ENVIRONMENTAL PROTECTION LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the *Environmental Protection Legislation Amendment Bill 2003.*

Policy Objectives of the Legislation

The policy objective of the Bill is to achieve better environmental outcomes and provide a better service to the administering authority's customers by improving the integration of the *Environmental Protection Act 1994* (EP Act) and the *Integrated Planning Act 1997* (IPA) for all environmentally relevant activities (ERAs), other than mining or petroleum activities. The amendments will also refine the assessment arrangements associated with development proposals that involve the management of contaminated land.

Reasons for the Bill

The Bill incorporates legislative changes necessary to improve the integration of the EP Act and the IPA. The amendments will reduce red-tape for industry through streamlined approval process, provide for consistent regulation and administration of all ERAs and provide for significant administrative efficiencies for administering authorities.

Achieving the Objective

The objective of the Bill will be achieved by enacting amendments to the Acts that provide the following—

- A single approval type for ERAs: transitioning conditions of environmental authorities as development conditions of development approvals.
- A single approval process for ERAs: changing IPA so that mobile and temporary ERAs are assessed and conditioned in the integrated development assessment system (IDAS) and amending the EP Act so that all conditioning powers associated with the ERAs are linked to the development approval.
- A single approval requirement: replacing the requirement for the person carrying out an ERA to hold an environmental authority with the requirement for the operator to be a registered operator.
- Establishing a system of codes of environmental compliance for certain ERAs: amending existing provisions related to standard environmental conditions and codes of environmental compliance for non-mining and non-petroleum activities.
- Refining assessment arrangements for contaminated land management: creating a trigger in the IPA relating to assessable development (schedule 8 of IPA) to ensure that relevant proposals that involve contaminated land are assessed for development approval.
- Minor amendments to the transitional provisions in the EP Act relating to mining activities: removing the need for holders of some environmental authorities to reapply for the same environmental authority.

Alternatives to the Bill

Legislative amendment was considered to be the most effective and efficient way to achieve the above objectives. The complete integration of all ERAs (other than mining or petroleum activities) into the IPA could only be achieved through legislative amendment. The proposed amendments significantly reduce the number of approval types and processes in relation to environmentally relevant activities and provides for one approval type and approval process to be consistently applied to all activities. This will achieve greater efficiencies and environmental outcomes for administering authorities and their customers.

Administrative costs and savings to Government

Removing the need to maintain multiple approval processes and approval types will provide significant administrative savings to administering authorities, and to industry. Savings include removing the need to maintain multiple administrative systems, processes and forms. These changes will consequently reduce training requirements for new and existing administering authority officers.

The replacement of the environmental authority with the system of operator registration will provide significant cost savings to administering authorities. The registration system is simple and requires reduced assessment considerations.

The codes of environmental compliance will provide administrative savings through:

- application of a standard set of conditions for each ERA outlined in the code; and
- reduced individual assessment of development applications for these standard activities.

This will provide cost savings for both industry and administering authorities and enable more time to be devoted to compliance programs and assessment of applications for higher risk activities.

Reducing unnecessary referrals for contaminated land management through refining the assessment arrangements will also provide savings.

Consistency with Fundamental Legislative Principles

Legislative Standards Act 1992, section 4(3)(a) requires legislation to have sufficient regard for the rights and liberties of individuals.

- The Bill maintains existing administrative powers and introduces some new administrative powers. Where rights and liberties or obligations depend on a decision made by the administering authority, review and appeal processes for dissatisfied persons are provided. The Bill includes the following new decisions that are subject to review and/or appeal under the EP Act:
    - Decision to refuse to grant a single registration certificate;
    - Decision to refuse to grant an application for a registration certificate;

- Decision to cancel or suspend a registration certificate;
- Decision to refuse surrender of a registration certificate;
- Decision to give replacement registration certificate and development approval; and
- Decision to give notice that the risk of environmental harm from carrying out a chapter 4 activity under an environmental authority is no longer insignificant.

- The EP Act provides that a person ('dissatisfied person') may apply to the administering authority to review and/or appeal the decisions listed above.
- Existing appeal rights (section 4.1.31 of IPA) in relation to changing or cancelling conditions of a development approval, are maintained for the new section 3.5.33A of IPA. Decisions under 73C of the EP Act are made in accordance with the process outlined in 3.5.33A of IPA and therefore the appeal provision in IPA also applies to a decision under 73C of the EP Act.
- Existing provisions associated with entry of land, enforcement and investigation have been amended to relate to the new system of registration and codes of environmental compliance. This ensures that administering authorities retain existing powers for these ERAs.
- Codes of environmental compliance will be developed for ERAs that are standard in their operation and that have been demonstrated to operate under standard conditions. Standard environmental conditions of a code will apply to new and existing operators of the activity. No development approval will be required for operators of activities subject to a code as this development will be self-assessable.

  As the development approval decision is removed for activities that are subject to a code, conditions associated with the code cannot be varied. To ensure that operator's rights and interests are represented, the development of standard environmental conditions and the associated code will involve a significant stakeholder engagement program. Additionally, as the Minister for Environment approves the conditions and the code is made by regulation, the process for giving effect to this proposal has regard to the Parliament.

The introduction of a code does not remove the rights of an existing operator to continue to carry out the ERA. To ensure a level playing field for all operators, existing operators will have a 1-year moratorium period to achieve compliance with a code and the standard environmental conditions.

- The provision relating to environmental authorities for mining activities covers a gap in the current transitional provisions for these activities and has a retrospective effect. This provision ensures that holders of environmental authorities that were issued but not in force on 1 January 2001 are not required to reapply for an environmental authority. The provision retains the existing rights of these operators and removes the need for new applications to be made for the same environmental authority.

Consultation

The provisions of the Bill have been developed following over twelve months of consultation with Government Departments, Commerce Queensland, the Australian Industry Group, Motor Trades Association of Queensland, Extractive Industries Association of Queensland, the Local Government Association of Queensland, individual local governments, the Queensland Conservation Council and community groups. All stakeholders have indicated in principle support for the proposed amendments.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 Short title

Clause 1 sets out the short title of the proposed Act.

Clause 2 Commencement

Clause 2 provides for when the Bill will commence.

Subclause (1) provides that sections 42, 43 and 44 commence on assent.

Subclause (2) provides for other provisions of this Bill to commence on a date to be fixed by proclamation.

PART 2—AMENDMENT OF ENVIRONMENTAL PROTECTION ACT 1994

Clause 3 Act amended in pt 2 and schedule

Clause 3 provides that part 2 and the schedule of the Act amend the *Environmental Protection Act 1994* (EP Act).

Clause 4 Amendment of ch 4 (Development approvals and environmental authorities other than for mining activities)

Clause 4 omits Chapter 4 from the heading of the chapter to the heading for part 3, division 2. Clause 4 inserts new provisions as follows.

CHAPTER 4—DEVELOPMENT APPROVALS AND REGISTRATION (OTHER THAN FOR MINING OR PETROLEUM ACTIVITIES)

PART 1—ASSESSING DEVELOPMENT APPLICATIONS

Application of pt 1

Section 73 declares that this Part will be used by the administering authority to assess development applications. In particular, this part applies where the administering authority for a chapter 4 activity is either the assessment manager or a referral agency for a development application for a chapter 4 activity. The term chapter 4 activity is a new defined term, (Clause 47 which amends Schedule 3 (Dictionary)) and relates to an environmentally relevant activity other than a mining activity or a petroleum activity.

Assessing development applications

Section 73A provides explicit powers for assessing development applications and replaces section 78 of the EP Act. This provision will apply to all chapter 4 activities that are assessable development. This will include all non-mining and non-petroleum activities (including mobile and temporary ERAs - refer to Clause 51, new section 3.8.1 of IPA).

Subsection (1) and (2) are consistent with the existing provisions in the Act for assessing development applications.

Subsection (3) clarifies that when assessing a development application for an increase in the scale or intensity of a chapter 4 activity the administering authority must assess the application having regard to –

(a) the proposed activity; and

(b) the existing activity; and

(c) the total likely or potential environmental harm the proposed activity and the existing activity, may cause.

This provides that if a chapter 4 activity is carried out, and a development application is made because of a proposed intensification of the activity, the application is assessed on the basis of the activity, including the intensification.

Conditions of development approval that may and must be imposed

Section 73B provides detail about the types of conditions that the administering authority may and must impose on a development approval.

The conditions that may be imposed on a development approval under section 73B are consistent with those under the existing EP Act provisions for environmentally relevant activities.

In addition to the conditions that may currently be imposed on a development approval or environmental authority under existing sections of the EP Act, the new section 73B also enables the administering authority to impose a condition about a financial assurance on a development approval – 73B(3)(c). This is a new conditioning power for development approvals for chapter 4 activities. This change is to ensure that all conditions relevant to carrying out a chapter 4 activity rest on the development approval and supports one of the policy objectives underpinning the Bill - the removal of the requirement for an environmental authority to carry out a chapter 4 activity. This amendment is accompanied by changes to section 364 (Clause 25) and 367 (Clause 26), which deal specifically with conditions about financial assurance.

A financial assurance required as a development condition on a development approval, would be required for the reasons under section 364 (as amended by this Bill). The condition may be required because of the inherent risk of the activity or, if a person has applied to be, or is a registered operator (new Part 2 of Chapter 4 of the EP Act) the personal risk of the operator.

Adding, changing or cancelling a development condition

Section 73C provides that the administering authority can add, change or cancel development conditions of a development approval where it is considered necessary or desirable because of the reasons listed in

73C(1). This section is consistent with existing section 130 of the EP Act with the following changes:—

- (1)(a) refers to the registered operator rather than the holder of the environmental authority;
- (1)(b) refers to the development approval or registration certificate rather than environmental authority.

