Greenhouse Gas Storage Bill 2008

Explanatory Notes

Introduction

Greenhouse gas (GHG) capture and geological storage is the capture of carbon dioxide (CO_2) produced as a result of burning coal and other fossil fuels for electricity generation, and the subsequent transportation of the CO_2 to a geologically suitable site for injection and permanent storage in a stable, deep, underground reservoir. GHG storage is considered an important option for making deep cuts in CO_2 emissions.

This Bill provides an onshore tenure framework in Queensland to administer the GHG storage process as part of the State Government's commitment to the reduction of greenhouse gas emissions into the atmosphere.

GHG storage reservoirs are classed as a State resource and the tenure process aligns with other resource tenure processes administered by the State to provide the requisite certainty for the financial and legal sectors. The tenure administration process also provides security of tenure, investment certainty and confidence for the community that the GHG storage activities will be undertaken in a manner that minimises risks to public health and safety and to the environment.

Short Title of the Bill

The short title of the Bill is the *Greenhouse Gas Storage Bill 2008*.

Objectives of the Bill

The Bill will help reduce the impact of greenhouse gas emissions on the environment. The main purpose is achieved principally by facilitating the process called greenhouse gas geological storage, also called greenhouse gas storage (***GHG storage***).

Other purposes of this Bill are to ensure the following for the carrying out of the activities—

- minimisation of conflict with other land uses
- constructive consultation with people affected by the activities
- appropriate compensation for owners or occupiers adversely affected by the activities
- responsible land and resource management.

Policy rationale

The amount of greenhouse gases in the atmosphere, particularly methane and CO_2, is increasing as a result of human activity. Approximately one third of all CO_2 emissions result from the burning of fossil fuels to generate electricity. In Queensland about 80% of electricity generation comes from burning black coal. In order to maintain international competitiveness and economic growth Australia will need to continue using fossil fuels for energy in the short to medium term while the development of renewable energy sources is fully realised.

If steps are not taken to mitigate CO_2 emissions, there may be potential costs to the community and costs for operators who do not take steps to mitigate their emissions, if any future carbon trading regime, planned by the Australian Government, applies.

How objectives are achieved

The Bill facilitates GHG storage by—

- providing for the granting of authorities to explore for, or use, underground geological formations or structures to store carbon dioxide
- creating a regulatory system for the carrying out of activities relating to the authorities.

Alternative method of achieving policy objectives

There is no alternative method of achieving the policy objectives of issuing tenure for a fledgling industry other than regulatory control. Other Australian States are either developing legislation for GHG activities or, in

Victoria's case, have legislation in place. The Commonwealth has the Offshore Petroleum (Greenhouse Gas Storage) Bill 2008 and the Victorian Government has the *Greenhouse Gas Geological Sequestration Act 2008*. Western Australia, New South Wales and South Australia are all working towards a legislative solution.

Estimated cost for Government implementation

The Bill establishes new administrative arrangements that closely align with those of the *Petroleum and Gas (Production and Safety) Act 2004*. The costs will be as follows:

- developing regulations
- developing directions and guidelines
- training staff dealing with the tenders and applications for a storage lease
- developing IT systems to accommodate tenure processing and administration, and geological data storage
- developing forms and work instructions
- preparing land release packages
- employing technical staff to review technical data submitted
- mapping of potential storage sites by Geological Survey Queensland
- establishing a data room for geological data gathered.

Consistency with Fundamental Legislative Principles

The Bill has been drafted with regard to fundamental legislative principles, as defined in the *Legislative Standards Act 1992*. The Bill includes a number of provisions that may be regarded as breaching fundamental legislative principles. However, any such breach can be justified on grounds of meeting the overall policy intent of the legislation and complying with community expectations for appropriate resource management. This is a clear and accountable decision making process ensuring a safe and sustainable regime benefiting all Queenslanders. The clauses in which fundamental legislative principle issue arises, together with the justification for the breach, is dealt with in the explanation of the relevant clauses.

