Environmental Protection and Other Legislation Amendment Bill 2004

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The short title of the Bill is the *Environmental Protection and Other Legislation Amendment Bill 2004*.

Policy Objectives of the Legislation

The principal objectives of the Bill are to:

- amend the *Coastal Protection and Management Act 1995* (Coastal Act) and the *Integrated Planning Act 1997* (IPA) to provide for the improvement of the operation of the Coastal Act integration with the IPA; and
- amend the *Environmental Protection Act 1994* (EP Act) to provide for the continued environmental regulation of petroleum activities upon commencement of the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) and to implement recommendations of the Mining Legislative Review Committee for the environmental regulation of mining activities;
- repeal the *Meaker Trust (Raine Island Research) Act 1981* (Meaker Trust Act) to enable the transfer of the Meaker Trust fund for Raine Island Research to the Australian Rainforest Foundation; and
- amend the *Nature Conservation Act 1992* (NC Act) to provide for the streamlining of tenure transfers for the South East Queensland Forest Agreement and Wet Tropics and improvement of the operation of the Act in relation to the Wildlife Management Review.

Reasons for the Bill

There is a need for a portfolio Bill to enable a number of miscellaneous amendments to be made to the following Acts:

- *Coastal Protection and Management Act 1995*;
- *Environmental Protection Act 1994*;
- *Integrated Planning Act 1997*;
- *Land and Resources Tribunal Act 1999* (LRT Act);
- *Marine Parks Act 1982* (MP Act);
- *Meaker Trust (Raine Island Research) Act 1981*;
- *Mineral Resources Act 1989* (MR Act); and
- *Nature Conservation Act 1992*.

These amendments will provide for:

- the improvement of the operation of Environmental Protection Agency (EPA) legislation relating to the Coastal Act integration with the IPA and the Wildlife Management Review;
- the environmental regulation of petroleum and mining activities;
- an amendment to the IPA to introduce transitional arrangements for the "currency period" for development applications, pending development of a long term solution in consultation with stakeholders;
- the transfer of the Meaker Trust fund for Raine Island Research to the Australian Rainforest Foundation;
- the streamlining of tenure transfers for the South East Queensland Forest Agreement and Wet Tropics forest reserve lands; and
- minor technical and consequential corrections.

Alternatives to the Bill

In view of the intricate relationship between the proposed amendments and current statutory provisions, legislation was considered to be the more efficient and appropriate option.

Estimated Cost for Implementation

The amendments are expected to be implemented within current budget allocations.

Consistency with Fundamental Legislative Principles

Section 4 of the *Legislative Standards Act 1992* (LSA) requires that legislation have sufficient regard to the rights and liberties of individuals. Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example:

- the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review;
- the legislation does not reverse the onus of proof in criminal proceedings without adequate justification; or
- the legislation adversely affects rights and liberties, or imposes obligations, retrospectively.

Potential breaches of fundamental legislative principles for particular amendments are noted below.

Coastal amendments to the Coastal Protection and Management Act 1995

Whether legislation has sufficient regard to rights and liberties of individuals also depends on whether, for example, the legislation adversely affects rights and liberties, or imposes obligations, retrospectively (s.4(3)(g) of the LSA).

The Coastal Act currently provides for the lapsing of applications made under repealed coastal legislation where the applicant was requested to provide information prior to commencement of that section. However, a large number of applications were received in the week prior to commencement of that section, and consequently, information requests were only issued after the commencement. The Bill applies the lapsing requirement to these latter applications, giving applicants 12 months to respond to the information request from the date of a letter advising them of the lapse**.** It also provides for all affected applicants to be notified of this new requirement.

Petroleum and mining amendments to the Environmental Protection Act 1994

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is subject to appropriate review (s.4(3)(a) of the LSA). Under the new petroleum provisions and the amended mining provisions in the EP Act, the absence of appeal rights for when an Environmental Impact Study (EIS) is required may be considered to be a breach of a fundamental legislative principle. However, the decision about the EIS proceeding is not an assessment of, or decision on, the merits of the project. The chief executive may allow the EIS to proceed only if the chief executive considers it addresses the final terms of reference in an acceptable form. If the chief executive decides to refuse to allow the EIS to proceed under this part, the administering authority must give the proponent a notice stating the reasons for the decision that the proponent may apply to the Minister to review the decision and how to apply for a review. These provisions reflect the same requirements that have been in place for mining activities since 2001.

In reviewing the decision, the Minister has the same powers as the chief executive and the Minister may confirm the chief executive's decision or decide to allow the EIS to proceed. In effect, the Minister is the review body for the original decision by the chief executive. The Minister's decision is not appealable on the merits, however, the application of the *Judicial Review Act 1991* is not affected by these amendments. The proponent of a petroleum or mining project has an appeal right to the Land and Resources Tribunal later in the approval process. The intention is to allow for only one appeal to the Tribunal for a project.

The amendments to the EP Act for new petroleum provisions and updated mining provisions provide a streamlined and simplified application process that enables an applicant to elect to apply for a code compliant authority to be issued automatically. The absence of a right of appeal for code compliant authorities may be considered to be a breach of fundamental legislative principles. However, the codes of environmental compliance contain clear criteria and standard environmental conditions that have been agreed by industry as being appropriate to apply uniformly. To provide a statutory right of appeal in these circumstances would make the automatic issue of environmental authorities with standard conditions unworkable. An applicant may elect to apply for a non-code compliant environmental

authority that requires an assessment of the application and the application of non-standard conditions to which appeal rights apply.

The absence of appeal rights for setting financial assurances for petroleum activities could be considered to be a breach of a fundamental legislative principle. There is no appeal right because a workable and equitable system of financial assurances requires a fixed level of financial assurance for petroleum activities with similar levels of risk of causing environmental harm. The proposed use of a standard schedule of financial assurance for specified activities will continue the accepted industry practice of having a standard schedule of securities under the *Petroleum Act 1923*.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification (s.4 (3)(d) of the LSA).

The existing section 480 of the *Environmental Protection Act 1994* provides that it is an offence for a person to give the administering authority a document that is false or misleading or incomplete. This section is amended declaring that if a person breaches either:

(a) a code compliance condition of a code compliant authority for a petroleum activity, or

(b) a standard environmental condition of a code compliant authority for a mining activity;

then the original certification at the time of application for or transfer of a code compliant authority for either a petroleum or mining activity is taken to be false or misleading document. This is a partial reversal of the onus of proof, as the administering authority only has to prove there has been a breach of a condition. The defence that at the time of application the person had reasonable grounds for believing that they could comply with the conditions does not have to be proved by EPA.

This partial reversal of onus of proof is justified as the system of automatically issuing code compliant authorities, which has been requested by industry, is totally reliant on the authenticity of the certificates. The applicant is the only person with this knowledge of what they reasonably believed at the time of application. The offence is required to ensure there is a deterrent to making false certifications.

IPA – Transitional amendment for currency periods under the Integrated Planning Act 1997

The IPA amendment to introduce transitional arrangements for currency periods will be taken to have commenced at the same time as the IPA. However the intent of the provision is to clarify the rights of applicants by validating existing approvals until a more permanent legislative solution can be negotiated.

Wildlife amendments to the Nature Conservation Act 1992

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification (s.4(3)(d) of the LSA).

This Bill includes a partial reversal of onus of proof for certain wildlife offences under the NC Act. The amendment would only require the person to prove that he or she had lawful possession of the wildlife where a conservation officer reasonably suspected this was not the case. It is a defence to the charge if the person satisfies the court that the person had no reasonable grounds for suspecting the wildlife was unlawfully taken. This approach is consistent with the manner in which onus of proof is addressed in New South Wales, Victorian and Commonwealth wildlife legislation. Currently persons can avoid prosecution for serious wildlife offences such as wildlife smuggling on the basis that in the absence of admissions, the State cannot prove that the person obtained the animal from the wild.

Consultation

A wide range of public and private sector stakeholders were consulted on the particular amendments relevant to their interests. All government departments were consulted as part of the Cabinet process in developing the Bill.

Key stakeholder groups including the Queensland Resources Council, the Queensland Conservation Council, the Queensland Environmental Law Association, AgForce, the Australian Petroleum Production & Exploration Association (APPEA) and other industry stakeholders have been consulted on proposed amendments contained in the Bill. Feedback was considered and the Bill amended as a result of this process.

NOTES ON PROVISIONS

Part 1 Preliminary

Short title

Clause 1 states that the Act should be cited as the *Environmental Protection and Other Legislation Amendment Act 2004*.

Commencement

Clause 2 states that the Act will commence on a day fixed by proclamation.

Part 2 Amendment of Coastal Protection and Management Act 1995

Act amended in pt 2

Clause 3 states this part amends the *Coastal Protection and Management Act 1995*.

Amendment of s 9 (Meaning of canal)

Section 9 provides the definition for a canal. The current provision states that a canal does not include a marina, boat harbour or commercial boat mooring facility. Clause 4 clarifies what is meant by the terms marina, boat harbour and commercial boat mooring facility by replacing these terms with a statement reflecting the activities that normally occur in such facilities.

This amendment seeks to remove confusion over what the terms marina, boat harbour and commercial boat mooring facility actually mean. Confusion has mainly been related to the status of private marinas within the boundaries of canal developments.

Section 116 of the Coastal Act requires that the area of a canal must be surrendered to the State as a public waterway. This amendment makes it

clear that these types of facilities are not automatically part of a public waterway.

In addition, section 121 of the Coastal Act requires local government to maintain and keep clean all canals in their area. Within a canal, local government is not expected to have to maintain (e.g. dredge) a commercial facility such as a marina, or boat harbours that may also contain organisations such as sailing clubs.

Amendment of s 25 (Functions of regional consultative group)

Section 25 identifies the functions of the regional consultative group. That group may make recommendations on matters requiring special coastal management to achieve ecological sustainable development of the coastal zone. Clause 5 corrects the term 'ecological' to be 'ecologically', as the existing provision is grammatically incorrect.

Amendment of s 39 (Public notice inviting submissions on draft regional plan)

Section 39 currently provides the public consultation process for a draft regional coastal management plan. This plan must describe how the region covered by the plan is to be managed and identify the coastal management districts within that region.

Clause 6 clarifies that the public consultation process for a draft regional coastal management plan also includes a coastal management district that would be declared under a regulation.

This amendment is necessary as there is currently no stated notification requirement for declaring a coastal management district contained within a regional coastal management plan (section 54(1)(a)), whilst section 57 identifies the notification requirements for a coastal management district declared without a regional coastal management plan (section 54(1)(b)).

A coastal management district declared under section 54(1)(a) is described in a draft regional coastal management plan. The notification requirements for draft regional coastal management plans are identified in section 39; these requirements are essentially the same as those identified in section 57.

Amendment of ch 2, pt 3 hdg (Coastal management districts and erosion prone areas)

Clause 7 removes the term 'erosion prone areas' from the heading, as chapter 2, part 3 only deals with coastal management districts. Erosion prone areas are dealt with in chapter 2, part 4. The heading for chapter 2, part 3 currently refers to coastal management districts and erosion prone areas.

Amendment of s 54 (Declaration of coastal management districts)

Clause 8 replaces the term 'giving effect to the plan' with a reference to the commencement of the relevant regional coastal management plan.

Section 54 currently identifies the different ways in which a coastal management district may be declared. If the proposed coastal management district is covered by a regional coastal management plan, then the district can be declared under a regulation that gives effect to the regional plan. Additional subsections provide for situations outside of regional coastal plans or for areas that require immediate protection.

When the Coastal Act first commenced in 1995, State and regional coastal management plans were subordinate legislation, i.e. they were to be declared under a regulation. This status was removed in 1999, although section 54 was not updated to reflect this change in status. As it is still intended that coastal management districts contained within a regional coastal management plan will be declared under a regulation, the terminology required updating.

Insertion of new s 58A

Clause 9 provides for the amendment of coastal management districts that were transitioned from being coastal management control districts and erosion prone areas under the now repealed *Beach Protection Act 1968* (BP Act). The amendment only applies where the transitional coastal management district is comprised solely of the erosion prone area, and only when the erosion prone area is being amended by a coastal engineering reassessment. As affected landowners will be notified of any erosion prone area amendments (refer clause 11), no public consultation on the coastal management district amendment is necessary.

The transitional coastal management districts provided under section 169 apply to all areas of the Queensland coast that are not covered by a regional

coastal management plan, i.e. the majority of the coast. This results in a coastal management district that in some places corresponds to the erosion prone area, and in other places corresponds to the larger of the combined coastal management control district and the erosion prone area. This default coastal management district represents the area of the Agency's interest.

Erosion prone areas are calculated widths over a 50-year period based on a coastal engineering assessment of short and long term erosion, erosion due to greenhouse-induced sea level rise and dune slumping. When erosion prone areas were first declared in 1984, each of these components was based on a conservative allowance depending on the characteristics of the coastline.

As the erosion prone area can affect the development potential of coastal land, if a detailed coastal engineering assessment of the erosion prone area for that specific location demonstrates that the erosion prone area should be amended, section 71 of the Coastal Act allows the chief executive to amend the erosion prone area if the assessment is agreed with.

If the coastal management district is only made up of the default erosion prone area, then amendment of the erosion prone area is reflecting the Agency's interest in that land. The regional coastal planning process, which reviews all coastal management districts and identifies new coastal management districts that are declared under section 54, is the appropriate process for reviewing the extent of the coastal management district on the basis of more than just erosion.

Amendment of s 60 (Tidal works notices)

Clause 10 updates the terminology relating to the definition of tidal works and the persons on whom a tidal works notice may be served for consistency.

Section 60 currently provides the ability to issue notices for tidal works that need repair, are abandoned or should be removed.

The existing provision refers to 'works in, on, or over the foreshore or land under tidal water'. Tidal works means 'works in, on or above land under tidal water'. Tidal water refers to water within the ebb and flow of the tides at spring tides (i.e. up to mean high water spring tide). Foreshore means that land between the high and low water mark. All references to 'works in, on, or over the foreshore or land under tidal water' therefore mean 'tidal works', and this amendment does this for consistency.

Tidal works notices can currently be issued to a person responsible for the works or the maintenance of them. Section 124 places an obligation on freehold landowners and lessees of State land who are connected to or receiving the benefit of a tidal work to maintain that work in a safe condition. Clause 10 provides a consistent process by ensuring that tidal works notices can be served on persons identified in section 124 to ensure that they fulfil those obligations.

Amendment of s 71 (Amending erosion prone areas)

Clause 11 provides an additional requirement for the chief executive to notify the owners of land affected by an erosion prone area amendment that the amendment has occurred and what the new erosion prone area width is.

Section 71 currently allows the chief executive to amend an erosion prone area and identifies certain actions that the chief executive must take once the erosion prone area has been amended.

An erosion prone area can currently be amended without advising affected landowners. As the erosion prone area can affect the development potential of coastal land, it may also affect the value of the land. If a detailed coastal engineering assessment of the erosion prone area for that specific location demonstrates that the erosion prone area should be amended, all landowners affected by the amendment should be notified.

This is especially important where a developer has made an offer to purchase land on the basis that the erosion prone area severely limits the development potential of the land. A reduced erosion prone area may increase the development potential and therefore the market value of the land.

Omission of ch 2, pt 5, div 1, sdiv 3 (Removal of quarry materials may require other approval)

Clause 12 omits chapter 2, part 5, division 1, subdivision 3. The existing provision only applies to allocation notices, however it should also apply to dredge management plans. The content of the provision has been retained and updated to deal with dredge management plans, but has been relocated within the Bill as Clause 15.

Chapter 2, part 5, division 1, subdivision 3 only contains section 81. Section 81 establishes the relationship between an allocation notice, development approvals under the IPA, and environmental authorities under

the EP Act in relation to the removal of quarry material on State coastal land below high water mark in a coastal management district.

Amendment of s 85 (Suspension or cancellation—grounds)

Clause 13 amends section 85. The *Environmental Protection Legislation Amendment Act 2003* (EPLAA) amended the EP Act to improve the integration between the IPA and EP Act. The EPLAA provided that all operators of chapter 4 activities (i.e. environmentally relevant activities other than mining and petroleum) must be registered operators under the EP Act, in addition to the requirement under IPA to obtain a development approval.

Section 85 presently provides the grounds on which the chief executive may cancel or suspend an allocation notice. The grounds include a failure to apply for certain other approvals that may be required.

The amendment to section 85 is consequential to these amendments.

Section 85(b)(iii) has been replaced with a new paragraph (iii) which states that grounds exist for suspension or cancellation of an allocation notice if the holder has not, within 1 year after the day the notice was issued, applied for a development permit (if the holder requires a development permit for removal of quarry material) or if the removal of quarry material is an environmentally relevant activity, the required authority.

Omission of s 94 (Relationship with IPA)

Clause 14 omits section 94. Section 94 provides the relationship between a dredge management plan and the IPA. While an approved dredge management plan replaces the need to obtain a resource allocation under division 1, the approved plan can also replace requirements to obtain approvals or refer applications under Integrated Development Assessment System (IDAS).

