are not lessened merely because the application is for an amendment application rather than for a brand new environmental authority.

This section is similar to and replaces section 310W of the pre-amendment *Environmental Protection Act 1994*. The process, which was in section 310X of the pre-amendment *Environmental Protection Act 1994*, is then outlined in the public notice stage of the application process.

Public notice for amendments of mining activities is covered by section 233 of this Bill.

Division 4 Process if proposed amendment is a major amendment

Section 231 Application of div 4

This section states that this division applies if the administering authority has decided that the amendment is a 'major amendment'.

This is similar to section 250 of the pre-amendment *Environmental Protection Act 1994*, except that whether an EIS is required is decided as part of the information stage.

Section 232 Relevant application process applies

This section states the relevant application process that an amendment application goes through.

The information, notification, and decision stages outlined in Parts 3 to 5, apply to the amendment application as if it were a site-specific application.

This section also specifies that a submission (by a third party as a result of public notice) made for the amendment application may be made about a condition of the environmental authority only to the extent that the condition is proposed to be amended.

This is similar to section 251 of the pre-amendment *Environmental Protection Act 1994*.

Section 233 Public notice of amendment application

This section specifies the public notice requirements for an amendment application for particular mining activities. The section specifies who the application must be given to, and how a notice can be published to satisfy the requirements of this section. The section also provides that if the administering authority decides another way of publishing the notice different to that outlined in this section, it may only do so if it gives the applicant an information notice about the decision before the notice is published.

These requirements have not been changed from section 254 of the pre-amendment *Environmental Protection Act 1994*.

Section 234 Submission period

This section applies to an amendment application in relation to a mining lease where there is no certificate of public notice under the *Mineral Resources Act 1989*.

This section states that the submission period for the application is the period fixed by the administering authority by written notice to the applicant. This period must be at least 20 business days and must end at least 20 business days after the publication of the application notice stated in section 233.

This section replaces section 255 of the pre-amendment *Environmental Protection Act 1994*.

Section 235 Criteria for deciding amendment application

This section specifies which criteria are to be used for deciding an amendment application. The criteria referred to may only be considered in the decision making process to the extent that they relate to the proposed amendment.

This section replaces sections 310Y and 310Z of the pre-amendment *Environmental Protection Act 1994*.

Section 236 Changing amendment application

This section specifies the requirements for making a change to an amendment application, before a decision on the amendment application has been made. This section is based on section 132 of this Bill, which in turn is based on section 302A of the pre-amendment *Environmental Protection Act 1994* and equivalent sections in the *Sustainable Planning Act 2009*.

Section 237 Effect on assessment of amendment application—minor change

This section specifies that a minor change to the amendment application or a change that the administering authority agrees to in writing, does not stop the assessment of the amendment. Further, if such a minor or agreed change occurs during or after the notification stage, the notification stage does not need to restart. This section is based on section 133 of this Bill, which in turn is based on section 302A of the pre-amendment *Environmental Protection Act 1994* and equivalent sections in the *Sustainable Planning Act 2009*.

Section 238 Effect on assessment of amendment application—other changes

This section specifies the effect on the amendment application process if a change to the amendment application is not a minor or agreed change. Specifically, the assessment process stops on the day the administering authority receives the notice, and the process starts again from the beginning of the information stage.

For applications which the notification stage applies to, a change of the type mentioned in this section will require that the notification stage be

repeated unless the administering authority is satisfied the change would not be likely to attract a submission objecting to the thing the subject of the change.

This section is based on section 134 of this Bill, which in turn is based on section 302A of the pre-amendment *Environmental Protection Act 1994* and equivalent sections in the *Sustainable Planning Act 2009*.

Division 5 Process if proposed amendment is minor amendment

Section 239 Application of div 5

This section states that this Division applies if it has been decided by the administering authority that the amendment is a minor amendment (that is, not a major amendment).

This process replaces section 256 of the pre-amendment *Environmental Protection Act 1994*.

Section 240 Deciding amendment application

This section states that the administering authority must decide to refuse or approve the amendment application within 10 business days of making the assessment level decision. The administering authority may approve an amendment application if it is satisfied the proposed amendment is necessary or desirable. Further, if the administering authority decides to approve the application, it may also make amendments to the conditions of the environmental authority it considers relate to the subject matter of the proposed amendment, and are necessary and desirable.

This section replaces section 257 of the pre-amendment *Environmental Protection Act 1994*.

Section 241 Criteria for deciding amendment application

This section states the requirements and criteria the administering authority must comply with and have regard to in deciding an amendment application.

This section replaces section 258 of the pre-amendment *Environmental Protection Act 1994*.

Division 6 Steps after deciding amendment application

Section 242 Steps after deciding amendment application

This section specifies the steps the administering authority is required to take to put into effect an approved amendment. If the administering authority decides to refuse the application, it must give the applicant an information notice of the decision. This enlivens the review and appeal provisions of chapter 11 part 3 of the *Environmental Protection Act 1994*.

Part 8 Amalgamating environmental authorities

Division 1 Preliminary

Section 243 Definitions for pt 8

This section defines relevant terms for this part.

Section 244 Types of amalgamated environmental authorities

This section states the three types of amalgamated environmental authority. These are an amalgamated project authority, amalgamated local government authority, and an amalgamated corporate authority. Of these, only the amalgamated corporate authority is new, as the others were previously provided for in former section 73F of the pre-amendment *Environmental Protection Act 1994*, or through applications to amend an environmental authority.

Section 245 Who may apply

This section states that the holder of 2 or more environmental authorities may, at any time, apply for an amalgamated authority for all of the activities on the current environmental authorities.

This means that it is only where a single legal entity holds the relevant environmental authority that they can be amalgamated. For example, a parent company cannot amalgamate the environmental authorities owned by its subsidiary companies, since that would create confusion about which legal entity is responsible for compliance with the conditions of the amalgamated environmental authority.

Section 246 Requirements for amalgamation application

This section specifies the requirements for an amalgamation application. These are requirements for the application to be in the approved form, accompanied by the prescribed fee, state the type of amalgamated authority applied for, and be supported with enough information for the administering authority to decide the application.

Division 2 Deciding amalgamation application

Section 247 Deciding amalgamation application

This section provides for the decision to be made by the administering authority for an amalgamation application.

The administering authority cannot refuse an application for an amalgamated corporate authority. This is because this is merely an administrative tool, and the amalgamation fee is to cover the administering authority's costs of processing the amalgamation application and issuing a replacement amalgamated authority.

However, in the case of amalgamated local government authorities and project authorities, the administering authority must be satisfied that the environmental authorities being amalgamated meet the criteria for these types of amalgamated authority.

The criteria for a local government amalgamated authority have been copied from section 73F(3)(b) of the pre-amendment *Environmental Protection Act 1994* without change.

To approve an amalgamated project authority the administering authority must be satisfied that the relevant activities for the existing authorities are being carried out as a single integrated operation. 'Single integrated operation' is defined in section 113 of the Bill.

Division 3 Miscellaneous provisions

Section 248 Steps after deciding amalgamation application

This section states the steps that the administering authority must undertake to formalise the amalgamation.

Section 249 Information notice about particular decisions

This section states that if the amalgamation application has been refused, the administering authority must give the applicant an information notice about the decision. This enlivens the review and appeal provisions in chapter 11, part 3 of the *Environmental Protection Act 1994*.

This section replaces section 73F(6) of the pre-amendment *Environmental Protection Act 1994*.

Section 250 Relationship between amendment application and amalgamation application

This section applies in the case when an amendment application for an environmental authority has been made but not decided before an amalgamation application for the authority is decided. In this case the amendment application for the environmental authority is taken to be an amendment application for the amalgamated authority, if the amalgamated authority is approved.

This is because the amendment application may take much longer to decide than the amalgamation application, especially where an EIS is required for the amendment. This section allows the amalgamation to proceed, even where amendment applications are in the process of being determined.

Part 9 Transferring environmental authorities for prescribed ERAs

Section 251 Application of pt 9

This section states that part 9 applies for an environmental authority for a prescribed ERA.

Environmental authorities for resource activities are not transferred through the *Environmental Protection Act 1994* as they attach to the tenure through the definition of 'holder' in the Dictionary. Consequently, when the tenure is transferred through the resources legislation, the environmental authority automatically travels with the tenure.

Section 252 Who may apply for transfer

A transfer of an environmental authority will be required in some situations such as the sale of a business that includes a prescribed ERA. A transfer will also be required when an environmental authority has joint holders, and one holder wishes to cease to be a holder, or when a new joint holder is brought in.

This section specifies that a current holder (the existing holder) of an environmental authority may make an application to transfer all or part of the authority to another person. This application is known as a 'transfer application' for the purposes of the provisions related to transfers.

Section 253 Requirements for transfer application

This section states the requirements for a transfer application. The application must state if the proposed holder is a registered suitable operator, and if not, be accompanied by an application for registration as a suitable operator. This will be done through the approved form for a transfer, as the application for registration as a suitable operator will be incorporated into the form for the transfer application.

Where all or part of the business is being transferred, the buyer of the business may wish to apply in advance for registration as a suitable operator. There are no ongoing fees for registration as a suitable operator, and being on the register prior to the transfer application will ensure that the transfer goes through smoothly.

Section 254 Deciding transfer application

This section states that the administering authority must consider each transfer application and decide to either approve or refuse the transfer. The only ground upon which the application can be refused is that the proposed holder is not a registered suitable operator.

If the proposed holder is a registered suitable operator prior to making the application, the decision must be made within 10 business days after the transfer application is received. Since the decision in this case must be to approve the transfer, this timeframe is simply to take the administrative steps to transfer all or part of the environmental authority.

If the proposed holder is not a registered suitable operator the decision about the transfer must be made at the same time as the application for registration as a suitable operator is decided. If the administering authority decides that the proposed holder is not a suitable operator, both their registration and the transfer is refused.

This section raises the fundamental legislative principle that legislation should make rights and liberties, or obligations, dependant on administrative powers only if subject to appropriate review. Specifically, there is no right of appeal against the decision to refuse the transfer. However, the only ground for refusing the transfer application is that the proposed holder is not a registered suitable operator, and a decision to refuse registration as a registered suitable operator has review and appeal rights, so providing an appeal against this decision point would, in effect, permit double dipping.

This process replaces the process in sections 73Q and 73R of the pre-amendment *Environmental Protection Act 1994*.

Section 255 Steps after deciding transfer application

This section states the steps that the administering authority must take if it approves the transfer.

This section replaces section 73HD of the pre-amendment *Environmental Protection Act 1994*.

Section 256 Notice to owners of transfer

This section creates an obligation for a person who is transferred an environmental authority, to inform the owner(s) of the land on which the authority relates that they are the new holder.

This scenario is generally covered by the commercial arrangements between parties for the lease of the land. However, because the environmental authority may involve a notifiable activity (i.e. it may cause contaminated land), it is essential that the owners are aware of who is carrying out the activity on their land. This section ensures that this is the case.

The maximum penalty for failure to comply with this requirement is 10 penalty units. This is justified on the basis that the fine is sufficient to be a deterrent to failing to comply with the notice and ensures that the owner of the relevant land is made aware of a change in the holder of an authority for an activity on their land. A contravention of this section is unlikely to lead to environmental harm so a more significant maximum penalty is not appropriate. This penalty is the same as a similar offence provision in the current *Environmental Protection Act 1994* of not providing the owner of land notice of a matter affecting their land (section 386 - Owner of land to be given copy of report).

Part 10 Surrender of environmental authorities

Division 1 Preliminary

Section 257 Who may apply for surrender

This section states that the holder of an environmental authority may apply to the administering authority to surrender the environmental authority (a surrender application).

However, the section places restrictions on surrender applications for particular environmental authorities that relate to mining activities, and those where a relevant tenure is administered under resource legislation.

This is to ensure that the tenure always covers the same area as the environmental authority.

Under the *Mineral Resources Act 1989*, there is a process where the holder of the mining tenement can surrender the tenure on the basis that new tenure of the same type (or in the case of a mining claim or mining lease, the same tenure or a mining claim or mining lease) is granted over whole or part of the land (a conditional surrender). These provisions are contained in sections 107(7) (mining claim), 161(4) (exploration permit), 210(13) (mineral development licence), and 309(12) (mining lease) of the Mineral Resources Act.

In that case, the environmental authority can only be surrendered for that part of the land which is not covered by the new tenure (i.e. the environmental authority cannot be surrendered for the part which is conditionally surrendered in favour of a new mining tenure of the same type).

This section replaces, and has a similar effect to, sections 73O(1), 268, 269A and 311K of the pre-amendment *Environmental Protection Act 1994*.

Section 258 Notice by administering authority to make surrender application

This section applies for an environmental authority for a mining activity, a petroleum activity or a geothermal activity. For these environmental authorities, the administering authority may, by written notice (called a surrender notice), require the holder of the environmental authority to make a surrender application. The surrender application is required if a relevant tenure for the authority is effectively cancelled, in whole or in part.

This is because an environmental authority must be held for the same area as the tenure.

Since the action to cancel, or effectively cancel, part or all of the tenure is an action taken by the government, this section changes the previous provisions so that the onus is on the government to notify the holder that it must make a surrender application. This has been difficult in the past, since the environmental authority and the tenure are managed by different departments. However, business practices and electronic approval management systems are being updated as part of the Greentape Reduction and Streamlining Resource Approvals projects and will facilitate the transfer of this information between departments.

This section replaces, and has a similar effect to, sections 270, 271, 312A and 312B of the pre-amendment *Environmental Protection Act 1994*.

Section 259 When surrender notice ceases to have effect

This section states when a surrender notice ceases to have effect. Effectively, the notice ceases to have effect if the tenure is renewed or continued in force or consolidated with or replaced by another relevant tenure before the surrender application is required to be submitted.

Section 260 Failure to comply with surrender notice

This section states that a person to whom a surrender notice has been given must comply with the notice unless the person has a reasonable excuse.

There is a maximum penalty of 100 penalty units for failing to comply with the notice without a reasonable excuse. This penalty is justified because it is the same penalty as the pre-amendment sections for failure to comply with the surrender notice (sections 272 and 312C of the pre-amendment *Environmental Protection Act 1994*).

Section 261 Surrender may be partial

This section states that the administering authority may approve a surrender application for a part of the environmental authority for an environmental authority for a mining activity or a petroleum activity or a geothermal activity.

An environmental authority for a greenhouse gas storage activity cannot be partially surrendered because the underlying tenure cannot be partially surrendered.

Since an environmental authority for prescribed ERAs has no underlying tenure, there is no need for a partial surrender because the environmental authority can be amended to reduce the area of operations.

This section replaces, and is of similar effect to, sections 269 and 312 of the pre-amendment *Environmental Protection Act 1994*.

Division 2 Surrender applications

Section 262 Requirements for surrender application

This section states that a surrender application must be in the approved form and supported by enough information to allow the administering authority to decide the application.

If the relevant activity was not carried out, the application must be accompanied by a declaration that the activity was not carried out.

If the activity was carried out, the application must be accompanied by a compliance statement that states whether all of the conditions of the environmental authority have been complied with. Where the environmental authority contains conditions about rehabilitation, the application must also be accompanied by a final rehabilitation report and the compliance statement must also specify whether any parts of the final rehabilitation report are not accurate.

This section replaces, and is of similar effect to sections 73O(2), 273, and 311L of the pre-amendment *Environmental Protection Act 1994*, except that all activities with rehabilitation conditions must now provide a final rehabilitation report, rather than just resource activities. This is to provide consistency of process across similar activities, such as mining activities and extraction.

Section 263 Amending surrender application

This section states that the applicant may, at any time before the administering authority decides the surrender application, amend the application. If an application is amended under this section, the process for assessing and deciding the application restarts.

This section replaces, and is of similar effect to sections 275 and 311N of the pre-amendment *Environmental Protection Act 1994*, except that it is the application which is amended, not the final rehabilitation report.

Division 3 Final rehabilitation reports

Section 264 Requirements for final rehabilitation report

This section states the requirements for a final rehabilitation report. The report must be in the approved form and include enough information to allow the administering authority to decide whether the conditions of the environmental authority have been complied with and the land on which each relevant activity for the environmental authority has been carried out has been satisfactorily rehabilitated. The report must also describe any ongoing environmental management needs for the land.

If the report is for an environmental authority for a resource activity, the report must state details of the monitoring required under the environmental authority, details of any consultation with affected stakeholders about rehabilitation, and the environmental risk assessment and residual risks after surrender. These requirements were previously only legislatively applied to mining activities and greenhouse gas storage activities, but have been expanded to apply to all resource activities to provide a level playing field for surrender applications.

This section replaces and is similar to sections 274 and 311M of the pre-amendment *Environmental Protection Act 1994*.

Division 4 Requests for information

Section 265 Administering authority may request further information

This section states that the administering authority may ask the applicant, by written request, to give further information needed to assess the surrender application. This request must be made within 10 business days after the application is received.

This step was previously done informally through the assessment and report on the final rehabilitation report in sections 275, 276, 311N and 311O of the pre-amendment *Environmental Protection Act 1994*. These steps have been removed and replaced with this formal request for further information.

Division 5 Deciding surrender applications

Section 266 Deciding surrender application

This section specifies the timeframes in which the administering authority must decide to approve or refuse the surrender application.

These timeframes are similar to the timeframes which previously applied to surrenders of environmental authorities for mining activities via section 277 of the pre-amendment *Environmental Protection Act 1994* and section 45 of the *Environmental Protection Regulation 2008*.

This section also replaces sections 73O(3) and 311P of the pre-amendment *Environmental Protection Act 1994*.

Section 267 Advice from MRA chief executive about surrender application

This section states that the administering authority may, before it makes a decision to refuse a surrender application for an environmental authority for a mining activity, seek advice from the chief executive of the MRA department. This is to ensure that the surrender of the environmental authority is consistent with the surrender of any mining tenement. This section maintains the status quo for mining activities under section 302 of the pre-amendment *Environmental Protection Act 1994*.

Section 268 Criteria for decision

This section states the criteria which the administering authority must consider in deciding a surrender application.

These criteria include considering whether the land is no longer contaminated (i.e. it has been removed from the environmental management register) or the contamination is sufficiently contained or will be remediated (i.e. a site management plan has been approved). If neither of these have occurred, and the application is for the surrender of resource activities, the application for surrender would be refused.

This section is based on, and is similar to, the criteria for the surrender decision in sections 73O(6), 278(1) and 311Q(2) of the pre-amendment *Environmental Protection Act 1994*.

Section 269 Restrictions on giving approval

This section states the circumstances under which the administering authority may approve a surrender application. The surrender application may only be approved where the authority is satisfied the conditions of the environmental authority have been complied with.