Consultation

The proposed legislation was prepared following extensive consultation with key stakeholders including the petroleum and coal industries, legal firms and conservation and environmental groups. This was achieved through various working groups (particularly the Commonwealth's Ministerial Council on Mineral and Petroleum Resources (MCMPR) Carbon Capture and Storage Working Group), a discussion paper, industry forums, multiple workshops, information sessions and the release of the draft of the Greenhouse Gas Storage Bill 2008.

The Department of Mines and Energy also met with interested parties and utilised various industry conferences and seminars to highlight policy development and discuss potential issues.

Notes on Provisions

Chapter 1 Preliminary

Part 1 Introduction

Short Title

Clause 1 establishes the short title of this Act as the *Greenhouse Gas Storage Act 2008*.

Commencement

Clause 2 provides for the commencement of this Act, which will be on assent for the listed chapters, parts and sections, and on a day fixed by proclamation for the rest of this Act.

Part 2 Purpose and application of Act

Purposes of Act and their achievement

Clause 3 states the purposes of this Act and how these purposes are achieved. This Act provides a statutory regime to help relieve the impact that greenhouse gas emissions on the environment, by providing for a greenhouse gas (GHG) capture and geological storage regime.

This Act achieves this by providing that an authority ('a GHG authority') may be granted to explore for, and conduct all activities required to identify underground structures or formations that may be favourable for the safe storage of carbon dioxide. These structures or formations are often called reservoirs. This Act also provides that when such a reservoir is discovered, an authority holder may conduct such relevant activities required to store the carbon dioxide.

This Act also ensures that the activities conducted on GHG authorities do not overly conflict with other land uses being conducted on the land the subject of a GHG authority. To this end, this Act also provides for constructive consultation with a person affected by GHG activities allowed under a GHG authority, and also provides for appropriate compensation for owners or occupiers of land directly affected by such activities.

This Act also provides for responsible land management by the holder of a GHG authority.

Facilitation of Act by Petroleum and Gas (Production and Safety) Act 2004

Clause 4 details the linkages between the *Petroleum and Gas (Production and Safety) Act 2004* and this Act and how the *Petroleum and Gas (Production and Safety) Act 2004* helps the operation of this Act.

Consequently, such things as survey licences and pipeline licences that may be granted for surveying the route for a petroleum pipeline, or actually transporting petroleum may also extend to surveying the route of a GHG stream pipeline, or actually transporting a GHG stream.

Importantly, the safety provisions for activities conducted on petroleum authorities under the *Petroleum and Gas (Production and Safety) Act 2004* are extended to include activities under a GHG authority.

The investigation provisions and some of the enforcement provisions of the *Petroleum and Gas (Production and Safety) Act 2004* are also extended to include activities conducted under a GHG authority.

Act binds all persons

Clause 5 provides that this Act binds all persons and the State, and the Commonwealth and other States to the extent the legislative power of the Parliament permits. This clause also provides that the Commonwealth or a State can not be prosecuted for any offence against this Act.

Application of Act to coastal waters of the State

Clause 6 provides that this Act also applies to the coastal waters of the State, up to the adjacent area of the State as described in the *Petroleum (Submerged Lands) Act 1982*. This clause also notes that if a pipeline extends from coastal waters of the State, to the adjacent area of the State as described in the *Petroleum (Submerged Lands) Act 1982*, the pipeline must be granted under the provisions of the *Petroleum (Submerged Lands) Act 1982*.

Relationship with Nature Conservation Act 1992

Clause 7 provides that this Act is subject to sections 27 and 70QA of the *Nature Conservation Act 1992*.

Relationship with Geothermal Act and principal mining and petroleum Acts

Clause 8 provides that the relationship between this Act, and certain provisions of the *Geothermal Exploration Act 2004*, *Mineral Resources Act 1989*, the *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004* is provided for in chapter 4, parts 2 to 10 of this Act.