The existing provision does not provide any ability for the chief executive to not require an allocation or dredge management plan before the lodgement of a development application. The approach of phasing an entitlement to take a resource can prove challenging for capital and maintenance dredging projects, e.g. construction of an access channel for a marina where the marina has not yet been approved.

Section 94(2) also removes the requirement to obtain a separate development permit for works covered by the dredge management plan for

which the chief executive is the assessment manager, if there are no referral agencies. This provision was inserted as an incentive to encourage applicants to develop a dredge management plan that also dealt with other works below high water mark. This provision does not work as intended, as there will never be an instance where any of the works proposed to be covered in the plan would not have at least the chief executive of the department administering the *Transport Operations (Marine Safety) Act 1994* (Queensland Transport) as a concurrence agency.

The content of the provision has been retained and updated to deal with these two issues, but has been relocated within the Bill as Clause 15.

Insertion of new ch 2, pt 5, div 2A

Clause 15 replaces existing sections 81 and 94, provides criteria under which the chief executive may refuse to give consent for a development application to be made, and allow the intent of the existing section 94 to operate by seeking referral agency signoff of certain assessable development contained in dredge management plans.

Section 81 currently establishes the relationship between an allocation notice, development approvals under the IPA, and environmental authorities under the EP Act in relation to the removal of quarry material on State coastal land below high water mark in a coastal management district.

Section 81 presently requires that an allocation of quarry material be obtained before applying for further approvals required under the IPA and/or the EP Act. However, all relevant approvals and authorities, including the allocation notice, are required to commence operations. Subsection (3) provides that evidence of the allocation is required as part of the development application under IDAS or the EP Act to carry out the works. This coincides with requirements under section 3.2.1 of the IPA that provide that where the development involves the removal of a resource of the State, the evidence of the allocation is part of the mandatory requirements for a properly made application under the Act.

Section 94 currently provides the relationship between a dredge management plan and the IPA. While an approved dredge management plan replaces the need to obtain a resource allocation under division 1, the approved plan can also replace requirements to obtain approvals or refer applications under IDAS.

Section 94 provides that to the extent that a dredge management plan deals with assessable development under the IPA schedule 8, part 1, item 3D (the coastal specific triggers; now replaced by schedule 8, part 1, table 4, item 5), the holder of the approved plan is either:

- not required to obtain approval (i.e. no development application is required); or
- is not required to refer a development application for the development to the chief executive under the IDAS.

Which of these two scenarios is relevant will depend on whether or not other entities such as local government or other State concurrence agencies are involved in the prospective IDAS application.

The provisions ensure that a dredge management plan can only replace requirements under the IPA to the extent that the chief executive under the Coastal Act is involved in the development application. As such, the holder of an approved plan would still be required to obtain other relevant approval requirements under the IPA such as a planning scheme approval to place material on land in a local government area. Similarly, the dredge management plan does not replace the requirement to obtain approvals or authorities under other legislation in relation to the removal of quarry material or placement of spoil. This could be, for instance, approvals under the EP Act, MP Act or *Fisheries Act 1994* (Fisheries Act). These requirements may be currently operating within IDAS or are to be integrated under the IDAS framework in the future.

However, section 94 does not work as planned, as there will never be an instance where any of the works proposed to be covered in the plan would not have at least chief executive of the department administering the *Transport Operations (Marine Safety) Act 1994* (Queensland Transport) as a concurrence agency. Consequently, the phasing regime for allocations established in section 81 has not been established for dredge management plans. A person is therefore lawfully entitled to obtain a development permit for an environmentally relevant activity (ERA) under the EP Act (e.g. ERA 19) prior to obtaining a dredge management plan. If the ERA is issued first, it could present a problem if the resource applied for was not available or the application for the dredge management plan is to be refused.

In addition, section 81 does not provide any ability for the chief executive to not require an allocation before the lodgement of a development application. The approach of phasing an entitlement to take a resource can

prove challenging for capital and maintenance dredging projects, e.g. construction of an access channel for a marina where the marina has not yet been approved.

To remove doubt, section 81 has been recreated as new section 100A, which now applies to allocation notices and dredge management plans.

The EPLAA amended the EP Act to improve the integration between the IPA and EP Act. The EPLAA provided that all operators of chapter 4 activities (i.e. environmentally relevant activities other than mining and petroleum) must be registered operators under the EP Act, in addition to the requirement under IPA to obtain a development approval

These terms were used in section 81 and the new terminology has been used in section 100A.

Section 100A also mirrors recent amendments to the IPA and *Integrated Planning Regulation 1998* (IPA Regulation) that provide that the chief executive's consent must accompany an application for a development permit that involves interfering with or taking quarry material from land under tidal water. There is provision for the chief executive to refuse to give consent under certain circumstances, similar to section 967 of the *Water Act 2000* (Water Act).

Section 94 has been recreated as new section 100B, which will now be able to operate by seeking referral agency signoff of certain assessable development contained in dredge management plans.

Amendment of s 102 (Royalty or price for quarry material)

Clause 16 removes the port authority exemption. This exemption power will instead be placed in the *Coastal Protection and Management Regulation 2003* (Coastal Regulation).

Section 102(3) presently provides that port authorities are exempt from paying royalties under certain circumstances.

The Coastal Regulation currently provides for exemptions from the payment of royalties for the removal of quarry material from land under tidal water. However, section 102(3) of the Coastal Act also provides an exemption from payment of royalties under certain circumstances for port authorities. Rather than have exemptions in two different places, it is more logical to consolidate all exemptions in a single location. As the exemption process is established in the Coastal Regulation, all exemptions will be placed in that regulation.

Amendment of s 120 (Registration of instruments—construction of artificial waterways)

Clause 17 provides a consistent process for the Registrar of Titles when registering a plan of subdivision for an artificial waterway.

Section 120 provides that the Registrar of Titles must not register plans of subdivision involving artificial waterways until the plan of subdivision is registered under the *Land Title Act 1994*. If the plan of subdivision deals with a canal, the plan must be certified by a local government and the area of the canal surrendered to the State as a public waterway before registry.

Section 119 identifies what a local government must certify on a plan of subdivision for an artificial waterway, no matter what type of artificial waterway. The current section 120 identifies that the Registrar of Titles must check that the requisite certification has been obtained for a canal, but does not identify what the Registrar of Titles must check for an artificial waterway other than a canal.

Insertion of new ch 2, pt 6, div 5

Clause 18 provides a process for issuing exemption certificates.

An amendment has been proposed to remove certain types of works from being assessable under the IDAS under the IPA. The types of works that will be excluded from assessment include maintenance works and certain minor works that will have an insignificant impact on coastal management and are reversible or expendable, e.g. installation of park furniture in a coastal management district.

However, there may be some proposals for works in which it may not be immediately obvious whether it will have an impact on coastal management or not, i.e. the type of work rather than the physical location of the work may be the critical issue. In these situations, a preliminary assessment can often determine whether a work will have any impact on coastal management. If there is no impact or the impact is insignificant, an exemption certificate may be issued for the work and the work will cease to be assessable under the IPA.

The process has been modelled on the exemption certificate process established under the *Queensland Heritage Act 1992*. This process provides for sufficient information to accompany the application, and the ability for any referral agencies that would normally be assessing the applications under IDAS to provide input into the assessment. If the application involves works that trigger other types of assessable

development under IDAS, the exemption certificate does not remove the requirement to obtain these other IDAS approvals. Should any agencies that would have been concurrence agencies under IDAS advise that the application should be refused, the exemption certificate must be refused, meaning that the application must be formally considered under IDAS.

Should an application be lodged under IDAS for works that, upon consideration, will have no impact on coastal management, these applications may be discontinued and an exemption certificate issued instead of an IDAS approval.

Amendment of s 123 (Development permits - right to use and occupy)

Clause 19 updates the terminology relating to the definition of tidal works for consistency.

Section 123 provides that in the absence of a requirement to obtain tenure for tidal works in particular circumstances, the development permit for the works is a right to use and occupy the land under tidal water for the purpose provided in the development approval.

The existing provision refers to 'tidal works on land under tidal water'. Tidal works means 'works in, on or above land under tidal water'. The provision is meant to convey that the works do not necessarily require exclusive tenure. The words 'on land under tidal water' are therefore redundant.

Amendment of s 124 (Obligation to keep certain tidal works in safe condition)

Clause 20 updates the terminology relating to the definition of tidal works for consistency.

Section 124 applies to an owner of freehold land or the lessee of leasehold land above the high water mark where the land is connected to an approved structure in tidal waters or where the owner or lessee of land receives benefit from the structure in tidal waters associated, but not physically connected, with the land. The section provides that the freehold owner or lessee of the land has a duty of care to ensure the structure is maintained in a safe condition. Structure includes jetty, pontoon or boat ramp.

The existing provision refers to 'tidal works on land under tidal water'. Tidal works means 'works in, on or above land under tidal water'. The

provision is meant to convey that the works do not necessarily require exclusive tenure. The words 'on land under tidal water' are therefore redundant.

Replacement of s 165 (Delegation by chief executive)

Clause 21 extends the existing delegation provision by permitting the sub-delegation of the chief executive's powers to appropriately qualified entities. The provision also allows the chief executive to appoint a senior public service officer such as an Executive Director to take the chief executive's place on the Coastal Protection Advisory Council.

Section 165 currently empowers the chief executive to delegate powers to an officer of the public service, a local government, port authority or other statutory authority.

In negotiations to delegate certain powers under the Coastal Act to one local government, it was identified that the entity 'local government' only meant a full meeting of the local government, i.e. a meeting of the elected representatives. As this arrangement would be very difficult to establish in practice, an ability to sub-delegate this power was required.

As the chief executive is not always able to attend Coastal Protection Advisory Council meetings, the ability for an alternate representative to attend is required.

Amendment of s 167 (Regulation-making power)

Clause 22 inserts a new regulation making power to be able to recognise downstream limits of watercourses under the *Water Regulation 2002* (Water Regulation). The clause also corrects an incorrect reference.

Section 167 lists those matters for which the Governor in Council can make regulations.

Many provisions in the Coastal Act are limited to 'tidal water', which is the limit of the mean high water spring tide. Conversely, the Water Act applies in a watercourse as far downstream as a point, which is in the vicinity of the mean high water spring tide. Under the Water Act however, there is ability for that Act's chief executive to declare limits on a watercourse to which that Act applies. These are called upstream and downstream limits.

As most downstream limits will be declared in the vicinity of mean high water spring tide, it is operationally convenient for the Coastal Act to be able to recognise them as the limit of tidal water. However, downstream

limits declared under the Water Act can be significantly upstream of mean high water spring tide. It is therefore necessary under the Coastal Act to recognise only those downstream limits that are declared under the Water Regulation that are in the vicinity of the mean high water spring tide.

Amendment of s 171 (Continuing effect of authorities under Harbours Act)

Clause 23 replaces the reference to 'item 3D' with 'table 4, item 5'.

Section 171 currently provides that existing authorities and sanctions under the now repealed *Harbours Act 1955* (Harbours Act) are taken to be development approvals (in the form of development permits) under the IPA to the extent that the development or works could have been authorised under the repealed legislation.

The *Integrated Planning and Other Legislation Amendment Act 2003* amended the IPA to overhaul the format of references to assessable development. The amendment to section 171 is consequential to these amendments.

Amendment of s 176 (Continuing effect of approvals under Canals Act)

Clause 24 changes the continuing status of a provisional approval under the now repealed *Canals Act 1958* (Canals Act) from being a preliminary approval to reconfigure a lot to a development permit for a material change of use of premises. The clause also clarifies that a development permit for operational works to construct an artificial waterway also includes the access channel for the waterway.

Section 176 presently provides that existing approvals under the Canals Act are taken to be development approvals (in the form of either preliminary approvals or development permits) under the IPA to the extent that the development or works could have been authorised under the repealed legislation.

Approvals under the now repealed Canals Act consisted of three distinct stages. An application for provisional approval was the conceptual check on whether this type of development and the proposal being considered was appropriate for the site. An application for final approval involved detailed designs and layouts. The final stage was a certification process to ensure that the canal had been constructed in accordance with the final approval.

At the provisional approval stage, the extent of the layout was usually conceptual in nature and often changed significantly before final approval was obtained. Accordingly, the ongoing status of a provisional approval is better represented as a development permit for a material change of use of premises than a preliminary approval to reconfigure a lot. The material change of use is limited to the extent that it could have been authorised under the Canals Act (i.e. it does not provide a blanket material change of use approval for all possible material change of use activities on the land).

Omission of s 181 (Applications to reconfigure a lot in a coastal management district)

Section 181 currently provides for how an application is to be processed where a person has approval to reconfigure a lot in a coastal management district from a local authority but has not yet sought approval from the Governor in Council under section 45 of the *Beach Protection Act* (BP Act). In such instances, this section clarifies that a person would be required to apply for the reconfiguring of a lot under the IPA with the chief executive as the assessment manager.

Clause 25 omits this subdivision.

The existing provision is contained in a part that deals with transitional provisions for the *Coastal Protection and Management and Other Legislation Amendment Act 2001*. As these provisions are being amended, the provision has to be removed and recreated in a new part relating to transitional provisions for this Act.

The content of the provision has been retained and updated to deal with new issues, but has been relocated within the Bill as Clause 26.

Insertion of new ch 6, pt 4

Clause 26 inserts a new part dealing with transitional provisions for the *Environmental and Other Legislation Amendment Act 2004*. The clause deals specifically with approvals that have ongoing validity despite the repeal of the authorising legislation.

New section 187 clearly establishes that where a provisional approval under the Canals Act is held, all future development relating to the construction of the canal must be approved using the IDAS.

Approvals under the now repealed Canals Act consisted of three distinct stages. An application for provisional approval was the conceptual check

on whether this type of development and the proposal being considered was appropriate for the site. An application for final approval involved detailed designs and layouts. The final stage was a certification process to ensure that the canal had been constructed in accordance with the final approval.

The provisional approval consisted of a list of items that had to be addressed within a nominated time frame before final approval would be considered. As such, there was no formal application for a final approval, more a statement to show how the provisional approval requirements had been satisfied. There has been some uncertainty over whether the final approval is therefore a continuation of the provisional approval.

Section 179 of the Coastal Act provides that applications under the now repealed legislation, in this case, the Canals Act, not finally decided prior to commencement of that section on 20 October 2003 must be processed as if the legislation had not been repealed. As an IDAS approval equivalent has been provided for these applications in section 176, this clause clarifies that the IDAS system is to be used for all future dealings, i.e. final approval for a canal is now processed as an IDAS application.

New section 188 carries over existing section 181, which provides for how an application is to be processed where a person has approval to reconfigure a lot in a coastal management district from a local authority but has not yet sought approval from the Governor in Council under section 45 of the repealed BP Act. In such instances, this section clarifies that a person would be required to apply for the reconfiguring of a lot under the IPA with the chief executive as the assessment manager. The section has been further clarified by confirming that there are no referral agencies for the application, referral coordination is not required and that the assessment type is code assessment. Ability for the Registrar of Titles to place a notation on properties that are subject to this provision is also provided.

As current section 181 required that an additional IDAS application be lodged with the chief executive as the assessment manager, clarity was required on whether other IDAS processes such as referral coordination or seeking referral agency input into the application was required. As these other processes would have been undertaken as part of the local government approval IDAS process, it was not considered necessary or desirable to force applicant to repeat a substantial part of the process.

When the Registrar of Titles registers a plan of subdivision, a check of whether local government approval for the subdivision (reconfiguration) is made. However, not all land is subject to the provisions of the Coastal Act,

and as the provisions are often limited to areas that fluctuate, such as erosion prone areas, it is not practical to identify all blocks of land at any point in time that may be subject to this provision.

All future applications to reconfigure a lot within the coastal management district submitted to local government are referred to the chief executive as a concurrence agency, so the Registrar of Titles' current process will be sufficient for all future approvals. Accordingly, the ability for the chief executive to advise the Registrar of Titles of land that is subject to the Coastal Act is required to ensure that titles are not inadvertently given over land that has not obtained all of the necessary approvals.

The validity period of repetitive works such as beach scraping is clarified by new section 189.

Current sections 175 and 177 of the Coastal Act provide that approvals under section 47(1)(A) of the now repealed BP Act have the status of development permits under IDAS and that the validity periods for the permits is as provided in the IPA. However, the IPA provides that approvals only lapse if they are not 'substantially started' by the end of their currency period.

Approvals under section 47(1)(A) of the now repealed BP Act were given for works on unoccupied Crown land, and often included repetitive activities such as beach scraping. As this activity can be done more than once, as soon as it is done the first time, the development has 'substantially started' and the development permit does not lapse. This new provision ensures that these approvals lapse at the end of the time period stated in the permit, or at the end of 2 years, which ever provides the longer period.