Subsection (2) is a new section that provides a link between the registered operator and the development conditions of the development approval.

Subsection (2) provides that where the administering authority is concerned about the environmental record or suitability of a person that has applied to be a registered operator for the development approval, the administering authority may add, change or cancel a development condition to, include or vary a condition about financial assurance, monitoring or reporting.

Subsection (3) provides that the process in IPA under section 3.5.33A (see Clause 50) for changing or cancelling conditions applies under section 73C, for changing, cancelling or adding conditions. This provides that there is a consistent process relating to adding, changing or cancelling development conditions under the IPA and EP Act.

In addition, where a notice if given by the administering authority (under the IPA, section 3.5.33A(9)(b)) for the adding, changing or cancelling of a condition under section 73C, the notice is taken to be a notice to which the IPA, section 4.1.3(1)(b) (Appeals for matters arising after approval given (no correspondents)) applies. Where the condition relates to a mobile or temporary environmentally relevant activity, the notice given for changing, cancelling or adding a development condition, will be given to the registered operator for the development approval.

If the administering authority adds, changes or cancels a condition it must within 10 business days, record the particulars in the appropriate register.

PART 2—REGISTRATION

Part 2 establishes a system of operator registration for chapter 4 activities. A chapter 4 activity (as defined in Schedule 3 - Dictionary) is an environmentally relevant activity (other than a mining activity or petroleum activity). The system of registration incorporates the administrative details currently contained as part of the environmental authority and the consideration of whether a person is suitable to carry out an environmentally relevant activity.

Application for registration to carry out a chapter 4 activity

Section 73D provides that a person may apply to be a registered operator to carry out a chapter 4 activity. A person may apply to be a registered operator for one or more chapter 4 activities.

An application could include for example:—

- one or more chapter 4 activities at one or more premises including a site-based and a mobile and temporary environmentally relevant activity; and/or
- one or more chapter 4 activities at a single premises.

An application for a registration certificate is required for all operators of level 1 and level 2, chapter 4 activities. It is an offence under new section 427 (Clause 27) to carry out a chapter 4 activity unless the person is a registered operator for the activity or is acting under a registration certificate for the activity.

The application must be lodged in the approved form to the administering authority and accompanied by the fee prescribed by regulation. The approved form will include information relating to; the details of the operator, the ERA to be carried out, the location of the activity and will also require either the development approval number (if in effect) the development application number (if yet to be approved) or a reference to an applicable code of environmental compliance. The operator must declare that they are aware of the code or development approval and will comply with the conditions of the code or development approval.

If an application is being made for one or more chapter 4 activities at one or more premises, additional information about how these activities will be managed as part of a single integrated operation, may

also be required. This is particularly the case where chapter 4 activities are located in different places (i.e. subject to different development approvals). Where multiple activities are carried out at one site, there will generally be one development approval for these activities. In these cases no particular determination about a single registration certificate will be required as this will have been made at the development approval stage and considerations about integrated environmental management will have been undertaken. A single integrated operation is defined in section 73F(3).

An application for a registration certificate may be for either a new chapter 4 activity or for an existing chapter 4 activity (where there is a change in operator, e.g. a person is selling their business). Where there is a change of operator the application would be for a "continuing registration". The approved form for the registration application will provide the applicant with the ability to identify if the application is for a new activity or an existing activity ('continuing registration').

This replaces the current legislative process for transfer of environmental authorities and incorporates it into the registration application process. The details and signatures of the new operator as well as the existing operator, will be required as part of this application. If the existing operator is disposing of their business to someone else (proposed buyer), the operator is required to notify the buyer of the need for a registration certificate (refer to section 73Q).

Grounds for refusing application for registration

Section 73E provides the grounds for the administering authority to refuse an application for a registration certificate.

The administering authority may refuse an application if it is satisfied the applicant is not a suitable person to be a registered operator having regard to their environmental record. The administering authority may also refuse the application if a disqualifying event (as defined in the EP Act) has happened in relation to the applicant or another person of whom the applicant is a partner. Equivalent considerations apply to corporations.

Registration certificates

Section 73F establishes the timeframes for decisions and actions relating to an application made under section 73D.

If the administering authority is satisfied a registration certificate should be granted, the administering authority must give the applicant a registration certificate for the activities within either 10 business days after receiving the application, or if a suitability report is requested about the applicant, 20 business days after receiving the application.

Under section 73F(2) if the administering authority has decided that the activities will not be carried out as part of a single integrated operation (as defined in section 73F(3)) the administering authority may grant 2 or more registration certificates instead of a single registration certificate.

Section 73F(3) provides the circumstances in which activities are carried out as a single integrated operation and relates to the decision to issue one or more registration certificates under 73F(2). It provides a prerequisite that there must be a functional link between activities for a single registration certificate to be issued for those activities.

If under 73F(2) the administering authority decides to issue two or more registration certificates because the activities are not carried out as part of a single integrated operation, and the applicant paid the fee for a single registration certificate, the applicant must pay the fees for the additional registration certificates that have been granted (73F(4)).

Under 73F(5) if the administering authority decides to refuse the application, the authority must give the applicant an information notice about the decision within either 10 business days after receiving the application, or if a suitability report is requested, 20 business days after receiving the application.

The registration certificate issued will authorise the operator to carry out the activities stated in the certificate only at the place or places stated in the certificate.

If the administering authority does not grant or refuse the registration certificate under sections 73F(1), (2) or (5) the applicant is taken to have been granted a registration certificate for the activities applied for. The authority must issue the certificate as soon as practicable.

When registration certificate takes effect

Section 73G provides for when the registration certificate takes effect. The certificate has effect from either a day stated in the certificate or the day the certificate is granted. However, if section 73F(7) applies,

and the registration certificate is taken to have been granted, the certificate takes effect from 21 days after the administering authority received the application.

If a single registration certificate for one or more chapter 4 activities at one or more premises, was applied for and the administering authority decided to issue more than one registration certificate (under 73F(2)), none of the registration certificates will take effect until the outstanding fees for the additional registration certificates are paid as required under 73F(4).

The day the registration certificate takes effect is the anniversary day for the registration certificate and is related to an amendment to the defined term "anniversary day" (Clause 47).

PART 3—AMENDING REGISTRATION

Amending a registration certificate

Section 73H provides circumstances for amending a registration certificate.

The administering authority may amend a registration certificate to correct a clerical or formal error if, the amendment does not affect the interests of the registered operator or anyone else, and written notice has been given to the operator.

Under subsection (2) if the administering authority suggests an amendment to the registration certificate (other than to correct a clerical or formal error), the amendment can only be made if the operator has agreed in writing.

Under subsection (2) if the operator requests an amendment to the registration certificate (in writing) the administering may decide to make the amendment.

The administering authority may also amend a registration certificate (under subsection (2)) at any time to ensure the details of the certificate are consistent with any code of environmental compliance applying to the activity.

Additionally when a registered operator applies for a registration certificate for a new chapter 4 activity and the administering authority

is satisfied the registration certificate should be granted, the authority may amend an existing registration certificate for the registered operator, to include the new activity, rather than issuing a registration certificate for the new activity. In this circumstance the administering authority would consider whether the activities are to be part of a single integrated operation.

The administering authority must record the details of the amendment in the appropriate register and give a copy of the amended certificate to the operator within 10 business days.

PART 4—CANCELLING OR SUSPENDING REGISTRATION

Cancelling or suspending a registration certificate

Section 73I provides the circumstances when the administering authority may cancel or suspend a registration certificate. These circumstances are consistent with the existing provisions of the EP Act.

The circumstances relate to the operator's conduct, providing false or misleading information, conviction of an environmental offence, or failure to comply with the annual notice for the certificate.

Notice of proposed action

Section 73J requires the administering authority to give written notice to the registered operator if the authority proposes to cancel or suspend a registration certificate. The action to be taken and the grounds for the action must be provided in the notice. In addition the operator must be advised that they may make written representation within a stated period regarding the proposed action. The stated period within which written representation may be made must end at least 20 business days after the operator is given the notice. This process is consistent with the existing provisions of the EP Act.

Considering representations

Section 73K requires the administering authority to consider any written representation made under section 73J, if it is made within the period stated in the notice.

Decision on proposed action

Section 73L provides that if after the administering authority has considered a representation made under section 73K and the authority still believes a ground exists to cancel or suspend the registration certificate, the authority may take the action.

Notice of proposed action decision

Section 73M provides that the administering authority must within 10 business days give notice of the decision made under section 73L to the registered operator. Section 73M also outlines when the decision to cancel or suspend the registration certificate takes effect.

Steps for cancelling or suspending a registration certificate

Section 73N sets out the steps the administering authority must follow after deciding to cancel or suspend a registration certificate. The administering authority must take the action and record the details of the action in the appropriate register within 10 business days of the decision.

PART 5—SURRENDERING REGISTRATION

Surrendering a registration certificate

Section 73O provides circumstances in which a registered operator may apply to surrender the operator's registration certificate.

A registered operator for a chapter 4 activity may apply to the administering authority in the approved form to surrender a registration certificate for the activity. The application must be accompanied by an audit statement advising the extent to which

activities carried out under the development approval or relevant code of environmental compliance, have complied with the development conditions of the development approval or standard environmental conditions of the code of environmental compliance. The fee prescribed by regulation must also accompany the application.

Subsection (3) requires that the administering authority must consider each application and decide to either approve or refuse the surrender application within 20 business days of receiving the application.

Subsection (4) requires that the administering authority must approve the surrender if the authority is satisfied the operator has not started to carry out any activity for which the certificate was granted.

Subsection (5) provides that the administering authority must not approve the surrender unless it is satisfied that the land on which the activities have been carried out, has been or will be satisfactorily rehabilitated and suitably managed.