Act does not affect other rights or remedies

Clause 9 provides that, subject to certain provisions of this Act, that this Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.

This clause also provides that compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.

Native title

Clause 10 recognises that a Native Title holder as defined under section 224 of the *Native Title Act 1993* (Cwlth) has the procedural and other rights that the holder has under the *Native Title Act 1993* (Cwlth).

Part 3 Interpretation

Division 1 Dictionary

Definitions

Clause 11 provides that the Dictionary, Schedule 2, to this Act, defines certain words used in this Act.

Division 2 Key definitions

What is a *GHG stream*

Clause 12 provides the definition of a GHG stream. Australia is a party to the 1996 Protocol to the "Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972". This protocol to the London Convention was amended to provide regulation for geosequestration of greenhouse gas streams, that 'consist overwhelmingly of carbon dioxide', so that these streams may be sequestered permanently into sub-seabed geological formations. Queensland is adopting this international definition.

Defining a GHG stream by its percentage of carbon dioxide content would be arbitrary and may unnecessarily preclude GHG streams that would ordinarily be capable of being stored safely and permanently. A GHG stream is a stream of carbon dioxide (CO_2) or other stream that overwhelmingly consists of carbon dioxide, whether in a gaseous or liquid state. For example, the stream may contain associated substances derived

from the source material, a detection agent (for example, odourant) and carbon dioxide, providing the stream is overwhelmingly carbon dioxide.

The stream cannot contain wastes or other matter added to dispose of the waste or other matter (such as mercury), nor can the stream be that captured directly from, for example, power station flues.

This clause also notes that the use of a GHG stream, for injection and storage, is subject to particular chapters of this Act.

What is a *GHG stream storage site*

Clause 13 provides the definition of a GHG stream storage site. A GHG stream storage site is the area of land required to cover underground geological formations or structures that are suitable for the safe storage of a GHG stream. These are referred to as GHG storage reservoirs. The storage site includes where the injection of the GHG stream occurs.

What is *GHG stream storage*

Clause 14 provides the definition of GHG stream storage. GHG stream storage covers the process of injecting the GHG stream into the GHG reservoir and monitoring the behaviour of the GHG stream in the GHG reservoir. To remove doubt for petroleum lease holders enhanced petroleum recovery is not classed as GHG stream storage.

What is *GHG storage exploration*

Clause 15 provides the definition of GHG exploration. GHG exploration is defined as those activities conducted to locate and define an underground geological formation or structure that is capable of being used for GHG stream storage.

What is *GHG storage injection testing*

Clause 16 provides the definition of GHG injection testing. GHG injection testing helps provide information to evaluate or test a possible GHG reservoir, by injecting carbon dioxide or water into the reservoir, to ascertain it's suitability to be used for GHG stream storage.

What is a *GHG stream pipeline*

Clause 17 provides the definition of GHG stream pipeline. A GHG stream pipeline, is a pipe, or a system of pipes, used to transport a GHG stream. A reference to a GHG stream pipeline includes a part of the pipeline and includes those things that are ancillary to the operation of the pipeline including, for example, things such as meter stations, scraper stations, valve stations, pumping stations or compressor stations.

Types of authority under Act

Clause 18 provides the types of GHG authorities under this Act. These are a GHG exploration permit (also known as a GHG permit) and a GHG injection and storage lease (also a GHG lease). A GHG permit and a GHG lease are collectively referred to as GHG tenure.

A GHG injection and storage data acquisition authority (also called a GHG data acquisition authority) is called an authority under this Act.

A GHG permit, GHG lease and GHG data acquisition authority are collectively referred to as a GHG authority.

Who is an *eligible person*

Clause 19 provides the definition of an eligible person as an adult, a company or registered body under the *Corporations Act 2001* (Cwlth) or a government owned corporation. This definition does not restrict a foreign company that is not registered under the *Corporations Act 2001* (Cwlth) from applying for a GHG authority. However, the company must be registered before a GHG authority can be granted to this company.