New section 190 also clarifies who the assessment manager is for amending a deemed approval. At present there is some confusion over who is the assessment manager for a deemed approval (i.e. an approval under now repealed legislation that has a continued status under IDAS). If local government gave a separate approval for the works covered by the deemed approval, then local government should be contacted to ascertain if the proposed amendment to the approval affects their approval. If so, local government will then be given the option of being the assessment manager for the amendment covering both of the approvals that were issued. If the local government approval is not affected by the amendment or if the local government elects not to be the assessment manager, then the chief executive will be the assessment manager for the amendment application and local government will not be involved in the amendment application process.

New section 191 provides a lapsing provision for outstanding applications and closes a loophole in the existing application lapsing provision. No lapsing provision was provided for outstanding applications under the BP Act. Additionally, the lapsing provision that was provided for certain applications in current section 180 does not apply to applications that were received prior to commencement of that section (20 October 2003) but to which a request for additional information was made after the commencement. There are a large number of these applications outstanding as many applications were lodged with very little supporting documentation in the week prior to commencement. All applicants with outstanding applications will be contacted in writing and advised that they have 1 year from the date of the letter to supply the outstanding information or their applications will lapse.

Amendment of sch (Dictionary)

Clause 27 provides several new additions to the definitions and removes others that are no longer used in the Coastal Act. The Schedule contains the dictionary for the Coastal Act.

The term 'environmental authority' has been replaced with 'registration certificate' (refer Clauses 13 and 15).

'Appropriately qualified' has been defined for use in the delegation provision (refer Clause 21).

'Operational work' and 'referral agency' have been defined for use in Chapters 2 and 6 of the Coastal Act.

The definition of 'tidal water' has been updated to recognise downstream limits declared under a regulation (refer Clause 22).

The definition of 'tidal works' has been expanded to also include structures which are not currently in, on, or above land under tidal water, but which are designed to be exposed to tidal water. Such works mainly comprise buried seawalls, which are only intended to act as a last line of defence should erosion progress to a point where private property or significant infrastructure is threatened. These types of structures may have a significant impact on coastal management once exposed to tidal water, resulting in the loss of beaches, and may also pose safety risks if not appropriately designed and constructed.

The definition of tidal works has also been clarified to exclude digging to source material for use in reclamation, where an additional work is not being created. The pit created by the excavation is not being maintained for

other reasons e.g. navigation, the removal of the material is already being examined through the resource allocation process, and the reclamation requires a specific approval. In this instance, removal of the material is no different to extractive industry.

The definition of 'required authority' is a term that has been introduced to capture the types of approvals that may be required for an environmentally relevant activity under the EP Act. For chapter 4 activities, i.e. environmentally relevant activities and other than mining activities or petroleum activities, a development permit is required (if the activity is not subject to a code of environmental compliance). In addition, the chapter 4 activity must have a registration certificate for the activity. If there is a code of environmental compliance for the activity, the development permit for the activity is not required, but a registration certificate is still required. For environmentally relevant activities that are petroleum activities or mining activities the required authority is an environmental authority.

Part 3 Amendment of Environmental Protection Act 1994

Act amended in pt 3

Clause 28 states that this part amends the *Environmental Protection Act 1994*.

Insertion of new s 7A

Clause 29 amends part 3, division 1 by inserting a new section 7A. Section 7A is entitled 'Notes in text' and clarifies that a note in the text of this Act is part of this Act.

Amendment of s 20 (Levels for environmentally relevant activities)

Clause 30 omits sections 20(2) and (3) and replaces them with new section (2) and (3). This amendment reflects the new terminology used to describe what a level 1 and level 2 environmentally relevant activity is.

Amendment of s 37 (When EIS process applies)

Clause 31 renumbers the subsections of section 37(1)(b) to (d) of the EP Act as section 37(c) to (e). It also amends section 37(1) so that section 37 also applies where an EIS requirement is in force for an application for an environmental authority (petroleum activities).

Replacement of ch 4A (Environmental authorities for petroleum activities)

Clause 32 replaces chapter 4A. The previous chapter 4A contained provisions about the following types of environmental authorities for petroleum activities:

(a) a licence for a level 1 environmentally relevant activity (a "licence");

(b) a provisional environmental authority (a "provisional licence") for a level 1 environmentally relevant activity;

(c) an approval for a level 2 environmentally relevant activity (a "level 2 approval");

(d) a constituent part of an integrated authority, if the constituent part is an environmental authority mentioned in paragraphs (a) to (c).

The new chapter 4A provides for environmental authorities (petroleum activities). For simplicity, an environmental authority (petroleum activities) can regulate:

- level 1 environmentally relevant petroleum activities;
- level 2 environmentally relevant petroleum activities that do not comply with a code; or
- level 2 environmentally relevant petroleum activities that comply with a code.

The environmental authority (petroleum activities) will regulate petroleum activities, regardless of the level. Hence, the previous environmental authorities 'licence', 'provisional licence' and 'level 2 approval' are no longer required and have been omitted. Project authorities for integrated petroleum developments are a regulatory tool that will replace 'integrated authorities' which have also been omitted.

Chapter 4A Environmental authorities for petroleum activities

Part 1 Preliminary

Purpose of ch 4A

New section 74 sets out the purpose of chapter 4A which is to provide for environmental authorities for petroleum activities. These authorities are called environmental authorities (petroleum activities). The key definitions for chapter 4A are set out in part 1.

Types of environmental authority (petroleum activities)

New section 75 provides that an environmental authority (petroleum activities) can be a code compliant authority or a non-code compliant authority. A code compliant authority is an environmental authority (petroleum activities) issued under part 2, division 3, subdivision 1. However, a code compliant authority ceases to be a code compliant authority if, under part 3, 4 or 7, its conditions are amended or new conditions are imposed on it. A non-code compliant authority is any environmental authority (petroleum activities) other than a code compliant authority.

What is a *petroleum authority* and the *Petroleum legislation*

New section 76 defines the different types of petroleum authority and the various legislative enactments (collectively referred to as the petroleum legislation) under which they may be granted or issued.

A petroleum authority is—

(a) A 1923 Act petroleum tenure under the *Petroleum Act 1923* (Petroleum Act); or

(b) A petroleum authority granted or issued under the P&G Act; or

(c) A licence, permit, pipeline licence, primary licence, secondary licence or special prospecting authority granted under the *Petroleum (Submerged Lands) Act 1982.*

What is a *petroleum activity*, a *level 1 petroleum activity* and a *level 2 petroleum activity*

New section 77 defines a petroleum activity as —

(a) An authorised activity for a petroleum tenure under the Petroleum Act; or

(b) An authorised activity under the P&G Act for a petroleum authority; or

(c) Exploring for, or mining minerals under a licence, permit, pipeline licence, primary licence, secondary licence or special prospecting authority granted under the *Petroleum (Submerged Lands) Act 1982*; or

(d) Rehabilitating or remediating environmental harm because of an activity mentioned in paragraphs (a) to (c);

(e) Action taken to prevent environmental harm because of an activity mentioned in paragraphs (a) to (d);

(f) An activity required under a condition of an environmental authority (petroleum authorities); or

(g) An activity required under a condition of an environmental authority (petroleum authorities) that has ended or ceased to have effect, if the condition continues to apply after the authority has ended or has not been complied with.

The clause also defines a level 1 petroleum activity as a level 1 environmentally relevant activity (ERA) under section 20, and a level 2 petroleum activity as a petroleum activity that is a level 2 ERA under the same provision.

What is a *relevant petroleum authority*

New section 78 defines a relevant petroleum authority for—

(a) a petroleum activity; or

(b) an environmental authority (petroleum activities); or

(c) an application for or about an environmental authority (petroleum activities).

What is a *relevant petroleum activity*

New section 79 defines a relevant petroleum activity for

(a) an application for an environmental authority (petroleum activities); or

(b) an environmental authority (petroleum activities).

What is a *petroleum project*

New section 80 defines a petroleum project as a project that includes all activities carried out as a single integrated operation under 1 or more of—

(a) a petroleum tenure granted under the Petroleum Act;

(b) a petroleum authority granted under the P&G Act;

(c) a licence, permit, pipeline licence, primary licence, secondary licence or special prospecting authority granted under the *Petroleum (Submerged Lands) Act 1982.*

Part 2 Applying for and obtaining environmental authority (petroleum activities)

Division 1 Preliminary

Definitions for pt 2

New section 81 defines the terms ‘person’, ‘relevant place’ and ‘submission period’ for the purposes of chapter 4A, part 2.

Division 2 General provisions for applications

Subdivision 1 Restriction on who may apply

Restriction

New section 82 states that a person can only apply for an environmental authority (petroleum activities) if the person is the holder of, or applicant for, a relevant petroleum authority.

Subdivision 2 Petroleum projects

Single application required for petroleum project

New section 83 applies to a person who applies for an environmental authority (petroleum activities) that consists of petroleum activities to be carried out as a petroleum project. In these circumstances, a single application for 1 environmental authority (petroleum activities) is required. If any relevant petroleum activity is a level 1 petroleum activity, part 2, division 4 must be complied with. However a submission under section 110 cannot be made about any relevant petroleum activity that is a level 2 petroleum activity. In granting the application, the administering authority may issue 1 environmental authority (petroleum activities) for all the activities; or 2 or more environmental authorities (petroleum activities) for the activities.

Single environmental authority (petroleum activities) required for petroleum project

New section 84 applies if an environmental authority (petroleum activities) has been granted for a petroleum project. The authority holder cannot apply for a separate environmental authority (petroleum activities) for an additional petroleum activity intended to be undertaken as part of the petroleum project. However, this section does not prevent the holder from applying to amend or replace the environmental authority (petroleum activities). A single environmental authority can be issued for a combination of level 1 or level 2 environmental relevant activities.

Subdivision 3 Joint applications

Application of sdiv 3

New section 85 outlines the application of this subdivision in relation to joint applications.

Joint application may be made

New section 86 states that the administering authority may accept an application made by a person who is a joint applicant on behalf of all the joint applicants if the authority is satisfied that the person is authorised to make the application on behalf of each of the joint applicants.

Appointment of principal applicant

New section 87 states that the joint applicants may appoint 1 of them as a principal applicant who can act on behalf of the joint applicants for the application. The appointment can only be made in the joint application or by a notice to the administering authority signed by all the joint applicants. The joint applicants can, by a notice signed by all the joint applicants, cancel the appointment.

Effect of appointment

New section 88 states that the principal applicant can give to the administering authority a notice or other document relating to the application on behalf of the joint applicants. The section also states that the administering authority can give a notice or other document relating to the application to the applicants by giving it to the principal applicant. The authority can also make a requirement under this chapter relating to the application of all the applicants by making it a requirement of the principal applicant.

Operation of sdiv 1

New section 89 outlines the operation of subdivision 1 in relation to the process to obtain an environmental authority (petroleum activities) for a level 2 petroleum activity, if there are relevant codes of environmental compliance for the activities for the environmental authority and if the applicant agrees to comply with the codes.

Requirements for application

New section 90 sets out the requirements and content of an application for an environmental authority. The application must be in the approved form and must be supported by enough information for the authority to decide it, including a description of each relevant petroleum authority and all relevant petroleum activities. The application must include a statement certifying that the applicant can, in carrying out the relevant petroleum activities for the environmental authority (petroleum activities), comply with the code compliance condition. The application must be accompanied by a fee prescribed under a regulation.

Deciding application

New section 91 states that the administering authority must make a decision to grant the application, if the application complies with section 90, otherwise it must refuse the application.

Steps after granting application and the giving of financial assurance

New section 92 outlines the steps the administering authority must take after granting the application and the giving of financial assurance. Subsection (1) states that the administering authority must issue the code compliant authority (petroleum activities) in the approved form, insert it in the appropriate register and give the applicant a copy of the authority within 8 business days after the day the decision is made or the payment of the application fee (whichever is later). However, if the administering authority decides that a financial assurance is required as a condition of the environmental authority (petroleum activities) under section 145O, the issuing of the environmental authority (petroleum activities) will not occur until the financial assurance condition has been complied with.

This section updates section 91 of the EP Act, which did not allow the administering authority to withhold the issuing of an authority until financial assurance had been complied with. A financial assurance may be a standard environmental condition of a Code of Environmental Compliance. The condition may require the payment of financial assurances after the issuing of the authority. The financial assurance may be required to be paid in differing amounts at differing times. For example the financial assurance may be required to be paid on a predetermined schedule of amount of area disturbed. Also the condition may require payment prior to the commencement of certain activities such as drilling.

If a person certifies that they can comply with the code including a standard environmental condition for financial assurance then this condition for future financial assurance is taken to have been complied with.

Code compliance condition

New section 93 states that a code compliant authority will include a condition that the applicable codes of environmental compliance for the relevant petroleum activities for the authority must be complied with. Applicable codes include any relevant codes of environmental compliance for relevant petroleum activities for the authority that were in force when the application was made, or if these codes change or are replaced then the changed or replaced code from 1 year after the change or replacement. If the environmental authority continues to be a code compliant authority then the code compliance condition will be the only conditions of the authority.

Subdivision 2 Non-code compliant authorities

Operation of sdiv 2

New section 94 outlines the operation of this subdivision in relation to the process to obtain an environmental authority (petroleum activities) for a level 2 petroleum activity, if there are no relevant codes of environmental compliance for the activities for the environmental authority and if the applicant elects not to comply with the codes.

Requirements for application

New section 95 sets out the requirements and content of an application for an environmental authority. The application must be in the approved form and must include a description of each relevant petroleum authority and all relevant petroleum activities. The application must be supported by enough information to allow the authority to make a decision, including relevant information about the likely risks to the environment, details of wastes to be generated and any waste minimisation strategy. The application must include the application fee prescribed under a regulation.

Deciding application

New section 96 requires the administering authority to decide to either grant or refuse the application within the later of either 20 business days after the application date, or within 8 business days after the submission period ends.

Criteria for decision

New decision 97 outlines the criteria the administering authority must consider when deciding whether to grant or refuse an application.

Conditions that may and must be imposed

New section 98 applies to the conditions that may and must be imposed on the environmental authority (petroleum activities). The administering authority may impose conditions on the environmental authority that it considers necessary or desirable. Conditions can require the authority holder to do certain things, prohibit the holder from doing certain things and provide details on the cessation of the environmental authority. The administering authority must include any conditions that it is required to impose under an environmental protection policy (EPP) requirement. A condition can be imposed on an authority holder that continues to apply after the authority has ended or ceased to have effect. If the relevant petroleum authority for the environmental authority is, or is included in, a significant project, then any conditions stated in the Coordinator-General's report for the project must be imposed on the environmental authority. The administering authority must ensure that any other condition imposed on the environmental authority is consistent with the conditions imposed by the Coordinator-General.

Steps after granting application and the giving of financial assurance

New section 99 outlines the steps the administering authority must take after granting the application and the giving of financial assurance.

Information notice about particular decisions

New section 100 outlines the requirement of the administering authority to provide, within 8 business days after making a decision, to the applicant an information notice about particular decisions. The decisions in question

relate to a decision to refuse the application or a decision to impose a condition on the environmental authority other than a condition that is the same, or to the same effect, as a condition agreed to or requested by the applicant.

Division 4 Level 1 petroleum activities

Operation of div 4

New section 101 provides the application process for applying for an environmental authority (petroleum activities) for a level 1 petroleum activity.

Requirements for application

New section 102 sets out the requirements and content of an application for an environmental authority (petroleum activities). The application must describe each relevant petroleum authority and all relevant petroleum activities, be supported by enough information for the authority to make the decision, including, information about the likely risks to the environment, details of wastes to be generated, and any waste minimisation strategy. The application must include an environmental management plan and the application fee prescribed under a regulation.

Environmental management plan

New section 103 sets out the purpose and requirements of the environmental management plan. The purpose of the environmental management plan is to propose commitments to help the authority to decide what conditions will be included in the environmental authority. An environmental management plan must be submitted in the approved form and must describe each relevant petroleum authority, all relevant petroleum activities the subject of the application and contain information about the land the activities will be carried out on. The environmental management plan must also describe any potential adverse or beneficial impacts of the activities on the environmental values and best practice environmental management commitments proposed by the applicant.

EIS may be required

New section 104 sets out the requirements and timeframes the administering authority must adhere to when deciding whether an EIS is required for an application. This section is consistent with the requirements for EIS under Chapter 5 (section 164).

Public access to application

New section 105 sets out the requirements of the administering authority to keep applications open for inspection by members of the public at certain places from the application date to the review date. The administering authority must allow a person to take extracts or receive a copy of the application on the payment of an appropriate fee.

Public notice of application

New section 106 sets out the obligation and requirements of the applicant to make public notice of the application.

Required contents of application notice

New section 107 outlines the content that is required in the application notice.

Declaration of compliance

Section 108 sets out the obligation of the applicant to submit a declaration of compliance to the administering authority declaring whether or not the applicant has complied with the notice requirements under sections 106 and 107. The applicant is taken to have complied with the notice requirements if a declaration is given under this section and if the declaration states they have complied with the requirements.