Subsection (6) provides the requirements and considerations that administering authority must follow in making a decision to approve or refuse the surrender under subsection (3):—

(a) comply with any relevant EPP requirement; and

(b) subject to paragraph (a) consider the following—

i. the standard criteria;

ii. the audit statement mentioned in subsection (2)(c)(i);

iii. whether the standard environmental conditions of the code of environmental compliance or the development conditions of the development approval, for the activity have been complied with;

iv. any environmental management program for the land;

v. whether or not the land has been removed from the environmental management register or the land has a site management plan approved for it;

vi. whether or not any financial assurance given for the activity should be returned, reduced or retained;

vii. another matter prescribed under an environmental protection policy or a regulation.

Surrendering a registration certificate

Section 73P sets out the steps the administering authority must follow regarding a decision to approve or refuse an application to surrender a registration certificate.

If the administering authority approves the surrender, the administering authority must within 10 business days record the particulars of the surrender in the appropriate register and give the registered operator notice of the approval of the surrender.

If the administering authority decides to refuse the surrender, within 10 business days of the decision, the authority must give the operator an information notice about the decision to refuse.

PART 6—MISCELLANEOUS

Notice of disposal by registered operator

Section 73Q requires if the registered operator is proposing to dispose of the business to someone else, the operator must notify the proposed buyer that the buyer must apply for a registration certificate.

Additional consequences of not giving notice

Section 73R provides that if the operator does not give notice to the buyer under section 73Q, the buyer may by written notice rescind the agreement. This process is consistent with the existing provisions of the EP Act.

Effect of self-assessable development becoming assessable development

Section 73S deals with the repeal of a code of environmental compliance.

The repeal of a code of environmental compliance results in the chapter 4 activity that was self-assessable development becoming assessable development.

Where this happens, the registration certificate for the activities that were subject to the repealed code is taken to be a development approval and the conditions of the code become development conditions of the development approval.

This ensures that where an ERA become assessable development through the repeal of the code the registered operator is not required to apply for a new development approval, and that the activities can continue to operate under the same conditions as they were operating when the code was in place.

Offences under s427 do not apply in certain circumstances

Section 73T provides for when an activity that is being carried out and the activity is not a chapter 4 activity, because of a change in the law, becomes a chapter 4 activity. This provision is equivalent to the existing section 140.

Section 73T requires that the person carrying out the activity must apply within 4 months of the activity becoming a chapter 4 activity, for either a development approval and registration certificate or if the activity is subject to a code of environmental compliance the person must apply for a registration certificate. The offence for a person to operate a chapter 4 activity when the person is not a registered operator (under section 427) will not apply to the person carrying out the activity during the four-month period.

If a person applies for a development approval and/or registration certificate within the 4 month period, the offence for not being a registered operator (under section 427) will not apply after the 4 month period (mentioned in subsection (2)) ends, until either the application/s has been decided or the application lapses.

If the application is for a development application the applicant must respond to an information request about the application within 3 months after the day the request is made, otherwise the application lapses.

CHAPTER 4A—ENVIRONMENTAL AUTHORITIES FOR PETROLEUM ACTIVITIES

PART 1—PRELIMINARY

Prior to the introduction of this Act, Chapter 4 of the EP Act applied to all environmentally relevant activities (other than mining activities). Chapter 4 also related to petroleum activities. Chapter 4 has now been amended to relate only to petroleum activities and is now referred to as Chapter 4A.

A new Chapter 4 has been inserted with these amendments to relate to environmentally relevant activities (other than mining or petroleum activities).

Application of ch 4A

Section 73U states that Chapter 4A applies only to environmental authorities for petroleum activities.

Types of environmental authority under ch 4A

Section 74 sets out the types of environmental authority under Chapter 4A that relate to petroleum activities. Petroleum activities are required to have a licence, provisional licence or level 2 approval. Petroleum activities may also have an integrated authority (under existing Chapter 6). The integrated authority is made up of constituent parts, each constituent part is an environmental authority as mentioned above.

PART 2—ENVIRONMENTAL AUTHORITY APPLICATIONS

Division 1—Obtaining licence

Clause 5 Amendment of s 87 (Operation of sdiv 1)

Clause 5 amends section 87 to remove the term '(without development approval)'. These amendments are consequential to the establishment of the registration system and all environmentally relevant activities (other than mining or petroleum activities) being regulated in IDAS.

Clause 6 Amendment of s 106 (Term of environmental authority)

Clause 6 amends section 106 regarding the term of an environmental authority. A licence under this chapter continues in force unless it is surrendered (under part 4, division 3) or cancelled or suspended (under part 5). A level 2 approval continues in force for the period stated in it unless it is surrendered, cancelled or suspended.

Clause 7 Omission of ch 4, pt 4 (Conversion of licence to level 1 approval)

Clause 7 omits Chapter 4, Part 4, as it was before the commencement of section 4 which provides the ability to apply to convert a licence to a level 1 approval. Under the existing Part 4 a person could apply to convert a licence to a level 1 approval if the holder of the licence could demonstrate good environmental performance. On approval of the conversion application the holder is no longer required to pay an annual fee or submit an annual return.

The circumstances in which a licence may be converted to a level 1 approval duplicates the existing circumstances for a fee waiver under section 50 of the *Environmental Protection Regulation 1998* (EP Regulation). For existing level 1 approvals for chapter 4 activities the fee benefit will continue to apply through transitional provisions (see section 623).

Clause 8 Amendment of s 119 (Public notice may be required for amendment of licence (without development approval))

Clause 8 amends section 119 and removes the reference to '(without development approval)'.

Clause 9 Amendment of s 120 (Public notice process)

Clause 9 amends section 120(1) and removes the reference to '(without development approval)'.

Clause 10 Amendment of s 128J (When surrender application required)

Clause 10 amends section 128J relating to when a surrender application is required. Subsections (2) and (3), which refer to a licence (without development approval), have been removed.

Clause 11 Amendment of s 130 (Other amendments)

Clause 11 amends section 130(2)(h) removing the reference to a level 1 approval and amends section 130(3) to move the definition of 'recognised entity' to Schedule 3 – Dictionary.

Clause 12 Amendment of s 131 (Conditions)

Clause 12 amends section 131 relating to the conditions when an administering authority may cancel or suspend an environmental authority. Subsections (2) and (3)(b) have been removed as these sections refer to a level 1 approval. The ability to convert a licence to a level 1 approval has been removed by Clause 7.

Clause 13 Amendment of s 135 (Decision of proposed action)

Clause 13 amends section 135 relating to a decision on a proposed action to cancel or suspend an environmental authority. Subsections (1)(c)(iii) and (iv) have been removed as these sections refer to a level 1 approval. The ability to convert a licence to a level 1 approval has been removed by Clause 7.

Clause 14 Omission of s 145 (Death of environmental authority holder)

Clause 14 omits section 145 relating to the death of an environmental authority holder. New section 318C relates to the death of either an environmental authority holder or registered operator.

Clause 15 Omission of ch 5, pt 13, div 5

Clause 15 omits Chapter 5, Part 13, Division 5. The requirements of this provision have been carried over to a new section 318C, which deals with the death of either an environmental authority holder or registered operator.

Clause 16 Amendment of ch 6, hdg (General provisions about environmental authorities)

Clause 16 amends the heading of Chapter 6 to refer to registration certificates. This clarifies that some general provisions within Chapter 6 will relate to environmental authorities and registration certificates.

Clause 17 Replacement of s 316 (Annual fee and return)

Clause 17 replaces section 316 relating to annual fee and return.

References to a registration certificate have been included throughout this provision to ensure that the annual fee and return requirements apply to both registration certificates for chapter 4 activities and environmental authorities for mining or petroleum activities for which there is a prescribed fee under a regulation.

Subsection (3) amends the existing subsection relating to what an annual notice must state when given to the registered operator or environmental authority holder. This new subsection retains the requirement for the annual fee to be paid but provides that the administering authority has discretion as to whether the annual return must be lodged by the holder or operator.

If the operator or holder does not comply with the notice and pay the annual fee, then the registration certificate or environmental authority may be cancelled or suspended.

Clause 18 Omission of s 318 (Effect of Integrated Planning Act, s 6.1.44)

Clause 18 omits section 318 relating to the effect of section 6.1.44 (Conditions may be changed or cancelled by assessment manager or concurrence agency in certain circumstances) of the Integrated Planning Act. Section 73C makes section 318 redundant.

Clause 19 Replacement of ss 318A and 318B

Clause 19 amends and reinserts sections 318A and 318B, which currently relate to changing an anniversary day of an environmental authority. These provisions have been amended to enable consistent application of these provisions to registration certificates and environmental authorities.

Clause 19 also inserts a new section 318C relating to the death of an environmental authority holder or registered operator. This section replaces existing sections 145 (Death of environmental authority holder) and Chapter 5, part 13, division 5 (section 310 – Personal representative becomes the holder) relating to environmental authorities and environmental authorities (mining activities) respectively. The new section 318C applies to all environmental authority holders and registered operators.

Section 318C states that the personal representative of the environmental authority holder or registered operator's estate on the death of the holder or operator is taken to be the environmental authority holder or the registered operator for the estate.

Clause 20 Amendment of s 320 (Duty to notify environmental harm)

Clause 20 amends existing section 320 relating to a persons duty to notify if environmental harm is caused or threatened whilst carrying out an environmentally relevant activity. Where an environmental authority or development approval has authorised the harm to be caused, the person is not required to notify the causing of authorised harm.

This section has been amended to refer to standard environmental conditions of a code of environmental compliance for a chapter 4 activity. This provides consistent application of this provision to operators of environmentally relevant activities whether operating under an environmental authority, development approval or code of environmental compliance.