What are the *conditions* of a GHG authority

Clause 20 provides the definition of the conditions and mandatory conditions for a GHG authority.

What are the *provisions* of a GHG authority

Clause 21 provides that any time a GHG authority is referenced; this includes a reference to its provisions. Also, any reference to the provisions of a GHG authority is also a reference to its conditions, mandatory conditions and anything written in the authority.

What is an *authorised activity* for a GHG authority

Clause 22 provides the definition of an authorised activity, which is any activity a holder is entitled to carry out under this Act or the GHG authority. The notes to this clause highlight that there are certain provisions that are restricted, that the carrying out of the activities are subject to certain rights and obligations, and about who may carry out authorised activities for a GHG authority holder.

What is a *GHG storage activity*

Clause 23 provides that a GHG storage activity is defined as any authorised activity under the GHG authority.

What is a *work program* for a GHG permit

Clause 24 provides that a work program is an initial work program or a later work program approved for a GHG permit. The approved work program is current if the period the work program is approved for has commenced, and this period has not ended. The work program contains details of the activities to be carried out and timeframes of the permit and the initial program requires approval before a GHG permit may be granted.

What is a *development plan* for a GHG lease

Clause 25 provides that a development plan is an initial development plan or a later development plan approved for a GHG lease. The approved development plan is current if the period the development plan is approved for has commenced, and this period has not ended. The development plan is a comprehensive detailing of the nature and extent of activities proposed to be carried out under the GHG lease, including timeframes and the initial plan requires approval before a GHG lease may be granted.

Graticulation of earth's surface into *blocks* and *sub-blocks*

Clause 26 provides for the division of the earth's surface into blocks and sub blocks. This will allow for the identification of the area of a GHG authority in an orderly manner.

Part 4 State ownership of GHG storage reservoirs

GHG storage reservoirs the property of the State

Clause 27 provides that the State is, and has always taken to have been, the owner of GHG storage reservoirs on land in the State. Just because a person creates or discovers a GHG storage reservoir or petroleum on land in the State, this does not mean that the person acquires ownership of the GHG storage reservoir or the petroleum. This is also irrespective of whether the person created or discovered a GHG storage reservoir, or petroleum, on land that is freehold or other land, and despite any Act, grant, title or other document in force from the commencement of this section of this Act.

Note that 'the State' does not include any of the adjacent area under the *Petroleum (Submerged Lands) Act 1982*.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as the Bill claims as property of the State all GHG storage reservoirs and this may be seen as adversely affecting the rights of a freehold landowner.

At common law, there is a presumption that a landowner also owns everything on or below the surface of that land (including all minerals on or beneath the surface) subject to an exception for the 'royal metals'. Also, there is a general common law right of an owner of freehold land to use his or her land in whatever manner he or she thinks fit.

In Queensland however, the holder of freehold land does not hold an allodial title but a tenurial title based on the Torrens system, which is subject to a number of reservations to the State. The Parliament has already reserved petroleum and geothermal energy in this manner and is entitled to reserve GHG storage reservoirs.

Reservation in land grants

Clause 28 provides that any land grants contain a reservation to the State of all GHG storage reservoirs, and that the GHG authority holders and others authorised under this Act can enter land to undertake authorised activities carried out under this Act or any other Act that relate to activities for a GHG authority.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as the Bill deems, in all existing or future tenures, a reservation to the State of GHG storage reservoirs and of the right of the State to carry out, and regulate, activities concerning them (called 'GHG storage activities'). The reservations are broadly similar to those for petroleum under the *Petroleum and Gas (Production and Safety) Act 2004* and for geothermal energy under the *Geothermal Exploration Act 2004*.