In addition, where the environmental authority requires rehabilitation before surrender, the administering authority must be satisfied that either the land has been satisfactorily rehabilitated or that it will be under a transitional environmental program.

This section replaces, and is similar to, sections 73O(5), 278(2) and 311Q(2) of the pre-amendment *Environmental Protection Act 1994*.

Section 270 When application may be refused

This section states a particular circumstance when an application may be refused. If a surrender application for a partial surrender of an environmental authority for an ERA project is made and the surrender is not for the entire continuing part of the ERA project, the surrender application can be refused. This provision mirrors the requirements in sections 118 and 119 which require that all activities which form a project are contained in a single environmental authority for the project.

Division 6 Residual risk requirements

Section 271 Payment may be required for residual risks of rehabilitation

Once a site has been rehabilitated, and the rehabilitated system meets the completion criteria set as a prerequisite for surrender under an environmental authority, there may remain a risk that the rehabilitation, or aspects of the rehabilitation, may fail in the future. Because natural processes and human activities may have adverse effects on rehabilitation, it is possible that a site that meets a criterion at one time may fail to meet the same criterion at some future time. Such criterion might include an ecological parameter in a vegetation community, or a water quality objective of an aquifer. To ensure that the government is not liable for the costs of rectifying a rehabilitation failure after surrender, a residual risk payment may be required.

This section provides the administering authority with the power to require a residual risk payment, at the time when the holder of an environmental authority for a resource activity makes a surrender application. The section further outlines how the administering authority must have regard to any progressive certification that has occurred at the site when determining whether or not to require the payment.

'Residual risks' is defined in the dictionary. Further examples where a residual risks payment may be required include:

- remediation of adverse impacts to ground water quality that may occur as a result of previous extraction/brine injection schemes;
- remediation of confinement (for example, underground grout walls) in the event that CSG water or brine flows underground from a target aquifer to another aquifer as a result of an injection scheme;
- remediation of land, soils, or vegetation in the event that rehabilitation fails;
- continuation of a monitoring plan for rehabilitation activities;
- continuation of a monitoring plan for groundwater or surface waters;
- repairs for any monitoring bore;
- repairs to infrastructure for any GHG well in the relevant area; and
- the operation of pumping equipment to manage stored GHG in the relevant area.

The residual risk requirements have generally not been changed from the pre-amendment *Environmental Protection Act 1994*, except to combine the provisions from chapters 5 and 5A and extend the requirement from just mining and greenhouse gas storage activities to all resource activities.

Section 272 Criteria for decision to make residual risks requirement

In determining if a residual risk payment is required, the administering authority must be satisfied that such a requirement is justified. This section outlines the criteria that are to be considered in making this decision.

The first consideration is the degree of risk of environmental harm, having regard to the requirements of the *Environmental Protection Act 1994*. The Australian/New Zealand Standard AS/NZS 4360:2004 *Risk Management* defines risk as the chance of something happening that will have an impact

on objectives. It is typically calculated as a combination of likelihood of an event and the consequences of that event.

The section further describes the type of events that might require future action by the administering authority such as reinstating rehabilitation that fails to establish a safe, stable and self-sustaining ecosystem; maintaining environmental management processes that are required to protect the environment; and restoring environment that has been adversely affected by effects of the resource activities despite the rehabilitation. In order to use this criterion, the administering authority will require either qualitative or quantitative estimates of the likelihood of a relevant event occurring. Where possible, qualitative estimates of the likelihood of these events will be obtained from past experience, field trials, or theoretical models. Past experience at the site is preferable provided that it covers an appropriate length of time.

This section further clarifies that when considering the consequences of the event, the administering authority is to consider the cost of likely action in comparison to the cost of best practice environmental management of similar land use where the land has not been previously affected by the activities.

These criteria are the same as those in section 311U in the pre-amendment *Environmental Protection Act 1994*. This section also replaces part of section 278B of the pre-amendment *Environmental Protection Act 1994*.

Section 273 Amount and form of payment

This section states that the administering authority must decide the amount and form of the payment required but this amount must not be more than the likely rehabilitation costs. The likely rehabilitation costs is defined in this section as all the likely costs and expenses that may be incurred in taking action to rehabilitate or restore and protect the environment because of environmental harm that may be caused by the residual risks of the relevant area.

This section is the same as the requirement in section 311V of the pre-amendment *Environmental Protection Act 1994*. This section also replaces part of section 278B of the pre-amendment *Environmental Protection Act 1994*.

Division 7 Directions about rehabilitation

Section 274 Directions to carry out rehabilitation may be given if surrender refused

This section applies if the administering authority decides to refuse a surrender application for an environmental authority for a resource activity. The administering authority may give the applicant a written direction to carry out further rehabilitation. This written direction is described as the rehabilitation direction. This direction must be given to the applicant with the notice of the refusal of the surrender application and include an information notice about the decision to give the direction. This enlivens the review and appeal provisions in chapter 11, part 3 of the *Environmental Protection Act 1994*.

This section is the same as section 311Y of the pre-amendment *Environmental Protection Act 1994*. This section also replaces section 278A of the pre-amendment *Environmental Protection Act 1994*.

Division 8 Miscellaneous provisions

Section 275 Steps after deciding surrender application

This section sets out the steps the administering authority must undertake to record the surrender application decision and notify the applicant. If the decision is to refuse the surrender application, or to require a residual risk payment, then the administering authority must give the applicant an information notice. This enlivens the review and appeal provisions in chapter 11, part 3 of the *Environmental Protection Act 1994*.

This section replaces, and is essentially identical to sections 73P, 279, 311R, and 311W of the pre-amendment *Environmental Protection Act 1994*.

Section 276 Restriction on surrender taking effect if payment required for residual risks

This section states that, if the applicant has been required to pay a residual risk payment, the surrender does not take effect until the payment is received by the administering authority. This means that, for example,

annual fees must still be paid, and any financial assurance will not be returned, until the residual risk payment is made to finalise the surrender.

This section replaces, and is similar to, sections 279A and 311X of the pre-amendment *Environmental Protection Act 1994*.

Part 11 Cancellation or suspension of environmental authorities

Division 1 Preliminary

Section 277 Automatic cancellation if replacement environmental authority given

This section ensures that a site or tenure does not have multiple overlapping environmental authorities for the same activities. When a replacement environmental authority takes effect, the existing environmental authority is automatically cancelled. 'Replacement environmental authority' is defined in the Dictionary by clause 62 of this Bill to mean:

- the new environmental authority issued for an environmentally relevant activity which already has an environmental authority;
- an amended environmental authority;
- a transferred environmental authority; or
- an amalgamated environmental authority.

This section replaces sections 293(1)(a) and 312F(1)(a) of the pre-amendment *Environmental Protection Act 1994*.

Section 278 Cancellation or suspension by administering authority

This section sets out when the administering authority may cancel or suspend an environmental authority.

Mostly, these are events for which any enforcement mechanism may be used, and cancellation or suspension of the environmental authority would

be one of the enforcement tools considered by the administering authority. For example, where a disqualifying event for registration as a suitable operator has occurred (such as being found guilty of an environmental offence), the administering authority may choose to issue a notice to cancel the environmental authority as well as cancelling the registration as a suitable operator.

However, the grounds set out in subsections (2)(g) to (2)(i) are administrative in nature. These grounds enable the administering authority to cancel the environmental authority where it has been issued but has not taken effect and will not take effect because the related Coordinator-General's approval, development permit or tenure has not been granted (i.e. the application has been refused or withdrawn or has lapsed). In these cases, the environmental authority does not authorise any operations because it has not commenced and the cancellation is an administrative mechanism to remove the ineffective environmental authority from the department's records.

This section replaces, and the enforcement grounds are similar to, parts of sections 73I, 293 and 312F of the pre-amendment *Environmental Protection Act 1994*.

Division 2 Procedure for cancellation or suspension by administering authority

Section 279 Application of div 2

This section states that this division (and therefore this procedure) applies if the administering authority proposes to cancel or suspend an environmental authority.

This section replaces sections 294 and 312G of the pre-amendment *Environmental Protection Act 1994*.

Section 280 Notice of proposed action

This section states that the administering authority must give the environmental authority holder a written notice and specifies what must be contained in that notice.

The contents of the notice are the same as the content requirements of sections 73J, 295 and 312H of the pre-amendment *Environmental Protection Act 1994*, which this section replaces.

Section 281 Considering representations

This section states that the administering authority must consider any written representation made within the stated period by the environmental authority holder.

This section replaces, and is substantially the same as, sections 73K, 296 and 312I of the pre-amendment *Environmental Protection Act 1994*.

Section 282 Decision on proposed action

This section states that the administering authority may decide to suspend or cancel the environmental authority if the administering authority still believes grounds exist to take that action after considering the representations of the environmental authority holder. If the administering authority believes those grounds do not exist, or that suspension or cancellation is not appropriate in the circumstances, the administering authority may decide to neither suspend nor cancel the environmental authority.

The administering authority must give the holder notice of its decision. If the decision is to suspend or cancel the environmental authority, this notice must be an information notice which enlivens the review and appeal provisions in chapter 11, part 3 of the *Environmental Protection Act 1994*.

This section replaces, and is substantially the same as, sections 73L, 297 and 312J of the pre-amendment *Environmental Protection Act 1994*.

Section 283 Notice of proposed action decision

This section states when the administering authority must give the environmental authority holder an information notice about the decision. Where an environmental authority for a resource activity is cancelled or suspended, the administering authority must also inform the department managing the tenure of its decision.

This section also states when the cancellation or suspension takes effect from.

This section replaces, and is substantially the same as, sections 73M, 298 and 312K of the pre-amendment *Environmental Protection Act 1994*.

Division 3 Steps after making decision

Section 284 Steps for cancellation or suspension

This section states the actions that the administering authority must take to record a decision to suspend or cancel the environmental authority.

This section consolidates and replaces the requirements of sections 73N, 299, 299A, 300, 301, and 312N of the pre-amendment *Environmental Protection Act 1994*.

Part 12 General provisions

Division 1 Plan of operations for environmental authority relating to mining lease or petroleum lease

Section 285 Definitions for div 1

This section provides a definition of 'plan of operations', and 'relevant lease' for this division. The plan of operations is used by the operator to advise the administering authority how the operator intends to meet the conditions of the environmental authority. In addition, it sets out the rehabilitation requirements for the land, which in turn is used to calculate the financial assurance.

The definition of 'plan of operations' was previously contained in section 233(2) of the pre-amendment *Environmental Protection Act 1994*.

Section 286 Application of div 1

This section specifies which types of environmental authority require the submission of a plan of operations.

The plan of operations is used by the operator to advise the administering authority how the operator intends to meet the conditions of the environmental authority. In addition, it sets out the rehabilitation requirements for the land, which in turn is used to calculate the financial assurance.

This section has been amended so that this provision also applies to environmental authorities for petroleum leases rather than just mining leases.

This section replaces and is of similar effect to section 232 of the pre-amendment *Environmental Protection Act 1994*, except that:

- not all environmental authorities related to a mining lease will now require a plan of operations; and
- the requirement for a plan of operations has been expanded to apply to environmental authorities for petroleum leases rather than just mining leases.

In the terminology of the pre-amendment *Environmental Protection Act 1994,* it is only the holders of level 1 environmental authorities (i.e. environmental authorities for ineligible ERAs) who will be required to submit a plan of operations. This removes a reporting requirement for small miners (i.e. holders of environmental authorities for eligible ERAs) as the level of detail required in a plan of operations is not necessary for smaller mines. The holders of these lower level environmental authorities for mining leases will be required to report on rehabilitation through the annual return instead, which is necessary information for calculating financial assurance.

As with mining leases, this division only applies to an environmental authority for a petroleum lease where any activity is an ineligible ERA (i.e. one that would have been required to undertake the site-specific application assessment process). In other words, these are the activities which are considered to be high environmental risk either because of their nature (i.e. they have no eligibility criteria) or their location or intensity (i.e. they do not comply with the eligibility criteria), or because the Co-ordinator General has elected to include them in a significant project.

Currently, 20 of a total of 26 environmental authorities for level 1 petroleum activities on petroleum leases are conditioned to require an "operational plan" similar in nature to the plan of operations as required under these provisions. For these projects there will be no significant extra

burden. For those that do not have an operational plan condition, application of the plan of operations requirements to petroleum leases provides the benefit of a more dynamic financial assurance system and allows more certainty around progressively rehabilitated disturbance not requiring financial assurance.

Petroleum lease holders have other statutory requirements to develop plans, such as development plans under the *Petroleum and Gas (Production and Safety) Act 2004*. Some of the content requirements between development plans and plans of operations overlap, and importantly, the 5 year or less timeframe for plans of operations will allow the submission of subsequent plans of operations and development plans to occur simultaneously.

Section 287 Plan of operations required before acting under relevant lease

This section specifies that the operator must submit a plan of operations at least 20 business days before they start carrying out the activity under the relevant lease. The plan must also comply with the content requirements under section 288. The maximum penalty for non-compliance with these requirements is 100 penalty units. This penalty is justified since it is the same penalty as in the pre-amendment *Environmental Protection Act 1994* and is also the same magnitude as other offence provisions that relate to operating in contravention of, or without a required management document in place (for example, applying fertiliser while carrying out an agricultural ERA in certain catchments without an Environmental Risk Management Plan (ERMP)).

The administering authority does not approve the plan of operations. However, it may audit the plan of operations at any time to ensure that it meets the content requirements.

However, the operator also cannot commence the activity until the financial assurance has been paid. Since the financial assurance is calculated on the basis of the plan of operations, the rehabilitation portions of the plan of operations must be assessed in order to calculate the amount of the financial assurance. To ensure that operations can commence according to plan, it is in the operator's interest to ensure that the plan of operations is submitted to the administering authority with sufficient time to allow any negotiations to take place before the operator intends to commence carrying out the activity. As this is an applicant driven process, the operator may wish to submit the plan of operations well in advance of the

20 business days limit to ensure certainty of the commencement date. It is also the applicant's responsibility to ensure that the content requirements are met and there is sufficient information to enable calculation of the financial assurance.

This section replaces and is similar in content to section 233(1)(a)-(c) of the pre-amendment *Environmental Protection Act 1994*. The timeframe in this section was 28 days, which equates to 20 business days.

Section 288 Requirements for plan of operations

This section states the content requirements for a plan of operations.

This section replaces and is largely a restatement of the requirements under section 234 of the pre-amendment *Environmental Protection Act 1994*. However, this section no longer refers to EM plans as these have been discontinued as a requirement for environmental authority applications. This is because they had evolved over time to become an application document and not a true ongoing management plan. Consequently, it is only necessary for the plan of operations to be consistent with the environmental authority, which contains the legally binding conditions for operating the mine. If the operator intends to carry out operations in a way which is inconsistent with the environmental authority, it must seek an amendment of the environmental authority, which must be approved prior to submitting the plan of operations.

The plan of operations must be updated and resubmitted at least every 5 years.

Section 289 Amending or replacing plan

This section states the requirements for amending a plan of operations to update and replace it before the 5 year term of the plan expires.

This section replaces and is based on section 235 of the pre-amendment *Environmental Protection Act 1994*.

Section 290 Failure to comply with plan of operations

This section makes it an offence if the holder of the environmental authority does not comply with the plan of operations. This offence provision was previously located in section 233(1)(d) of the

pre-amendment *Environmental Protection Act 1994* and is now extended to include holders of an environmental authority for a petroleum lease.

The magnitude of the penalty (100 penalty units) is the same as in the pre-amendment *Environmental Protection Act 1994* and is also the same magnitude as other offence provisions that relate to operating in contravention of, or without a required management document in place (for example, applying fertiliser while carrying out an agricultural ERA in certain catchments without an Environmental Risk Management Plan (ERMP)).

Section 291 Environmental authority overrides plan

This section states that, if there is any inconsistency between an environmental authority and a relevant plan of operations, the conditions of the environmental authority prevail to the extent of any inconsistency with the plan. If the holder of an environmental authority becomes aware of an inconsistency between the conditions of the environmental authority and the plan of operations, they must amend the plan of operations to remove the inconsistency within 15 business days.

This section replaces and is similar to section 236 of the pre-amendment *Environmental Protection Act 1994*. The magnitude of the penalty (100 penalty units) is the same as in the pre-amendment *Environmental Protection Act 1994* and is also the same magnitude as other offence provisions that relate to operating in contravention of, or without a required management document in place (for example, applying fertiliser while carrying out an agricultural ERA in certain catchments without an Environmental Risk Management Plan (ERMP)).

Division 2 Financial assurance

In some circumstances, the administering authority may require that a financial assurance be paid prior to commencing operations. A financial assurance may be necessary to ensure that the government holds sufficient money to cover any costs that it may incur to achieve compliance with an environmental authority should the holder be unable to meet the conditions or fail to rehabilitate or restore the environment. Financial assurances are commonly required for resources activities, extractive activities and waste

disposal facilities as these activities typically require rehabilitation at the end of operational life.

The requirements for the different circumstances when a financial assurance may be required have been streamlined into one division for all types of environmental authorities.

Subdivision 1 Requiring financial assurance

Section 292 Requirement to give financial assurance

This section sets out when the administering authority may impose a condition on the environmental authority which requires payment of financial assurance. A financial assurance may be required as security to ensure that the conditions of the environmental authority are complied with or to cover the government's potential costs associated with rehabilitation or compliance with an environmental authority where the holder does not meet their obligations.

The condition may require that the financial assurance be paid prior to the commencement of operations and may continue in force, even after the surrender of the environmental authority, until the administering authority is sure that a claim on it is not likely to be made. The condition will not specify the amount payable. This will be calculated in accordance with any relevant regulatory requirements and guidelines.

The administering authority can only impose a condition requiring a financial assurance if it is satisfied that it is necessary after considering the degree of risk of environmental harm being caused, the likelihood of action being required to rehabilitate or restore the environment and the environmental record of the holder.

This section replaces and combines the requirements of sections 364 (mining activities and prescribed ERAs), and 312O (chapter 5A activities) of the pre-amendment *Environmental Protection Act 1994*.

Section 293 New holder must give financial assurance before acting under environmental authority

This section states that if an environmental authority is transferred, then the new holder cannot carry out the activity until any financial assurance required by the authority is given to the administering authority.

This ensures that a financial assurance always remains current for an activity and the government does not become exposed to a liability when the operator changes.

This offence provision raises the fundamental legislative principle that a penalty should be proportionate to an offence, and that penalties within legislation should be consistent with each other. Since payment of the financial assurance is a condition of the environmental authority, failure to comply with this requirement is effectively a breach of the conditions of the environmental authority. Consequently, the maximum penalty for this offence is justified because it equals the maximum penalty for breach of a condition of an environmental authority (1665 penalty units).