Clause 21 Amendment of s 326 (Administering authority to consider and act on environmental reports)

Clause 21 amends section 326 relating to when an administering authority is considering and acting on environmental reports.

Currently if the administering authority accepts an environmental report, the authority may if the recipient of that report is the holder of a development approval, change or cancel a development condition of the approval under section 6.1.44 of the IPA.

Because of other changes in this Bill, this section has been amended to refer to a registered operator for a development approval and section 73C, which provides the ability to add, change or cancel a development condition of the development approval.

Clause 22 Amendment of s 332 (Administering authority may require draft program)

Clause 22 amends section 332 to enable the administering authority to require a person to submit a draft environmental management program if it is satisfied the standard environmental conditions of a code of environmental compliance for a chapter 4 activity are being, or have been, contravened.

This provides for consistent application of this provision to operators of environmentally relevant activities whether operating under an environmental authority, development approval or code of environmental compliance.

Clause 23 Amendment of s 346 (Effect of compliance with program)

Clause 23 amends existing section 346 relating to a person operating under an environmental management program (EMP). The person is required to comply with the EMP despite anything in the environmental authority or development approval.

Section 346(2)(a) and (3)(a) have been amended to remove the reference to a level 1 approval.

Section 346(2) has been amended to refer to standard environmental conditions of a code of environmental compliance for a chapter 4 activity.

Section 346(3) has been amended to refer to standard environmental conditions of a code of environmental compliance for a chapter 4 activity and a development condition of a development approval.

These amendments provide that the EMP holder cannot be prosecuted for breach of standard environmental condition of a code of environmental compliance or development condition of a development approval, if the approved EMP specifically addresses the contravention of the specific condition.

This provides consistent application of section 346 to all ERAs operating under an environmental management program with an environmental authority, development approval or code of environmental compliance.

Clause 24 Amendment of s 358 (When order may be issued)

Clause 24 amends existing section 358 relating to when the administering authority may issue an environmental protection order (EPO) to a person. Currently an EPO may be required to secure compliance with a condition of an environmental authority or development condition of a development approval.

This section has been amended to refer to standard environmental conditions of a code of environmental compliance for a chapter 4 activity. This provides consistent application of this provision to all ERAs operating under an environmental authority, development approval or code of environmental compliance.

Clause 25 Amendment of s 364 (When financial assurance may be required)

Clause 25 amends existing section 364 to provide that a condition requiring a financial assurance can be imposed on a development approval for a level 1, chapter 4 activity.

The requirement for a financial assurance as a development condition of a development approval will be required for the same circumstances as are currently in place for an environmental authority.

The financial assurance can be required as a condition of a development approval if the administering authority is satisfied the condition is justified having regard to the degree of risk of harm being caused, the likelihood of

action being required to rehabilitate the environment or the environmental record of the registered operator (364(2)(c)).

If the administering authority is requiring a financial assurance because of the environmental record of the person who is or has applied to be the registered operator for the activity, the administering authority may:

- impose the condition under section 73B if the application for a registration certificate is received at the same time as the development application; or
- impose the condition through amending the development approval under 73C if the development approval has already been decided and either the existing registered operator is convicted of an offence (73C(1)(a)) or an application for a registration certificate (73C(2)) is received after the development application is approved.

Section 365 and 366 have not been amended, the functions provided by these provisions - notification and appeals about conditions, and cancelling or discharging a financial assurance - can be dealt with under existing provisions of IPA. For example, where a person seeks to amend or discharge the financial assurance, this will be considered as part of an application to amend or cancel a condition of a development approval under section 3.5.33 of IPA - Request to change or cancel conditions. In this case, the person will have to lodge the request to the entity that imposed the condition, in the form required by that entity. An application to change or cancel a condition about a financial assurance will require the type of information that is required under section 366 of the EP Act.

Clause 26 Amendment of s 367 (Claims on financial assurances)

Clause 26 amends existing section 367, which provides that the administering authority may recover costs or expenses for action taken in certain circumstances. The administering authority recovers these costs or expenses by claiming on the financial assurance that has been given.

The section has been amended (367(1)(a) and (c)) to refer to a development approval for which a financial assurance has been given. This supports the amendment to section 364 (Clause 25).

Subsections (3), (7) and (8) have been amended to remove the reference to the 'holder' and insert a reference to the person who gave the financial assurance. This provides for consistent application of this provision to both environmental authority holders and registered operators.

Clause 27 Replacement of ss 426 and 427

Clause 27 replaces existing sections 426 and 427 that establish offences for a person carrying out an environmentally relevant activity without the relevant authority or approval.

Environmental authority required for mining or petroleum activity

Section 426 collates offences relating to carrying out a mining activity without an environmental authority (previously in sections 426 and 427) and includes an offence for carrying out a petroleum activity without an environmental authority.

Offences for petroleum activities were previously included in sections 426 and 427 as an offence for carrying out a non-mining activity without an environmental authority.

Section 426 provides specific offences for carrying out a level 1 or level 2 mining or petroleum activity, without the relevant environmental authority for these activities. The offences are consistent with those currently in place. The offences have been collated into the one provision for ease of reference.

Only registered operators may carry out chapter 4 activities

Section 427 provides offences for carrying out a chapter 4 activity without a registration certificate.

Operators of all chapter 4 activities are required to be a registered operator and therefore the holder of a registration certificate for the activity (in place of the previous requirement for an environmental authority), or be acting under a registration certificate for the activity.

The offence for a person operating a level 1 or level 2, chapter 4 activity when the person is not a registered operator (or acting under a registration certificate) is consistent with previous offences for a person operating a level 1 ERA when the person does not hold an environmental authority or a level 2 ERA when the person does not hold an environmental authority or where no development approval has been given for the activity.

Clause 28 Amendment of s 429 (Special provisions for interstate transporters of controlled waste)

Clause 28 amends existing section 429 relating to interstate transporters of controlled waste. Currently section 429 provides that if a person is carrying out interstate transportation of controlled waste and the person holds an interstate licence, which authorises the transportation, the person is not required to hold an environmental authority or development approval for the ERA.

Section 429 has been amended to provide that a person carrying out the interstate transportation of controlled waste where the person holds an interstate licence (as currently prescribed in section 429(1)) is not liable for the offence of not being a registered operator for the activity. Further the person does not require a development approval for the carrying out of the activity.

This amendment retains the current exemptions for these operators under the new regulatory system.

Clause 29 Insertion of ss 435A and 435B

Clause 29 inserts two new offence provisions, section 435A relating to the contravention of standard environmental conditions and 435B relating to the registered operating being responsible for ensuring conditions are complied with.

Offence to contravene standard environmental conditions

Section 435A is a new section that establishes offences in relation to a breach of standard environmental conditions of a code of environmental compliance for a chapter 4 activity.

A person must not wilfully contravene the standard environmental conditions of the code. The maximum penalty is 2000 penalty units or 2 years imprisonment. This penalty is consistent with the offence for wilfully contravening a condition of a development approval.

A person must not contravene the standard environmental conditions of the code. The maximum penalty is 1665 penalty units. This penalty is consistent with the offence for contravening a condition of a development approval.

If the Court is not satisfied the defendant is guilty of the offence of wilfully contravening conditions, but is satisfied the defendant is guilty of

contravening the condition, the court may find the defendant guilty of the latter offence.

Registered operator responsible for ensuring conditions complied with

Section 435B is a new section that requires the registered operator of a chapter 4 activity to ensure that everyone acting under the operators registration certificate complies with their environmental requirements.

This provision is consistent with existing section 431 that places the same responsibility on the environmental authority holder for an ERA.

The registered operator must ensure that everyone that is acting under the operators registration certificate for the chapter 4 activity (including employees and subcontractors) complies with the development conditions of the development approval for the activity, or the standard environmental conditions of the code of environmental compliance for the activity.

If a person commits an offence under the registration certificate, either the offence of breach of development conditions of a development approval (section 435) or breach of standard environmental conditions of a code of environmental compliance (new section 435A) the registered operator also commits an offence.

The offence of the registered operator is the offence of failing to ensure the person complied with the conditions. The maximum penalty of this offence is the penalty as currently prescribed under subsections 435(1) or 435(2) or subsection 435A(1) or (2), being the offence of breaching a development condition of a development approval or a standard environmental condition of a code of environmental compliance.

However, it is a defence for the registered operator to prove that they took all reasonable steps to ensure compliance with the conditions by issuing appropriate instructions and using appropriate precautions, and that the operator was not aware of the contravention and could not by the exercise of any reasonable diligence have prevented the contravention.

Clause 30 Amendment of s 436 (Unlawful environmental harm)

Clause 30 amends existing section 436 to include a reference to standard environmental conditions of a code of environmental compliance for a chapter 4 activity.

Currently section 436 provides that if an act or omission that causes serious or material environmental harm or environmental nuisance has

been authorised to be done, or omitted to be done under an environmental authority or a development condition of a development approval, that act or omission is not unlawful.

This section has been amended to refer to standard environmental conditions of a code of environmental compliance for a chapter 4 activity. This provides consistent application of this provision to all environmentally relevant activities operating either under an environmental authority, development approval or code of environmental compliance.

Clause 31 Insertion of new s444A

Offence not to notify chapter 4 activity has stopped

Clause 31 inserts a new section 444A that provides that if a registered operator in relation to a chapter 4 activity stops carrying out the activity the operator must give the administering authority a written notice advising the activity has stopped within 20 business days.

A penalty of 50 penalty units relates to a person not notifying of the ceasing of the activity.

Clause 32 Amendment of s 452 (Entry of place –general)

Clause 32 amends existing section 452 which allows an authorised person to enter a place if it is a place to which an environmental authority or development approval subject to a development condition relates and the entry is made when the environmentally relevant activity is carried out, when the place is open for business or, is otherwise open for entry.