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Chapter 2 GHG exploration permits

Part 1 Key authorised activities

Operation of pt 1

Clause 29 provides an overview of this part. This part provides for the authorised activities that may be undertaken on a GHG exploration permit (GHG permit) and what the GHG holder must have regard to, when conducting authorised activities.

This part also provides what the authorised activities are subject to, and the obligations of a GHG permit holder when conducting authorised activities.

Principal authorised activities

Clause 30 provides for the principal activities that may be conducted on a GHG exploration permit.

Incidental activities

Clause 31 provides the incidental activities that may be conducted on a GHG exploration permit.

Part 2 Obtaining GHG permits

Division 1 Preliminary

Operation of pt 2

Clause 32 provides for a process for the granting of GHG permits by competitive tender. This is the only method of obtaining a GHG permit in Queensland.

Division 2 Competitive tenders

Call for tenders

Clause 33 provides for a call for tenders through a gazette notice. The requirement to publish a notice in the gazette ensures that there is a consistent place for the publication of all tenders. A call for tenders is considered to be the key element in ensuring that the State has competition in the exploration for GHG stream storage sites.

However, this does not limit the Minister to publishing the tender in the gazette only. The tender may also be published on the department's internet site and other publications including relevant industry journals.

The tender process will:

- provide a transparent process for the awarding of exploration tenures; and
- ensure that the State achieves the best possible exploration programs.

The call for tenders must provide additional information on any other conditions that may be imposed on the successful tender and any special criteria to be used in deciding the tender. The requirement to provide this information is to ensure the openness of the tender process.

Right to tender

Clause 34 provides the right for a person to make an application for a GHG permit subject to a call for tenders. The application cannot be made after the closing time and the tender must be submitted for all of the land subject to each individual area as grouped the tender and not for part of the land.

For example, there may be 5 discrete areas published in a call for tender. Areas called A, B, C, D, and E. If an applicant is only interested in applying for area D, which consists of 20 blocks, the applicant must apply for the whole 20 blocks. The restriction on the application being made for all of the land provides an equal basis for the assessment of applications.

Requirements for making tender

Clause 35 requires that an application for a GHG permit be made on the approved form, and accompanied by the proposed work program and prescribed fee. The application is also to include a statement in respect of how owners and occupiers of land will be consulted about proposed activities that may be conducted on a GHG permit.

Requirements for verification statement

Clause 36 requires a statement to be included in the tender application that has been made by an independent, appropriately qualified person who can verify the tenderer has the resources and ability to carry out and manage the exploration required for a granted GHG permit. This assists the decision-making process for the State and makes clear the standard required for submission of a tender.

Right to terminate call for tenders

Clause 37 enables the Minister to publish a gazette notice at any time to terminate the tender process. The tender process may take several months, during which an issue may arise that would result in a conflict with GHG exploration and storage. The ability to terminate the tender process has the potential to reduce the possibility of conflicting land use if the permit were

granted. The preference is to be able to terminate the tender process rather than allowing the conflict to arise. The grant of a GHG permit is the State exercising its rights in respect of managing the State's resources.

Also one of the purposes of this Act is to minimise land use conflict arising from GHG activities. The ability to terminate a call for tenders is required to protect the State's interest in the management of these resources.

Up until a GHG permit is granted, the applicant has no rights under this Act. Therefore, the termination of the previously advertised call for tenders in no way effects the rights of the applicant; the applicant being aware of the risk associated with any tender process prior to submitting the tender application.

It is noted that in storage practice, tenders may be cancelled at any time. The tender process for GHG permits is no different.

Division 3 Deciding tenders

Process for deciding tenders

Clause 38 provides for the Minister to decide a call for tenders in any manner the Minister considers appropriate. The Minister may use any process that is considered appropriate to decide the tender.