Subdivision 2 Amount and form of financial assurance

Section 294 Application for decision about amount and form of financial assurance

This section states that the holder of an authority, which requires a financial assurance to be given, can apply to the administering authority for a decision about the amount and form of the financial assurance. Where the holder is required to provide a plan of operations under section 287, this application is not required as the submitted plan of operations is effectively the application for deciding the amount and form of the financial assurance under section 295.

The purpose of this section is to have an open and transparent process to determine the amount of financial assurance. Since the detail upon which the financial assurance is calculated is not always known at the time of the application, it is appropriate for the amount to be calculated after the environmental authority has been approved but prior to commencing operation of the activities.

Section 295 Deciding amount and form of financial assurance

This section states that the administering authority must decide the amount and form of financial assurance required.

This decision must be made either:

- within 10 business days of receiving the application for financial assurance decision mentioned in section 294;
- within 15 business days of receiving the plan of operations required under section 287; or
- a further period agreed with the holder.

This timeframe can be extended with the holder's consent in writing. This is to allow sufficient time to negotiate the amount of the financial assurance. If the operator does not wish to negotiate the amount of the financial assurance prior commencing the activity, it can pay the amount decided by the administering authority, and then appeal the decision. If the negotiated or court decided amount is less than the amount decided by the administering authority, the administering authority would be required to refund the difference.

In making this decision the administering authority must have regard to regulatory requirements, and any criteria outlined in a guideline made by the chief executive and prescribed under a regulation. The administering authority can not require an amount for financial assurance that is likely to exceed the amount required to rehabilitate or restore and protect the environment because of the harm caused by the activity. The regulatory requirements and guidelines will contain the criteria which determine how much below this cap the amount of financial assurance would be.

This section replaces and is substantially like section 364(3)-(6) of the pre-amendment *Environmental Protection Act 1994*.

Section 296 Notice of decision

This section states that the administering authority must give the holder of the environmental authority an information notice about the decision within 5 business days of making a decision. This information notice enlivens the review and appeal provisions of chapter 11 part 3 of the *Environmental Protection Act 1994*.

This section replaces and mirrors section 312O(4) of the pre-amendment *Environmental Protection Act 1994*.

Subdivision 3 Claiming or realising financial assurance

Section 297 Definition for sdiv 3

This section provides definitions of 'environmental authority' for this subdivision.

This definition is the same as section 367(8) of the pre-amendment *Environmental Protection Act 1994*.

Section 298 Application of sdiv 3

This section states the circumstances where the administering authority can claim or realise the financial assurance.

This section replaces and mirrors the circumstances in section 367(1)-(2) of the pre-amendment *Environmental Protection Act 1994*.

Section 299 Administering authority may claim or realise financial assurance

This section sets out the process for the administering authority to claim or realise the financial assurance. The administering authority must give written notice to the person who gave the financial assurance and invite the person to make written representations to the administering authority why the financial assurance should not be claimed or realised as proposed.

This section replaces and mirrors parts of section 367 of the pre-amendment *Environmental Protection Act 1994*.

Section 300 Considering representations

This section states that the administering authority must consider any written representations made by the person who gave the financial assurance.

This section replaces and mirrors section 367(6) of the pre-amendment *Environmental Protection Act 1994*.

Section 301 Decision

This section states that the administering authority must decide whether to make the claim or realise the financial assurance 10 business days after the end of the period for the person to make representations. The administering authority must give the person an information notice about the decision within 5 business days after making the decision. This enlivens the review and appeal provisions of chapter 11 part 3 of the *Environmental Protection Act 1994*.

This section replaces and mirrors section 367(7) of the pre-amendment *Environmental Protection Act 1994*.

Subdivision 4 Amending or discharging financial assurance

Section 302 Who may apply

This section states that a person who has given a financial assurance to the administering authority under a condition imposed on an environmental authority may apply to have the amount or form of the financial assurance amended, or have the financial assurance discharged.

To remove any doubt, the person who gives the financial assurance is the holder of the environmental authority. If a third party (e.g. a bank) is the person who supplies the paperwork, the financial assurance is still given by the holder since it is given on behalf of the holder. Consequently, it is only the holder (i.e. the person who gave the financial assurance) who may apply to change the financial assurance or have it discharged.

This section replaces and mirrors section 366(1)-(2) of the pre-amendment *Environmental Protection Act 1994*.

Section 303 Requirements for application

This section specifies the requirements for an application to amend the financial assurance or have it discharged.

This section replaces and mirrors section 366(3) and (5) of the pre-amendment *Environmental Protection Act 1994*.

Section 304 Administering authority may require compliance statement for particular applications

This section states that the administering authority may, by written notice, require a compliance statement for financial assurance amendment applications for an environmental authority for resource activities. The section further specifies what the compliance statement must contain.

This section previously only applied to mining activities but has been expanded to also include resource activities to allow a more considered assessment of applications relating to financial assurance for these activities. Further, using an audit statement in relation to these activities simplifies and streamlines the assessment process and reduces the time required for assessment and subsequent granting of approvals in relation to these applications.

This section replaces and is similar to section 366(4) of the pre-amendment *Environmental Protection Act 1994*.

Section 305 Deciding application

This section states that the administering authority must decide, within the relevant period, to approve or refuse the amendment application. If the decision is to refuse the application, the administering authority must give the applicant an information notice about the decision. The information notice then enlivens the review and appeal provisions in chapter 11 part 3 of the *Environmental Protection Act 1994*.

The section further indicates the criteria that must be considered if the administering authority is deciding an application to amend the amount or form of the financial assurance. Further, the administering authority may only approve an application to discharge a financial assurance if it is satisfied that no claim is likely to be made on the assurance.

For applications as a result of a transfer application for an environmental authority the administering authority may withhold making a decision on the amendment application until the financial assurance has been paid by the new holder and the transfer has taken effect.

The section replaces and mirrors section 366(6)-(8) of the pre-amendment *Environmental Protection Act 1994*.

Section 306 Power to require a change to financial assurance

This section provides that the administering authority may, at any time, require the holder of an environmental authority to change the amount of financial assurance. Before making this requirement the administering authority must give the holder of the environmental authority written notice which states the new form and amount and give the holder the opportunity to make submissions about why the financial assurance should not be changed. The administering authority must consider any written submissions before deciding to change the financial assurance. The administering authority must give the holder an information notice about its decision which enlivens the review and appeal provisions in chapter 11 part 3 of the *Environmental Protection Act 1994*.

This section replaces and is similar to section 312P of the pre-amendment *Environmental Protection Act 1994*.

Subdivision 5 Replenishing financial assurance

Section 307 Replenishment of financial assurance

This section provides that the administering authority can require a holder of an environmental authority that is still in force to replenish the financial assurance in the circumstance that all or part of the financial assurance has been realised. The administering authority must give the holder a notice stating how much of the financial assurance has been used, and direct the holder to replenish the financial assurance within 20 business days after receiving the notice, so that the financial assurance complies with the amount and form stated in the decision notice for the financial assurance.

This section replaces and mirrors section 312Q of the pre-amendment *Environmental Protection Act 1994*.

Division 3 Annual fees and returns

Subdivision 1 Annual notices

Section 308 Annual fee and return

This section applies to an environmental authority for which an annual fee is prescribed under a regulation. In effect, this means that it applies to every environmental authority since prospecting permits (the only environmental authorities which did not attract an annual fee) will not be required to obtain an environmental authority anymore.

At least 20 business days before each anniversary day for the environmental authority (i.e. the anniversary of when the environmental authority took effect), the administering authority must give the holder a written notice which is essentially an invoice for the annual fee. In addition, the notice must state whether or not the holder is required to submit an annual return. If the holder does not comply with the notice, the administering authority may suspend or cancel the environmental authority and recover any unpaid annual fees as a debt.

This section replaces and mirrors section 316 of the pre-amendment *Environmental Protection Act 1994*.

Section 309 Particular requirement for annual return for CSG environmental authority

This section requires additional information to be provided as part of an annual return required for an environmental authority for a CSG activity.

CSG activity is defined in the Dictionary to mean a petroleum activity involving exploring for or producing coal seam gas.

In 2009, the Queensland Government released the Blueprint for Queensland's LNG Industry. The Blueprint contains policy statements about managing the potential environmental risks of CSG water, and also announced that the government would introduce an adaptive environmental management regime, by appropriate conditioning of new environmental authorities. This section provides for part of the evaluation process required for implementing the adaptive management regime. This is achieved by providing a step to evaluate and identify necessary changes to the management of the CSG water.

Specifically, the section inserts additional requirements for annual returns for CSG environmental authorities. As part of the annual return, the authority holder must include an evaluation about the management of the CSG water against the criteria mentioned in section 126(1)(e). The evaluation must state whether or not the CSG water has been effectively managed having regard to these criteria. If the water has not been effectively managed, then the evaluation must state what action will be taken to ensure that the water will be effectively managed in the future, and when that action will be taken.

This will assist the administering authority in identifying necessary changes to the management of the CSG water. While there are no enforcement provisions for this section, the administering authority will be able to use existing tools in the *Environmental Protection Act 1994* such as transitional environmental plans or environmental protection orders to guarantee enforcement where there is a likelihood of environmental harm. Where necessary, the administering authority may also amend the conditions of the environmental authority based on information received in an annual return.

This section replaces and mirrors section 316A of the pre-amendment *Environmental Protection Act 1994*. The requirements have not been changed from the previous section.

Subdivision 2 Changing anniversary day

Section 310 Changing anniversary day

This section provides that the administering authority may change the anniversary day if they have either the agreement of the holder in writing, or the holder has applied for a change to the anniversary day for the environmental authority. The application must be made in the approved form and be accompanied by a fee prescribed under a regulation.

This section was inserted to enable holders of environmental authorities to nominate the anniversary day of their authority to suit reporting and business needs. The environmental authority holder may need to change the anniversary day to achieve administrative efficiencies for financial procedures and budgeting.

Equally, the administering authority may wish to streamline anniversary days so that reporting is either staggered throughout the year, or so that

reporting on similar ERAs is received at the same time. Provided the holder consents to this change, this section allows the administering authority to make this change.

This section replaces and mirrors section 318A (1)-(3) of the pre-amendment *Environmental Protection Act 1994*.

Section 311 Deciding application

This section states that the administering authority must decide whether or not to change the anniversary day within 20 business days of receiving the application.

This section replaces and mirrors section 318A(4) of the pre-amendment of the *Environmental Protection Act 1994*.

Section 312 Notice of decision

This section states that the administering authority must, within 10 business days after making a decision, give the holder a written notice of a decision to change the anniversary day. If the decision is not to change the anniversary day, an information notice must be provided to the holder within the same period. This enlivens the review and appeal provisions in chapter 11 part 3 of the *Environmental Protection Act 1994*.

This section replaces and mirrors section 318A(5) of the pre-amendment *Environmental Protection Act 1994*.

Section 313 When decision takes effect

This section states when a decision to change the anniversary day takes effect.

This section replaces and mirrors section 318A(6) of the pre-amendment *Environmental Protection Act 1994*.

Division 4 Non-compliance with eligibility criteria

Section 314 Requirement to replace environmental authority if non-compliance with eligibility criteria

This section applies in the circumstance where an environmental authority has been issued for a standard or variation application, and the activity does not comply with the relevant eligibility criteria.

In this case the administering authority may require the authority holder to make a site-specific application, or make an amendment application for the environmental authority so that it can be conditioned as a site-specific application would be. This power would only be able to be used where requiring a site-specific application is reasonable, i.e. it could not be required where the non-compliance with the eligibility criteria is beyond the control of the holder of the environmental authority, as is often the case with urban encroachment on an industrial use.

Before making this requirement the administering authority must give a written notice to the holder to give the holder the opportunity to make representations why they should not be required to make the application. Before making a decision the administering authority must consider these representations.

Failure to comply with this notice is an offence, subject to a maximum penalty of 1665 penalty units.

This offence provision raises the fundamental legislative principle that a penalty should be proportionate to an offence, and that penalties within legislation should be consistent with each other.

This penalty is justified as failing to comply with the eligibility criteria is a breach of a condition of the environmental authority and this penalty is the same as the maximum penalty for breaching a condition of the environmental authority.

Division 5 Miscellaneous provisions

Section 315 Administering authority may seek advice, comment or information about application

This section describes the process the administering authority may take in requesting more information to decide an application or submission. The administering authority may seek additional information, advice or comment from third parties and in any way it sees fit, including by public notice.

This section replaces and is similar to section 556 of the pre-amendment *Environmental Protection Act 1994*.

Section 316 Decision criteria are not exhaustive

This section clarifies that where various sections of the *Environmental Protection Act 1994* require the administering authority (or another entity such as the chief executive or the Minister) to consider certain criteria before making a decision, these criteria are not exhaustive and do not prevent the decision-maker from considering other matters which may be relevant to the decision.

This section replaces and is similar to section 557 of the pre-amendment *Environmental Protection Act 1994*.

Chapter 5A General provisions about environmentally relevant activities

Part 1 Eligibility criteria

Part of managing low risk ERAs is the application of 'eligibility criteria' to the proposed activity. An activity must comply with these criteria to be able

to make a standard or variation application. One way that eligibility criteria can be used is in determining whether a location is suitable for standard conditions, for example, whether the proposed activity located more than 100 metres from a watercourse. However, in some cases, the eligibility criteria may be as simple as the prescribed ERA number in schedule 2 of the *Environmental Protection Regulation 2008* since all activities within that ERA will be covered by the standard conditions.

Examples of ERAs that are likely to be suitable for standard applications include motor vehicle workshops, chemical storage and waste transfer stations.

Section 317 Notice of proposed eligibility criteria

This section provides the process for publishing and consulting on proposed eligibility criteria. The chief executive is required to publish these proposed eligibility criteria on the department's website along with a notice that states that any person may make a submission about the proposed eligibility criteria, and that the period during which submissions may be made. This period must be at least 30 business days. The chief executive must keep this information on the department's website for the consultation period.

Section 318 Making eligibility criteria

This section states that after the consultation on proposed eligibility criteria required by section 317 is complete, and after considering any submissions made during this period, the chief executive may make eligibility criteria by gazette notice. The eligibility criteria take effect when a regulation approves the eligibility criteria.

Part 2 Standard conditions

This part relates to the standard application assessment track. An environmental authority will be issued automatically, if the applicant for a standard application meets the registered suitable operator requirements under Chapter 5A part 4 division 1, application is properly made, saving approval time for both industry and government. A standard application is made when an application relates to an activity for which eligibility criteria

are in effect, and the activity complies with both the eligibility criteria and the standard conditions. When a standard application is approved, an environmental authority will be issued, and this authority will be subject to standard conditions for the activity.

Section 318A Definition for pt 2

This section provides a definition for 'relevant existing authority' for the purposes of the application of standard conditions to certain environmental authorities. This is an environmental authority that is subject to standard conditions for the activity, given before new proposed standard conditions are proposed under section 318C. That is, the existing authority contains conditions that are identified as standard conditions for the activity.

Section 318B When standard conditions must be made

This section relates to the standard approvals assessment track.

The section states that if eligibility criteria are made for an ERA under section 318, the chief executive must, at the same time, make standard conditions for the ERA. These two processes are co-dependant and must occur together for potential submitters to understand the impact of the making of eligibility criteria and standard conditions for an activity.

Section 318C Notice of proposed standard conditions

The section states that process for providing notice of any proposed standard conditions. The chief executive is required to publish a copy of the proposed standard conditions on its department's website along with a notice that states that any person may make a submission about the proposed standard conditions, and that the period during which submissions may be made. This period must be at least 30 business days. The chief executive must keep this information on its website for the consultation period.

If the chief executive intends, under section 318D, that the proposed standard conditions will apply to a relevant existing environmental authority, the chief executive must meet further notice requirements. Specifically, the chief executive must give written notice to the holder of a relevant existing authority which states:

- the website address for the proposed standard conditions;

- that the proposed standard conditions may apply to the existing authority; and
- that the holder may make a submission about the proposed standard conditions during the consultation period.

This written notice must be given to each current holder immediately before the information related to the proposed standard conditions is published under this section.

Since these standard conditions will be retrospective, this process is in place to ensure that affected environmental authority holders are informed of the potential changes and that they are likely to impact on their environmental authorities. This will allow the holders to make a submission if they consider that the change will adversely affect their interest. It is anticipated that these provisions will not be used frequently since most standard conditions which are made will only apply to future applicants for environmental authorities and will not open up old environmental authorities.

Section 318D Making standard conditions

This section states that, after considering any submissions made within the consultation period, the chief executive may make standard conditions for an environmentally relevant activity or an environmental authority by making a gazette notice. The standard conditions may apply to all or part of an environmentally relevant activity (e.g. chemical storage) or a type of environmental authority (e.g. an environmental authority for mining activities on a mining claim).

If the consultation notice mentioned in section 318C indicates the intention that the proposed standard conditions may apply to a relevant existing authority, then the gazette notice must state whether or not the standard conditions may apply to a relevant existing authority.

The section also states that the administering authority must keep a copy of the standard conditions on its website, and specifies which day the standard conditions will take effect on.

Part 3 Codes of practice

Section 318E Codes of practice

This section provides that the Minister may approve codes of practice by gazette notice. Codes of practice are an important way that industry organisations can provide leadership in responsible environmental management and allow their membership to have ownership of the content.

Specifically, the section states that the Minister may make codes of practice which state ways of achieving compliance with the general environmental duty for any activity that causes, or is likely to cause, environmental harm. The section also states: the matters the Minister must have regard to in making a code of practice; that the administering authority must keep a copy of the code of conduct on its website; and that a code of practice has effect for 7 years after the day it is made, unless it is repealed earlier.

Part 4 Registration of suitable operators

Division 1 Applications for registration

This division relates to the suitable operator register. Under the pre-amendment *Environmental Protection Act 1994*, the suitability of an applicant was assessed as part of an application for a registration certificate for a chapter 4 activity (now a prescribed ERA). This Bill provides for a suitable operator register and associated application process. Current holders of an environmental authority or registration certificate will be automatically listed on the register. As a result of the new register, the suitability of operators to hold an environmental authority is assessed only on the first application, reducing processing time both if the operator makes further applications and for transfers.

Section 318F Application for registration

This section states that a person can apply to be registered as a suitable operator for the carrying out of an environmentally relevant activity by

making an application to the chief executive in the correct form, and with the fee prescribed under a regulation. An application can be withdrawn by the applicant at any time before it is decided.

This means that a person can apply to be registered as a suitable operator before making an application for an environmental authority. There is no annual fee to be listed on the register, so a person who is considering putting in an application for an environmental authority, or buying a business which includes an activity authorised by an environmental authority, may wish to simplify the process by being registered as a suitable operator in advance.