Section 452(1)(c) has been amended to remove the reference to development approval, so the section refers to environmental authorities only. This section would apply to environmental authorities for mining or petroleum activities.

A new section 452(1)(ca) has been included, to refer to a registration certificate, development approval subject to development conditions or a code of environmental compliance. An authorised person may enter a place if it is a place to which a registration certificate, approval or code relates and the entry is made when the chapter 4 activity to which the registration certificate, development approval or code of environmental compliance relates, is being carried out, or the place is open for conduct of business, or the place is otherwise open for entry.

This amendment retains existing powers of entry for chapter 4 activities under the new system, as previously provided under section 452.

Clause 33 Amendment of s 458 (Order to enter land to conduct investigation or conduct work)

Clause 33 amends existing section 458 that enables an authorised person to apply to the magistrate for an order to enter land.

Section 458(1)(a)(i) and 458(2)(c) have been amended to include a reference to a registration certificate and a registered operator.

Section 458(1)(a)(iii) has been amended to include a reference to (B) development conditions of a development approval and (C) standard environmental conditions of a code of environmental compliance for a chapter 4 activity.

These amendments ensure that an authorised person may apply to a magistrate for an order to enter land to prevent or minimise harm in relation to an activity carried out under a registration certificate and for an authorised person to be able to secure compliance with a development approval or standard environmental conditions of a code of environmental compliance.

These amendments ensure consistency in application of this provision to all ERAs.

Clause 34 Amendment of s 490 (Evidentiary provisions)

Clause 34 amends existing section 490 to ensure that existing evidentiary provisions relating to a proceeding under or in relation to the EP Act, also apply to registration certificates.

Clause 35 Amendment of s 499 (Proof of authority)

Clause 35 amends existing section 499 to ensure this provision consistently applies to registration certificates.

Clause 36 Amendment of s 520 (Dissatisfied person)

Clause 36 amends existing section 520 that outlines who a 'dissatisfied person' is in relation to an original or review decision. This provision states which people can apply for a review or appeal an original decision.

Section 520(1) has been amended to provide that an applicant for a registration certificate or the holder of a registration certificate is a dissatisfied person for an original or review decision. If a decision is about issuing replacement documents under section 621 the person who was the holder of the environmental authority is a dissatisfied person for section 520.

Clause 37 Amendment of s 538 (Appeals may be heard with planning appeals)

Clause 37 amends section 538 that provides if a person appeals against a decision regarding an environmental authority and a planning or development decision the subject of the environmental authority, the Court may order the appeals to be heard together.

Section 538(1)(a) and (1)(b) have been amended, to include a reference to a registration certificate to provide for consistent application of this provision to appeals regarding environmental authorities and registration certificates.

Clause 38 Amendment of s 540 (Required registers)

Clause 38 amends section 540 that outlines the information the administering authority must keep on a register.

Subsection (ca) has been included to require that under Chapter 4 the administering authority must keep a register of registration certificates, surrenders of registration certificates and reports the administering authority accepts under section 73C(1)(g)(ii).

Clause 39 Insertion of new s 549A

When standard environmental conditions must be complied with

Clause 39 inserts a new section 549A relating to compliance with standard environmental conditions for carrying out a chapter 4 activity.

Under section 549 if a code of environmental compliance contains standard environmental conditions for carrying out an environmentally relevant activity, the Minister may approve the conditions. The approval of these conditions is by gazette notice.

Section 580(2)(n) provides a regulation making power, stating that the Governor in Council may make regulations under this Act about the approval or making of codes of environmental compliance (which contain standard environmental conditions).

The code will define the ERA to which it applies and may include other detailed criteria that state in which circumstances the code applies to that ERA - for example, relating to the scale of the activity, location (e.g. not in or near particular areas) or the duration of the activity at a particular site. These criteria will determine the circumstances in which the code applies and will enable operators to determine whether the code applies to their activity. These criteria will be set in the code in addition to the approved standard environmental conditions.

Section 549A(2) provides that where standard environmental conditions are approved, and there is a difference between a development condition that applies for the activity before the approval of a standard environmental condition for the activity, the standard environmental condition prevails to the extent of the difference.

Section 549A(3) provides that if a person was lawfully carrying out the activity immediately before the approval of standard environmental conditions was given (under section 549(2)), section 435A (Clause 29) does not apply to a person until 1 year after the standard environmental conditions for the activity were approved.

Therefore the person is provided with 1 year to reach compliance with the standard environmental conditions. After this 1 year period, section 435A (Offence to contravene standard environmental conditions) will apply.

However, if there is not a development approval in place for the activity (i.e. starting a new activity) the registered operator must comply with the standard environmental conditions from commencement of the activity.

If the person who was carrying out the activity under a development approval before the approval of the standard environmental conditions believes that they will not be able to comply with the standard environmental conditions, the person may submit a draft environmental management program (under section 333) within the 1 year period.

Clause 40 Insertion of new s 550A

Effect of changes to standard environmental conditions (non-mining and non-petroleum)

Clause 40 inserts a new section 550A relating to changes to standard environmental conditions. This clause provides for the situation where chapter 4 activities are already bound by a code of environmental compliance.

Where a person is operating a chapter 4 activity to which standard environmental conditions apply and changes to the conditions are approved, the person will have 1 year after the change to the conditions are approved, to comply with the new conditions.

During this time the person will continue to comply with the conditions that applied immediately before the change. After this 1 year period, section 435A (Offence to contravene standard environmental conditions) will apply.

If the person believes that they will not be able to comply with the changed conditions, the person may submit a draft environmental management program (under section 333) within the 1 year period.

Clause 41 Amendment of s 559 (Investigation of applicant suitability or disqualifying events)

Clause 41 amends section 559 which states that the administering authority may investigate a person to help it decide whether the person is a suitable person to hold, or continue to hold, an environmental authority.

This section has been amended to include a reference to a registered operator. This enables the administering authority to investigate a person who is applying to be a registered operator or is a registered operator, and decide whether the person is a suitable person to be, or continue to be a registered operator.

Clause 42 Insertion of new s586A

Existing authority becomes an environmental authority (mining activities)

Clause 42 inserts a new section 586A that relates to transitional authorities for mining activities.

The regulation of mining was transferred to the EP Act by the *Environmental Protection and Other Legislation Amendment Act 2000* (EPOLA 2000). Chapter 13 of the EP Act contains transitional provisions for EPOLA 2000.

Under section 586 in the transitional provisions, any environmental authority that was in force on commencement of the EPOLA 2000 amendments and was for, or included a mining activity, became an environmental authority (mining activity) under the EP Act.

Section 590 allowed an application for an environmental authority for a mining activity that had progressed beyond the objection process and had environmental conditions in their final form to continue to be processed under the legislation as introduced by EPOLA 2000 (therefore not requiring the applicant to reapply or be subject to another objection process). The resulting environmental authority, when issued, would be transitioned to an environmental authority (mining activity).

Neither of these sections provided for those environmental authorities that had been issued but were not in force when the EPOLA 2000 amendments commenced. Under the existing transitional provisions the holders of these environmental authorities would be required to apply for a new environmental authority and be subject to a second objection process before their mining lease can be granted.

This new transitional provision will provide for such environmental authorities that have been issued but are not in force, by transitioning them to environmental authorities (mining activities). This provision has effect as of 1 January 2001 to ensure these authorities are included in the initial transitional arrangements and are not adversely affected by their omission from the original transitional provisions.

Clause 43 Amendment of s 587 (Conditions of environmental authority)

Clause 43 amends section 587 to provide that where an existing environmental authority becomes an environmental authority (mining activity) under section 586A, the conditions of the environmental authority are also transitioned.

Clause 44 Amendment of s 592 (Meaning of "transitional authority" for div 4)

Clause 44 amends section 592 to provide that an existing environmental authority under section 586A that is taken to be an environmental authority (mining activities) is for Chapter 13, Part 2, Division 4 a transitional authority.

Clause 45 Insertion of new ch 13, pt 5

PART 5—TRANSITIONAL PROVISIONS FOR ENVIRONMENTAL PROTECTION LEGISLATION AMENDMENT ACT 2003

Continuing effect of particular environmental authorities

Section 619 provides the transitional arrangements for chapter 4 activities to be brought into the new system of registration and development approvals.

Section 619 is divided into a number of parts:

- (1) and (2) which applies to chapter 4 activities with environmental authorities with no development approval and chapter 4 activities with an environmental authority for which there is an end date; and
- (3) and (4) which applies to chapter 4 activities with an environmental authority and a development approval.

Subsection (1) applies to chapter 4 activities that hold an environmental authority but no development approval. If the environmental authority was in force immediately before the commencement of the amendments, subsection (2) applies.

Subsection (2) provides that from the commencement of this Bill, the environmental authority has effect as it if were a registration certificate and the authority has effect as if the holder of the authority were the registered operator for the activity.

Under subsection (2)(c)(i) if the activity would after the commencement of the Bill, be a mobile and temporary ERA (as defined in Schedule 3 –

Dictionary), the authority has effect as if it were a development approval for a material change of use under the IPA, schedule 8, part 1, table 2, item 3.

In any other case the authority has effect as if it were a development approval for a material change of use under the IPA, schedule 8, part 1, table 2, item 1 (under subsection (2)(c)(ii)).

The environmental authority under (2)(c)(i) and (c)(ii) has effect as if it were a development approval for the activity and does not replace further development approval requirements under the IPA for other development undertaken or approvals required under other legislation.

Thus, where a person has an environmental authority under the EP Act for carrying out an ERA but has not obtained, for example, approval to reconfigure a lot under Schedule 8 of IPA or 'planning approval' as required by a planning scheme, the commencement of the Bill will not remove or replace the requirement to obtain a development approval under the IPA to reconfigure the lot or approval under the planning scheme.