Substantial compliance may be accepted

New section 109 sets out the procedure for accepting substantial compliance of the application notice.

Right to make submission

New section 110 sets out the rights of a person to make a submission about an application to the administering authority within the submission period.

Acceptance of submission

New section 111 outlines the requirements that need to be fulfilled for a submission to be accepted by the administering authority. A submission that complies with these requirements is a properly made submission, and the administering authority must accept any properly made submission.

Deciding application

New section 112 sets out the statutory timeframes for the administering authority to make a decision to either grant or refuse an application.

Criteria for decision

New section 113 details the criteria that must be considered by the administering authority in deciding whether to grant or refuse the application.

Conditions that may and must be imposed

New section 114 applies to the conditions that may or must be imposed on the environmental authority. The administering authority may impose conditions on the environmental authority that it considers necessary or desirable. Conditions can require the authority holder to do certain things, prohibit the holder from doing certain things and provide details on the cessation of the environmental authority. The administering authority must include any conditions that it is required to impose under an EPP requirement. A condition can be imposed on an authority holder that continues to apply after the authority has ended or ceased to have effect.

This new section includes the requirement that if a relevant petroleum authority is, or is included in, a significant project, any conditions for the authority stated in the Coordinator-General's report for the project must be imposed on the authority and any other condition imposed on the authority must be consistent with the Coordinator-General's conditions.

Steps after granting application and the giving of financial assurance

New section 115 provides the steps the administering authority must take after granting the application and the giving of financial assurance.

Information notice about particular decisions

New section 116 outlines the requirement on the administering authority to provide to the applicant and any submitter for the application, within 8 business days after making a decision, an information notice about the decision.

Division 5 Term of environmental authority (petroleum activities)

Term

New section 117 details the term of an environmental authority (petroleum activities). An environmental authority continues in force unless it is cancelled, surrendered or suspended under this chapter.

Part 3 Amending environmental authorities (petroleum activities) by application

Division 1 Making amendment application

Who may apply for amendment

New section 118 sets out that the holder of an environmental authority (petroleum activities) can, at any time, apply to the administering authority to amend the environmental authority. The holder cannot, however, apply to amend the condition of a relevant Environmental Code of Compliance.

Code compliance condition may be amended

New section 119 states that an applicant can make an amendment application for a code compliant authority to amend the code compliance condition or to impose new conditions on the authority. However, if this occurs then the authority will become a non-code compliant authority.

Requirements for amendment application

New section 120 details the requirements for an amendment application. An amendment application must be in the approved form, supported by enough information to allow the administering authority to decide the application and must be accompanied by the fee prescribed under a regulation.

Division 2 Processing amendment application

EIS may be required

New section 121 sets out the procedures and timeframes for the administering authority to decide if an EIS is required for an amendment application.

Public notice may be required

New section 122 refers to the ability of the administering authority to require public notice for an amended application, if the administering authority is satisfied that there is likely to be a substantial increase in the risk of environmental harm under the amended license. The section outlines what qualifies as substantial increase in risk and what the procedures are for dealing with this issue.

Public notice process

New section 123 sets out the procedures and timeframes for the public notice process.

Deciding application

New section 124 requires the administering authority to decide to grant or refuse the application, and sets out the relevant statutory timeframes for this process.

Criteria for decision

New section 125 refers to the criteria that must be considered by the administering authority when making a decision. The administering authority may grant an amendment application if it is satisfied that the

amendment is necessary and desirable, however this decision must take into account the criteria under part 3 for deciding an application to obtain an environmental authority (petroleum activities) as well as any existing provision of the environmental authority. The decision must also take into account whether or not the provision is proposed to be amended under the application and all or any petroleum activities carried out under the environmental authority before deciding the application.

Division 3 Miscellaneous provisions

Steps after making decision

New section 126 sets out the required steps the administering authority must undertake after making a decision on an amendment application.

When amendment takes effect

New section 127 outlines the different circumstances under which the amendment may take effect.

Information notice about decisions

New section 128 requires the administering authority to give the applicant an information notice about the decision to either grant or refuse the application within 8 business days after making a decision. This does not apply if the applicant has already provided a written agreement. The administering authority must also give an information notice about a decision to grant an application to any submitter if public notice was made.

Part 4 Transfers

Transfer only by approval

New section 129 states that an environmental authority cannot be transferred unless an application has been made under this part and the administering authority has approved the transfer.

A transfer application can be made and approved for a transfer from joint holders of an environmental authority where 1 or more joint holders will continue to be a holder of the environmental authority.

General requirements for transfer application

New section 130 states that a transfer application must be made to the administering authority in the approved form, supported by enough information to allow the administering authority to make a decision and accompanied by the appropriate fee. Both the holder of the environmental authority and the proposed transferee must make the transfer application.

Amendment application may accompany transfer application

New section 131 sets out the procedures for submitting an amendment application and transfer application at the same time. If the amendment is made and the conditions of the authority are amended or new conditions are imposed on it, the authority will become a non-code compliant authority.

Part 3 will apply, with necessary changes, to the amendment application as if a reference to the environmental authority holder included a reference to the proposed transferee.

The section states that the amendment application must not be granted before the transfer application is granted or if the transfer application is refused.

Additional requirement for transfer application for code compliant authority if no amendment application made

New section 132 applies if the environmental authority (petroleum activities) is a code compliant authority and the transfer application is not accompanied by an amendment application.

The section states that the transfer application must include a certification by the proposed transferee that the proposed transferee can, in carrying out the relevant petroleum activities for the environmental authority, comply with the code compliance condition.

Audit statement may be required

New section 133 refers to the ability of the administering authority to require an audit statement for the environmental authority, within 20 business days after a transfer application is made. An audit statement must be made by or for the environmental authority holder and must state the extent to which activities carried out under each petroleum authority have complied with the conditions of the environmental authority.

Deciding application

New section 134 states that the administering authority must consider each transfer application and decide to approve or refuse the transfer within 20 business days after the application date. The administering authority must also consider the status of any application under the petroleum legislation for the transfer to the proposed transferee of any relevant petroleum authority when making a decision.

Additional ground for refusal

New section 135 sets out an additional ground for refusal of a transfer application.

Steps after making decision

New section 136 sets out the required steps the administering authority must undertake after making a decision on a transfer application.

Part 5 Surrenders

Division 1 General provisions for surrenders

Surrender only by approval

New section 137 states that an environmental authority (petroleum activities) may be surrendered only if an application has been made under division 2 and the administering authority has approved the surrender. A holder of an environmental authority (petroleum activities) must make a

surrender application if required under section 139. The holder can make a surrender application at any other time.

Surrender may be partial

New section 138 states that the administering authority may approve a partial surrender of an environmental authority (petroleum activities), however there are grounds for the authority to refuse such an application.

When surrender application required

New section 139 sets out the circumstances in which a surrender application is required.

Notice by administering authority to make surrender application

New section 140 sets out the circumstances in which the administering authority may, by written notice, require a holder to make a surrender application for an environmental authority within a stated period.

Failure to comply with surrender notice

New section 141 states that if a person is given a surrender notice the person must comply with this notice unless they have a reasonable excuse. There is a maximum penalty of 100 penalty units for failure to comply with a surrender notice.

Division 2 Making surrender application

Requirements for surrender application

New section 142 sets out the requirements for making a surrender application. A surrender application must be made in the approved for and must be accompanied by enough information for the administering authority to decide the application, a final rehabilitation report (compliant with section 143), an audit statement and the appropriate fee. An audit statement must be made for or by the environmental authority holder, state the extent to which activities carried out under the environmental authority have complied with the conditions of the authority and state that the final rehabilitation report is accurate.

Division 3 Final rehabilitation reports

Content requirements for final rehabilitation report

New section 143 outlines the content requirements for a final rehabilitation report.

Amending report

New section 144 sets out the grounds and requirements for amending a final rehabilitation report.

FRR assessment report may be given

New section 145 states that the administering authority may give the person who submitted a final rehabilitation report and assessment report about the final rehabilitation report.

Division 4 Processing surrender applications

Deciding application

New section 145A states that the administering authority must consider and approve or refuse a surrender application within 20 business days after the authority receives the application.

If the application for surrender is refused because ongoing rehabilitation or remediation work is required then the environmental authority continues even though the tenure has expired. A new development approval under the IPA is not required, as the use is a continuing use of the land for a petroleum activity (see new section 77 (What is a petroleum activity)).

If the application for surrender is approved but remediation or rehabilitation is still required then an application for a development permit under the IPA is not required, as the use is a continuing use of the land for a petroleum activity (see new section 77(g) (What is a petroleum activity).

Given that rehabilitation and remediation may require work on an intermittent basis, the continuation of work after a period of absence in accordance with the requirements of a petroleum authority should not be taken to be the re-establishment of a use that has been abandoned.

Criteria for decision

New section 145B sets out the criteria the administering authority must consider when making a decision about a surrender application.

Steps after making decision

New section 145C sets out the required steps the administering authority must undertake after making a decision on a surrender application.

Part 6 Amendment, cancellation or suspension by administering authority

Division 1 Conditions for amendment, cancellation or suspension

Subdivision 1 Amendments

Corrections

New section 145D sets out the grounds for the administering authority amend an environmental authority (petroleum activities) to correct a clerical or formal error.

Other amendments

New section 145E sets out the grounds and requirements for the administering authority to amend an environmental authority (petroleum activities).

Subdivision 2 Cancellation or suspension

Conditions for cancellation or suspension

New section 145F outlines the circumstances in which the administering authority can cancel or suspend an environmental authority (petroleum activities).

Division 2 Procedure for amendment without agreement or for cancellation or suspension

Application of div 2

New section 145G refers to the application of division 2, which applies if the administering authority proposes to amend an environmental authority (petroleum activities) other than to make a correction or with the written agreement of the holder, or to cancel or suspend an environmental authority (petroleum activities).

Notice of proposed action

New section 145H outlines the procedural and content requirements for the administering authority to provide an environmental authority holder with a written notice of a proposed action.

Considering representations

New section 145I states the administering authority must consider any written representation made within the period stated in the notice under section 145H by the environmental authority holder.

Decision on proposed action

New section 145J sets out the requirements and procedure for the administering authority to decide on a proposed action.

Notice of proposed action decision

New section 145K sets out the requirements and procedures for the administering authority to provide a notice of a proposed action decision.

Division 3 Steps after making decision

Steps for corrections

New section 145L outlines the steps for the administering authority to make corrections to an environmental authority (petroleum activities).

Steps for amendment by agreement

New section 145M outlines the steps the administering authority must take for an amendment by agreement.

Steps for amendment without agreement or for cancellation or suspension

New section 145N sets out the steps the administering authority must take to amend, cancel or suspend an environmental authority (petroleum activities) without agreement.

Part 7 Financial assurance

Financial assurance may be required before authority is issued or transferred

New section 145O provides that the administering authority can decide to grant an application for, or to transfer, an environmental authority (petroleum activities). The requirement for a financial assurance can only be made if the financial assurance is justified by having regard to-

- the degree of risk of environmental harm caused by the activities; and
- the likelihood of action to rehabilitate or restore and protect the environment because of the environmental harm caused by the activities; and
- the environmental record of the applicant.

Power to require change to financial assurance

New section 145P outlines the grounds and procedure the administering authority must undertake for requiring a change to financial assurance.

Replenishment of financial assurance

New section 145Q refers to the ability of the administering authority to require replenishment of financial assurance if all or part of the financial assurance has been used and if the financial assurance is still in force. The section outlines the administering authority's obligation to give the permit holder a notice directing the holder to replenish the financial assurance within a stated period so that its amount and form complies with the financial assurance. It is a condition of the environmental authority that the holder must comply with this direction.

Part 8 Principal holders

Application of pt 8

New section 145R states that part 8 applies if 2 or more persons jointly hold an environmental authority (petroleum activities).

Appointment of principal holder

New section 145S states that a person can be appointed the principal holder of the environmental authority if, immediately before the issue of the environmental authority, the person held the position of principal applicant for the application and if the person's appointment was not cancelled under that section. The joint holders can sign a notice from all of them to the administering authority appointing 1 person as the principal holder or cancelling a person as a principal holder.

Effect of appointment

New section 145T states that the principal holder may give a notice or other documents relating to the environmental authority to the administering authority, or make a requirement under the EP Act relating to the environmental authority of all the holders by making the requirement of the principal holder.

Part 9 Miscellaneous provisions

Grounds for refusing application for or to transfer non-code compliant authority

New section 145U outlines the grounds for the administering authority to refuse an application for or to transfer a non-code compliant authority.

Restrictions on authority or transfer taking effect

New section 145V outlines the restrictions on an environmental authority (petroleum activities) or transfer taking effect.

Chapter 5 Environmental authorities for mining activities

Amendment of s 148 (Types of environmental authority (mining activities))

Clause 33 inserts new subsections after section 148. The clause states that each environmental authority (mining activities) is either a code compliant authority or a non-code compliant authority (mining activities). A code compliant authority is an environmental authority (mining activities) that was issued under section 164 or issued under section 167 if all relevant standard environmental conditions for the authority are conditions of the authority, and they are the only conditions of the authority. However, a code compliant authority ceases to be a code compliant authority if, under part 8, 9 or 12, its conditions are amended or new conditions are imposed on it. A non-code compliant authority is any environmental authority (mining activities) other than a code compliant authority.

Amendment of s 150 (What are the *application documents*)

Clause 34 amends section 150 by omitting the reference to "environmental management document" and replacing it with "EM plan". The reference to "or EMOS assessment report" is also omitted. These amendments update

the terminology to maintain consistency with the amendments to the legislation.

Replacement of ch 5, part 1, div 3 (Standard mining activities)

Clause 35 replaces chapter 5, part 1, division 3 relating to standard mining with updated definitions on what constitutes a level 1 mining project or a level 2 mining project.

Omission of ch 5, pt 2, div 1 (Introduction)

Clause 36 removes chapter 5, part 2, division 1 which related to the introduction of this section.

Renumbering of ch 5, pt 2, div 2

Clause 37 renumbers chapter 5, part 2, division 2 as chapter 5, part 2, division 1, as the previous division 1 has been removed.

Amendment of s 154 (General requirements for application)

Clause 38 inserts a new section relating to the general requirements for an application, as the types of applications have been amended under this legislation. The clause outlines the different types of applications (code compliant and non-code compliant) and their requirements.

Amendment of s 155 (Single application required for mining project)

Clause 39 amends section 155 which relates to a single application being required for mining projects by updating it to include a reference to whether each stated type is proposed to be a code or non-code compliant authority. This clause also removes section 155(4) and renumbers subsections (5) to (7) as sections 155(4) to (6) to accommodate the removal of section 155(4).

Replacement of ch 5, pt 2, div 3 (Assessment level decision for certain applications)

Clause 40 omits chapter 5, part 2, division 3 which relates to assessment level decisions for certain applications and replaces it with a new chapter 5, part 2, division 2.

Division 2 EIS decision for particular non-code compliant applications

Application of div 2

New section 161 outlines the application of this division, which relates to non-code compliant applications that are for an environmental authority (mining activities) for a level 1 mining project and no relevant mining tenement for the application is, or is included in, a significant project.

Decision about EIS requirement

New section 162 outlines the administering authority's obligation to decide whether an EIS is required for the application. The administering authority must consider the standard criteria when making a decision, and if the authority does not make a decision within the required period, it is taken that no EIS is required for the application. The section outlines what constitutes a required period.

Minister's power to overturn decision about EIS requirement

New section 163 sets out the power of the EPA Minister to make a decision on whether an EIS is required for an application at any time before the environmental authority (mining activities) is issued. The Minister must consider the standard criteria when making a decision.

Replacement of ch 5, pt 3 (Processing environmental authority (prospecting) applications

Clause 41 replaces chapter 5, part 3 which related to processing environmental authority (prospecting) applications with new headings and sections related to the processing of applications for level 2 mining projects. The part is now split into 2 parts related to code compliant applications and non-code compliant applications.

Part 3 Processing of applications for level 2 mining projects

Division 1 Code compliant applications

Subdivision 1 Process if there is a relevant mining claim or mining lease

Automatic issuing of code compliant authority if application requirements complied with

New section 164 sets out the obligation of the administering authority to automatically issue a code compliant authority if it complies with the application requirements, and if no relevant mining tenement for a code compliant application is a mining claim or mining lease and if section 155 does not apply to the applicant, or if it does apply to the applicant, section 155(2) and (3) have been complied with.

Conditions of code compliant authority

New section 165 sets out that the only conditions for a code compliant authority will be the standard conditions. This does not apply however if at some stage the authority becomes a non-code compliant authority.

Subdivision 2 Process if there is a relevant mining claim or mining lease

Application of sdiv 2

New section 166 states that this subdivision applies to a code compliant application if any relevant mining tenement is a mining claim or mining lease.