Where a person is not on the suitable operator register prior to applying for an environmental authority, the application for the environmental authority will include the application to be registered as a suitable operator. This will be done via the approved form, so there is no need to put in two applications at the same time. Where the application for an environmental authority is made to a local government (as the administering authority for the activity), the application to be registered as a suitable operator will be referred to the chief executive though administrative processes. This includes where the application for an environmental authority is deemed to be made under section 115 of this Bill.

Section 318G Deciding application

This section states the time period within which the chief executive must decide to refuse or approve a suitable operator application. The chief executive has 20 business days to decide the application if a suitability report under section 318R is obtained; otherwise the decision must be made within 10 business days.

This section is similar to the application for a registration certificate in section 73F(1) of the pre-amendment *Environmental Protection Act 1994*.

Section 318H Grounds for refusing application for registration

This section states the grounds for which the chief executive may refuse an application for registration as a suitable operator. These grounds include:

- the applicant has an unsuitable environmental record;
- for an applicant who is not a corporation, a disqualifying event has occurred in relation to an applicant, or to an applicants partner; and

- if the applicant is a corporation, a disqualifying event has occurred in relation to any of the corporation's executive officers, or another corporation of which any of the corporation's executive officers are, or have been, an executive officer.

Where a disqualifying event has occurred in relation to the directors of the company (or another company the person is a director of), this ground for refusing the application for registration should be considered in light of all of the circumstances around the disqualifying event. For example, where the particular director wasn't involved with the company at the time of the disqualifying event, this should not be a reason to refuse the registration. Equally, if the director can demonstrate that he or she was not in a position to influence the conduct of the corporation in relation to the offence, or took all reasonable steps to ensure the corporation complied with the provision, the chief executive's discretion to refuse the registration should not be exercised on this ground.

These criteria are similar to those in sections 73E, 304, and 312U of the pre-amendment *Environmental Protection Act 1994* for refusing to approve a registration certificate or an environmental authority on the grounds that the person is not a suitable operator.

Section 318I Steps after deciding application for registration

This section states what the chief executive must do after a decision has been made about an application for registration as a suitable operator. After the chief executive has made a decision about an application it must give written notice to the applicant within 5 days. If the decision is to refuse the registration, this notice must be an information notice which enlivens the review and appeal provisions in chapter 11 part 3 of the *Environmental Protection Act 1994*.

Where the application to be registered as a suitable operator is made to a local government as the administering authority (i.e. as part of an application for an environmental authority), the application will be referred to the chief executive though administrative processes. This includes where the application for an environmental authority is deemed to be made under section 115 of this Bill. Consequently, the chief executive must inform the relevant local government (i.e. the local government to whom the application was made) of the decision.

Section 318J When registration takes effect

This section states that the registration as a suitable operator takes effect from the day that the applicant's name and address is included in the register for suitable operators. This register will be maintained by the chief executive for the *Environmental Protection Act 1994* as a single reference point for all administering authorities, operators and the community.

Division 2 Cancelling or suspending registration

Section 318K Cancellation or suspension of registration

A process to cancel a registration as a suitable operator is necessary to ensure that environmental standards are upheld in terms of operating an environmentally relevant activity. Cancellation or suspension of the registration will not restrict an operator in carrying out a current activity, but can mean that an operator can not acquire other businesses carrying out an environmentally relevant activity (i.e. through a transfer of the environmental authority) or apply for a new environmental authority without full assessment of their suitability after the cancellation or during the period of suspension. Local governments are co-regulators of the *Environmental Protection Act 1994*, and may, as administering authorities, request that the chief executive take action to cancel or suspend registration of a person.

This section states that the chief executive may cancel or suspend a registration if a disqualifying event has happened for the registered suitable operator, or if the chief executive is satisfied the operator is not a suitable person to be registered having regard to their environmental record. In the case where the operator is a corporation, the chief executive may cancel or suspend a registration if a disqualifying event has happened for any of the corporation's executive officers or another corporation of which any of the corporation's executive officers are, or have been an executive officer.

Where a disqualifying event has occurred in relation to the directors of the company (or another company the person is a director of), this ground for cancellation or suspension should be considered in light of all of the circumstances around the disqualifying event. For example, where the particular director wasn't involved with the company at the time of the disqualifying event, this should not be a reason to cancel or suspend the

registration. Equally, if the director can demonstrate that he or she was not in a position to influence the conduct of the corporation in relation to the offence, or took all reasonable steps to ensure the corporation complied with the provision, the chief executive's discretion to cancel or suspend the registration should not be exercised on this ground.

'Disqualifying event' is defined in the Dictionary to the *Environmental Protection Act 1994*.

Section 318L Notice of proposed action

This section states what the chief executive must do following a proposal to cancel or suspend registration of a person. The chief executive must give written notice and give the person the opportunity to make written representations to show why their registration should not be cancelled or suspended.

Section 318M Considering representations

This section provides that the chief executive must consider any written representations made by an operator about a proposed action to either cancel or suspend a registration.

Section 318N Decision on proposed action

This section states that, after considering representation made by the registered suitable operator, the chief executive must decide to:

- cancel the registration;
- suspend the registration for a fixed period; or
- take no further action.

Section 318O Notice of proposed action decision

This section requires that the chief executive give notice to the registered suitable operator of the proposed action decision.

If the decision is to suspend or cancel the registration, this notice must be an information notice, which then enlivens the review and appeal provisions of chapter 11 part 3 of the *Environmental Protection Act 1994*.

In addition, if the operator is the holder of, or is acting under, an environmental authority for a resource activity, the chief executive must

give written notice of the decision to the chief executive administering the resource legislation.

Section 318P When decision takes effect

This section states when the suspension or cancellation takes effect. That is, either the day the information notice is given to the operator, or a later day stated in the notice. However, if the decision to cancel or suspend the registration is as a result of a conviction of the operator for an offence, the cancellation or suspension does not take effect until the end of the appeal period.

Section 318Q Steps for cancelling or suspending registration

This section sets out the steps the chief executive must follow after deciding to cancel or suspend registration. The chief executive must take the action and record the cancellation or suspension in the register of suitable operators.

Division 3 Investigating suitability

Section 318R Investigation of applicant suitability or disqualifying events

The chief executive requires effective tools for investigating the suitability of an applicant. This section provides these tools by specifying the different means of investigating a person to determine their suitability. Specifically, the chief executive may investigate a person to determine if they are suitable person to hold or continue to hold an environmental authority or to determine if a disqualifying event (such as being found guilty of an offence under this Act or an equivalent interstate Act) has occurred in relation to the person.

The chief executive may seek advice from the administering authority of a corresponding law to give information about the person in relation to an environmental offence.

This section replaces and mirrors section 559 of the pre-amendment *Environmental Protection Act 1994*.

Section 318S Use of information in suitability report

This section prohibits the chief executive from using information in a suitability report for any other purpose than to make the decision for which the report was requested. It also requires the chief executive, in making relevant decision, to consider how long ago the offence was committed and the nature and relevance of the offence.

This section replaces and maintains the effect of section 560 of the pre-amendment *Environmental Protection Act 1994*.

Section 318T Notice of use of information in suitability report

This section states that, if the chief executive has obtained a suitability report about a person, they must give a copy of the report to that person and allow them to respond to the information contained in the report before using the information for a matter mentioned in section 318R.

This section replaces and maintains the effect of section 561 of the pre-amendment *Environmental Protection Act 1994*.

Section 318U Confidentiality of suitability reports

This section requires current or former public servants to keep suitability reports confidential and sets a maximum penalty of 100 penalty units for an offence against this provision. The information may be disclosed in limited circumstances (for example, with the written permission of the person who is the subject of the report or to a Court hearing an appeal against the relevant decision).

This offence provision raises the fundamental legislative principles that a penalty should be proportionate to an offence, and that penalties within legislation should be consistent with each other. This offence has not been changed from the pre-amendment Act, and is justified as it is consistent with similar provisions related to requirements related to breaches that are not necessarily linked to environmental harm (for example, sections 597 and 601 of the *Environmental Protection Act 1994*). It is also the same penalty as applies to the unlawful access to information under section 185 of the *Information Privacy Act 2009.*

This section replaces and maintains the effect of section 652 of the pre-amendment *Environmental Protection Act 1994*.

Section 318V Destruction of suitability reports

This section requires the chief executive to destroy suitability reports as soon as practical after making the decision for which the report was prepared. However, if the decision is open to appeal or review, the report is not to be destroyed until the end of the period in which the person may appeal or apply for a review. If the report relates to a conviction for an offence and there is an appeal current against the conviction (or the time to lodge such an appeal has not expired), the report can not be destroyed until any such appeal has been concluded or the appeal period has ended.

This section replaces and maintains the effect of section 653 of the pre-amendment *Environmental Protection Act 1994*.

Part 5 Work diary requirements for particular registered suitable operators

The work diary requirements for mobile and temporary activities were inserted into the *Environmental Protection Act 1994* by the *Environmental Protection and Other Legislation Amendment Act 2011*.

Section 318W Application of pt 5

This section states that this part applies to a registered suitable operator carrying out a prescribed ERA that is a mobile and temporary environmentally relevant activity, unless the activity is regulated waste transport.

This section does not apply to regulated waste transport as these operators are subject to the waste tracking provisions in the *Environmental Protection (Waste Management) Regulation 2000*.

This section replaces and mirrors section 73PA of the *Environmental Protection Act 1994* as inserted by the *Environmental Protection and Other Legislation Amendment Act 2011*. The requirements for a work diary have not been altered from that section.

Section 318X Requirement to keep work diary

This section states the requirement for operators of mobile and temporary environmentally relevant activities to keep a work diary in an approved form so that the administering authority and operator can easily monitor the activity to determine whether the activity continues to meet the requirement for a mobile and temporary environmentally relevant activity.

Part of the definition of mobile and temporary environmentally relevant activity in schedule 4 of the *Environmental Protection Act 1994* requires that the activity is not carried out for 28 days in a calendar year at a single location unless associated with the construction or demolition phase of a project.

If an operator does not meet this requirement (or the other requirements outlined in the definition) they are not a mobile and temporary environmentally relevant activity and need to be assessed to ensure that they are operating within standards suitable for a permanent site.

Without reference to any records of the activity, it is difficult for the administering authority to determine if the activity meets the requirements for a mobile and temporary environmentally relevant activity without constant surveillance.

Subsection (1) establishes an offence if a registered operator for a mobile and temporary environmentally relevant activity does not keep a work diary in the approved form.

The maximum penalty for the offence is 100 penalty units which is consistent with other similar offences under the *Environmental Protection Act 1994* including section 83 which requires operators of agricultural environmentally relevant activities to keep records of their activities.

Subsection (2) sets out that the approved form must provide for the inclusion of details of each location at which the mobile and temporary environmentally relevant activity is carried out, and the days on which the activity is carried out.

Subsection (3) provides that a registered operator must record the information required in the approved form within 1 day after the day the operator vacates each location at which the activity is carried out. This ensures accurate compliance checks can be made. Failure to comply is an offence with a maximum penalty of 100 penalty units which is consistent with other similar offences under the *Environmental Protection Act 1994.*

Subsection (4) states that the diary must be kept for 2 years after the day on which the operator vacates the last location at which the activity was carried out unless the operator has a reasonable excuse. Failure to comply is an offence with a maximum penalty of 100 penalty units which is consistent with other similar offences under the *Environmental Protection Act 1994*.

This section replaces and mirrors section 73PB of the pre-amendment *Environmental Protection Act 1994* as inserted by the *Environmental Protection and Other Legislation Amendment Act 2011*.

Section 318Y Requirement to notify chief executive if work diary lost or stolen

This section provides that a registered operator who becomes aware that the operator's work diary has been lost or stolen must, within 7 business days, give the chief executive written notice that the diary has been lost or stolen, unless the operator has a reasonable excuse.

This offence has a maximum penalty of 50 penalty units. This penalty unit amount is based on other similar offences in the *Environmental Protection Act 1994* in relation to providing written notice about a matter.

This section replaces and mirrors section 73PC of the pre-amendment *Environmental Protection Act 1994* as inserted by the *Environmental Protection and Other Legislation Amendment Act 2011*.

Part 6 Progressive rehabilitation

Division 1 Certification of progressive rehabilitation for resource projects

The content of this part is largely unchanged from the pre-amendment *Environmental Protection Act 1994*, except that it has been extended to cover all resource activities. This is because these provisions encourage early rehabilitation through refund of part of the financial assurance and this has potential benefits to all resource activities.

Subdivision 1 Preliminary

Section 318Z What is *progressive certification*

This section provides for the administering authority to certify that an area of rehabilitation within a relevant tenure in a resource project has met the criteria required under the Act, the environmental authority or any guideline published by the administering authority. This is called progressive certification because it is occurring progressively during the term of the relevant tenure rather than being left until the environmental authority is about to be surrendered. The area subject to progressive certification is a certified rehabilitated area for the relevant tenure. It is possible to have several certified rehabilitated areas for one tenure.

This section replaces and mirrors section 266A of the pre-amendment *Environmental Protection Act 1994*.

Section 318ZA Effect of progressive certification

This section declares that progressive certification of rehabilitated area indicates that the rehabilitation requirements mentioned in section 318Z are taken to have been met, despite any other provisions in the *Environmental Protection Act 1994*. Section 318ZB imposes certain continuing obligations on the holder of the environmental authority after certification of progressive rehabilitation.

This section replaces and mirrors section 266B of the pre-amendment *Environmental Protection Act 1994*.

Section 318ZB Continuing responsibility of environmental authority holder relating to certified rehabilitated area

This section applies if progressive certification has been given for a relevant tenure.

Subsection (2) imposes a condition on the relevant environmental authority for the relevant tenure that contains the certified rehabilitated area requiring the holder of the environmental authority to maintain the certified rehabilitated area and to continue to comply with the relevant environmental authority. This might include monitoring and maintenance to prevent or manage any environmental harm resulting from mining activities in the area to levels stated in the environmental authority.

Subsection (4) provides for the obligation to cease when the last of the following has taken place:

- the tenure is surrendered;
- the environmental authority is cancelled or surrendered; or
- a continuing condition of the environmental authority (i.e. a condition which continues to have effect after the environmental authority has ended), has been fulfilled.

This section replaces and mirrors section 266C of the pre-amendment *Environmental Protection Act 1994*.

Subdivision 2 Applying for progressive certification

Section 318ZC Who may apply for progressive certification

This section provides to for the holder of an environmental authority for a resource project to apply for progressive certification.

This section replaces and mirrors section 266D of the pre-amendment *Environmental Protection Act 1994*.

Section 318ZD Requirements for progressive certification application

This section provides the requirements for an application for progressive certification.

Subsection (1) requires the application to be in the approved form, supported by enough information to enable the administering authority to decide the application, and be accompanied by a progressive rehabilitation report, an compliance statement and the prescribed fee. This subsection specifies that the progressive rehabilitation report must comply with the requirements set out in section 318ZF.

Subsection (2) specifies that the compliance statement must be made for the environmental authority holder and must contain a statement about the extent to which the activities have complied with the conditions of the environmental authority and the accuracy of the progressive rehabilitation report.

This section replaces and mirrors section 266E of the pre-amendment *Environmental Protection Act 1994*.

Section 318ZE Amending progressive certification application

This section provides for the amendment of an application for progressive rehabilitation. An application can be amended by written notice at any time before the administering authority decides the application. The notice must be accompanied by the prescribed fee and any necessary amendments to the progressive rehabilitation report or compliance statement to accompany the notice.

This section replaces and mirrors section 266F of the pre-amendment *Environmental Protection Act 1994*.

Subdivision 3 Progressive rehabilitation report

Section 318ZF Requirements for progressive rehabilitation report

This section establishes required content of a progressive rehabilitation report.

Subsection (1) refers to section 264, which provides the content required for a final rehabilitation report, and applies those requirements with necessary changes to relate to the requirements to the certified rehabilitation area the subject of the application instead of the land that is the subject of a surrender application to which a final rehabilitation report applies. The subsection also requires additional information to be included in the progressive rehabilitation report. This includes a map that shows the proposed certified rehabilitation area at an appropriate scale so that it can be readily identified; supporting information on the location of the area such as global positioning system (GPS) coordinates to survey information; and an environmental risk assessment of the area. Information about any areas that have previously received progressive certification for any relevant tenure within this resource project must also be supplied.

Subsection (2) requires the environmental risk assessment to comply with a methodology published by the administering authority. The assessment must identify all credible risk events related to a failure of the rehabilitation to perform as it was intended. An event is credible if there is a reasonable expectation that it is likely to occur at least once with a time span measured in hundreds or possibly thousands of years, and it would have significant cost consequences. Identification of credible risk events may involve fault-tree analysis, an environmental liability risk assessment or similar assessment that produces a risk register for the proposed certified rehabilitated area.

The likelihood and consequences of each credible risk event must be evaluated and compared against a published threshold. This might involve calculation of the 'risk cost' or 'risk quotient', i.e. the product of the likely cost of an event multiplied by its likelihood of occurrence. The risk cost could be compared with the threshold for material environmental harm, as defined in section 16 of the *Environmental Protection Act 1994*, to determine which risk event need to be covered in a residual risk calculation.

This section replaces and mirrors section 266G of the pre-amendment *Environmental Protection Act 1994*.

Subdivision 4 Requests for Information

Section 318ZG Administering authority may request further information

This section states that the administering authority may request further information from the applicant needed to assess the progressive certification application. The request must be made in writing within 10 business days after the application is received.

Subdivision 5 Deciding progressive certification application

Section 318ZH Deciding progressive certification application

This section sets the timeframe in which the administering authority must decide to give the certification or refuse the application for progressive certification. The decision must be made within 40 business days after the application is made or after a notice of amendment is given to the administering authority.

This section replaces and mirrors section 266J of the pre-amendment *Environmental Protection Act 1994*.

Section 318ZI Criteria for decision

This section provides the criteria for deciding whether to give or refuse the progressive certification.

Subsection (1) sets out the matters the administering authority must consider. These include relevant regulatory requirements, the standard criteria, the progressive rehabilitation report, the compliance statement, and relevant assessment report, and any other matter prescribed by regulation.

Subsection (2) states that progressive certification may only be given if the administering authority is satisfied with the environmental risk assessment and that the conditions of the environmental authority have been complied with or that the rehabilitation in the area subject of the application is satisfactory or another circumstance prescribed by regulation for this section has been satisfactorily met.

This section replaces and mirrors section 266K of the pre-amendment *Environmental Protection Act 1994*.

Section 318ZJ Steps after making decision

This section sets out the steps the administering authority must follow after making a decision in regard to an application for progressive certification.

Subsection (1) prescribes that the administering authority must within 10 business days after making the decision give the applicant either an information notice (if the application was refused) or a written notice (if the decision was to give the progressive certification) and to record the particulars of the certification in the appropriate register.