Subsection (2)(d) provides that the conditions of the environmental authority have effect as if they were development conditions of the development approval.

Subsection (2)(e) provides for those environmental authorities that were issued for a stated period. For example:

- A provisional licence may have been granted for a level 1 chapter 4 activity, which remains in force for either 5 years or an earlier term stated in it; or
- An environmental authority may have been granted for a stated period for a level 2 chapter 4 activity.

These types of environmental authorities will be transitioned in the same manner as environmental authorities under subsection (2)(a) to (d) but the authority continues to have effect only until the end of the period for which the authority would have had effect if these amendments had not been enacted.

Therefore, the registration certificate for the chapter 4 activity will have effect only until the end of the period for which the original authority (level 2 approval or provisional licence) had effect.

Subsection (3) applies to chapter 4 activities that hold an environmental authority and a development approval. If the environmental authority was

in force immediately before the commencement of subsection (3), and there was a development approval in place, subsection (4) applies.

Subsection (4) provides that the development approval continues to have effect. The environmental authority has effect as if it were a registration certificate for the activity, and the authority has effect as if the holder of the authority were the registered operator for the activity. The conditions of the environmental authority have effect as if they were development conditions of the development approval, which will also continue to have effect.

Additional ground for changing or cancelling development conditions

Section 620 provides additional grounds for changing or cancelling development conditions - specifically in relation to those conditions of environmental authorities that have, under section 619(2)(d) or (4)(d), been transitioned to development conditions of development approvals.

Additional circumstances for changing or cancelling these conditions have been provided to ensure that, as part of the transition, the administering authority may change or cancel the conditions in certain circumstances to provide clarity and certainty as to how the conditions now apply as development conditions.

However the change or cancellation of the condition must not adversely affect the interests of the registered operator for the activity. If the condition is changed it must in substance reflect the intent of the condition before section 619 commenced.

The administering authority, within 10 business days of changing or cancelling a condition, must record particulars in the appropriate register and give a copy of the development conditions and the registration certificate to the registered operator.

Administering authority may issue replacement documents

Section 621 provides the administering authority with the ability to issue a replacement registration certificate and development approval to the person that was the holder of an environmental authority that was subject to section 619.

This provision enables the administering authority to issue documentation that reflects the transitional effect of section 619. Where the environmental authority that was subject to section 619 was for multiple locations, more than one development approval will be issued to

correspond with the relevant locations. If the authority was for one location, or was for a mobile and temporary ERA (defined in Schedule 3 - Dictionary), the administering authority will issue one development approval for that site or activity respectively.

If the person carrying out the activity does not have a registration certificate for the activity, the administering authority may also give the person a registration certificate for the activity.

The development approval must contain the same details about the activity and conditions for carrying out the activity as were contained in the authority.

If the administering authority acts under subsection 1 or subsections 1 and 2 the authority must give the person an information notice about the administering authority's decision to give the certificate and/or approval.

The approval or approval and certificate issued have effect from:

(a) if there is no appeal against the administering authority's decision under subsection (4), from the day the appeal period expires; or

(b) if there is an appeal against the administering authority's decision under subsection (4), from the day the appeal is finally decided or is otherwise ended.

The environmental authority is cancelled from the day the approval or approval and certificate have effect.

A decision under this section is an original decision and the person may review and appeal the decision.

Effect of commencement on particular integrated authorities

Section 622 provides the transitional arrangements for integrated authorities. Under the existing EP Act individual environmental authorities could form constituent parts of an integrated authority. The consolidation of these authorities resulted in a fee benefit for the authority holder.

Section 622 is divided into a number of parts:

- (1), (2), (3) and (4) cater for integrated authorities that include both environmental authorities for mining or petroleum activities and environmental authorities (mentioned in section 619); and
- (5) and (6) cater for integrated authorities that include only environmental authorities mentioned in section 619.

Under section 622(1) where both an:

(a) environmental authority is a constituent part of an integrated authority; and

(b) another constituent part of the integrated authority is an environmental authority for a mining or petroleum activity;

the following applies:

- section 619 applies to the environmental authority mentioned in 622(1)(a), therefore this authority will be transitioned to a development approval and registration certificate;
- the environmental authority mentioned in 622(1)(a), ceases to be a constituent part of the integrated authority other than for the purposes of sections 316(2) to 316(4). Therefore although the authority is no longer a part of the integrated authority, the annual fee for the authority will continue to be the fee for the integrated authority. The annual return for the authority, if required, will be the annual return for the integrated authority. The authority will continue to have the same anniversary day as the integrated authority. The administering authority must record in the appropriate register that the integrated authority has ceased.

Under section 622(4) the fee benefit continues while the same person is the holder of all the authorities forming constituent parts of the integrated authority. If there is a change of holder, then the integrated authority has ceased as stated in 622(2).

Under section 622(5) where both an:

(a) environmental authority mentioned in section 619 is a constituent part of an integrated authority; and

(b) another constituent part of the integrated authority is also an environmental authority mentioned in section 619;

subsection (6) applies.

Subsection (6) provides that on the commencement, each environmental authority having effect under section 619 as a registration certificate is taken to be a single registration certificate for the 1 registered operator.

Effect of commencement on level 1 approvals for particular environmentally relevant activities

Section 623 provides transitional provisions for level 1 approvals for level 1 chapter 4 activities. Under existing section 108 of the EP Act, the holder of a licence for a level 1 environmentally relevant activity may apply to have their licence converted to a level 1 approval.

On granting this conversion application the holder of the now level 1 approval is no longer required to submit annual fees and annual returns under section 316 of the EP Act. The ability to convert a licence to a level 1 approval has been removed (Clause 7).

Level 1 approvals will be transitioned in the same manner as other environmental authorities under section 619. The requirement for an annual return and annual notice under section 316 will not apply to the registration certificate for the operator of this activity whilst the administering authority remains satisfied that the risk of environmental harm from carrying out the activity is insignificant.

If the risk is no longer insignificant then the administering authority will issue a notice to the registered operator stating this and that the exemption from 316 will no longer apply. This is an original decision and can be reviewed and appealed by a dissatisfied person.

In this section a "level 1 approval" means a level 1 approval immediately before the commencement of this Act.

Effect of commencement on particular approvals

Section 624 requires particular level 2, chapter 4 activities to register with the administering authority within 1 year of commencement of this section. This requirement provides for consistency of the registration requirement across all chapter 4 activities.

The intent of the amendments is for all chapter 4 activities to be operating under a registration certificate, therefore those activities that currently do not have an environmental authority (e.g. level 2 ERA with development approval or 'deemed approval') cannot be transitioned to a registration certificate. Operators of these activities must apply to the administering authority for the certificate.

This requirement applies to:

(a) a person that was operating a level 2, chapter 4 activity under a development approval, that was in force before the commencement of this section; and

(b) a person that was operating a level 2, chapter 4 activity under an approval mentioned in the repealed *Environmental Protection (Interim) Regulation 1995*, section 63 or 65, in force immediately before the commencement of this section. This approval is often referred to as a 'deemed approval'.

An approval mentioned in subsection (1)(a), a development approval for a level 2, chapter 4 activity, will continue to have effect and any conditions of the approval will continue to have effect. From the commencement the person operating this activity will be taken to be a registered operator for the activity for 1 year.

An approval mentioned in subsection (1)(b), a 'deemed approval' for a level 2, chapter 4 activity, and the conditions will continue to have effect until the person stops carrying out the activity. The person carrying out the activity must be the person that was carrying out the activity, when the activity was 'deemed' under section 63 or 65 of the repeated *Environmental Protection (Interim) Regulation 1995*. From the commencement the person operating this activity will be taken to be a registered operator for the activity for 1 year.

If the person was not the person carrying out the activity when the activity was 'deemed' that person must apply for a development approval and new registration certificate for the activity, as a 'deemed approval' cannot be transferred. If the activity is not operating at the same scale as the activity when it was 'deemed', the operator must apply for a development approval.

The 'deemed approval' is not transitioned under section 619, however as stated the approval will continue to have effect under the circumstances outlined above.

Under section 624(3) both operators mentioned above, must within 1 year after the commencement of this section, give the administering authority for the activity, the same details that the person would have to give if they were applying for a registration certificate.

The intent of this provision is to ensure that all operators can continue to carry out the activity, and the administering authority is advised of the

details of the operator, the nature of the activity and the location of the activity to assist with compliance inspections.

If this information is provided to the administering authority, the administering authority must give the person a registration certificate.

Effect of commencement on applications for development approvals for level 2 environmentally relevant activities

Section 625 provides transitional arrangements for applications for development approvals in progress for level 2, chapter 4 activities.

The section applies where a development application for a level 2, chapter 4 activity has not lapsed immediately before the commencement of this section. Before the person carries out the activity under the development approval, the person who proposes to carry out the activity must obtain a registration certificate (see section 73D).

This ensures that operators of all chapter 4 activities, have a registration certificate under the EP Act to conduct the activity.

Effect of commencement on particular applications in progress

Section 626 applies to applications relating to environmental authorities (for chapter 4 activities) that are not decided before the commencement of this section.

This section relates to an application for an environmental authority for a chapter 4 activity, including an application under existing section 611 or an application to amend, surrender or transfer an environmental authority for a chapter 4 activity, not decided on commencement of this section.

From the commencement of this section the application is to be processed and all matters incidental to the processing must proceed, as if the *Environmental Protection Legislation Amendment Act 2003* had not been enacted.

After the application has been processed any environmental authority granted, amended or transferred is taken to be an environmental authority to which section 619 applies.

This ensures that the introduction of the Bill will not disrupt applications that are being processed, the applications can continue to be dealt with under the existing EP Act provisions, but that after the applications have

been processed the applications will be transitioned in the same manner as existing environmental authorities under section 619.