Modified application of pt 6 divs 6 to 8

New section 167 states that part 6, divisions 6 to 8 apply as if the application were an application for a level 1 mining project and with any

other necessary changes. For the purpose of the application of these divisions, the draft environmental authority for the application is taken to be all of the relevant standard environmental conditions for the proposed environmental authority (mining activities). For section 216 to apply the applicant cannot object to the draft environmental authority and another entity may object to the draft only to the extent it relates to a relevant mining tenement that is a mining claim or mining lease.

Non-code compliant application fee must be paid if decision is to grant non-code compliant authority

New section 168 applies if the Minister's decision is to grant an environmental authority (mining activities) and the conditions of the environmental authority are not the same as the conditions in the draft environmental authority for the application.

However, the administering authority must not issue the environmental authority until the applicant has paid the amount of the application fee for a non-code compliant application.

Division 2 Non-code compliant applications

Subdivision 1 Process if no relevant mining claim or mining lease

Application of sdiv 1

New section 169 sets out that this subdivision applies only to non-code compliant applications for a for a level 2 mining project if no relevant mining project tenement is a mining claim or mining lease.

Additional conditions may be imposed

New section 170 sets out that the administering authority can impose a non-standard environmental condition on a non-code compliant environmental authority (mining activities). The applicant can also request the administering authority to impose an additional condition, however the request must be submitted to the administering authority in the approved form, be supported by enough information for the authority to make a decision, and be accompanied by the appropriate fee. However, an

additional condition can be imposed even if the applicant does not ask for it.

The administering authority must comply with any relevant EPP requirement and, subject to this, also consider the standard criteria, when deciding whether to impose an additional condition. An additional condition can only be imposed if it is considered necessary and desirable. An extra condition cannot make a level 2 mining project a level 1 mining project.

Deciding application

New section 171 sets out the steps the administering authority must take and the requirements it must fulfil when deciding an application.

Consequence of failure to decide

New section 171A states that an application will be granted at the end of the required period if the administering authority has not decided to refuse the application and if the application requirements have been complied with. If the applicant has requested an additional condition and the administering authority has decided not to refuse the request then the condition will be imposed on the environmental authority.

Grant of application

New section 171B sets out the steps the administering authority must take and the requirements it must fulfil when granting an application.

Notice about refusal or condition decision

New section 171C sets out the requirement of the administering authority to provide a notice to the applicant if it decides to refuse the application or if it decides to impose an additional condition that is not the same, or to the same effect, as an additional condition agreed to or requested by the applicant, or if it decides to refuse a request by the applicant to impose an additional condition. The administering authority must provide a notice of such decisions within 10 business days after making the decision, and the notice must include details of the decision, and reasons for it, and state that the decision does not stop the applicant from applying for another environmental authority (mining activities) for the activities that are the subject of the application.

Subdivision 2 Process if there is a relevant mining claim or mining lease

Modified application of pt 6 divs 5 to 8

New section 171D states that this section applies to a non-code compliant application for a level 2 mining project if any relevant mining tenement is a mining claim or mining lease.

Part 6, divisions 5 to 8 apply as if the application were an application for a level 1 mining project and with other necessary changes.

For section 216 to apply, an entity may object to the draft environmental authority for the application only to the extent it relates to a relevant mining tenement that is a mining claim or mining lease.

Replacement of ch 5, pt 4, hdg (Processing environmental authority (mining claim) applications

Clause 42 replaces chapter 5, part 4, heading with a new heading and section relating to the processing of non-code compliant applications for environmental authority (mining claim) for level 1 projects, to maintain consistency with previous amendments and to set out the process for making an application for this new authority type.

Amendment of s 172 (Operation of pt 4)

Clause 43 sets out that this division applies to the processing of non-code compliant applications for environmental authority (mining claim) for a level 1 mining projects.

Omission of s 176 (Additional conditions may be included)

Clause 44 omits section 176, which related to additional conditions for standard authorities.

Replacement of ch 5, pt 5, hdg (Processing environmental authority (exploration) and environmental authority (mineral development) applications

Clause 45 replaces the chapter 5, part 5 heading with a new heading that relates to the processing of non-code compliant applications for

environmental authority (exploration) or environmental authority (mineral development) for level 1 mining projects.

Omission of ch 5, pt 5, div 1, hdg (Preliminary)

Clause 46 omits chapter 5, part 5, division 1 heading as it is no longer relevant due to the other amendments.

Amendment of s 178 (Operation of pt 5)

Clause 47 amends section 178 by inserting a reference to assessing non-code compliant application for an environmental authority (exploration) or environmental authority (mineral development) for a level 1 mining project, to update the section to reflect the amendments.

Omission of ch 5, pt 5, div 2 (Standard applications)

Clause 48 removes chapter 5, part 5, division 2 as it relates to standard applications.

Omission of ch 5, pt 5, div 3, hdg (Non-standard applications)

Clause 49 removes the heading relating to non-standard applications as the whole part now relates to non-standard applications.

Omission of ch 5, pt 5, div 3, sdiv 1, hdg (Preliminary)

Clause 50 omits the chapter 5, part 5, division 3, subdivision 1 heading.

Omission of ch 5, pt 5, div 3, sdiv 2, hdg (EIS stage)

Clause 51 removes the heading 'EIS stage'.

Omission of ch 5, pt 5, div 3, sdiv 3, hdg (Environmental management document stage)

Clause 52 removes the heading 'Environmental management document stage'.

Amendment of s 187 (Environmental management plan required)

Clause 53 renumbers section 187(2) as section 187(3). The clause states that the plan must comply with section 189, which relates to content requirements for environmental management plans.

Amendment of s 188 (Purpose of environmental management plan)

Clause 54 replaces the reference to 'environmental management plan' with 'submitted EM plan', which is the new terminology, to maintain consistency with the amendments.

Amendment of s 189 (Environmental management plan – content requirements)

Clause 55 replaces the heading with a new heading that refers to content requirements for submitted EM plan, to reflect the new terminology that is being used. The clause also replaces the reference to 'an environmental management plan' with 'a submitted EM plan' to update the terminology. Section 189(1)(c) is amended after 'state' to include a reference to 'to the extent a code of environmental compliance does not apply to the relevant mining activities'. Section 189(1)(c) to (e) is renumbered to accommodate the changes to this section as section 189(1)(d) to (f). A new section (c) has been inserted stating that 'any code of environmental compliance and standard environmental conditions that are to apply to the relevant mining activities'.

Amendment of s 190 (Amending environmental management plan)

Clause 56 replaces the words before subsection (2) with 'Submitted EM plan may be amended', to update the terminology to reflect the amendments. Section 190(2) is amended by replacing 'original plan' with 'submitted EM plan', to update the terminology. Section 190(2) to (4) has been renumbered as section 190(1) to (3) to accommodate the above amendments. Section 190(5) has been removed.

Amendment of s 191 (EM plan assessment report may be prepared)

Clause 57 removes the reference to 'a submitted environmental management plan' and replaces it with 'the submitted EM plan' to update the terminology to reflect the amendments.

Amendment of s 192 (Requirements for EM plan assessment report)

Clause 58 removes the reference to 'a submitted environmental management plan' and replaces it with 'the submitted EM plan' to update the terminology to reflect the amendments.

Omission of ch 5, pt 5, div 3, sdiv 4, hdg (Decision stage)

Clause 59 removes the heading relating to the decision stage.

Replacement of ch 5, pt 6, hdg (Processing environmental authority (mining lease) applications

Clause 60 replaces the chapter 5, part 6 heading with a new heading that refers to the processing of non-code compliant applications for environmental authority (mining lease) for level 1 mining project. This updates the terminology of the authority and application types and content of this section.

Amendment of s 196 (Operation of pt 6)

Clause 61 amends section 196 after 'application' to include a reference highlighting that part 6 is applicable 'if the application is a non-code compliant application for a level 1 mining project'. This updates the section to maintain consistency with amendments to this part.

Replacement of s 197 (Summary of pt 6 process)

Clause 62 removes the summary of the part 6 process and replaces it with a new summary of the part 6 process. The summary has been updated to reflect amendments to the processing of applications.

Replacement of ch 5, pt 6, div 2, heading (EIS stage for non-standard applications)

Clause 63 replaces the heading with 'Division 2 EIS stage' and removes the reference to non-standard applications as the whole part relates to non-standard applications.

Amendment of s 198 (Application of div 2)

Clause 64 removes the reference to non-standard applications as the whole part relates to non-standard applications.

Amendment of s 199 (EIS process applies)

Clause 65 removes the term 'EMOS' and replaces it with 'environmental management plan' to update the terminology to reflect the amendments.

Replacement of ch 5, pt 6, div 3, heading (Environmental document stage for non-standard applications)

Clause 66 replaces the chapter 5, part 6, division 3 heading to update the terminology.

Omission of s 200 (Application of div 3)

Clause 67 removes section 200 related to the application of division 3.

Replacement of s 201 (EMOS required)

Clause 68 removes the section relating to the requirement of an EMOS to update the terminology to reflect the documents now required under the amendments. The clause sets out the requirements for an environmental management plan.

Amendment of s 202 (Purpose of EMOS)

Clause 69 removes the term 'EMOS' in the heading and section and replaces it with 'submitted EM plan' to ensure the terminology is consistent with the amendments.

Amendment of s 203 (EMOS – content requirements)

Clause 70 replaces the heading and section relating to EMOS content requirements and replaces it with a new heading and section on content requirements for submitted EM plan. The clause outlines the content requirements for a submitted EM plan.

Amendment of s 204 (Amending EMOS)

Clause 71 removes the heading relating to amending EMOS and replaces it with a new heading relating to submitted EM plan may be amended. The term 'submitted EMOS' is removed from section 204(2) and replaced with 'submitted EM plan'. Section 204(3) and (4) have been amended by removing the term "EMOS amendment notice" and replacing it with the term 'EM plan amendment notice'. Section 204(2) to (4) have been renumbered as section 204(1) to (3) and section 204(5) has been removed. These changes have been made to reflect the updated terminology in the amendments.

Amendment of s 205 (EMOS assessment report may be prepared)

Clause 72 removes the term 'EMOS' from the heading and replaces it with 'EM plan'. Section 205(1) has been amended to remove the term "EMOS" and replace it with 'environmental management plan'. Section 205(2) to (4) has been amended to remove the term 'EMOS assessment report' and replaced with 'EM plan assessment report'. Section 205(2) has been amended to remove the term 'a submitted EMOS' and replaced with the term 'the submitted EM plan'. These changes have been made to reflect the updated terminology in the amendments.

Amendment of s 206 (Requirements for 'EMOS assessment report')

Clause 73 amends section 206 by removing the term 'EMOS assessment report' and replacing it with 'EM plan assessment report'. Section 206(b)(i) has been amended to remove the term 'submitted EMOS' and has been replaced it with the term 'EM plan'. Section 206 (b)(ii) has been amended to remove the term 'EMOS' and has been replaced with the term 'submitted EM plan'. These changes have been made to reflect the updated terminology in the amendments.

Amendment of s 207 (Administering authority may refuse application)

Clause 74 removes section 207(2)(c) and renumbers section 207(2)(d) and (e) as section 207(2)(c) and (d). Section 207(3) omits from 'applicant' to 'non-standard application' and inserts 'applicant' to update the terminology in this section.

Amendment of s 208 (Obligation to prepare draft environmental authority

Clause 75 amends section 208 to ensure consistency with the omission of section 209.

Omission of s 209 (Conditions – standard applications)

Clause 76 removes this section relating to standard applications as these types of applications are not considered in this part.

Amendment of s 210 (Conditions – non-standard applications)

Clause 77 removes the words before section 210(2) and replaces them with 'Conditions that may and must be included in the draft environmental authority'. The clause also renumbers section 210(1) to (4) to section 210(1) to (3).

Amendment of ch 5, pt 6, div 6, hdg (Public notice and objections stage for all applications)

Clause 78 amends the heading in chapter 5, part 6, division 6 by removing the words 'for all applications'.

Amendment of s 213 (Public access to application documents)

Clause 79 amends section 213 to provide that application documents may be displayed at the administering authority's head office or another appropriate office of the authority.

Amendment of s 216 (Right to make objection)

Clause 80 removes section 216(2) as it refers to standard applications which are not relevant in this chapter. 'Section 209 or 210' in section 216(3) has been removed and been replaced by 'section 210' in response to

amendments to section 210. Section 210(3) to (5) has been renumbered as section 216(2) to (4) to accommodate the removal of section 216(2).

Amendment of s 222 (Nature of objections decision)

Clause 81 removes the reference to 'section 209 or 210' and replaces it with 'section 210' because section 209 is omitted.

Amendment of s 223 (Matters to be considered for objections decision)

Clause 82 removes section 223(e) as it refers to standard applications that are not relevant in this chapter following these amendments to the legislation. Paragraphs (e) to (f) have been renumbered.

Amendment of s 225 (EPA Minister's decision on application)

Clause 83 removes the reference to 'section 209 or 210' and replaces it with 'section 210' in response to amendments to section 210.

Amendment of s 234 (Content requirements)

Clause 84 omits section 234(1)(d)(ii)(A) and inserts a new section relating to the content requirements of a Plan of Operations. Sub-subparagraph (A) now states that if there is a submitted EM plan for the environmental authority then an action plan must be included for achieving or implementing the environmental protection commitments and control strategies under the plan.

Replacement of s 239 (Additional conditions may be sought for standard authorities)

Clause 85 removes section 239 heading and replaces it with 'Conditions of code compliant authority may be amended'. This section is now split into 2 subsections, with the addition of a new subsection (2), which states that the effect of the amendment is that the authority will become a non-code compliant authority.

Amendment of s 240 (Requirements for application)

Clause 86 removes section 240(c) which refers to an amendment application requiring a fee to accompany it and replaces it with '(c) accompanied by each of the following –

- the amount of the next annual fee for the environmental authority (mining activities) that would be payable if the amendment applied for is made; and
- the fee prescribed under a regulation.'

Under the new amendments a fee prescribed under a regulation and the next annual fee for the environmental authority is required for an amendment application.

Omission of ch 5, pt 8, div 3 (Processing amendment applications for standard authorities)

Clause 87 removes chapter 5, part 8, division 3 as it refers to standard authorities, which are no longer applicable under this chapter.

Replacement of ch 5, pt 8, div 4, hdg (Processing other amendment applications)

Clause 88 has removed chapter 5, part 8, division 4 heading and replaced it with 'Division 3 Processing application' as it needed to be renumbered as division 3 has been removed, and the reference to other applications has been removed as there is only one type of application under this chapter – a non-standard application.

Omission of ch 5, pt 8, div 3. as renumbered under this Act, sdiv 1 (Preliminary)

Clause 89 removes chapter 5, part 8, division 4, subdivision 1 as it refers to non-standard applications and as this chapter now applies only to non-standard applications this simplifies the section.

Renumbering of ch5, pt 8, div 4, sdiv 3, as renumbered under this Act, sdiv 2 (Assessment level decision)

Clause 90 replaces the numbering of chapter 5, part 8, division 4, subdivision 2 and renumbers it as chapter 5, part 8, division 4, subdivision 1.

Insertion of new s 247A

Clause 91 inserts a new subsection 247A after section 247. The clause provides the criteria the administering authority must consider when making an assessment level decision.

Replacement of s 248 (Automatic refusal if EIS required)

Clause 92 updates section 248 that relates to automatic refusal of an amendment application if an EIS is required. It is replaced with a new section 248, which involves providing a written notice of an EIS requirement decision to the applicant and requesting that the applicant provide the administering authority with draft terms of reference for the EIS.

Renumbering of ch 5, pt 8, as renumbered under this Act, sdiv 3 (Process if decision is significant increase in environmental harm likely and EIS not required)

Clause 93 renumbers chapter 5, part 8, division 4, subdivision 3 as chapter 5, part 8, division 4, subdivision 2.

Amendment of s 250 (Application of sdiv 3)

Clause 94 removes 'sdiv 3' from the heading and replaces it with 'sdiv 2'.

Amendment of s 251 (Relevant application process applies)

Clause 95 omits section 251(2). This is replaced with a new section that states that if the environmental authority is an environmental authority (mining claim) or environmental authority (mining lease) the following provisions apply, with necessary changes, as if the application were an application for the authority for either a code compliant authority or a non-code authority for a level 2 mining project (part 3, division 2, subdivision 1 will apply) or for a non-code compliant authority for a level 1 mining project (part 6, divisions 3 to will apply).

This updates the section to include the new types of authorities.

In section 251(3)(b) after 'subject to' 'subsections (4) and (5) and' has been inserted. The references to these subsections have been included as new subsections (4) and (5) have been inserted into this section.

Subsection (4) has been inserted which outlines that, to remove any doubt, an objection declared under section 216 as applied under subsection 216 may be made about an existing provision of the environmental authority only to the extent the provision is proposed to be amended under the application, and an objection cannot be made about environmentally relevant activities carried out under the environmental authority before the deciding of the application.