Subsection (2) states that the progressive certification is not to be given until any requirement to make a residual risk payment has been made.

This section replaces and mirrors section 266L of the pre-amendment *Environmental Protection Act 1994*. The requirements for a progressive certification have not been altered from that section, except to extend to non-mining resource activities the ability to seek certification of progressive rehabilitation.

Division 2 Payment for residual risks of rehabilitation

Section 318ZK Application of div 2

This section states that division 2 applies if there has been an application for progressive certification.

This section replaces and maintains the effect of section 266M of the pre-amendment *Environmental Protection Act 1994*.

Section 318ZL Payment may be required for residual risk

This section provides for the administering authority to require the payment of a stated amount for the residual risk of the proposed certified rehabilitated land.

Subsection (1) makes the requirement subject to the criteria in section 318ZM and the decision on the amount and form of the payment in section 318ZN.

Subsection (2) requires the administering authority to include the request for the payment to be made in an information notice or be accompanied by an information notice. This gives the applicant a right to a review or appeal against the decision.

Subsection (3) states that the payment may be made as part of the amount of financial assurance for the environmental authority until the relevant tenure is surrendered.

This section replaces and mirrors section 266N of the pre-amendment *Environmental Protection Act 1994*.

Section 318ZM Criteria for decision to make requirement

This section sets the criteria that the administering authority must have regard to when deciding whether to require a payment of residual risk.

Subsection (a) sets the degree of risk of environmental harm as a criterion. Australian/New Zealand Standard AS/NZ 4360:2004 *Risk Management* defines risk as the chance something happening that will have an impact on objectives. It is typically calculated as a combination of likelihood of an event and the consequence of that event.

Subsection (b) describes the type of events that might require future action by the administering authority such as reinstating rehabilitation that fails to establish a safe, stable and self-sustaining ecosystem; restoring environment that has been adversely affected by effects of the resource activities despite rehabilitation; and maintain environmental management processes that are required to protect the environment. In order to use this criterion, the administrative authority will require either qualitative or quantitative estimates of the likelihood of a relevant event occurring. Where possible qualitative estimates of the likelihood of these events will be obtained either from past experience, field trials or theoretical models. Past experience at the site is preferable provided that it covers an appropriate length of time.

Subsection (c) clarifies that when considering the consequences of the event, the administering authority is to consider the cost of likely action in comparison to the cost of best practice environmental management of

similar land use where the land has not been previously affected by resource activities.

This section replaces and mirrors section 266O of the pre-amendment *Environmental Protection Act 1994*. The requirements for a progressive certification have not been altered from that section, except to extend to non-mining resource activities the ability to seek certification of progressive rehabilitation.

Section 318ZN Amount and form of payment

This section provides for the administering authority to decide the amount and form of the payment for residual risks. This section states that the administering authority may calculate the amount using a procedure that has been published in a guideline or other document that is publicly available. The amount cannot be greater than the total likely costs and expenses that may be incurred to rehabilitate, restore or protect the environment from the residual risks.

This section replaces and mirrors section 266P of the pre-amendment *Environmental Protection Act 1994*.

Clause 9 Replacement of s 321 – 326

This clause omits and replaces section 321 to section 326. This is because the pre-amendment *Environmental Protection Act 1994* had two different processes for two different types of environmental audit. These processes have been combined into chapter 7 part 2 of the *Environmental Protection Act 1994*.

Division 1 Preliminary

Section 321 What is an environmental evaluation

This section explains that an environmental evaluation is used to determine the source, cause or extent of environmental harm of an activity or event and the need for a transitional environmental program to manage the issue.

Environmental evaluation is defined in the Dictionary of the *Environmental Protection Act 1994* as being either an environmental audit or an environmental investigation. Division 2 deals with environmental audits and division 3 deals with environmental investigations.

This section replaces and is identical to section 321 of the pre-amendment *Environmental Protection Act 1994*.

Division 2 Environmental Audits

Subdivision 1 Audit requirements

Section 322 Administering authority may require environmental audit about environmental authority

This section sets out when the administering authority can require an environmental audit about an environmental authority.

This section replaces and is similar to section 280(1)-(2) of the pre-amendment *Environmental Protection Act 1994*.

Section 323 Administering authority may require environmental audit about other matters

This section sets out when the administering authority can require an environmental audit about matters other than an environmental authority.

This section replaces and is similar to section 322(1) of the pre-amendment *Environmental Protection Act 1994*. The circumstances in which an environmental audit can be required have not been expanded.

Section 324 Content of audit notice

This section outlines what the audit notice must contain. The audit notice must be accompanied by, or include, an information notice about the decision to give the notice and to fix the stated period. This enlivens the review and appeal provisions of chapter 11 part 3 of the *Environmental Protection Act 1994*.

This section replaces and is similar to sections 280(3)-(4) and 324 of the pre-amendment *Environmental Protection Act 1994*.

Section 325 Failure to comply with audit notice

This section makes it an offence to fail to comply with the audit notice, unless the person has a reasonable excuse.

The audit must be carried out by an auditor, which is defined in section 567 as an individual who is approved as an auditor under chapter 12 part 3A division 2 of the *Environmental Protection Act 1994* as inserted by this Bill. Under section 574A, the auditor must be a third party auditor (i.e. must not be the operator or have an interest the business being audited). Section 282 of the pre-amendment *Environmental Protection Act 1994* has not been duplicated in this division since, like any other enforcement mechanism, the cost of complying with the notice must be paid by the recipient of the notice. It is not necessary to state this in the legislation.

Alternatively, the audit may be carried out by the administering authority. However, in that case, the administering authority may be able to recover the costs it incurred in carrying out the auditor's function (see section 326A).

The maximum penalty for is 300 penalty units. This penalty is justified because it is equivalent to the penalty for failure to comply with an audit notice in section 281 of the pre-amendment *Environmental Protection Act 1994*, which this section replaces.

This section also replaces section 280(3)-(4) of the pre-amendment *Environmental Protection Act 1994*.

Subdivision 2 Audit by administering authority

Section 326 Administering authority may conduct environmental audit for resource activities

This section gives the administering authority the power to carry out, or commission a person to carry out, the auditor's function. The administering authority may decide to do the audit, or prepare the report, or both. The administering authority must give the holder an information notice if it decides to carry out the auditor's function. This enlivens the

review and appeal provisions in chapter 11 part 3 of the *Environmental Protection Act 1994*.

The administering authority must also, within 10 business days after preparing an environmental audit report, give the environmental authority holder a copy of it.

This section replaces section 283 of the pre-amendment *Environmental Protection Act 1994*.

The pre-amendment section only applied to mining activities but has been expanded to also include resource activities other than mining activities to provide more certainty that any risks posed by such activities can be adequately identified and managed. This is an important backup to the adaptive management framework that is now being implemented for CSG activities. The provision also enables the framework being applied in light of rapid expansion of unconventional petroleum sources such as coal seam gas, and may in some circumstances necessarily be conducted by the administering authority to enable the cumulative environmental impacts of a range of projects to be adequately assessed.

Section 326A Administering authority's costs of environmental audit or report

This section enables the administering authority to recover any costs it incurs in conducting an environmental audit or preparing an environmental audit report. It requires the holder of the relevant environmental authority to pay the amount of the costs that were properly and reasonably incurred. The administering authority may recover the amount as a debt.

This section replaces and is identical to section 284 of the pre-amendment *Environmental Protection Act 1994*.

Division 3 Environmental Investigation

Section 326B When environmental investigation required

This section sets out when the administering authority can require an environmental investigation.

This section replaces and maintains the effect of the requirements in section 323 of the pre-amendment *Environmental Protection Act 1994*.

Section 326C Content of investigation notice

This section outlines what the investigation notice must contain. The audit notice be accompanied by, or include, an information notice about the decision to give the notice and to fix the stated period. This enlivens the review and appeal provisions of chapter 11 part 3 of the *Environmental Protection Act 1994*.

This section replaces and is similar to section 324 of the pre-amendment *Environmental Protection Act 1994*.

Section 326D Failure to comply with investigation notice

This section makes it an offence to fail to comply with the audit notice, unless the person has a reasonable excuse.

Unlike an environmental audit, an environmental investigation does not need to be carried out by a third party.

The maximum penalty is 300 penalty units. This penalty is justified because it is equivalent to the penalty for failure to comply with an audit notice in section 281 of the pre-amendment *Environmental Protection Act 1994*, and is in line with the penalty for failure to comply with an audit notice.

This section replaces section 323(3) of the pre-amendment *Environmental Protection Act 1994*.

Division 4 Requirement for declarations

Section 326E Declarations to accompany report

This section provides for an accountability mechanism to ensure the environmental audit or investigation is credible. The report must be accompanied by a declaration by the recipient of the notice that the report contains all relevant information and that false and misleading information has not been given. Note that the recipient must identify whether they are making the declaration as an individual or as the executive officer of a corporation.

Where the report is for an environmental audit, the auditor must also make a declaration to accompany the report (see section 574C of this Bill).

Where a suitably qualified person is required to carry out the environmental investigation instead of the recipient personally, the suitably qualified person must also make a declaration to accompany the report (see section 566 of this Bill).

This section replaces section 325 of the pre-amendment *Environmental Protection Act 1994*.

Division 5 Steps after receiving environmental reports

Section 326F Administering authority may request further information

This section enables the administering authority to request, in writing, additional relevant information for an environmental report about an environmental investigation. This could be used, for example, where the environmental report does not adequately address the matters in the investigation notice. The request for information must be made within 10 business days after the report is received.

The administering authority must accept the environmental audit, so there is no information request for that type of report. However, if the report does not address the information in the audit notice, the recipient of the notice may be required to address the deficiency or face enforcement action for non-compliance with the audit notice.

This section replaces and is similar to section 326(4) of the pre-amendment *Environmental Protection Act 1994*.

Section 326G Decision about environmental report

This section requires the administering authority to accept an environmental report about an environmental audit and to make a decision whether to accept or refuse an environmental report about an environmental investigation. This section also gives the timeframes for making the decision about an environmental investigation.

This section replaces and is similar to parts of section 326 and section 328 of the pre-amendment *Environmental Protection Act 1994*.

Section 326H Action following acceptance of report

This section outlines the actions the administering authority may take following the acceptance of the environmental report, such as requiring amendment of the environmental authority, requiring submission of transitional environmental program, or taking enforcement action (like an environmental protection order).

This section replaces and is similar to section 326(2) of the pre-amendment *Environmental Protection Act 1994*.

Section 326I Action following refusal of report

This section outlines the actions the administering authority may take following the refusal of the environmental report. The administering authority can require another environmental investigation process be undertaken. The requirement must be made via an information notice which enlivens the review and appeal provisions of chapter 11 part 3 of the *Environmental Protection Act 1994*.

It is an offence to fail to comply with the notice. The maximum penalty for this offence is 300 penalty units. This penalty is justified since it is the same as failure to comply with the investigation notice in section 326D of this Bill.

This section replaces and is similar to the requirements of section 326(3) and (6) of the pre-amendment *Environmental Protection Act 1994*.

Clause 10 Omission of s 328 (Extensions of time for decisions on submissions)

This clause omits section 328 of the *Environmental Protection Act 1994*. This section allowed the administering authority to decide to extend the time it is required to decide whether or not to accept and environmental report. This section is now contained in section 326G(7) of this Bill.

Clause 11 Amendment of s 329 (Failure to make decision on environmental report taken to be refusal)

This clause amends section 329 of the *Environmental Protection Act 1994* to correct a cross-reference as a consequential amendment from the insertion of section 326G in this Bill.

Clause 12 Amendment of s 330 (What is a transitional environmental program)

This clause amends section 330 of the *Environmental Protection Act 1994* to remove references to Codes of Environmental Compliance, which are being deleted by this Bill, and accommodate the changes in conditioning for prospecting permits.

The requirements of an environmental authority for prospecting permits are removed under the changes in this Bill. Instead, prescribed conditions will be included in the *Environmental Protection Regulation 2008* as standard rules, removing the need for the application and processing of an environmental authority. The conditions for prospecting permits will be the prescribed and it will be an offence to fail to comply with these conditions. The conditions will be based on the existing code of environmental compliance for an environmental authority (prospecting).

Clause 13 Amendment of s 331 (Content of program)

This clause amends section 331 of the *Environmental Protection Act 1994* to remove references to Codes of Environmental Compliance, which are being deleted by this Bill, and accommodate the changes in conditioning for prospecting permits.

The requirements of an environmental authority for prospecting permits are removed under the changes in this Bill. Instead, prescribed conditions will be included in the *Environmental Protection Regulation 2008* as standard

rules, removing the need for the application and processing of an environmental authority. The conditions for prospecting permits will be the prescribed and it will be an offence to fail to comply with these conditions. The conditions will be based on the existing code of environmental compliance for an environmental authority (prospecting).

Clause 14 Amendment of s 332 (Administering authority may require draft program)

This clause amends section 330 of the *Environmental Protection Act 1994* to remove references to Codes of Environmental Compliance, which are being deleted by this Bill, and accommodate the changes in conditioning for prospecting permits.

The requirements of an environmental authority for prospecting permits are removed under the changes in this Bill. Instead, standard rules will be included in the *Environmental Protection Regulation 2008*, removing the need for the application and processing of an environmental authority. The conditions for prospecting permits will be prescribed conditions for carrying out a mining activity authorised under a prospecting permit.

Clause 15 Insertion of s 334A

This clause inserts a new section 334A into the *Environmental Protection Act 1994*.

Section 334A Administering authority may request further information

This new section has been inserted to include a formal information request step in the assessment process so that the administering authority may request further information from the person or public authority that submitted the draft transitional environmental program. The request must be made in writing within 10 business days after the draft program is received. In the past, this was done informally or through a catch all provision at the end of the pre-amendment *Environmental Protection Act 1994* (section 552). Including this step in the assessment process means the ability to request further information is up-front and transparent.

Clause 16 Amendment of s 335 (Public notice of submission for approval of certain draft programs)

This clause amends section 335 of the *Environmental Protection Act 1994* to change the time periods for when public notice of submission for approval of certain draft programs must be undertaken to allow for additional time if the administering authority requests further information under the new section 334A.

Clause 17 Insertion of new s 336A

This clause inserts a new section 336A into the *Environmental Protection Act 1994.*

Section 336A Administering authority may seek advice, comment or information about submission

This new section is inserted to allow the administering authority to ask any person for advice, comment or information about a submission for approval of a transitional environmental program. The administering authority may seek the advice, comment or information in any form. This power was previously included in a catch-all provision at the end of the pre-amendment *Environmental Protection Act 1994* (section 556). Including this power as part of the assessment process makes it more transparent.

Clause 18 Amendment of s 337 (Administering authority to consider draft programs)

This clause amends section 337 of the *Environmental Protection Act 1994* to change the timeframes for a decision on a transitional environmental program to accommodate an information request. This change is consequential to the insertion of the new section 334A into the *Environmental Protection Act 1994* by clause 15 of this Bill.

In addition, the new subsection (2) allows the administering authority to extend the period for making a decision if it gives an information notice about the decision. In the past, this was done informally or through a catch all provision at the end of the pre-amendment *Environmental Protection Act 1994* (section 555). Including this step in the assessment process means the decision timeframes are up-front and transparent.

Clause 19 Amendment of s 338 (Criteria for deciding draft program)

This clause amends section 338 of the *Environmental Protection Act 1994* to ensure the administering authority is not limited in what it may consider in deciding whether to approve, or refuse to approve, a draft environmental program or in imposing conditions on the approval. This provision was previously contained in a catch-all provision at the end of the pre-amendment *Environmental Protection Act 1994* (section 557). Including this provision in the assessment process improves the transparency of the assessment process.

Clause 20 Amendment of s 339 (Decision about draft program)

This clause amends section 339 of the *Environmental Protection Act 1994* to include reference to imposing a condition on the approval which requires a financial assurance. This provision was previously included in section 364 of the pre-amendment *Environmental Protection Act 1994* about a financial assurance generally. Including this provision in the assessment process improves the transparency of the assessment process.

Clause 21 Insertion of new s 343A

This clause inserts a new section 343A into the *Environmental Protection Act 1994*.

Section 343A Notation of approval of transitional environmental program on particular environmental authorities

This section applies to draft transitional environmental programs relating to an environmental authority. If a draft transitional environmental program is approved, the administering authority must include a note in the environmental authority stating the details of the transitional environmental program and stipulate that it is an offence to contravene a requirement of the program or a condition of the approval of the transitional environmental program.

This is because the definition of 'holder' for a transitional environmental program means that, where the transitional environmental program relates to an environmental authority, the holder of the program is the holder of the environmental authority. This ensures that the approved transitional environmental program is transferred with any transfer of the environmental authority.

Consequently, the purpose of this section is to ensure that the purchaser of a business with an environmental authority is aware of the existence of the transitional environmental program prior to the purchase.

Clause 22 Insertion of new ch 7, pt 3, div 3A

This clause inserts a new chapter 7, part 3, division 3A after section 344 of the *Environmental Protection 1994*. This new division deals with financial assurances which were previously included in general financial assurance provisions in the pre-amendment *Environmental Protection Act 1994*. Moving these provisions to sit with the approval to which they relate improves the transparency of the financial assurance requirements.

Division 3A Financial assurances

Section 344A Administering authority may claim or realise financial assurance

This section enables the administering authority to recover costs and expenses incurred in taking action to secure compliance with a transitional

environmental program through claiming or realising a financial assurance. The administering authority must give written notice to the person who gave the financial assurance and invite the person to make representations as to why the assurance should not be claimed or realised.

To remove any doubt, the person who gives the financial assurance is the holder of the environmental authority. If a third party (e.g. a bank) is the person who supplies the paperwork, the financial assurance is still given by the holder since it is given on behalf of the holder. Consequently, it is only the holder (i.e. the person who gave the financial assurance) who may apply to change the financial assurance or have it discharged.

This section replaces and is similar to section 367(1)-(2) of the pre-amendment *Environmental Protection Act 1994.*

Section 344B Considering representations

This section requires the administering authority to consider any written representations made by the person who gave the financial assurance before making its decision.

This section replaces and is similar to section 367(6) of the pre-amendment *Environmental Protection Act 1994*.

Section 344C Decision

This section states the time period within which the administering authority must decide whether to make a claim on or realise the financial assurance. Once the decision is made by the administering authority, it must give the person an information notice about the decision. This enlivens the review and appeal provisions in chapter 11 part 3 of the *Environmental Protection Act 1994*.

This section replaces and is similar to section 367(7) of the pre-amendment *Environmental Protection Act 1994*.

Section 344D Discharge financial assurance

This section requires the administering authority to discharge a financial assurance when the transitional environmental program ends. If further financial assurance is needed at the end of the program, the financial assurance on the environmental authority should be amended.