Under subsection (3) for an application mentioned in subsection (1) if the administering authority, by written notice, asks the applicant to give the administering authority a stated document or information relevant to the application and the applicant does not give the document or information to the authority within the time stated in the request, or such other time the administering authority agrees to in writing, the application lapses (subsection 4) at the end of the time in the request or as agreed to.

Effect of commencement on development approval applications in progress

Section 627 relates to development approval applications that are in progress on commencement of this section.

If an application for a development approval, or for an amendment of a development condition of a development approval, for a chapter 4 activity, has not been decided and has not lapsed, immediately before the commencement of this section, the processing of the application and all matters incidental to the processing must proceed as if the *Environmental Protection Legislation Amendment Act 2003* had not been enacted.

Effect of commencement on particular actions in progress

Section 628 deals with actions that have been undertaken by the administering authority that have not been finalised when this section commences, that relate to environmental authorities that are 'transitioned' by the new section 619 established by this Bill.

These actions include amendment of an environmental authority that is done without the consent of the environmental authority holder (because of a ground listed in section 130(2) of the existing EP Act), or suspension or cancellation of an environmental authority (because of an event listed in section 131(3) of the existing EP Act). Where these actions are taken the administering authority gives a notice under section 133 or 135 about the action.

Subsection (2) provides that where a notice is given about an action under section 133 or 135 of the existing EP Act about the amendment, suspension or cancellation of the environmental authority and all the action had not been taken, these actions will be completed as actions under the Act as amended by this Bill.

For example, where the action is to amend a condition this will be completed as an action to amend a condition under the new section 3.5.33A of IPA (Clause 50). The ground for this action will link to the new section 73C of the EP Act. Where the action is to suspend or cancel an environmental authority, this will be treated as a suspension or cancellation of a registration certificate under the new Chapter 4 Part 4 – cancelling or suspending registration – of the EP Act as amended by this Bill.

Additionally, under subsection (5), any environmental authority that is taken to be a registration certificate under section 619, and was suspended at the commencement of this section, remains suspended for the period the environmental authority would have been suspended.

Continuing operation of s 549 (Limited application of s 427 for transitional authority)

Section 629 ensures the exemption from the offence under section 427 (Environmental authority required for level 1 environmentally relevant activity) continues to apply to section 594 as the offence was (section 427) immediately before the commencement of the *Environmental Protection Legislation Amendment Act 2003, s*ection 27.

Continuing operation of s 611 (Unfinished applications under existing Act)

Section 630 ensures that section 611 operates as if this Bill had not been enacted.

Clause 46 Amendment of sch 1 (Original decisions)

Clause 46 amends Schedule 1, Part 2 of the EP Act relating to original decisions and inserts original decisions under Chapter 4 and in relation to the transitional provisions outlined in Chapter 13, Part 5.

New original decisions under new 'Division 1B – Decisions under chapter 4' are as follows:—

- 73F(2) Refusal to grant a single registration certificate
- 73F(5) Refusal to grant an application for registration
- 73L Decision to cancel or suspend registration
- 73O(3) Decision to refuse surrender of registration certificate.

New original decisions under Schedule 1, Part 2, Division 6 are as follows:—

- 621(4) Decision to give registration certificate and development approval.
- 623(2) Decision to give a notice that the risk of environmental harm from carrying out a chapter 4 activity under the environmental authority is no longer insignificant.

Other minor amendments are made to Schedule 1, Part 2.

Clause 47 Amendment of sch 3 (Dictionary)

Clause 47 amends Schedule 3 – Dictionary.

The following definitions "anniversary day", "approval", "conversion application", "level 1 approval", "level 1 approval (with development approval)", "level 1 approval (without development approval", "level 2 approval", "licence", "licence (with development approval)", "licence (without development approval)", "proposed action", "proposed action decision", "provisional licence", "schedule 8 development" and "standard environmental conditions" are omitted.

The following definitions are inserted in Schedule 2 - "anniversary day", "approval", "business days", "chapter 4 activity", "level 2 approval", "licence", "mobile and temporary environmentally relevant activity", "petroleum activity", "proposed action", "proposed action decision", "registered operator", "registration certificate", "self-assessable development" and "standard environmental conditions".

"mobile and temporary environmentally relevant activity" means a chapter 4 activity other than a activity that is dredging material, extracting rock or other material, or the incinerating of waste that is:

(a) carried out at various premises using transportable plant or equipment, including a vehicle; and

(b) that does not result in the building of any permanent structures or any physical change of the landform at the premises (other than minor alteration solely necessary for access and setup including, for example, access ways, footings and temporary storage areas); and

(c) carried out at 1 location and—

(i) for less than 28 days in a calendar year, other than for regulated waste transport, for not more than 6 times in a calendar year; or

(ii) the activity is necessarily associated with and is exclusively used in the construction or demolition phase of a project.

Therefore if an activity erects permanent structures or results in physical changes to the landform the activity is not mobile and temporary.

If the activity operates at one location for longer than 28 days or visits the location more than 6 times in any calendar year, the activity is not mobile and temporary.

The exclusion under (c)(i) for waste transporters is provided to ensure that this activity is not limited to visiting one location only 28 days or 6 visits in any calendar year.

Reference to 'days' in the definition of mobile and temporary environmental relevant activities are calendar days, not business days.

This definition accompanies amendments to IPA – in particular section 3.8.1 and Schedule 8 part 1 of IPA – to ensure that these activities are assessed and conditioned using IDAS.

The definition of "standard environmental conditions" is amended as follows:—

"standard environmental conditions" for an environmental authority or a chapter 4 activity, means the standard environmental conditions approved for the authority or activity under section 549.

Section 549 provides that if a code of environmental compliance contains standard environmental conditions for carrying out an environmentally relevant activity, the Minister may approve the conditions.

The definition of standard environmental conditions provides that conditions may be approved for either a chapter 4 activity or an environmental authority.

Section 580(2)(n) provides a regulation making power, stating that the Governor in Council may make regulations under this Act about the approval or making of codes of environmental compliance (which contain standard environmental conditions).

If standard environmental conditions of a code of environmental compliance for a chapter 4 activity or an environmental authority are approved, the EP Regulation will establish the code of environmental compliance (which contains these approved conditions).

The approval or making of a code of environmental compliance for a chapter 4 activity under the regulation will under the IPA Schedule 8, part 2, table 5 provide that the activity is self-assessable development. Section 3.1.4 of IPA provides that self-assessable development must comply with applicable codes. A code for IDAS means a document or part of a document identified as a code in IPA or another Act. When the code is made by the *Environmental Protection Regulation 1998*, the code will be identified as a code for IDAS.

Definition for "standard criteria" has been amended to include a reference to a development approval.

PART 3—AMENDMENT OF INTEGRATED PLANNING ACT 1997

Clause 48 Act amended in pt 3

Clause 48 provides that Part 3 of the Bill amends the *Integrated Planning Act 1997*.

Clause 49 Amendment of s 1.3.5 (Definitions for terms used in "development")

Clause 49 amends the definition of material change of use in section 1.3.5.

The definition of 'material change of use' in subsection (a) remains unchanged as currently defined in section 1.3.5.

The definition of 'material change of use' in subsection (b) relates to a material change of use of premises for administering IDAS under the EP Act for ERAs (other than mining activities or petroleum activities or for a mobile and temporary ERA).

Material change of use of premises in relation to administering IDAS under the EP Act means:—

(i) the start of a new ERA on the premises; or

(ii) an increase in the threshold of an ERA on the premises;

One example of an increase in threshold of an ERA would be a change to an existing activity, ERA 25(c) - powder coating 10 000t or more, but less than 30 000t - to ERA 25(d) – powder coating over 30 000t.

(iii) the re-establishment on the premises of an ERA that has been abandoned; or

(iv) a material change in the intensity or scale of an ERA on the premises.

The definition of material change of use of premises does not relate to a mobile and temporary ERA, as these activities do not specifically relate to a premises. However insertion of a new section 3.8.1 and schedule 8, part 1, table 5, item 3 provides for a mobile and temporary ERA to be assessed in IDAS.

Clause 50 Insertion of new s 3.5.33A

Clause 50 provides a new section that relates to changing a development condition by the assessment manager or concurrence agency.

When condition may be changed or cancelled by assessment manager or concurrence agency

Section 3.5.33A operates in addition to the transitional arrangement under section 6.1.44. Section 6.1.44 operated when other legislation was consequentially amended to integrate development previously approved under the legislation into the IPA. If under the other legislation an agency, including a local government, had the power to unilaterally change or cancel conditions imposed on an approval under the other legislation, section 6.1.44 saved that power with respect to conditions imposed by the agency on a development approval under the IPA.

New section 3.5.33A provides that in addition to those powers held by agencies on introduction of section 6.1.44, any powers currently held by agencies or introduced after 6.1.44 may now apply with respect to conditions imposed by the agency on a development approval under the IPA.

Subsection (1) limits the application of the section to development conditions under another Act if, under the other Act ‘development condition’ is defined with reference to a development approval.

Subsection (2) provides that if under the other Act the entity is authorised to change or cancel conditions of a development approval in a different way, the other Act prevails to the extent of any inconsistency. An example here would be changes to development conditions made under the Water Act.

Subsection (3) provides that an entity can only change or cancel a development condition imposed by that entity on a development approval (eg concurrence agency may only change condition imposed by the concurrence agency), or if the entity did not impose the condition, the entity with jurisdiction for the condition. In the case of the latter, an example here may be the Planning and Environment Court.

Subsection (4) states that condition as defined may be changed or cancelled on a ground mentioned in the other Act. For example section 73C of the EP Act.