Replacement of s 253 (Previous environmental management document may be amended)

Clause 96 removes section 253 and replaces it with a new section 253. The clause states that a submitted plan may be amended and outlines the requirements for compliance with this condition.

Renumbering of ch 5, pt 8, div 3, as renumbered under this Act, sdiv 4 (Process if decision is significant environmental harm unlikely)

Clause 97 renumbers chapter 5, part 8, division 4, subdivision 4 as chapter 5, part 8, division 4, subdivision 3.

Amendment of s 256 (Application of sdiv 3)

Clause 98 removes from the section 256 heading the words ‘sdiv 4’ and replaces it with ‘sdiv 3’.

Insertion of new s 258A

Clause 99 inserts a new section 258A. This clause outlines the circumstances in which a submitted EM plan can be amended and the requirements for amending an EM plan in compliance with sections 189 and 203.

Amendment of s 259 (Transfer only by approval)

Clause 100 removes section 259(2) and replaces it to clarify that a transfer application can be made and approved that involves joint holders of an environmental authority if 1 or more of the joint holders will continue to be a holder of the environmental authority.

Amendment of s 260 (Requirements for transfer application)

Clause 101 removes the term 'Requirements' from the section 260 heading and replaces it with 'General requirements'. The clause also adds a note to section 260(2), which states that if the amendment is made and the conditions of the authority are amended or new conditions are imposed on it, the environmental authority will become a non-code compliant authority.

Insertion of new s 260A

Clause 102 inserts a new section 260A entitled 'Additional requirement for transfer application for code compliant authority if no amendment application made'. This section applies if the environmental authority (mining activities) is a code compliant authority and the transfer application is not accompanied by an amendment application. The section states that the transfer application must also include a certification by the proposed transferee that all mining activities to be carried out by the proposed transferee under the environmental authority comply with the criteria prescribed under section 151 for that type of environmental authority to be a code compliant authority, and that the proposed transferee can, in carrying out the mining activities, comply with the relevant standard environmental conditions for the environmental authority.

Amendment of s 262 (Deciding application)

Clause 103 removes the words 'relevant standard environmental condition' from section 262(2)(b) and replaces them with 'conditions of the environmental authority'.

Amendment of s 265 (Effect of plan of operations and environmental management documents after transfer)

Clause 104 removes the reference to 'environmental management documents' and replaces it with the updated term 'environmental management plan' to make it consistent with the new amendments.

Amendment of s 274 (Content requirements for report)

Clause 105 removes the reference to 'environmental management document' and replaces it with the updated term 'environmental management plan' to make it consistent with the new amendments.

Amendment of s 280 (Administering authority may require environmental audit)

Clause 106 removes the reference to 'environmental management documents' and replaces it with the updated term 'environmental management plan' to make it consistent with the new amendments.

Omission of s 291 (Other amendments – standard authorities)

Clause 107 removes section 291 as it is being replaced with a new general section about other amendments in section 292.

Amendment of s 292 (Other amendments – non-standard authorities)

Clause 108 removes the section 292 heading and replaces it with 'Other amendments', as the other amendments that can be made have been combined for both standard and non-standard authorities into this one section. In section 292(1) the words 'non-standard' have been removed and replaced with 'an' so that it just refers to an environmental authority, rather than a particular type of authority. In section 292(2)(l) the word 'EMOS' has been replaced with 'submitted EM plan' to make the terminology consistent with the rest of the EP Act. In section 292(2)(b) the words 'representation or declaration' have been replaced with 'certificate, declaration or representation' to include certificates as a possible source of a materially false or misleading material. In section 292(3) the words 'an environmental management document or plan of operations' have been replaced with 'any submitted EM plan or plan of operations for the environmental authority', to make it consistent with the amended terminology of the EP Act.

Amendments of s 293 (Conditions)

Clause 109 amends section 293(2)(a) to ensure the administering authority may cancel or suspend an environmental authority (mining activities) if the environmental authority has been transferred because of a materially false or misleading representation or declaration.

Amendment of s 302 (Requirement to seek advice from MRA chief executive)

Clause 110 omits sections 302(1)(c) and (d) which refer to requiring the advice of the MRA chief executive for other decisions on non-standard mining applications, non-standard environmental authorities (mining activities) and draft environmental authorities for environmental authority (mining lease) applications for non-standard applications. A new paragraph (c) has been inserted which requires the MRA chief executive's advice for decisions under this part about non-code compliant applications or non-code compliant authorities for a level 1 mining project, to which decision the applicant or authority holder has not agreed to in writing.

Insertion of new ch 5, pt 13, div 1A

Clause 111 inserts a new division 1A into chapter 5, part 13. The division relates to the transfer of interest in an application for or to transfer environmental authority (mining activities). The division outlines the process and requirements whereby the applicant may, by written notice given to the administering authority, amend the application to change the name of the applicant.

Chapter 6 General provisions about environmental authorities and registration certificates

Omission of ch 6, part 1 (Integrated authorities)

Clause 112 relates to the removal of integrated authorities from the legislation. Project authorities for integrated petroleum developments are a regulatory tool that will replace integrated authorities. It is intended that the administering authority will grant a single project authority covering all petroleum activities and all relevant associated ERAs (rather than separate authorities for different ERAs or for separate petroleum authorities that are essentially part of the same operation). These authorities will become the prevalent form of authority and will provide a more flexible approach in dealing with changes in tenure under the P&G Act.

Omission of ch 6, part 2, hdg (Miscellaneous provisions)

Clause 113 omits the chapter 6, part 2 heading.

Amendment of s 318A (Changing anniversary days)

Clause 114 removes section 318A, which relates to the changing of anniversary days.

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

Clause 115 removes the term 'environmental authority, other than a level 2 approval' from section 364(1) and (2) and inserts the term 'environmental authority (mining activities)'. Section 363(4) and (5) have been renumbered as section 364 (6) and (7). Financial assurances previously could be required as a condition of environmental authorities (other than mining approvals), environmental management programs or site management plans. The amendment means that a financial assurance can be required as a condition of an environmental authority (mining activities). Financial assurance is dealt with under chapter 4A (Environmental authorities for petroleum activities) of the Act.

Amendment of s 365 (Person may show cause why financial assurance should not be required)

Clause 116 amends section 365 to make it consistent with the new terminology. The clause alters the section 365 heading by removing an 'a' and inserting 'for environmental management program or site management plan', so that the heading now clarifies that a person may show cause why financial assurance should not be required for environmental management programs or site management plans. The clause also replaces section 365(1) from 'an environmental authority' to 'level 2 approval, or' with 'a'. The words 'authority or' are removed from section 365(1) and the words 'environmental authority or' are removed from section 365(2)(c). The words 'issues the environmental authority or' are removed from section 365(4)(b).

Amendment of s 367 (Claims on financial assurances)

Clause 117 inserts a definition for 'financial assurance'.

Amendment of s 426 (Environmental authority required for mining or petroleum activity)

Clause 118 removes section 426(1)(a) and (b) and replaces them with new paragraphs that clarify that if an activity is a mining activity, then a non-code compliant authority under chapter 5 for the level 1 mining project of which the mining activity is part is required for that activity. However, if the activity is a level 1 petroleum activity then an environmental authority (petroleum activities) for the petroleum activity is required.

Section 426(2)(a) and (b) have been removed and replaced to clarify that if the activity is a mining activity then a code compliant authority or a non-code compliant authority under chapter 5 for the level 2 mining project of which the mining activity is part of is required. However, if the activity is a level 2 petroleum activity then an environmental authority (petroleum activities) for the petroleum activity is required.

Omission of s 428 (New approval required for certain activities if significant change)

Clause 119 deletes this section relating to the requiring of a new approval for certain activities if there are significant changes (10% increase or more in the release of contaminant into the environment under the approval).

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

Clause 120 alters the definition of an interstate licence by adding approvals similar to a development approval for a chapter 4 activity or a registration certificate.

Amendment of s 430 (Contravention of condition of environmental authority)

Clause 121 amends section 430(2)(a) by removing the term 'licence' and replacing it with 'an environmental authority (petroleum activities) for a level 1 petroleum activity'. In section 430(1)(a) the term 'level 2 approval' has been removed and replaced with 'an environmental authority (petroleum activities) for a level 2 petroleum activity'. These changes amend the authority names to make them consistent with the new petroleum legislation amendments.

Amendment of s 480 (False, misleading or incomplete documents)

Clause 122 inserts new subsections (4) and (5) which outlines additional grounds for deciding if a document is false or misleading, and states that subsection (4) does not apply if the person shows that when the declaration was made the person had reasonable grounds to believe that they could comply with the condition.

Amendment of s 495 (Proceedings for indictable offences)

Clause 123 amends section 495(4) to remove the requirement that the maximum penalty that may be imposed for an indictable offence heard summarily is 165 penalty units. This amendment is required to correct an anomaly in the EP Act relating to maximum monetary penalties for indictable offences dealt with under summary proceedings. The maximum penalty of imprisonment that may be summarily imposed for an indictable offence continues to be 1 year imprisonment.

Amendment of s 520 (Dissatisfied person)

Clause 124 removes section 520(1)(d) as it refers to integrated authorities as these authorities have been replaced by project authorities. Section 520(1)(e) to (t) has been renumbered to accommodate the change. Section 520(2)(a) has been removed and replaced with '(a) an application for an environmental authority (petroleum activities) for a level 1 petroleum activity' to update the name of the new authority. Section 520(2)(b) has been amended by removing 'chapter 4A, part 3' and replacing it with 'chapter 4A, part 2', to accommodate the changes in chapter 4.

Amendment of s 529 (Decision for appeals against refusals under s 207)

Clause 125 removes the reference to 'a non-standard application' and replaces it with 'an application', so that this clause is not just applicable to non-standard applications for environmental authorities (mining lease).

Amendment of s 540 (Required registers)

Clause 126 has been amended to reflect the new authority name by adding '(petroleum activities)' after 'environmental authorities'. The clause also replaces section 540(1)(d)(iii), which now refers to FRR assessment

reports. Section 540(1)(e)(ii) is amended by omitting the term 'environmental management documents' and replacing it with 'submitted EM plans'. The term 'and EMOS assessment reports' has been removed from section 540(1)(e)(iii) as the reference to this document is no longer relevant.

Amendment of s 549 (Minister may approve standard environmental conditions)

Clause 127 inserts, after 'activity' in section 549(1), the phrase 'or the giving of financial assurance as security for—

- compliance with the relevant environmental authority and its conditions; and
- costs or expenses, or likely costs or expenses, mentioned in section 367'.

Replacement of ss 550 and 550A

Clause 128 replaces sections 550 and 550A with a new section 550 related to the effect of changes to standard environmental conditions. The clause outlines the effects of change to conditions and the timeframes that apply.

Amendment of s 575 (Entry orders)

Clause 129 amends section 575(5) by omitting the term 'an environmental requirement' and replacing it with 'the environmental requirement'. Section 575(7) to (9) has been renumbered as section 575(8) to (10). A new subsection (7) has been inserted which states that 'Unless the court otherwise orders, an entry order remains in force until the environmental requirement is complied with.'. Section 575(8) (after renumbering) has been amended to include after 'must state' the term 'each of'. Section 575(8)(d) (after renumbering) has been replaced with new paragraphs (d) and (e). Section 575(10) (after renumbering) has been amended by omitting the term 'subsection (8)'and replacing it with 'subsection (9)'.

Replacement of s 579 (Compensation)

Clause 130 replaces section 579. The new section applies if a person (the responsible person under this Act who must comply with an environmental requirement), enters, or authorises someone else to enter, land to which the requirement relates to comply with the requirement.

The section states that compensation is payable from the responsible person to any owner or occupier of the land for any compensatable effect the owner or occupier suffers because of the entry or work conducted in relation to the land to comply, or purport to comply, with the environmental requirement. However, compensation is not payable if the work was conducted by someone other than the responsible person and the responsible person did not authorise the other person to conduct the work. The clause outlines the jurisdictions under which compensation may be claimed and ordered in a proceeding brought in a court of competent jurisdiction. A court may order the payment of the compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.

The clause also defines the terms 'compensatable effect', 'enter' and 'owner'.

Amendment of s 584 (Definitions for pt 2)

Clause 131 inserts new definitions for 'additional conditions' and 'conversion application'.

Amendment of s 585 (What is a *condition* of a mining tenement for div 2)

Clause 132 replaces the reference to 'EMOS' in section 585(4)(d)(i) with 'environmental management overview strategy'.

Replacement of s 593 (Transitional authority taken to be non-standard)

Clause 133 replaces the reference to 'non-standard environmental authority (mining activities)' with 'a non-code compliant authority under chapter 5 for mining activities that are level 1 environmentally relevant activities'. This updates the terminology of the authorities to reflect other amendments.

Replacement of s 603 (Conversion to standard authority by application)

Clause 134 replaces section 603 which is split into sections 603A, 603B and 603C. The heading for section 603 has been replaced with 'Application to convert transitional authority to an environmental authority

for a level 2 mining project'. The section sets out the process for applying to the administering authority to convert a transitional authority to a code compliant authority or a non-code compliant authority for a level 2 mining project (under chapter 5). The section sets out the requirements for the conversion application, the circumstances in which particular applications may be automatically converted and the process for deciding the application if additional conditions are requested.

Amendment of ch 13, pt 2, division 4, sdiv 4,hdg (Environmental management document requirements)

Clause 135 removes the words 'environmental management document' from the heading and replaces it with 'environmental management plan'. This updates the terminology to make the section consistent with the rest of the amendments.

Amendment of s 608 (Environmental management document may be required)

Clause 136 replaces the term 'document' in the heading with the term 'plan'. The clause also amends section 608(2) by omitting from 'submit to it' and inserting 'submit an environmental management plan to it'. Section 608(4) has been replaced, which defines what an environmental management plan is under this section and that it is to be taken to be the submitted EM plan for the transitional authority. The clause also inserts a new transitional provision relating to existing environmental management documents.

Omission of s 622 (Effect of commencement on particular integrated authorities)

Clause 137 omits section 622 as it refers to integrated authorities, which no longer exist under these new amendments.

Chapter 13 Savings, transitional and related provisions

Insertion of new ch 13, pt 6

Clause 138 inserts a new chapter 13, part 6 relating to transitional provisions for the *Environmental Protection and Other Legislation Amendment Act 2004*. A new heading has been inserted and the part has been split into 3 divisions. The clause also inserts a section about the effect of commencement on particular applications in progress. This outlines the various effects of commencement on different types of applications.

Part 6 Transitional provisions for Environmental Protection and Other Legislation Amendment Act 2004

Division 1 Preliminary

Definitions for pt 6

New section 635 inserts definitions for 'commencement', 'new chapter 4A' and 'old chapter 4A'.

Division 2 Provisions for former integrated authorities

Application of div 2

New section 636 states that this division applies to the constituent parts of an integrated authority that, under the existing Act, was in force immediately before the commencement.

Continuing status of each constituent part as an environmental authority

New section 637 states that this applies despite the repeal of former chapter 6, part 1 and that it is subject to section 638. The section states that from commencement of this Act each constituent part will become an environmental authority of the type stated in the integrated authority. The repeal does not change the anniversary days of the environmental authorities and the relevant provisions of chapters 4A, 5 and 6 apply to the environmental authorities.

Clause 137 has omitted section 622 (Effect of commencement on particular integrated authorities) of the EP Act to avoid confusion with new part 7 division 2 provisions which deal with integrated authorities that may have constituent parts that are environmental authorities for mining and petroleum activities. Section 622 was a transitional provision inserted by *Environmental Protection Legislation Amendment Act 2003* that commenced on 4 October 2004. Despite its omission under this Bill, the effect of section 622 with respect to integrated authorities for chapter 4 activities continues. Chapter 4 activities are environmentally relevant activities that are not petroleum or mining activities.

This Bill does not affect section 614 (Existing Act continues to apply for special agreement Acts) of the EP Act, which continues to apply to mining activities to which special agreement Acts relate. Section 614 was inserted by the *Environmental Protection and Other Legislation Amendment Act 2000* (EPOLA Act 2000) and provides that the EP Act continues to apply to such activities as if the EPOLA Act 2000 had not been made. Therefore, this Bill does not affect the application of the EP Act to special agreement Act mining activities.

Re-issuing of environmental authorities if they do not form a single mining or petroleum project

New section 638 states that the administering authority can at any time after the commencement, decide whether the constituent parts of the environmental authority form a single petroleum project. If the administering authority decides the constituent parts are different mining or petroleum projects, the authority can cancel the constituent parts as environmental authorities and issue the former holder of the cancelled constituent parts new environmental authorities (mining activities) or environmental authorities (petroleum activities) for each of the different mining or petroleum projects. The conditions of each environmental

authority must be the same conditions as in the cancelled constituent parts that applied to the mining or petroleum project the subject of the new environmental authority, subject to any necessary changes.