This section replaces and is based on section 366(1)-(2) of the pre-amendment *Environmental Protection Act 1994*.

Clause 23 Amendment of s 346 (Effect of compliance with program)

This clause amends section 346 of the *Environmental Protection Act 1994* to remove references to Codes of Environmental Compliance, which are being deleted by this Bill, and accommodate the changes in conditioning for prospecting permits.

The requirements of an environmental authority for prospecting permits are removed under the changes in this Bill. Instead, prescribed conditions will be included in the *Environmental Protection Regulation 2008* as standard rules, removing the need for the application and processing of an environmental authority. The conditions for prospecting permits will be the prescribed and it will be an offence to fail to comply with these conditions. The conditions will be based on the existing code of environmental compliance for an environmental authority (prospecting).

Clause 24 Amendment of s 347 (Notice of disposal by holder of program approval)

This clause amends section 347 of the *Environmental Protection Act 1994* to specify that the provisions relating to the disposal by the holder of a transitional environmental program (TEP) under this section only apply to a 'prescribed TEPs'. Prescribed TEPs are those which do not relate to an environmental authority. This is a consequential amendment to the amendment in clause 21 inserting section 343A, which requires notation of the TEP on the environmental authority where the TEP relates to an environmental authority. Since the buyer will have notice of the TEP through the notation on the environmental authority, there is no need for the holder to give the buyer notice of the TEP.

Clause 25 Amendment of s 358 (When order may be issued)

This clause amends section 358 of the *Environmental Protection Act 1994* to remove references to Codes of Environmental Compliance, which are being deleted by this Bill, and accommodate the changes in conditioning for prospecting permits.

The requirements of an environmental authority for prospecting permits are removed under the changes in this Bill. Instead, prescribed conditions will be included in the *Environmental Protection Regulation 2008* as standard rules, removing the need for the application and processing of an environmental authority. The conditions for prospecting permits will be the prescribed and it will be an offence to fail to comply with these conditions. The conditions will be based on the existing code of environmental compliance for an environmental authority (prospecting).

Clause 26 Amendment of s 360 (Form and content of order)

This clause amends section 360 of the *Environmental Protection Act 1994* as a consequential to amendments made to section 358 of the *Environmental Protection Act 1994*. Not all of the grounds in section 358 are relevant to environmental harm, consequently the requirement must be relevant to a matter in section 358, not just to prevent or minimise environmental harm.

Clause 27 Omission of Ch 7, pt 6 (Financial assurances)

This clause omits chapter 7, part 6 (sections 364 to 367) of the *Environmental Protection Act 1994*. Financial assurances are now dealt with under the new chapter 5 part 12 division 2 for environmental authorities and the new chapter 7 part 3 division 3A for transitional environmental programs.

Clause 28 Replacement of s 395 (Who must prepare validation report)

This clause omits section 395 of the *Environmental Protection Act 1994*. It is replaced by a new section concerning fees for consideration of a validation report.

The original section 395 is unnecessary as requirements for who must prepare a validation report are now dealt with under the suitably qualified persons provisions in the new chapter 12 part 3 inserted under clause 58.

Section 395 Fee for consideration of validation report

This section requires that a person submitting a validation report to the administering authority for consideration must pay the fee prescribed under the *Environmental Protection Regulation 2008*. This allows for the administering authority to recover costs of assessing the report.

Clause 29 Insertion of new ch 7, pt 8, div 5, sdiv 5

This clause inserts a new chapter 7, part 8, division 5, subdivision 5 into the *Environmental Protection Act 1994*. These provisions relate to residual risk requirements for site management plans. Previously, the administering authority could require a financial assurance for the approval of a site management plan. However, the reason why a financial assurance could be required meant that it was, in nature, more like a residual risk payment. Consequently, there is no longer an ability to require a financial assurance, and these provisions about residual risk requirements have been applied to the approval of a site management plan.

Subdivision 5 Residual risk requirement

Section 419A Payment may be required for residual risks of rehabilitation

This section provides the administering authority with the power to require a residual risks payment to be made by a person who submits a draft site management plan, if this plan relates to land which is recorded on the contaminated land register.

This section is based on section 266N of the pre-amendment *Environmental Protection Act 1994*.

Section 419B Criteria for decision to make residual risk requirement

This section sets the criteria that the administering authority must have regard to when deciding whether to require a payment for the residual risks of the area.

This section is based on section 266O of the pre-amendment *Environmental Protection Act 1994*.

Section 419C Amount and form of payment

This section provides for the administering authority to decide the amount and form of the residual risks payment. The administering authority may calculate the amount using a procedure that has been published in a guideline or other document that is publicly available. The amount cannot be greater than the total of all likely costs and expenses that may be incurred to rehabilitate, restore or protect the environment from the residual risk.

This section is based on section 266P of the pre-amendment *Environmental Protection Act 1994*.

Clause 30 Replacement of s 426 (Environmental authority required for mining activity)

This clause omits and replaces section 426 of the *Environmental Protection Act 1994*. Section 426 previously required an environmental authority for a mining activity only. The new section 426 effectively replaces sections 426, 426A and 427. Clause 31 omits sections 426A and 427.

Section 426 Environmental authority required for particular environmentally relevant activities

This section states that environmental authorities are required for environmentally relevant activities other than agricultural ERAs, mining activities under a prospecting permit, and certain geothermal activities.

Also, this section does not apply to the Coordinator-General, or another person on behalf of the Coordinator-General, in performing the Coordinator-General's functions under the *State Development and Public Works Organisation Act 1971*. Since carrying out prescribed ERAs will now require an environmental authority, the Coordinator-General needs to be excluded from this requirement to maintain the status quo that the Coordinator-General is not required to obtain a development approval under the *Sustainable Planning Act 2009* (see section 14). Without this subsection, the Coordinator-General could be required to obtain an environmental authority when they are acting under a section 109 direction or a section 140 authority under the *State Development and Public Works Organisation act 1971*.

A person must not carry out an environmentally relevant activity unless the person holds, or is acting under, an environmental authority for the activity. There is a maximum penalty of 1665 penalty units. This penalty is justified as it is the same as the old penalty for carrying out a level 1 resource activity without an environmental authority, or carrying out assessable development without a development approval under the *Sustainable Planning Act 2009*. The lower threshold for level 2 environmental authorities was removed since the offence is basically the same regardless of the level of application required to remedy the breach.

Clause 31 Omission of ss 426A and 427

This clause omits sections 426A and 427 of the *Environmental Protection Act 1994* as these offences are now covered by the new section 426.

Clause 32 Amendment of s 429 (Special provisions for interstate transporters of controlled waste)

This clause amends section 429 of the *Environmental Protection Act 1994* to change a cross-reference and to omit the provision that a person does not require a development approval for carrying out the activity. This is because mobile and temporary activities do not require a land use approval, so a development approval will never be required for these activities under the new provisions.

This section is also amended to give better clarity about the definition of 'controlled waste NEPM' (which is the *National Environmental Protection (Movement of Controlled Waste between States and Territories) Measure*), to be consistent with the definition under the *Waste Reduction and Recycling Act 2011.*

Clause 33 Amendment of s 430 (contravention of condition of environmental authority)

This clause amends section 430 of the *Environmental Protection Act 1994* to remove references to level 1 and level 2 authorities as these will no longer exist. Breach of an environmental authority is now considered to be the same offence, regardless of the type of application. This offence is subject to a maximum penalty of 2000 penalty units or 2 years imprisonment for a wilful breach or 1665 penalty units for a non-wilful breach. This penalty is justified as it is the same maximum penalty for a level 1 authority under the pre-amendment *Environmental Protection Act 1994*.

Clause 34 Omission of s 435 (Offence to contravene development condition)

This clause omits section 435 of the *Environmental Protection Act 1994* because the conditions relating the day to day management of the activity are now placed on the environmental authority and the offences relating to contravening the conditions on the environmental authority are contained in section 430. Breaches of the development permit will now be enforced through the offence provisions of the *Sustainable Planning Act 2009*.

Clause 35 Replacement of s 435A (Offence to contravene standard environmental conditions)

This clause replaces section 435A of the *Environmental Protection Act 1994* to reflect the removal of Codes of Environmental Compliance, which are being deleted by this Bill, and accommodate the changes in conditioning for prospecting permits.

Section 435A Offence to contravene prescribed conditions for particular activities

This section applies to a person carrying out a mining activity that is authorised under a prospecting permit and prescribed conditions are in effect for the carrying out of the activity.

The requirements of an environmental authority for prospecting permits are removed under the changes in this Bill. Instead, prescribed conditions will be included in the *Environmental Protection Regulation 2008* as standard rules, removing the need for the application and processing of an environmental authority. The conditions for prospecting permits will be the prescribed and it will be an offence to fail to comply with these conditions. The conditions will be based on the existing code of environmental compliance for an environmental authority (prospecting).

Consequently, this section now makes it an offence to fail to comply with the prescribed conditions for carrying out an activity under a prospecting permit. The maximum penalty is 300 penalty units for a wilful breach and 250 penalty units for a non-wilful breach. These penalties are justified

because they are the same as the old penalty for breaching a level 2 environmental authority, which are the comparative offence provisions for a breach of a prescribed condition related to a prospecting permit.

Clause 36 Amendment of s 452 (Entry of place – general)

This clause amends section 452 of the *Environmental Protection Act 1994* to remove references to mining or chapter 5A activities for an environmental authority since the environmental authority will now be the sole licensing document for all environmentally relevant activities regardless of the type of activity being undertaken. In addition, this section is amended to remove references to Codes of Environmental Compliance, which are being deleted by this Bill, and accommodate the changes in conditioning for prospecting permits.

The requirements of an environmental authority for prospecting permits are removed under the changes in this Bill. Instead, prescribed conditions will be included in the *Environmental Protection Regulation 2008* as standard rules, removing the need for the application and processing of an environmental authority. The conditions for prospecting permits will be the prescribed and it will be an offence to fail to comply with these conditions. The conditions will be based on the existing code of environmental compliance for an environmental authority (prospecting).

In addition, the powers of entry for agricultural ERAs (which do not require an environmental authority) have been restructured to separate them from other types of ERA.

Clause 37 Amendment of s 458 (Order to enter land to conduct investigation or conduct work)

This clause amends section 458 of the *Environmental Protection Act 1994* to remove the terms ‘registration certificate’ and ‘registered operator’ as these are no longer relevant terms, to remove references to Codes of Environmental Compliance, which are being deleted by this Bill, and accommodate the changes in conditioning for prospecting permits.

The requirements of an environmental authority for prospecting permits are removed under the changes in this Bill. Instead, prescribed conditions will be included in the *Environmental Protection Regulation 2008* as standard rules, removing the need for the application and processing of an environmental authority. The conditions for prospecting permits will be the prescribed and it will be an offence to fail to comply with these conditions. The conditions will be based on the existing code of environmental compliance for an environmental authority (prospecting).

Clause 38 Amendment of s 493A (When environmental harm or related acts are lawful)

This clause amends section 493A of the *Environmental Protection Act 1994* to remove references to Codes of Environmental Compliance, which are being deleted by this Bill, and accommodate the changes in conditioning for prospecting permits.

The requirements of an environmental authority for prospecting permits are removed under the changes in this Bill. Instead, prescribed conditions will be included in the *Environmental Protection Regulation 2008* as standard rules, removing the need for the application and processing of an environmental authority. The conditions for prospecting permits will be the prescribed and it will be an offence to fail to comply with these conditions. The conditions will be based on the existing code of environmental compliance for an environmental authority (prospecting).

This clause also amends section 493A to reflect the new definition of 'code of practice' in the Dictionary of the *Environmental Protection Act 1994*. 'Code of practice' is now defined to mean a code of practice made by the Minister under section 318E(1).

Clause 39 Amendment of s 502 (Court may make particular orders)

This clause amends section 502 of the *Environmental Protection Act 1994* to change cross-references to the relevant offence proceedings to which section 502 relates.

Clause 40 Amendment of s 520 (Dissatisfied person)

This clause amends section 520 of the *Environmental Protection Act 1994* to change cross-references to the decisions in the new sections inserted by this Bill. This ensures that the review and appeal provisions apply to these decisions.

Clause 41 Amendment of s 521 (Procedure for review)

This clause amends section 521 of the *Environmental Protection Act 1994* to create a longer decision period where an application has attracted submissions from third parties. This longer review period is needed because these types of applications are more complicated and may involve a review from multiple submitters on a number of different grounds.

Clause 42 Amendment of s 522 (Stay of operation of original decisions)

This clause amends section 522 of the *Environmental Protection Act 1994* as a consequence of the amendments to section 520 and schedule 2 which are contained in clauses 40 and 61 of this Bill.

Clause 43 Omission of s 529 (Decision for appeals against refusals under s 207)

This clause omits section 529 of the *Environmental Protection Act 1994*. This section is no longer necessary, as section 207 has been omitted by this Bill.

Clause 44 Amendment of s 530 (Decision for other appeals)

This clause amends section 530 of the *Environmental Protection Act 1994* as a consequence of the changes to the Land Court process contained in this Bill.

Clause 45 Amendment of s 531 (Who may appeal)

This clause amends section 531 of the *Environmental Protection Act 1994* as a consequence of the amendments to section 520 and schedule 2 which are contained in clauses 40 and 61 of this Bill.

Clause 46 Amendment of s 538 (Appeals may be heard with planning appeals)

This clause amends section 538 of the *Environmental Protection Act 1994* as a consequence of the introduction of flexible operational approvals (environmental authorities) for carrying out prescribed ERAs. Section 538 is amended so that the Court can make an order for related matters to be heard together, without needing an application from one of the parties. This is similar to the power of the Land Court to make an order that the matters be heard together.

Clause 47 Replacement of ss 540 (Required registers) and 541 (Keeping of registers)

This clause replaces section 540 of the *Environmental Protection Act 1994* with new sections 540 and 540A and replaces section 541 of the *Environmental Protection Act 1994* with a new section 541.

Section 540 Registers to be kept by the administering authority

This section now specifies those registers which must be kept by each administering authority.

Section 540A Registers to be kept by the chief executive

This section specifies those registers which must be kept only by the chief executive for the department.

Section 541 Keeping of registers

This section replaces section 541 of the pre-amendment *Environmental Protection Act 1994* to delete references to the register for Codes of Environmental Compliance, which have been removed by this Bill.

Clause 48 Amendment of s 542 (Inspection of registers)

This clause amends section 542 of the *Environmental Protection Act 1994* as a consequence of splitting the registers into those which must be kept by each administering authority (section 540), and those which must be kept only by the chief executive (section 540A).

Clause 49 Amendment of s 543 (Appropriate fees for copies)

This clause amends section 543 of the *Environmental Protection Act 1994* as a consequence of splitting the registers into those which must be kept by each administering authority (section 540), and those which must be kept only by the chief executive (section 540A).

Clause 50 Replacement of s 546 (Annual reports)

This clause replaces section 546 of the *Environmental Protection Act 1994* with new sections 546 and 546A. The new section 546 is about the administering authority's obligations, which the new section 546A is about the chief executive's obligations. This removes some of the obligations from administering authorities, particularly local governments.

Section 546 Chief executive may require administering authority to report

This section allows the chief executive to require an administering authority to provide a report of its administration of the *Environmental Protection Act 1994*. The chief executive must make this request in writing and state the information to be included in the report and when the report is due.

Section 546A Chief executive to provide annual report

This section provides that the chief executive must present a report to the Minister each year on the administration of the *Environmental Protection Act 1994*. This report must be tabled in the Legislative Assembly, ensuring that the administration of the Act is publicly accountable.

Clause 51 Replacement of ch 12, pt 1 (Approval of codes of practice and standard environmental conditions)

This clause deletes the current chapter 12, part 1 and inserts a new chapter 12, part 1 in the *Environmental Protection Act 1994*.

Part 1 Guidelines

Section 548 Chief executive may make guidelines for administering authorities

This section enables the chief executive to make guidelines about how to comply with a regulatory requirement. This power is based on an existing power in the *Sustainable Planning Act 2009*. This section specifies that the process to make guidelines is that the chief executive should consult with the persons or entities that the chief executive considers appropriate, and that notification of the guidelines must be made in the gazette.

The purpose of guidelines is to provide clear and consistent direction to achieve good environmental outcomes, and accountability in process. The use of guidelines rather than other statutory instruments (e.g. an Act or a regulation) is to allow more flexibility to incorporate descriptive and contextual information related to the topic of the guidelines.

This section raises the fundamental legislative principle of whether a Bill allows the delegation of legislative power in appropriate cases and to appropriate persons. However, as the guidelines are designed to guide the administering authority in using the criteria and principles stated in the Act and the *Environmental Protection Regulation 2008* and do not place obligations on operators, this is not a breach of the fundamental legislative principle.

Section 549 Chief executive may make guidelines to inform persons

This section enables the chief executive to make guidelines about the range of matters specified. This section specifies that the process to make guidelines is that the chief executive should consult with the persons or entities that the chief executive considers appropriate, and that notification of the guidelines must be made in the gazette.

Improving the guidance regarding specific requirements under various approvals processes will allow for more clarity and consistency for both government and industry. For example, one way to ensure that more complete and appropriate information is included in an environmental impact statement (EIS) is to clearly state from the outset the matters that the department considers should be addressed in a draft terms of reference. A guideline made by the chief executive under this section can achieve this

task. The existence of such a guideline can save both the government and business significant time and money.

This section raised the fundamental legislative principle of whether a Bill allows the delegation of legislative power in appropriate cases and to appropriate persons. However, as the guidelines are clearly designed to provide guidance and not to be used in place of legislative instruments and details in the Act, this is not a breach of the principle.

Clause 52 Omission of ch 12, pt 2, divs 1 and 2, hdgs

This clause removes the headings to divisions 1 and 2 of chapter 12, part 2 of the *Environmental Protection Act 1994*, as most of these sections have been omitted.

Clause 53 Omission of s 551 (Definitions for pt 2)

This clause omits section 551 of the *Environmental Protection Act 1994*, as the definitions for 'applicant' and 'TEP submission' are now found in section 554 and the definition for 'deciding' is no longer required.

Clause 54 Replacement of s552 (What is the application date for application or TEP submission)

This clause replaces section 552 of the *Environmental Protection Act 1994*. The previous section 552 has been replaced by the provisions for a properly made application in the new chapter 5.

Section 552 When documents are served

This section specifies when service of a document is deemed to have been effected if it is permitted to be served by post. This section specifies that

service occurs when the letter is posted. This is different from the meaning of service by post under the *Acts Interpretation Act 1954* which specifies that service occurs when the letter would be delivered in the ordinary course of post. This is because the service by post provisions of the *Acts Interpretation Act 1954* are primarily about service of legal documents in court proceedings, while the term 'give' in the *Environmental Protection Act 1994* is primarily about timeframes for when a step must be taken by the administering authority. Since the delivery of post is not within the control of the administering authority, the definition of 'give' under the *Acts Interpretation Act 1954* can make the timeframes for when a step must be taken uncertain. This definition makes these timeframes certain for the administering authority.