Subsection (5) provides that the consent of the owner and any occupier of the land are not required for the change or cancellation.

Subsection (6) requires that the changed condition must, like all other conditions, satisfy the tests of reasonableness and relevance under the IPA.

Subsections (7), (8) and (9) provide for how notice of the intended change or cancellation should be given to the owner and any occupier of the land. Submissions may be made by the owner/occupier about the intended change or cancellation and if made must be taken into consideration by the entity in deciding whether to proceed with the change or cancellation. Further notice of the entity's final decision must be given to the owner and the occupier.

Subsection (10) provides for the assessment manager for the development application to be notified and subsection (11) provides for when the changed condition or cancellation takes effect.

Clause 51 Insertion of new ch 3, pt 8

Clause 51 inserts a new Part 8 after section 3.7.8.

PART 8—APPLYING IDAS TO MOBILE AND TEMPORARY ENVIRONMENTALLY RELEVANT ACTIVITIES

Mobile and temporary environmentally relevant activities

Section 3.8.1 is a new section in a new Chapter 3, Part 8 of IPA that relates specifically to applying IDAS to mobile and temporary ERAs. Mobile and temporary ERAs have generally not been assessed in IDAS. This section ensures that mobile and temporary ERAs are taken to be development for the purpose of using IDAS to assess and condition proposed ERAs of this type.

Mobile and temporary ERAs are taken to be development to enable the IDAS process to be used but are only development for the purpose of assessing and conditioning the ERA under the EP Act. Mobile and temporary ERAs are not development for any other purposes in the IPA and therefore would still need relevant approvals for any other development undertaken by the activity - for example a requirement under a planning scheme or for operational works relating to vegetation clearing.

Subsection (2) provides that in applying IDAS to assessable development mentioned in schedule 8, part 1, table 5, item 3 (for mobile and temporary environmentally relevant activities) some changes to IDAS apply—

(a) a description of the land and the consent of the owner of the land is not a mandatory part of the approved form.

(b) the development approval will not attach to land as with other development approvals for ERAs (section 3.5.28) rather the development approval would attach to the registered operator/ plant /equipment.

(c) the development approval applies for the activity wherever it is carried out.
As the activity may be carried out at a number of premises the development approval must cover the carrying out of the activity at any premises. This removes the need for a mobile and temporary ERA to apply for a development approval every time the activity moves to new premises. This requirement would be unworkable for mobile activities. The development approval may however limit the scope of the operation of the activity, by

allowing the ERA to be carried out only in certain local government areas, road networks, regional areas etc.

(d) the development approval applies to and binds any person carrying out the activity under the approval.

The activity must be a mobile and temporary ERA as defined to apply for a development approval that relates to this section. If the activity does not fall within the definition of mobile and temporary, then a development approval that attaches to land must be applied for.

Clause 52 Amendment of s 4.1.31 (Appeals for matters arising after approval given (no co-respondents))

Clause 52 amends section 4.1.31(1)(b) of IPA to include a reference to new section 3.5.33A(9)(b) to ensure that the appeals process applies to notices issued under section 3.5.33A where conditions are changed or cancelled by the assessment manager or concurrence agency.

Clause 53 Amendment of s 4.3.2 (Self-assessable development must comply with codes)

Clause 53 amends section 4.3.2 of IPA, which currently requires activities that are self-assessable development to comply with codes, and where the code is not complied with this is an offence under IPA.

Section 4.3.2 has been amended to provide that the offence under this section does not apply where the contravention is for not complying with a standard environmental condition of a code of environmental compliance under the EP Act. An offence of this type is dealt with under section 435A, and associated provisions, of the EP Act.

Enforcement relating to contravention of a development condition of a development approval is currently provided for under the EP Act. The amendment to section 4.3.2 ensures consistency in enforcement for all ERAs, whether under a development approval or a code of environmental compliance.

Clause 54 Amendment of sch 8, pt 1

Schedule 8, part 1, table 2, item 1

Schedule 8, part 1, table 2, item 1 relating to a material change of use of premises for an ERA (other than a mining activity or petroleum activity),

has been amended. This item excludes activities for which a code of environmental compliance has been made under the *Environmental Protection Regulation 1998* from being assessable development. ERAs (other than a mining activity or petroleum activity) for which there is a code of environmental compliance are self-assessable development under Schedule 8, part 2, table 5, item 1. Mobile and temporary ERAs are listed under Schedule 8, part 1, table 5.

Schedule 8, part 1, table 2

Schedule 8, part 1, table 2, items 5, 6 and 7 have been inserted to define material change of use of premises for contaminated land management. These items seek to make assessable development of contaminated, or potentially contaminated land that is likely to warrant assessment to manage the associated environmental risk. These items do not seek to deal with contaminated land management for mining activities or petroleum activities, where these matters are better managed as part of the environmental authorities for these activities.

Item 5 makes a material change of use of premises assessable development where the land (either all or part of the land) forming part of the premises is on the environmental management register or contaminated land register under the *Environmental Protection Act 1994*.

Items 5 (a), (b), (c) and (d) provide exemptions, where the material change of use of premises is not assessable development for the purposes of this item, in the following cases:

(a) The administering authority under the EP Act has given a suitability statement (defined in the EP Act) for the land and a site management plan (defined in the EP Act) has been approved for the intended use, providing the application only involves the fit-out of building on the land; or minor site excavation including, for example, post holes for open-sided non-habitable structures; or

(b) There is currently a notifiable activity (defined in the EP Act) on the site and the activity is continuing; or

(c) The proposed use is industrial and only involves minor site excavation including, for example, post holes for open-sided non-habitable structures; or

(d) The land is used for a mining activity or petroleum activity.

Item 6 makes a material change of use of premises assessable development where the land (either all or part of the land) forming part of the premises is used for, or if there is no existing use was last used for:

(a) a notifiable activity; or

(b) an industrial activity (other than for a mining activity or petroleum activity), and the proposed use is for a child care, educational, recreational or residential purposes, including a caretaker residence on industrial land, then a material change of use is assessable development.

Items 6 (c), (d) and (e) provide exemptions that only relate to item 6 (a).- these exemptions include:

- The administering authority under the EP Act has given a suitability statement for the land for the existing use (or if there is no existing use, the last use), removing the land from the environmental management register and no new notifiable activity has occurred on the land since the suitability statement was issued, and the land is not otherwise contaminated with a hazardous contaminant (as defined in the EP Act).
- The administering authority has given a suitability statement for the land and a site management plan has been approved for the intended use and the application only involves the fit-out of building on the land or minor site excavation including, for example, post holes for open-sided non-habitable structures.
- The land is used for a mining activity or petroleum activity.

Item 7 makes a material change of use assessable development where all or part of the premises is in an area for which an area management advice (defined in the *Integrated Planning Regulation 1998*) has been given for natural mineralisation, industrial activity (other then a mining activity or petroleum activity) and the proposed use is for child care, educational, recreational or residential purposes, including a caretaker residence on industrial land.

Schedule 8, part 1, table 5

Schedule 8, part 1, table 5, item 3 provides that a mobile and temporary ERA is assessable development and therefore can be assessed in IDAS. This relates to new section 3.8.1 of IPA.

A mobile and temporary ERA (other than a mining activity or petroleum activity) for which a code of environmental compliance has not been made under the *Environmental Protection Regulation 1998* is assessable development.

A mobile and temporary ERA is taken to be development under section 3.8.1 for assessing the ERA in IDAS. Mobile and temporary ERAs are not development for any other purposes in the IPA and therefore would still need relevant approvals for any other development undertaken by the activity, for example a requirement under a planning scheme or for operational works relating to vegetation clearing. However where other development requires approval in addition to the assessable development under Schedule 8, part 1, table 5, item 3, the application will not require referral to the administering authority for the ERA.

Schedule 8, part 2

Schedule 8, part 2, item 1 provides for environmentally relevant activities that are self-assessable development. An ERA (other than a mining activity or petroleum activity) for which a code of environmental compliance has been made under the EP Regulation is self-assessable development.

Where a code of environmental compliance for a chapter 4 activity under the *Environmental Protection Regulation 1998* is approved, the activities covered by the code will become self-assessable development.

This means that where a person carries out an activity that is covered by a code of environmental compliance, this specific aspect of the development is self-assessable. Other aspects of the development associated with such an activity may still be made assessable by schedule 8 part 1 of IPA or a planning scheme. Other changes in this Bill ensure that the EP Act framework for administering these activities is consistent with those activities that are assessable development and have development approval.

Section 3.1.4 of IPA provides that self-assessable development must comply with applicable codes. A code for IDAS means a document or part of a document identified as a code in IPA or another Act. A code of environmental compliance made by the EP Regulation, will be identified as a code for IDAS.

Clause 55 Amendment of sch 8A (Assessment manger for development applications)

Clause 55 inserts a new table 3 in schedule 8A table 3 that defines the assessment manger for development applications in relation to contaminated land management.

This amendment relates to the new schedule 8, part 1, table 2, items 5, 6, and 7, which define material change of use of premises for contaminated land management. Where development is assessable under Schedule 8, part 1, table 2, item 5, 6 or 7, and there is no other assessable development, the chief executive administering the EP Act is the assessment manager for the development application.

Clause 56 Amendment of sch 10 (Dictionary)

Clause 56 inserts into Schedule 10 – Dictionary, definitions for "environmentally relevant activity", "hazardous contaminant", "mining activity", "mobile and temporary environmentally relevant activity", "notifiable activity", "petroleum activity", "site management plan", "special agreement act" and "suitability statement". All definitions are linked to the dictionary in Schedule 3 of the EP Act.

SCHEDULE

AMENDMENTS OF ENVIRONMENTAL PROTECTION ACT 1994

The schedule to the Bill makes minor amendments to the EP Act.