Division 3 Other provisions

Environmental authorities under old chapter 4A

New section 639 states that a licence, other than a provisional licence, under the previous chapter 4A in force immediately before the commencement is, on the commencement, taken to be a non-code compliant authority under new chapter 4A for a level 1 petroleum activity. A provisional licence under old chapter 4A ceases to be an environmental authority on the commencement.

The section also states that a level 2 approval under the previous chapter 4A in force immediately before the commencement is, on the commencement, taken to be a non-code compliant authority under new chapter 4A, for a level 2 petroleum activity.

Applications in progress under old chapter 4A

New section 640 states that an environmental authority that had not been decided prior to the commencement will be taken as an application for a level 2 petroleum activity under new chapter 4A, part 2, division 3, subdivision 2, or if it is for a level 1 petroleum activity, under new chapter 4A, part 2, division 4. This section states that an amendment, surrender or transfer application made under the old chapter 4A that had not been decided before the commencement is automatically taken to be an application of the corresponding type under the new chapter 4A upon commencement.

Existing environmental management documents

New section 641 states that the current environmental management plan or current EMOS under the existing Act for, or for an application for, an environmental authority (mining activities), is taken to be the submitted EM plan for the environmental authority or application on commencement of the EP Act.

Amendment of sch 1 (Original decisions)

Clause 139 removes schedule 1, part 1, division 2, entry for section 207(1). Schedule 1, parts 1, divisions 2 and 3 are renumbered as schedule 1, part 1, divisions 3 and 4. A new division 2 is inserted into schedule 1, part 1, tabulating the decisions under chapter 4A. Schedule 1, part 2, division 1C has been removed. Schedule 1, part 2, division 2, sections 311(5)(a) and (b) have been removed. Schedule 1, part 2, divisions 1B and 2 to 6 have been renumbered as schedule 1, part 2, divisions 2 to 7 respectively.

Amendment of sch 3 (Dictionary)

Clause 140 amends the dictionary. Subsection (1) removes a number of definitions from the dictionary – in some instances definitions have been replaced and in other instances they have been completely removed. Subsection (2) inserts a range of definitions into the dictionary, with references to which section should be referred to for the appropriate definition. Subsections (3) through to (20) involve minor amendments to definitions, primarily to update definitions to conform to new terminology or to update section references where section numbers have changed.

Part 4 Amendment of Integrated Planning Act 1997

Act amended in pt 4

Clause 141 states this part amends the *Integrated Planning Act 1997*.

Insertion of new ch 6, pt 5

Clause 142 inserts a new part 5 (Transitional provisions for Environmental Protection and other Legislation Amendment Act 2004) in chapter 6 of the IPA.

This part consists of a new section 6.5.1 (When particular development approvals lapse), which introduces a transitional arrangement affecting the date upon which certain development approvals for material changes of use lapse.

The amendment has resulted from concerns expressed by industry about the likely validity of development approvals obtained since the IPA came into effect, due to the misinterpretation by applicants of the effect of the existing "currency period" arrangements contained in section 3.5.21 of the IPA.

Section 3.5.21 establishes the periods within which development approvals lapse if not acted upon. For a material change of use approval this period is 4 years. For works approvals, the period is 2 years. The longer period for material changes of use accommodates the need to obtain and act upon associated works approvals before a use can start. Both periods can be extended upon application being made to the assessment manager.

It appears applicants may have assumed that starting works associated with a proposed material change of use effectively preserves the validity of the development approval for the material change of use. In fact, the two currency periods are independent of each other. If works are to extend beyond the 4 year currency period for a material change of the, the IPA requires that currency period to be extended. Consequently, it appears there are development permits that have lapsed before works are completed.

The amendment addresses this issue by preserving the validity of material change of use permits given since the IPA came into effect until March 2006, or the later time already provided for under the approval. This will allow a period of time for applicants to address any issues related to currency periods for their applications, and for a longer term solution to be developed and discussed with key stakeholders.

Subsection (1) indicates the section applies for development approvals for material changes of use for which there are associated assessable works, provided the development approval for the works has been obtained during the four year currency period for the material change of use approval, and the works have substantially started during the period. The term "substantially start" is not defined for this section, but is used elsewhere in the IPA, and has been the subject of considerable judicial authority.

Subsection (2) provides that the relevant material change of use approval does not lapse until at least 30 March 2006, or the later time already provided for under section 3.5.21.

Subsection (3) provides that the development approval does not lapse if the change of use happens before the relevant period mentioned in subsection (2).

Subsection (4) clarifies the extent of the term "works associated" with a material change of use mentioned in subsection (1). Specifically, subsection (4) states the term includes works necessary to prepare a site for construction, such as demolition, filling or excavation. Such works would need to be assessable development, as subsection (1) only applies if a development permit exists for such works. Minor site works for which no development permit is necessary would not trigger this section. is necessary

Subsection (5) confirms it is still possible to apply under sections 3.5.22 and 3.5.23 to extend a currency period affected by this section. This would apply even if the currency period had expired before such an application to extend was made, so long as the approval was still in effect under this section.

Amendment of sch 8 (Assessable development and self-assessable development)

Schedule 8, part 1, table 4, item 5 presently identifies the types of operational work that are assessable against the Coastal Act.

Clause 143 excludes certain work from being assessable under the IDAS, and clarifies the provision relating to disposal of dredge spoil.

At present, all activities identified in Schedule 8, part 1, table 4, item 5 of the IPA are assessable development. However, there are a number of minor activities that are triggering assessment that will have no impact on coastal management. These activities are termed 'excluded work' and are defined in Clause 146.

The current assessable development trigger for the disposal of dredge spoil also excludes disposal that has been approved under an allocation notice under the Coastal Act. Allocation notices only deal with the removal of quarry material (e.g. dredge spoil) and cannot deal with dredge spoil disposal.

Amendment of sch 8A (Assessment manager for development applications)

Schedule 8A currently identifies the assessment manager for applications for assessable development.

Clause 144 clarifies that local government is the assessment manager for applications dealing with artificial waterways, which includes the access channel for the artificial waterway.

Section 8 of the Coastal Act includes an access channel for an artificial waterway as part of the definition of an artificial waterway. Local government is already the assessment manager for artificial waterways entirely within the local government area. However, as access channels are often in existing water bodies, they are often outside of the local government area, which in most cases ends at the limit of mean high water spring tide. This means than an applicant would be forced to split an application to construct an artificial waterway into two applications – one for the waterway and one for the access channel as there would be two different assessment managers. More likely however, the applicant would seek the Minister of the department administering the IPA to nominate an assessment manager for a single application.

As the access channel is an intrinsic part of the artificial waterway (the waterway is unlikely to be able to be used for its intended purpose without the access channel), it is more logical to allow local government to be the assessment manager for the entire application.

Amendment of sch 9 (Development that is exempt from assessment against a planning scheme)

Clause 145 removes schedule 9, table 4, item 3, 'section 100' and replaces it with 'section 169'. Schedule 9, table 4, item 4, 'section 150' is removed and replaced with 'section 260'.

Amendment of sch 10 (Dictionary)

Schedule 10 contains the dictionary for the IPA.

Clause 146 inserts a definition of excluded work for operational work assessed against the Coastal Act.

At present, all activities identified in Schedule 8, part 1, table 4, item 5 of the IPA are assessable development. However, there are a number of minor activities that are triggering assessment that will have no impact on coastal management. These activities are termed 'excluded work'. The activities that do not require assessment against the Coastal Act are maintenance of lawful works (e.g. maintaining an approved jetty or pontoon), minor works and works that have been issued an exemption certificate under the Coastal Act.

Minor works are those works above high water mark that do not have a significant impact on coastal management and that are reversible or expendable, such as standard dune fencing, revegetation with native plant species, and low risk works such as the installation of park furniture. These works can be easily removed in the threat of a storm event such as a cyclone or can be sacrificed. No property protection works such as seawalls will be constructed to save these works.

For proposals above high water mark where it is not immediately obvious what the impact on coastal management may be, an applicant may apply for an exemption certificate (refer Clause 18). This can also cover works where it is not necessarily the type of work that may impact on coastal management but more the location of the work, e.g. installing park infrastructure in the vicinity of an existing erosion scarp. An assessment of the proposal will allow a determination of the likely impact on coastal management. If the chief executive administering the Coastal Act considers that there will be an impact on coastal management, the exemption certificate may be refused and a formal application lodged under the IDAS.

All applications for minor works below high water mark must be processed through the IDAS. Likewise, an exemption certificate cannot be sought for works below high water mark due to potential impacts on navigation and maritime management.

Works which are constructed in an emergency which are not maintenance works, minor works or works for which an exemption certificate has been issued are still subject to the IPA.

Part 5 Amendment of Land and Resources Tribunal Act 1999

Act amended in pt 5

Clause 147 states this part amends the *Land and Resources Tribunal Act 1999*.

Amendment of sch 1 (Requirements for constituting tribunal)

Clause 148 amends schedule 1 by inserting the words 'Environmental Protection Act 1994', followed by 'For all matters within the tribunal's jurisdiction, the tribunal is to be constituted by a presiding member'.

Part 6 Amendment of Marine Parks Act 1982

Act amended in pt 6

Clause 149 states that this part amends the *Marine Parks Act 1982*.

Amendment of s 22 (Revocation of marine parks)

Clause 150 amends the MP Act to change the statutory requirement for notice of a motion to request the Governor in Council to revoke a marine park from 14 sitting days to 28 calendar days. This amendment has arisen out of concern that the previous 14 sitting days requirement can result in periods of several months between the giving of notice of the motion and resolution. The objective of this amendment is to more effectively balance the need of Parliament to progress revocation of marine parks in a timely manner with the need to provide sufficient time for members of the public to make representations to Members of Parliament on proposed revocations. With modern communication technologies 28 calendar days is considered sufficient to give effect to the original intention of the time period requirement.

This clause is supported by clause 151 'Insertion of new s 22A', which provides for publication requirements relating to the notice for revocation.

This amendment ensures the 1982 MP Act is consistent with changes to the NC Act for notice of motions to revoke protected areas also made by this Bill, prior to the commencement of the *Marine Parks Act 2004*. (See sections 9 and 10 of the *Marine Parks Act 2004*.)

Insertion of new s 22A

Clause 151 inserts a section to provide for publication requirements for notices for revocation under section 22 of the MP Act. This provision requires that a notice be published in certain newspapers within 10 days of the giving of notice of a motion for the revocation in the Legislative

Assembly. The notice must set out the relevant area and details of the revocation.

Part 7 Amendment of Meaker Trust (Raine Island Research) Act 1981

Act amended in pt 7

Clause 152 states that this part amends the *Meaker Trust (Raine Island Research) Act 1981*.

Insertion of new pt 6

Clause 153 inserts a new part 6 into the Meaker Trust Act to repeal the Act. This part provides for the expiry of the Act and the transfer of assets and liabilities of the corporation on the day the Act expires. This provision allows the Meaker Trust funds to be transferred to the Australian Rainforest Foundation, a non-profit organisation. The Bill provides that all assets of the Raine Island Corporation become assets of the Australian Rainforest Foundation and all of the liabilities of the Raine Island Corporation become liabilities of the State. Raine Island, together with Moulter and Maclennan Cays, will continue to be protected as a declared Nature Refuge under the *Nature Conservation (Protected Areas) Regulation 1994*, and as Restricted Access Special Management Areas under the *Great Barrier Reef Marine Park Zoning Plan 2003*.

Part 8 Amendment of Mineral Resources Act 1989

Act amended in pt 8

Clause 154 states that this part amends the *Mineral Resources Act 1989*.

Amendment of s 64A (Issue of certificate of public notice)

Clause 155 replaces section 64A(1)(b). The clause amends the section to include updated references to new authorities under the EP Act as circumstances in which the issue of a certificate of public notice applies. The references include paragraph (i) that states the issue of a certificate of public notice applies if, under the EP Act, the application for the relevant environmental authority (mining claim) is a code compliant application – the environmental authority has been issued and paragraph (ii) states this issue applies if, under the EP Act, the application for the relevant environmental authority (mining claim) is a non-code compliant application – the draft environmental authority for the non-code compliant application has, under the EP Act section 175, been given to the mining registrar.

Amendment of s 252A (Issue of certificate of public notice)

Clause 156 replaces section 252(1)(b). The clause amends the section to include updated references to new authorities under the EP Act as circumstances in which the issue of a certificate of public notice applies. Paragraph (i) states that the issue of a certificate of public notice applies if, under the EP Act, the application for the relevant environmental authority (mining lease) is a code compliant application – the environmental authority has been issued and subsection (b)(ii) states this issue applies if, under the EP Act, the application for the relevant environmental authority (mining lease) is a non-code compliant application – the draft environmental authority for the non-code compliant application has, under section 208 of the EP Act, been given to the mining registrar.

Part 9 Amendment of Nature Conservation Act 1992

Act amended in pt 9

Clause 157 states that this part amends the *Nature Conservation Act 1992*.

Replacement of s 3 (Crown bound)

Clause 158 amends section 3 to ensure consistency with contemporary drafting style with reference to 'the State'.

Amendment of s 3A (Territorial application of Act)

Clause 159 amends section 3A to ensure consistency with contemporary drafting style with reference to 'the State'.

Amendment of s 5 (How object is to be achieved)

Clause 160 amends section 5 to ensure consistency with contemporary drafting style with reference to 'the State'.

Amendment of s 29 (Dedication of protected areas)

Clause 161 amends section 29 to enable a protected area to be dedicated over a forest reserve that is subject to a lease or licence under the *Land Act 1994*. Currently a protected area can only be dedicated over State land, and State land does not include land subject to a lease or licence under the *Land Act 1994*. This amendment supports the implementation of the transfer of forest reserves to protected areas under section 70A of the NC Act, which states that 'each area of land dedicated as a forest reserve will become a protected area as soon as practicable after its dedication'.

Amendment of s 30 (Revocation of State forests and timber reserves)

Clause 162 amends the section 30 requirement for notice of a motion to request the Governor in Council to dedicate a protected area, that involves revocation of a State forest or timber reserve, from 14 sitting days to 28 calendar days. This amendment has arisen out of concern that the previous 14 sitting days requirement can result in periods of several months between the giving of notice of the motion and resolution. The objective of this amendment is to more effectively balance the need of Parliament to progress dedications of protected areas that involve revocation of State forest or timber reserve in a timely manner with the need to provide sufficient time for members of the public to make representations to Members of Parliament on proposed revocations. With modern communication technologies 28 calendar days is considered sufficient to give effect to the original intent of the time period requirement.

This clause is supported by clause 184 'Publication of notice for revocation under s 30, 32, 56 or 70E or particular amalgamations under s 33', which provides for publication requirements relating to the notice for revocation.

Amendment of s 32 (Revocation of protected areas)

Clause 163 amends the section 32 requirement for notice of a motion to request the Governor in Council to dedicate a protected area from 14 sitting days to 28 calendar days. This amendment has arisen out of concern that the previous 14 sitting days requirement can result in periods of several months between the giving of notice of the motion and resolution. The objective of this amendment is to more effectively balance the need of Parliament to progress dedications of protected areas in a timely manner with the need to provide sufficient time for members of the public to make representations to Members of Parliament on proposed revocations. With modern communication technologies 28 calendar days is considered sufficient to give effect to the original intent of the time period requirement.

This clause is supported by clause 185 'Publication of notice for revocation under s 30, 32, 56 or 70E or particular amalgamations under s 33', which provides for publication requirements relating to the notice for revocation.

Amendment of s 33 (Amalgamation etc. of protected areas)

Clause 164 amends the section 33 requirement for notice of a motion to request the Governor in Council to revoke a protected area from 14 sitting days to 28 calendar days. Revocations made under section 33 of the NC Act where a resolution of the Legislative Assembly is required relate to:

- changes in the class of a protected area where the area will be given less protection under the Act; or
- changes in the boundaries of a protected area where land will be removed from the area, other than for the purposes of dedicating the removed land as land with a higher level of protection under the NC Act.

This amendment has arisen out of concern that the previous 14 sitting days requirement can result in periods of several months between the giving of notice of the motion and resolution. The objective of this amendment is to more effectively balance the need of Parliament to progress revocation in a timely manner with the need to provide sufficient time for members of the public to make representations to Members of Parliament on proposed revocations. With modern communication technologies 28 calendar days

is considered sufficient to give effect to the original intent of the time period requirement.

This clause is supported by clause 185 'Publication of notice for revocation under s 30, 32, 56 or 70E or particular amalgamations under s 33', which provides for publication requirements relating to the notice for revocation.

Amendment of s 53 (Proposal to declare World Heritage management area)

Clause 165 amends section 53 to ensure consistency with contemporary drafting style with reference to 'the State'.

Amendment of s 56 (Revocation of World Heritage management area)

Clause 166 amends the section 56 requirement for notice of a motion to request the Governor in Council to revoke a World Heritage management area from 14 sitting days to 28 calendar days. This amendment has arisen out of concern that the previous 14 sitting days requirement can result in periods of several months between the giving of notice of the motion and resolution. The objective of this amendment is to more effectively balance the need of Parliament to progress revocation of World Heritage management area in a timely manner with the need to provide sufficient time for members of the public to make representations to Members of Parliament on proposed revocations. With modern communication technologies 28 calendar days is considered sufficient to give effect to the original intent of the time period requirement.