Clause 55 Amendment of s 554 (Electronic notices about applications and submissions)

This clause amends section 554 of the *Environmental Protection Act 1994* to insert definitions for 'applicant' and 'TEP submission'. These definitions were previously located in section 552, which has been omitted by clause 54. These definitions have not been changed.

Clause 56 Omission of ss 555-557

This clause omits sections 555 to 557 of the *Environmental Protection Act 1994*. These sections are omitted because they are no longer necessary since similar sections and processes are now contained within the environmental authority and transitional environmental program assessment process. This makes the assessment process and timeframes clearer and more transparent.

Clause 57 Omission of ch 12, pt 2, div 3

This clause omits Chapter 12, part 2, division 3 (Investigating suitability) of the *Environmental Protection Act 1994*. The suitability of an operator is

now assessed through the registration of suitable operators in new Chapter 5A, part 4 of the *Environmental Protection Act 1994*, so the provisions about investigating the suitability of the operator have been moved to division 3 of that part.

Clause 58 Insertion of new ch 12, pt 3-3A

This clause inserts parts 3 and 3A into chapter 12 of the *Environmental Protection Act 1994* to provide for suitably qualified persons and auditors.

Part 3 Suitably qualified persons

Currently, there are provisions about reports or documents being prepared by suitably qualified persons in various locations throughout the *Environmental Protection Act 1994*. Part 3 formalises this framework into one part to provide consistency and transparency in how the tasks that can be undertaken by a suitably qualified person are regulated.

Section 564 Definitions for pt 3

This section provides the definitions of 'regulatory function' and 'suitably qualified person' for this part. The 'regulatory functions' include conducting a site investigation or preparing a validation report or site management plan for contaminated land. A 'suitably qualified person' must have the appropriate qualifications and experience and be a member of the appropriate organisation (if any).

Section 565 Only suitably qualified person can perform regulatory functions

This section states that the regulatory functions carried out under this Act must be carried out by a suitably qualified person.

The qualifications and experience which the department would consider to be sufficient for a function may be set out in a guideline (see section 549 of this Bill). These guidelines will help inform operators, and the experts preparing reports on their behalf, what qualifications would meet the

statutory test. If the person does not meet these guidelines, they may still be a suitably qualified person, but there would be less certainty about whether they meet the statutory test.

Section 566 Declaration to accompany document

Certain criteria and requirements must be met to ensure the dependability and consistency of tasks undertaken by a suitably qualified person. To ensure that these requirements have been met, this section requires that a declaration accompany a document prepared for, or related to, a regulatory function. This section specifies the required content of this declaration. The declaration must contain:

- the person's qualifications and experience related to the regulatory function;
- a statement that no false, misleading or incomplete information has knowingly been included in the document; and
- a statement that the person has not knowingly failed to reveal any relevant information or document to the administering authority.

Additionally, the declaration must certify that the document addresses the relevant matters and is factually correct, and that the opinions expressed are honestly and reasonable held.

Part 3A Auditors

Across Australia, frameworks for third party certification, a form of co-regulation, are increasingly being used to assist governments and industry to competently undertake activities or deliver outcomes on their behalf. For government, the use of third party certification frameworks can be an efficient and effective way of solving technical and specialist issues where that particular specialist expertise is not readily available in a department. For operators, the use of a third party gives greater flexibility in meeting the requirements of the legislation.

A common application of such frameworks is third party auditing where government departments use third parties to conduct audits on their behalf. This involves the need to approve the third party to conduct these audits of licensees. Government departments need to be satisfied that these third

parties have the expertise to undertake these functions and meet minimum standards that satisfy and uphold regulatory requirements. Conversely, clients need to be confident that consistent, robust and fair decision making processes underpin third party certification frameworks and that there is a dispute resolution process available to all clients whereby decisions and outcomes can be clearly justified.

To date, the use of independent certification frameworks under the *Environmental Protection Act 1994* has been limited to assessment of contaminated land, design plans for dams with hazardous contaminants and case-by-case requirements for third party audits on a small number of approvals and environmental authorities.

Part 3A formalises this framework in that it allows auditors, who are external to the administering authority, to carry out specific functions (auditor's functions) under the *Environmental Protection Act 1994*. This framework is currently limited in application, but may be expanded by regulation to other areas of the legislation in the future.

Division 1 Preliminary

Section 567 Who is an auditor

This section provides that an individual is an auditor if the individual is approved as an auditor under division 2.

Section 568 Auditor's functions

This section outlines the functions that an auditor may perform. These include:

- conducting environmental audits and preparing environmental reports about audits under chapter 7, part 2;
- evaluating site investigation reports, validation reports, and draft site management plans under chapter 7, part 8 against the prescribed criteria; and
- auditing or evaluating another matter or thing prescribed under a regulation and prepare a report or written certification about the audit or evaluation.

Division 2 Obtaining approval as auditor

Section 569 Who may apply

This section provides that an individual may apply to the chief executive for approval to be an auditor.

This section replaces parts of section 285 of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Section 570 Requirements for application

The administering authority must be satisfied that any audit carried out by an external auditor is trustworthy and accurate. Therefore, this section specifies the requirements of an application under this section so that the chief executive can ensure that the auditor is an appropriate person with the right qualifications. Since these requirements will be different for different types of auditors and audit functions, most of these requirements will be specified in the guideline for that type of auditor.

This section replaces parts of section 285 of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Section 571 Deciding application

This section states that the administering authority must, within 30 business days after receiving the application, decide to approve, approve with conditions, or refuse the application. An approval may be subject to a condition that limits the functions of the auditor to a stated type of function.

This section replaces parts of section 285 of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Section 572 Criteria for decision

This section specifies the criteria that the chief executive must consider in deciding the application for approval as an environmental auditor. These criteria are related to the character, experience, knowledge and qualifications of the applicant.

This section replaces parts of section 285 of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Section 573 Notice of decision

This section states that the chief executive must give written notice of the decision within 10 business days after the decision has been made. If the decision is to approve the application, the notice must include a certificate of approval. If the decision is to refuse the application, the notice must state the reasons for the refusal. This is because refusal of the application is an original decision under chapter 11 part 3 of the *Environmental Protection Act 1994* and the applicant may seek a review, or appeal the decision.

This section replaces parts of section 286 of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Section 574 Term of approval

This section states that an approval will remain in force for a term stated in the approval.

This section replaces parts of section 286 of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Division 3 Performance of auditor's functions

Section 574A Who may perform auditor's functions

This section states that an auditor's function may only be performed by either the administering authority, or an auditor whose approval allows the auditor to carry out the function. This section also states that an auditor must not perform a function if the person has a direct or indirect financial or other interest in the matter or thing relevant to the function. This is to ensure that there is no conflict of interest for the auditor in performing their approved function.

Performing an auditor's function in contravention of this section is an offence with a maximum penalty of 100 penalty units. This penalty is

justified because it is the same as the penalty for the equivalent provision in the pre-amendment *Environmental Protection Act 1994*.

This section replaces section 287(1) of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Section 574B Auditor must comply with approval

This section states that an auditor must comply with the conditions of the approval unless they have a reasonable excuse.

Non-compliance with this section is an offence with a maximum penalty of 100 penalty units. This penalty is justified because it is the same as the penalty for the equivalent provision in the pre-amendment *Environmental Protection Act 1994*.

This section replaces parts of section 286 of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Section 574C Report and declaration to accompany document

This section provides an added protection in terms of the reliability of a report or certification about an audit or evaluation carried out by an auditor. This protection is provided by requiring that any report or certification is accompanied by:

- a declaration by the auditor that states:
    - the person's qualifications and experience relevant to the audit or evaluation; and
    - that the person has not knowingly included any false, misleading or incomplete information;
- a statement the person has not knowingly failed to reveal any relevant information or document to the administering authority; and
- a certification that the report or certification addresses the relevant matters for the audit or evaluation and is factually correct, and that the opinions expressed in it are honestly and reasonably held.

This section replaces parts of section 286 of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Division 4 Suspension or cancellation of approval

Section 574D Grounds for suspension or cancellation

Under some circumstances, it will be necessary that the administering authority suspends or cancels an auditor's approval. This section states that the grounds for such a suspension or cancellation and include:

- contravening a condition of the approval;
- not complying with the code of conduct;
- being convicted of an offence under the *Environmental Protection Act 1994;*
- being convicted under another Act involving misleading or fraudulent conduct;
- not having the necessary expertise or experience to perform the auditor's functions; and
- if any audits conducted were not conducted honestly, fairly or diligently.

Section 574E Show cause notice

In the situation that chief executive believes a ground exists to suspend or cancel an auditor's approval under section 574D, then the chief executive must give the auditor a 'show cause notice'.

The show cause notice must contain the following:

- the proposed action;
- the grounds for the proposed action;
- an outline of facts and circumstances forming the basis of the grounds;

- the proposed suspension period if the proposed action is a suspension; and
- that the auditor may make written representations within a prescribed period to the chief executive why the proposed action should not be taken.

This section replaces section 287(2) of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Section 574F Representations about show cause notices

This section states that an auditor may make written representations about the show cause notice, and that the chief executive must consider all representations made in this period. This section is necessary to allow the auditor to respond to the belief of the chief executive that grounds exist to suspend or cancel the auditor's approval.

This section replaces section 287(2) of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Section 574G Suspension or cancellation

This section states that the chief executive may suspend or cancel an auditor's approval, after considering any representations made. If the chief executive decides to take an action then the auditor must be given an information notice about the decision. This enlivens the review and appeal provisions in chapter 11 part 3 of the *Environmental Protection Act 1994*.

This section replaces section 287(1) of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Division 5 Complaints

Section 574H Who may make a complaint

To ensure the integrity of the external auditor framework, it is necessary to allow a person to provide information or complain to the chief executive

about one of the grounds for suspension or cancellation of the auditor's approval under section 574D.

This section specifies that a complaint under this section must be in writing and state the particulars on which the complaint is based.

This section replaces section 287(2) of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Section 574I What happens after a complaint is made

This section states that after the chief executive receives a complaint, it must consider and investigate the complaint as soon as possible. After considering and investigating the complaint, the chief executive must decide to either accept the complaint for action, or to not take action on the complaint.

Section 574J Notice of decision

This section states that the chief executive must give the complainant a written notice of the decision the decision to suspend or cancel the auditor's approval within 10 business days of making the decision. If the decision is to not take action, then the notice given to the complainant must state the reasons for the decision.

Division 6 Miscellaneous

Section 574K Obligations to keep certificate of approval

This section states that a person given a certificate of approval as an environmental auditor must keep the certificate for the term of the approval, unless the person has a reasonable excuse. This is to ensure that the auditor can provide evidence of their approval when required.

Non-compliance with this section is an offence with a maximum penalty of 100 penalty units. This penalty is justified because it is the same as the other penalties in this part.

Section 574L Impersonation of auditor

This section states that a person must not pretend to be an auditor.

Non-compliance with this section is an offence with a maximum penalty of 100 penalty units. This penalty is justified because it is the same as the penalty for the equivalent provision in the pre-amendment *Environmental Protection Act 1994*.

This section replaces section 288 of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Section 574M False or misleading information about reports or certification

This section provides that it is an offence for an environmental auditor to make a report or provide a certification that the auditor knows is false or misleading in some way.

The maximum penalty for breaching this offence is 1665 penalty units or 2 years imprisonment. This penalty is justified because the administering authority must be able to rely on the information contained in the report or certificate and it is the same penalty as the equivalent section of the pre-amendment *Environmental Protection Act 1994*.

This section replaces and is similar to section 289 of the pre-amendment *Environmental Protection Act 1994*, which was limited to environmental audits for mining activities.

Clause 59 Amendment of s580 (Regulation-making power)

This clause amends section 580 of the *Environmental Protection Act 1994* to omit references to regulation making powers which have been made obsolete by the provisions of this Bill.

Clause 60 Insertion of new ch 13, pt 18

This clause inserts new chapter 13, part 18 into the *Environmental Protection Act 1994*, which contains the transitional provisions for this Bill.

Part 18 Transitional provisions for Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012

Division 1 Preliminary

Section 676 Definitions for pt 18

This section provides definitions for these transitional provisions.

Division 2 Provisions for chapter 4 activities

Section 677 Continuing effect of existing development permit for chapter 4 activity as environmental authority

This section states the transitional arrangements for registration certificates and development approvals for chapter 4 activities to transition to environmental authorities. This provision basically provides that the development conditions of the development approval (i.e. those conditions which were imposed by the administering authority) are combined with the registration certificate to become an environmental authority.

This transitional provision allows for current operators of environmentally relevant activities, for which the environmental conditions are included on the current development permit, to operate as though they also hold an environmental authority as required under the new arrangements.

Section 678 Existing development application for chapter 4 activity

This section states that if a development application for a chapter 4 activity has been lodged, but not decided, before commencement, then it is decided under the old provisions. This maintains the status quo for the assessment process and then the development permit is converted into an environmental authority.

Section 679 Continuing effect of existing UDA development approval for chapter 4 activity as environmental authority

This section ensures that any conditions of a UDA development approval can transition to an environmental authority. There are very few UDA development approvals that this will apply to. After commencement, an operator will need an environmental authority in addition to their UDA development approval. 'UDA development approval' is defined under the *Urban Land Development Authority Act 2007*, and is basically a development approval decided under that Act.

Section 680 Continuing effect of existing registration certificate as environmental authority

This section states the transitional arrangements for holders of a registration certificate without a development permit (i.e. self-assessable development under the *Sustainable Planning Act 2009* because of a code of environmental compliance). The registration certificate becomes an environmental authority, and the conditions of the environmental authority are the standard environmental conditions contained in the code.

Section 681 Existing application for registration to carry out chapter 4 activity

This section states that if an application for registration to carry out a chapter 4 activity is made, but not decided, before commencement, then it is decided under the old provisions. This maintains the status quo for the assessment process and then the registration certificate is converted into an environmental authority.

Division 3 Provisions for environmental authorities (mining activities)

Section 682 Continuing effect of existing environmental authority (mining activities) as environmental authority

This section transitions environmental authorities (mining activities) to environmental authorities for mining activities.

Section 683 Effect of commencement on particular applications

This section states that if an application for an environmental authority (mining activities) is made, but not decided, before commencement, then it is decided under the old provisions. This maintains the status quo for the assessment process and then any environmental authority (mining activities) issued will be taken to be an environmental authority for mining activities under the amended provisions.

Section 684 Existing progressive certification

This transitional provision preserves the status quo for existing progressive certification.

Section 685 Existing application for progressive certification

This section states that if an application for progressive certification is made, but not decided, before commencement, then it is decided under the old provisions. This maintains the status quo for the assessment process and then any progressive certification issued is taken to apply under the new provisions.

Section 686 Existing surrender notice

This section states that a surrender notice given by the administering authority to a holder of an environmental authority (mining activities) under the old provisions becomes a surrender notice under the new provisions. Any surrender application as a result of the surrender notice is then assessed under the new provisions.

Section 687 Existing audit notices

This section states that an audit notice given to the holder of an environmental authority (mining activities) under the old provisions becomes an audit notice under the new provisions. Any assessment of the audit is then assessed under the new provisions.

Section 688 Existing appointment of auditor

This section continues the appointment of an auditor under the old provisions. This is so that auditors previously appointed under the statutory process need not apply for re-appointment. However, auditors previously appointed under an administrative process will need to apply for re-appointment under the statutory process.

Section 689 Existing notice of proposed amendment, cancellation or suspension of environmental authority

This section provides that a notice of a proposed action under the previous provisions is becomes a notice under the new provisions and the amendment, cancellation or suspension is then assessed under the new provisions.

Division 4 Provisions for other environmental authorities

Section 690 Continuing effect of existing environmental authority (chapter 5A activities) as environmental authority

This section transitions environmental authorities (chapter 5A activities) to environmental authorities for petroleum activities, greenhouse gas storage activities or geothermal activities.

Section 691 Existing application for environmental authority (chapter 5A activities)

This section states that if an application for an environmental authority (chapter 5A activities) is made, but not decided, before commencement,

then it is decided under the old provisions. This maintains the status quo for the assessment process and then any environmental authority (chapter 5A activities) issued will be taken to be an environmental authority for the relevant resource activity under the amended provisions.

Section 692 Existing surrender notice

This section states that a surrender notice given by the administering authority to a holder of an environmental authority (chapter 5A activities) under the old provisions becomes a surrender notice under the new provisions. Any surrender application as a result of the surrender notice is then assessed under the new provisions.

Section 693 Existing notice of proposed amendment, cancellation or suspension of environmental authority

This section provides that a notice of a proposed action under the previous provisions becomes a notice under the new provisions and the amendment, cancellation or suspension is then assessed under the new provisions.

Division 5 Transitional authorities for environmentally relevant activities

Section 694 Definition for div 5

This section provides the meaning for transitional authority for division 5. There are four types of transitional authorities used in this division. For an environmental authority, a transitional authority is an authority that under section 682 or 690, is taken to be an environmental authority under chapter 5. For a development permit, or development conditions of a development permit, a transitional authority is an authority that, under section 677, is taken to be an environmental authority under chapter 5. For a development approval under the *Urban Land Development Authority Act 2007*, a transitional authority is an authority that, under section 679 is taken to be an environmental authority under chapter 5. For a registration certificate, a transitional authority is an authority that, under section 680, is taken to be an environmental authority under chapter 5.

Section 695 Application to convert conditions of transitional authority to standard conditions

This section allows the holder of a transitional authority to apply to the administering authority to convert the conditions of the environmental authority to the standard conditions for the authority or relevant activity. This is called a conversion application. This conversion is not compulsory, but can be done at the request of the operator.

This provision allows holders of authorities for an activity to transition to more contemporary environmental standards. It also allows authority holders to operate under similar conditions as those of other authority holders for the same activity. This results in better environmental outcomes and a more consistent and transparent and operating environment for industry.

Section 696 Requirements for conversion application

This section provides that a conversion application must be in the approved form, and be accompanied by the fee prescribed under a regulation.

Section 697 Deciding conversion application

This section states that the administering authority must, within 10 business days of receiving the application, decide to either approve or refuse the application. The criteria that must be considered by the administering authority are the same as the criteria for deciding a standard application. This section also states that a conversion application may only be approved if the relevant activity complies with all of the eligibility criteria for the activities.

Section 698 Steps after making decision

This section states the steps to be taken by the administering authority after making a decision to approve or refuse a conversion application. If the administering authority decides to refuse the application, an information notice must be given to the applicant about the decision. This enlivens the review and appeal provisions in chapter 11 part 3 of the *Environmental Protection Act 1994*.