This clause is supported by clause 185 'Publication of notice for revocation under s 30, 32, 56 or 70E or particular amalgamations under s 33', which provides for publication requirements relating to the notice for revocation.

Amendment of s 57 (Proposal to declare international agreement area)

Clause 167 amends section 57 to ensure consistency with contemporary drafting style with reference to 'the State'.

Amendment of s 70E (Revocation of forest reserves)

Clause 168 amends the section 70E requirement for notice of a motion to request the Governor in Council to revoke a forest reserve from 14 sitting

days to 28 calendar days. This amendment has arisen out of concern that the previous 14 sitting days requirement can result in periods of several months between the giving of notice of the motion and resolution. The objective of this amendment is to more effectively balance the need of Parliament to progress revocation of forest reserve in a timely manner with the need to provide sufficient time for members of the public to make representations to Members of Parliament on proposed revocations. With modern communication technologies 28 calendar days is considered sufficient to give effect to the original intent of the time period requirement.

This clause is supported by clause 185 'Publication of notice for revocation under s 30, 32, 56 or 70E or particular amalgamations under s 33'**,** which provides for publication requirements relating to the notice for revocation.

Amendment of s 74 (Management principles of international wildlife)

Clause 169 amends section 74 to ensure consistency with contemporary drafting style with reference to 'the State'.

Amendment of s 83 (Property in protected animals)

Clause 170 amends section 83 to provide the ability to transfer ownership of protected animals taken and kept under a captive agreement from the State.

The existing section establishes the property rights in protected animals taken in the circumstances described above and their progeny.

Protected animals are, subject to property rights that may exist in relation to the animal, the property of the State.

Property in a protected animal may pass from the State under a licence, permit or other authority issued or given under a regulation and where property passes from the State on the taking of the animal under a conservation plan.

Amendment of s 84 (Property in protected plants)

Clause 171 amends section 84 to provide the ability to transfer ownership of protected plants taken and kept under a captive agreement from the State.

The existing section establishes the property rights in protected plants taken in the circumstances described above and their progeny.

Protected plants are, subject to property rights that may exist in relation to the plant, the property of the State.

Property in a protected plant may pass from the State under a licence, permit or other authority issued or given under a regulation and where property passes from the State on the taking of the plant under a conservation plan.

Replacement of s 88 (Restriction on taking etc. protected animals)

Clause 172 amends section 88 of the NC Act to improve the enforcement of the Act allowing a more balanced and appropriate response depending on the conservation status of the animal(s) involved and the relevant circumstances. Section 88(2) creates a restriction on taking a protected animal. Section 88(5) creates an offence to keep or use a protected animal if the animal, or its progeny, has been unlawfully taken in Queensland or another State.

The new section 88 continues to be subject to section 93 (Aborigines and Torres Straight Islanders' right to take etc. protected wildlife), which has not yet commenced, and does not apply to the taking of protected animals in a protected area. This clause includes the existing definition of the term 'authorised person' as well as a definition of 'lawful authority'. A defence provision has been inserted for the offence of unlawfully taking a protected animal that achieves the same effect as the existing provision in section 88.

The maximum penalty is split into 4 classes of offence, allowing serious offences to proceed as indictable offences with up to 2 years imprisonment, while minor offences are subject to a penalty of up to 100 penalty units. The maximum penalty for the offence depends upon whether the animal is classified as presumed extinct, endangered, vulnerable, rare or common wildlife and the number of animals that were taken. The 4 tiers of penalty for an offence against the section are—

- Class 1 offence — 3000 penalty units or 2 years imprisonment;
- Class 2 offence — 1000 penalty units or 1 year imprisonment;
- Class 3 offence — 225 penalty units (infringement notice penalty 15 penalty units);

- Class 4 offence — 100 penalty units (infringement notice penalty of 4 penalty units).

For example, the taking of 1 or more endangered animals is a class 1 offence, with a maximum penalty of 3000 penalty units or 2 years imprisonment. A relatively minor offence of taking 4 or less common animals attracts a maximum penalty of only 100 penalty units.

Clause 172 inserts a new section 88A which restricts keeping or use of a lawfully taken protected animal. This restriction was previously contained in section 88. The new section applies to a protected animal that has been taken in accordance with the NC Act or a law of another State, or is a descendant of an animal that was taken in accordance with the NC Act or a law of another State.

The maximum penalty for an offence against this provision is 1000 penalty units, unless specific circumstances apply. For example, if a person held a licence, permit or another authority under the NC Act in the 12 months prior to the offence and the authority expired, the maximum penalty is 100 penalty units. Similarly, if the offence only relates to the movement of the animal, the maximum penalty is 100 penalty units.

Clause 172 also inserts a new section 88B that provides for an offence of keeping and using native wildlife reasonably suspected to have been unlawfully taken. This provision involves a partial reversal of the onus of proof. However, the amendment only requires the person to prove that he or she had lawful possession of the wildlife where a conservation officer reasonably suspected this was not the case. It is a defence to the charge if the person satisfies the court that the person had no reasonable grounds for suspecting the wildlife was unlawfully taken. This provision does not apply to an authorised person, or where the State has disposed of the native wildlife to another person under the NC Act. For example, this provision does not apply where the EPA has seized an unlawfully taken animal from a person and later gives the animal to a zoo to exhibit and care for.

Amendment of s 91 (Prohibition on release etc. of international and prohibited wildlife)

Clause 173 amends section 91 to provide for minor offences and create additional exemptions for keeping and use of parts of a prohibited or international animal or a dead prohibited or international animal.

The keeping or use of international or prohibited wildlife, that was not moved into the State, is now a less serious offence, with a maximum

penalty of 100 penalty units. Specific exemptions for this offence are created in relation to international wildlife that is dead, where an approved tag is attached to the wildlife; or the keeping or use of milk obtained from prohibited wildlife, for example water buffalo. Activities authorised under the Act, such as under a conservation plan applicable to the wildlife, a licence, permit or other authority given under a regulation, continue to be exempt from the application of this provision. This amendment gives effect to the Government's policy for wildlife management approved in 2003, and as reflected in recent changes to the *Nature Conservation Regulation 1994*.

Amendment of s 95 (Payment of conservation value)

Clause 174 amends section 95 to allow the Minister to exempt a person from the requirement to pay conservation value for the wildlife that is taken under a captive breeding agreement by a clause in the agreement, or to fix a different amount of conservation value under the agreement for the wildlife.

The amendment does not change the other remedies that a conservation officer has in relation to wildlife or recovery of conservation value for wildlife taken under the Act.

Section 95 prescribes that a person who takes wildlife under a licence, permit or other authority issued or given under a regulation must pay, to the State, the conservation value to the wildlife. Conservation value is a monetary expression of the State's conservation concern for the wildlife. Payment of conservation value does not in itself transfer to the State.

Replacement of pt 5, div 7, hdg (General)

Clause 175 removes the part 5, division 7 heading ' Division 7 General' and replaces it with 'Division 7 Provisions for landholders'. This heading has been renamed as new sections have been added at the end of this division relating to captive breeding.

Insertion of new pt 5, div 8

Clause 176 inserts a new division 8 in part 5. This division allows the Minister to enter into captive breeding agreements between the State and another party. The division contains a number of provisions relating to the agreements including making, administration and enforcement of the terms of the agreement.

Main purpose of div 8 and its achievement

New section 100A sets out the purpose of division 8 and how the purpose is achieved.

Subdivision 2 Captive breeding agreements

Minister's power to enter into captive breeding agreement

New section 100B creates a head of power for the Minister to enter into a captive breeding agreement and specifies the circumstances under which the Minister may enter into the agreement. The Minister may make an agreement even though there is no conservation plan or recovery plan has been made for the wildlife.

Things a captive breeding agreement may provide for

New section 100C identifies the things that a captive breeding agreement may provide for, including taking keeping or use of wildlife from a protected or other area. The agreement may also provide for the passing of ownership of the wildlife from the State to the holder of the agreement.

Required provisions for captive breeding agreement

New section 100D specifies the things that the Minister must state on a captive breeding agreement. The section does not limit the things that the Minister may state on the agreement.

Restriction on the taking, under a captive breeding agreement, of wildlife in the wild

New section 100E requires that a person who takes wildlife under a captive breeding agreement—

- Carry a copy of the agreement while taking or moving the animal; and
- Comply with section 99 of the NC Act (Offence to trespass – general).

The maximum penalty for the offence is 50 penalty units.

Additional provisions for termination of captive breeding agreement

New section 100F outlines the process that the Minister must follow to terminate a captive breeding agreement.

Obligation to surrender protected wildlife on termination of captive breeding agreement

New section 100G obliges a party to a captive agreement to surrender wildlife on termination of the agreement, where ownership of the wildlife resides with the State. The obligation applies even if the party to the agreement is in another State. The maximum penalty for the offence is 1000 penalty units.

Powers

New section 100H allows the chief executive to take, keep or use wildlife to give effect to a captive breeding agreement.

Amendment of s 112 (conservation plans)

Clause 177 makes a minor amendment to section 112 to replace 'Queensland' with 'the State' to ensure consistency throughout the Act and with contemporary drafting style.

Amendment of s 133 (Chief executive to keep register)

Clause 178 provides that the chief executive must keep a register of captive breeding agreements that are in force.

Amendment of s 135 (Chief executive may inquire into applications)

Clause 179 corrects an anomaly in the Act, to ensure that references to 'a State' are also to a Territory.

Insertion of new ss 152A and 152B

Clause 180 inserts a new section 152A to state what a conservation officer may do with a thing after having seized it under part 8 of the NC Act. The section allows the officer to—

- Move the seized thing from the place where it was seized; or
- Leave it at the place where it was seized, but take reasonable steps to restricts access to it;
- For equipment – make it inoperable;
- For an animal or plant, do the things considered necessary for the animal or plants survival, including—
- Take it to an appropriate place;
- Provide food, water etc;
- Arrange for veterinary treatment if the officer considers it necessary;
- Leave it at the place and direct the person from whom the wildlife was seized to look after the animal;
- If the person fails to comply with the direction – look after the animal.

The section makes it clear that, if wildlife is seized and left at the place of seizure, the person from whom it was seized is still required to provide care for the animal.

Clause 180 also inserts a new section 152B to create an offence to tamper with seized things, unless the thing is an animal and the person is otherwise providing ongoing care for the animal under a direction given by a conservation officer under section 152A and the person does not take the animal from the place from where it was seized.

It is an offence for a person, other than a conservation officer or a person acting under the conservation officer's direction, to do the following things to a seized item without a reasonable excuse—

- Tamper with an item seized where that item is left at the place of seizure;
- Enter or be at the place where the thing is being kept;
- Move the thing from the place where it is being kept; or
- Have the thing in the person possession.

A maximum penalty of 500 penalty units applies to the offence.

Amendment of s 160 (Evidentiary provisions)

Clause 181 amends section 160 of the NC Act to relocate the definition of the term "indigenous to Queensland" from the Dictionary in the Schedule to within section 160 as it is a term specific to that section.

Amendment of s 164 (Indictable and summary offences)

Clause 182 inserts a new subsection in section 164 to ensure it is clear that a class 2, 3 or 4 offence under section 88 is a summary offence.

Amendment of s 165 (Proceedings for indictable offences)

Clause 183 amends section 165(4) to remove the requirement that the maximum penalty that may be imposed for an indictable offence heard summarily is 165 penalty units. This amendment is required to correct an anomaly in the NC Act relating to maximum monetary penalties for indictable offences dealt with under summary proceedings. The maximum penalty of imprisonment that may be summarily imposed for an indictable offence continues to be 1 year's imprisonment.

Amendment of s 173A (Definitions for div 2)

Clause 184 adds new section 88A to the list of nominated offences for the purposes of part 10, division 2 (Proceedings for declarations and enforcement orders) in section 173A.

Insertion of new ss 173P and 173Q

Clause 185 has inserted a new section 173P provides a head of power for the chief executive to do anything that is considered reasonably necessary to achieve the objective of the NC Act, including—

- Take, keep, interfere with or use any wildlife in a protected or other area;
- Interfere with the natural or cultural resources of a protected area or forest reserve.

The section does not purport to exempt the chief executive from a requirement (however described) under another law of the State or the Commonwealth. It does however negate the need for the chief executive to grant approvals to himself or herself in performance of his or her duties under this NC Act.

Clause 185 also inserts a new section 173Q to provide for publication requirements for notices for revocation under section 30, 32, 56 or 70E or specific amalgamations under section 33. This provision requires that a notice be published in certain newspapers within 10 days of the giving of notice of a motion for the revocation or amalgamation in the Legislative Assembly. The notice must set out the relevant area and details of the revocation or amalgamation. This provision is related to clauses 162 to 164, 166 and 168.

Amendment of s 175 (Regulation-making power)

Clause 186 clarifies that a regulation can be made under the NC Act to authorise the taking, use or keeping of a protected animal.

Insertion of new pt 12, div 1, hdg

Clause 187 inserts a new part 12, division 1 heading for transitional provisions relating to the original NC Act.

Insertion of new pt 12, div 2

Clause 188 inserts a new part 12, division 2 to provide for transitional arrangements relating to transfers of forest reserves to protected area tenure, such as national park. The South East Queensland Forests Agreement and the Wet Tropics planning areas involve lands previously dedicated as state forest, managed under the *Forestry Act 1959*, to be transferred to the protected area estate. These lands are currently forest reserve, an interim tenure under the NC Act, before their transfer to protected area tenure. New section 184 facilitates the tenure transfers by providing for the continuation of beekeeping in national parks and national parks (recovery) until 2024. Beekeeping can occur on forest reserves according to provisions under the NC Act. Upon dedication of these lands to national park or national park (recovery), the keeping of beehives would become inconsistent with the management principles for national park or national park (recovery), and would therefore not be permissible under the NC Act.

Conversion of the majority of South East Queensland Forests Agreement and Wet Tropics forest reserve lands to national park or national park (recovery), without making special provision for continued access through statutory mechanisms, would result in this industry no longer being able to operate. The Bill provides that despite sections 15 and 34 of the NC Act, a

regulation may authorise a person to undertake beekeeping in a specified national park or national park (recovery) until 31 December 2024.

New section 185 facilitates the tenure transfers by providing for recognition under the NC Act of commercial activity permits previously issued under the *Forestry Act 1959*. The purpose of the amendment is to allow commercial activities that are authorised under the *Forestry Act 1959* to continue uninterrupted for the unexpired term of the permit when lands are transferred through the statewide forest process from forest reserve to a protected area tenure under the provisions of the NC Act.

The fees for commercial activity permits under both the *Forestry Act 1959* and the NC Act are the same, therefore there will be no inequity between existing holders of authorities under the NC Act and *Forestry Act 1959* permit holders. This amendment reduces the administrative burden of future renewals occurring all at once and minimises 'red tape' for existing permit holders. Once the existing permit expires, permit holders will need to apply for a commercial activity permit under the NC Act.

The provision applies even where activities conducted under the *Forestry Act 1959* permit are deemed to be inconsistent with the management principles or management plan for a protected area. However, in such circumstances, the chief executive may refuse approval for such activities to continue once the term of the existing permit has expired.

Amendment of schedule (Dictionary)

Clause 189 inserts the definition of 'captive breeding' into the dictionary. This definition is required for the new division 8 in part 5 relating to captive breeding agreements.

A definition of 'State' is included in the dictionary to clarify that a reference to a State includes territory.

The definition of 'indigenous to Queensland' is omitted from the dictionary and relocated to section 160 as the term is specific to that provision.

'Queensland' is omitted and replaced with 'the State', to ensure consistency with contemporary drafting style throughout the NC Act.

The definition of 'use' is amended to include 'give away'.

Part 10 Amendment of Nature Conservation Amendment Act 2004

Act amended in pt 10

Clause 190 states that this part amends the *Nature Conservation Amendment Act 2004*.

Insertion of new s 7A

Clause 191 inserts a new section 7A. The section amends the definition of protected animals by replacing 'presumed extinct' with 'extinct in the wild' and adding 'or near threatened'. These amendments ensure that the new section 88 inserted by this Bill is, on commencement of the *Nature Conservation Amendment Act 2004* amended to apply to the new classes of wildlife that will be introduced by that amending Act.

Omission of s 11 (Insertion of new pt 12, div 1, hdg)

Clause 192 removes the new part 12, division 1 heading.

Amendment of s 12 (Insertion of new pt 12, div 2)

Clause 193 amends the references to division 2 by changing them to division 3. The clause also renumbers inserted section 184 as inserted section 186.

This amendment is consequential to the insertion of a new division 2 within part 12, which relates to transitional provisions for transfers of forest reserves to protected area tenure, such as national park.