Division 6 Financial assurance

Section 699 Existing financial assurance requirement

This section maintains the status quo for the application and operation of financial assurance requirements.

Failure to comply with a financial assurance requirement prior to carrying out the activity is an offence with a maximum penalty of 1665 penalty units. This is justified because a financial assurance requirement is basically a condition of the environmental authority and this penalty is the same as the penalty for breaching a condition of the environmental authority.

Division 7 Provisions about codes of practice

Section 700 Existing codes of practice

This section allows an existing code of practice to continue to have effect after the commencement. However, these existing codes of practice must be updated within 2 years of commencement to ensure they are up-to-date with best practice environmental management.

Division 8 Provisions about environmental management plans

Section 701 Conditions about environmental management plans for particular environmental authorities

This section applies to continue the effect of the environmental management plan (EM plan) in two circumstances:

- where there is a condition of the old environmental authority which specifies that the operator must comply with the EM Plan; and
- where the rehabilitation commitments contained in the EM Plan have not been carried through to a new environmental authority.

In the first instance, the condition on the environmental authority effectively makes the commitments in the EM Plan conditions of the environmental authority. In the second instance, the final rehabilitation report under the pre-amendment *Environmental Protection Act 1994* required the operator to state the extent to which the environmental protection commitments under any submitted EM Plan has been complied with. Consequently, in both cases, this transitional provision is not adding to the regulatory burden on the operator.

Since the EM Plan requirement is being removed by this Bill, there will no longer be a mechanism to amend the EM Plan when the operational aspects of the activity change. Consequently, any commitments which formed part of the environmental authority through the EM Plan will be moved up to be conditions of the environmental authority. This then means that the mechanisms for amending the environmental authority will apply to these conditions. This should be merely an administrative change, where the conditions are moved from one document (the EM Plan) to another document (the environmental authority). However, to preserve the operator's rights, this decision is subject to the review and appeal provisions of chapter 11 part 3 of the *Environmental Protection Act 1994*.

Division 9 Provisions about plans of operations

Section 702 Existing plan of operations

This transitional provision preserves the status quo for existing plans of operations

Section 703 Plan of operations for environmental authority for petroleum activity that relates to a petroleum lease

This section provides the transitional arrangements for existing environmental authorities for petroleum leases that either:

- currently contain a condition requiring the holder to provide the administering authority with an operational plan (which is similar to the plan of operations); or
- do not have a condition requiring the provision of an operational plan.

If the plan of operations requirements applied to all petroleum leases on commencement of this Bill, holders of existing environmental authorities for petroleum leases would not have time to submit and plan of operations under the legislative requirements.

Therefore, the transitional provisions provide that the requirement to submit a plan of operations does not apply immediately but provides time to come into compliance. The plan of operations requirement applies to an environmental authority for a petroleum activity authorised under a petroleum lease if the authority: was issued before the commencement; and is required to submit a plan of operations under chapter 5, part 12, division 1.

The holder is provided six months to submit a plan of operations. It will be an offence to not submit the plan of operations within this timeframe. The offence of 100 penalty units is the same offence for not submitting a plan of operations under section 287.

Section 287, which requires a plan of operations to be lodged before activities can be carried out under the relevant petroleum lease, does not apply to the holder until either the plan of operations is given to the administering authority, or six months after commencement.

This section also gives the administering authority the power to amend the environmental authority to remove conditions which are duplicated by the plan of operations requirement (e.g. a condition requiring an operational plan). These amendment powers are subject to the amendment procedure in Chapter 5, Part 6, Division 2 which require the administering authority to issue a notice of proposed action about the amendment if the holder has not agreed to the amendment. The environmental authority holder then has the opportunity to provide submissions to the administering authority as to why the amendment should not be made. This decision is subject to the review and appeal provisions in chapter 11 part 3 of the *Environmental Protection Act 1994*.

This will provide certainty to the environmental authority holder regarding their obligations and remove any potential for inconsistencies between the environmental authority and plan of operations.

Division 10 Miscellaneous provisions

Section 704 Existing application to change anniversary day

This section provides that an application to change the anniversary date for a registration certificate or environmental authority made, but not decided, before commencement becomes an application to change the anniversary date of an environmental authority under the new provisions. The application is then assessed under the new provisions.

Section 705 Particular persons taken to be registered suitable operator

This section provides for current holders of an environmental authority or registration certificate to be automatically listed on the register of suitable operators. As a result of the new register, the suitability of operators to hold an environmental authority is assessed only once, reducing processing time for new applications.

This transitional provision allows current holders to become registered suitable operators automatically without having to make an application. The provision also ensures that holders of a suspended registration certificate are also taken to be suspended as registered suitable operators.

Section 706 Effect of proposed standard environmental conditions prepared before commencement of amending Act

This section provides for proposed standard conditions in a code of environmental compliance to be made standard conditions under the new provisions without having to repeat the public consultation step.

This section ensures that work carried out in developing draft standard conditions for a code of environmental compliance is recognised and transitioned to the new arrangements.

Section 707 Deferment of application of s 426 to newly prescribed ERAs

Prescribed ERAs are defined by how they are listed in the *Environmental Protection Regulation 2008*. Changes to how prescribed ERAs are defined

sometimes need to be made for clarity and transparency of who is regulated. This can lead to some existing operators needing to obtain an environmental authority where it was not required before.

Section 869 of the *Sustainable Planning Act 2009* gives existing operators, who are impacted by a new ERA or expansion of an existing ERA, one year in which to obtain their development approval.

This section preserves the status quo by extending this exemption to environmental authorities required under the *Environmental Protection Act 1994*.

Section 708 References to chapter 4 activity, development approval or registration certificate

This section ensures that references in documents to the old terminology (e.g. chapter 4 activity) can be taken to be references to the new terminology (e.g. prescribed ERA).

Section 709 References to former chapters 5 and 5A

This section ensures that references in documents to section numbers etc of the old chapters can be taken to be references to the equivalent provision in the new chapter.

Section 710 References to former terms

There are numerous pieces of subordinate legislation, statutory instruments, and other non-statutory documents which refer to the old terminology of the pre-amendment *Environmental Protection Act 1994*. While government documents are being progressively updated, not all documents will be updated to the new terminology in time for commencement of this Bill.

This section ensures that references in documents to the old terminology can be taken to be references to the new terminology during this transitional period.

Clause 61 Amendment of sch 2 (Original decisions)

This clause amends schedule 2 of the *Environmental Protection Act 1994* to update the list of original decisions as a result of the changes in this Bill.

Clause 62 Amendment of sch 4 (Dictionary)

This clause amends the Dictionary of the *Environmental Protection Act 1994* to delete, replace, amend and insert definitions as a result of changes in this Bill.

The following definitions are being deleted:

- additional condition
- applicable code
- applicants
- application date
- application requirements
- approved code of practice
- assessable development
- assessment period
- business
- chapter 4 activity
- chapter 5A activity
- chapter 5A activity project
- coal seam gas environmental authority
- code compliance condition
- code compliant application
- code compliant authority
- code of environmental compliance

- conditional surrender
- continuing chapter 4 activity
- correction
- current objection
- designated urban area
- development offence
- EIS decision
- EM plan assessment report
- enforcement order
- environmental authority (chapter 5A activities)
- environmental authority (exploration)
- environmental authority (mineral development)
- environmental authority (mining activities)
- environmental authority (mining claim)
- environmental authority (mining lease)
- environmental authority (prospecting)
- environmental protection commitment
- FRR amendment notice
- FRR assessment report
- GHG residual risks requirement
- interim enforcement order
- joint application
- level 1 chapter 5A activity
- level 1 mining project
- level 2 chapter 5A activity
- level 2 mining project
- mining project
- mining registrar

- Minister's decision
- mobile and temporary environmentally relevant activity
- National Strategy for Ecologically Sustainable Development
- non-code compliant application
- non-code compliant authority
- objection period
- project authority
- properly made objection
- proposed holder
- refusal period
- registered operator
- registration certificate
- relevant chapter 5A activity
- relevant CSG activity
- relevant place
- relevant standard environmental conditions
- revised (CSG) EM plan
- self-assessable development
- standard environmental conditions
- submitted EM plan.

The following definitions are being amended, replaced or moved to the Dictionary from other parts of the *Environmental Protection Act 1994*:

- amendment application
- anniversary day
- annual notice
- applicant
- application documents
- application notice

- assessment level decision
- audit notice
- auditor
- certified rehabilitated area
- coal seam gas
- CSG evaporation dam
- CSG water
- draft environmental authority
- environmental audit
- environmental authority
- environmental investigation
- environmental management plan
- environmental offence
- final rehabilitation report
- financial assurance
- geothermal activity
- GHG storage activity
- holder
- joint applicants
- mining activity
- mining tenure
- objections decision
- objector
- person
- petroleum activity
- progressive certification
- properly made submission
- proposed action

- proposed action decision
- public notice requirements
- register
- regulatory requirement
- rehabilitation direction
- relevant mining activity
- relevant mining lease
- relevant mining tenure
- relevant resource activity
- replacement environmental authority
- residual risks
- resource legislation
- standard criteria
- submission period
- suitability report
- surrender application
- surrender notice
- transfer application.

The following definitions are being inserted:

- amalgamated corporate authority
- amalgamated environmental authority
- amalgamated local government authority
- amalgamated project authority
- amalgamation application
- amendment decision
- application
- assessment process
- code of practice

- consultation period
- Coordinator-General's conditions
- CSG activity
- eligible ERA
- eligibility criteria
- environmental offset
- environmental offset condition
- ERA project
- Existing environmental authority
- Existing holder
- geothermal tenure
- GHG permit
- GHG storage tenure
- ineligible ERA
- information request
- information request period
- information response period
- Intergovernmental Agreement on the Environment
- investigation notice
- major amendment
- minor amendment
- minor change for an amendment application for an environmental authority
- minor change for an application for an environmental authority
- MRA department
- objection notice
- objections decision hearing
- on-site mitigation measure

- petroleum tenure
- plan of operations
- prescribed condition
- prescribed ERA
- prescribed ERA project
- progressive certification application
- properly made application
- proposed amendment
- proposed amendment notice
- registered suitable operator
- regulatory function
- relevant activity
- relevant area
- relevant existing authority
- relevant tenure
- residual risks requirement
- resource activity
- resource project
- resource tenure
- show cause notice
- site-specific application
- standard application
- standard conditions
- statement of compliance
- suitably qualified persons
- transferred environmental authority
- variation application.

Under this clause the definition of 'standard criteria' is being changed. The standard criteria are considered when making decisions under the *Environmental Protection Act 1994* about actions or activities.

The pre-amendment definition of 'standard criteria' required consideration of the principles of ecologically sustainable development as set out in the National Strategy for Ecologically Sustainable Development. The Strategy sets out seven guiding principles including the precautionary principle. Other than the precautionary principle, these principles are more readily applied at the policy level rather than for individual decisions.

Ecologically sustainable development is also defined in the object of the *Environmental Protection Act 1994* and embodies the principles of the quality of life now and in the future, and maintaining ecological processes. These principles align with the principles of intergenerational equity and conservation of biological diversity and ecological integrity as included in the Intergovernmental Agreement on the Environment (IGAE). The Queensland Government is a signatory to this agreement.

Section 5 of the *Environmental Protection Act 1994* requires a person deciding an application under the Act to make a decision in the way that best achieves the object of the Act. The requirement to consider principles of ecologically sustainable development for the object of the Act which are different to those under the standard criteria has given rise to confusion about the specific matters to be considered.

To remove any confusion, and to provide clarity on the specific matters that must be considered, the paragraph (a) of the definition of 'standard criteria' is being changed to clearly state the three specific principles in the IGAE that must be considered. These are:

- the precautionary principle;
- intergenerational equity principle; and
- conservation of biological diversity and ecological integrity principle.

These principles are set out in the IGAE as follows:

- Precautionary principle - where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and

(ii) an assessment of the risk-weighted consequences of various options.

- Intergenerational equity - the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- Conservation of biological diversity and ecological integrity - conservation of biological diversity and ecological integrity should be a fundamental consideration.

In addition, paragraph (b) of definition of 'standard criteria' has been changed to restrict the scope of consideration of plans, standards, agreements, or requirements to those relating to environmental protection or ecologically sustainable development. This links this aspect of the 'standard criteria' to the object of the *Environmental Protection Act 1994*. The amended definition also removes reference to local government plans as they are able to be implemented through the *Sustainable Planning Act 2009* where relevant to development.

Part 3 Amendment of Sustainable Planning Act 2009

Clause 63 Act amended

This clause states that this part amends the *Sustainable Planning Act 2009.*

Clause 64 Amendment of s 10 (Definition for terms used in *development*)

This clause provides for the amendment of the definition of 'material change of use' in section 10 of the *Sustainable Planning Act 2009*. Specifically, the clause removes reference to environmentally relevant activities, as these are now dealt with under a separate environmental

authority process under the *Environmental Protection Act 1994*. Those aspects of an environmentally relevant activity that relate to development under the *Sustainable Planning Act 2009* can still be made assessable through a regulation, a local planning instrument or a state planning regulatory provision.

Clause 65 Replacement of s 261 (When application is a *properly made application*)

This clause omits and replaces section 261 of the *Sustainable Planning Act 2009* to accommodate the separation of the development permit from the environmental authority.

Section 261 When application is a *properly made application*

This section identifies the circumstances under which a development application is a 'properly made application'.

The requirements for a 'properly made application' in this section have changed to include the circumstances where an application for a development permit is also taken to be an application for an environmental authority under section 115 of the *Environmental Protection Act 1994* (inserted by this Bill).

An application for a development permit can be taken as application for an environmental authority in some circumstances under section 115 of the *Environmental Protection Act 1994* (inserted by this Bill). In these circumstances, it is necessary that the application for the development permit includes the information necessary to assess the application for an environmental authority under the *Environmental Protection Act 1994*. Consequently, the application must comply with both section 260 of the *Sustainable Planning Act 2009* and section 125 of the *Environmental Protection Act 1994* (inserted by this Bill).

Clause 66 Amendment of s 319 (Decision-making period—changed circumstances)

This clause amends section 319 of the *Sustainable Planning Act 2009* as a consequence of the amendment to section 321 of the *Sustainable Planning Act 2009* in clause 67 of this Bill.

Clause 67 Amendment of s 321 (Applicant may stop decision-making period to request chief executive's assistance)

This clause amends section 321 of the *Sustainable Planning Act 2009* to give the chief executive for the *Sustainable Planning Act 2009* the power to resolve conflicts between an environmental authority and a concurrence agency's response. If the chief executive is satisfied that the environmental authority should be reissued, he or she may direct the administering authority to reissue the environmental authority to address the inconsistency. The administering authority then has the power to amend the environmental authority under section 214 of the *Environmental Protection Act 1994* (inserted by this Bill).

Clause 68 Amendment of s 335 (Content of decision notice)

This clause amends section 335 of the *Sustainable Planning Act 2009* to provide that any decision notice for a development application, which relates to an application for an environmental authority under the *Environmental Protection Act 1994*, must state the details of the environmental authority.

This is to ensure that the development permit is associated with the relevant environmental authority, since both are needed to operate legally.

Clause 69 Amendment of s 350 (Meaning of *minor change*)

This clause amends section 350 of the *Sustainable Planning Act 2009* specify that a change related to an application that is also taken to be an application for an environmental authority under section 115 of the *Environmental Protection Act 1994* (inserted by this Bill), can only be a minor change if it does not change the type of application made under the *Environmental Protection Act 1994* (e.g. if the change turns a variation application into a site-specific application, then it is a major change).

Clause 70 Omission of ch 6, pt 9 (Applying IDAS to mobile and temporary environmentally relevant activities)

This clause removes section 392 of the *Sustainable Planning Act 2009* which provides for the application of IDAS to mobile and temporary ERAs. As these activities do not attach to the land, they will now only require an environmental authority under the *Environmental Protection Act 1994*.

Clause 71 Replacement of s 399 (Who may carry out compliance assessment)

This clause omits and replaces section 399 of the *Sustainable Planning Act 2009* to include 'a nominated entity of a public sector entity'. This is so that a nominated entity of a State government department can carry out compliance assessment.

Clause 72 Amendment of s 401 (Request for compliance assessment)

This clause amends section 401 of the *Sustainable Planning Act 2009* so that a nominated entity of a State government department can carry out compliance assessment.

Clause 73 Amendment of s 413 (Changing compliance permit or compliance certificate)

This clause amends section 413 of the *Sustainable Planning Act 2009* so that a nominated entity of a State government department can carry out compliance assessment.

Clause 74 Amendment of s 420 (Ministerial directions to concurrence agencies)

This clause amends section 420 of the *Sustainable Planning Act 2009* so that the Minister for the *Sustainable Planning Act 2009* can direct that conflict is resolved between the conditions of an environmental authority, and the conditions of a concurrence agency. If the Minister is satisfied that the environmental authority should be reissued, he or she may direct the administering authority to reissue the environmental authority to address the inconsistency. The administering authority then has the power to amend the environmental authority under section 214 of the *Environmental Protection Act 1994* (inserted by this Bill).

Clause 75 Amendment of s 580 (Compliance with development approval)

This clause amends section 580 of the *Sustainable Planning Act 2009* to omit reference to a contravention of a condition imposed by the

administering authority. This is because these conditions will now be on the environmental authority, and any remaining land-use conditions will be enforced through the enforcement tools in the *Sustainable Planning Act 2009*.

Clause 76 Amendment of s 715 (Power of assessment manager or other entity to enter land in particular circumstances)

This clause amends section 715 of the *Sustainable Planning Act 2009* to provide that the agent of a State government department (e.g. an authorised person under the *Environmental Protection Act 1994*) can enter land in particular circumstances. This amendment is consequential to the amendment of sections 399, 401 and 413 of the *Sustainable Planning Act 2009*.

Clause 77 Amendment of sch 3 (Dictionary)

This clause amends a number of definitions in schedule 3 of the *Sustainable Planning Act 2009*. The reasons for these amendments are:

- the definition of 'mobile and temporary environmentally relevant activity' has been omitted as these activities no longer need a development permit. This is because these activities do not attach to a particular piece of land, and assessment will not be required under the *Sustainable Planning Act 2009*;
- the definition of 'assessing authority' is changed to allow for the inclusion a 'public sector entity'; and
- a cross-reference is changed in the definition of 'properly made application'.

Part 4 Other amendments

Clause 78 Legislation amended in schedule

This schedule outlines the consequential amendments to the *Environmental Protection Act 1994*, the *Sustainable Planning Act 2009* and other Acts that are required to facilitate the changes in processes and terminology used under the changes in this Bill.