Provisions for preferred tenderers

Clause 39 provides for the preferred tenderer to address a number of matters required by the Minister. Payment of the annual rent for the first year and security is to ensure that all the necessary financial transactions are completed before the grant of the GHG permit, thus showing the preferred tenderer's *bona fides*. The clause also provides that if the preferred tenderer does not comply with the matters, then the tenderer is no longer the preferred tenderer, and the Minister may select another tenderer as the new preferred tenderer.

Deciding whether to grant GHG permit

Clause 40 requires the consideration of all tenders, and a decision on whether to grant a GHG permit to one of the tenderers, or not to grant any GHG permit at all. A GHG permit can only be granted if the tenderer is an eligible person, as defined in this Act, the Minister has approved the tenderer's proposed work program, and a relevant environmental authority under the *Environmental Protection Act 1994* has been issued for the GHG permit.

Provisions of GHG permit

Clause 41 provides for the Minister to decide the provisions of the GHG permit, including the term (limited to a maximum of 12 years), area, relinquishment days, conditions not inconsistent with the mandatory conditions provided for in this Act, and the day the GHG permit takes effect. The ability to decide these provisions enables conditions to be set addressing issues specific to a particular GHG permit.

These conditions will ensure that the State can manage the permit for the best overall outcome in relation to GHG stream storage site exploration. A maximum term of 12 years will ensure that land will become available to other explorers who may wish to use different exploration concepts or techniques in the area.

Setting of the relinquishment days provides the holder with prior notice of when land is to be relinquished. The intent is that one third of the area of the GHG permit is relinquished every 4 years.

Criteria for decisions

Clause 42 provides for the matters to be considered in deciding to grant the GHG permit including any special criteria contained in the tender. The capability criteria are to be considered so as to ensure that the GHG permit will only be granted to a holder who has the resources and ability to complete the proposed work program in full and on time.

Notice to unsuccessful tenderers

Clause 43 requires that a notice be given to unsuccessful tenderers. The giving on the notice provides closure of the tender.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is no appeal process under this Act, provided to the unsuccessful tender applicant.

A tender process for the grant of a GHG permit ensures that the best possible outcome can be obtained in relation to the management of the State's resources. The grant of the GHG permit is a decision made by the Minister as the steward of the State's resources. The unsuccessful applicants have no right to the grant of a GHG permit. Therefore, an appeal against this decision is not considered appropriate.

It is also envisaged that the advertisement calling for tenders for a GHG permit will detail information about the criteria that will be used to decide competitive tender applications. Further, it is envisaged that the whole competitive tender assessment process will be transparent and publicly available to all potential tender applicants prior to the applicants submitting their tenders.

Note that the *Judicial Review Act 1991*, in particular section 32 'Request for statement of reasons', applies to the decision making process about which this notice is given.

Part 3 Area provisions

Area of GHG permit

Clause 44 provides for limitations on the area of a GHG permit and for land that cannot be included in the area of a GHG permit. These limitations ensure that only one GHG storage tenure can be granted over any land. More than one GHG permit may be needed to cover a prospective part of the State. The need for more than one permit, in conjunction with a call for tenders, assists in providing competition for land in prospective regions, and provides the best possible exploration outcome.

References to sub-blocks of GHG permit

Clause 45 provides that if the area of a GHG permit is described in blocks, it is taken to mean that the area includes all sub-blocks within the block, to the extent that the sub-blocks do not include areas of unavailable land.

Also, this clause provides that if land identified within a sub-block that is also in the area of a GHG permit ceases to be unavailable land, the ceasing of this land as unavailable land does not automatically mean that this subject land becomes part of the area of the GHG permit.

Minister's power to decide excluded land

Clause 46 provides that the Minister may decide excluded land for a GHG permit or proposed GHG permit. However, the Minister may only decide excluded land for the GHG permit at the grant or renewal of the GHG permit, or when deciding to approve any later work program for a GHG permit.

The exclusion may relate to a specific type of land or a defined area. For example, the Minister may state that the area within a registered plan is excluded land for the GHG permit.

Land may be excluded from a GHG permit if there is an incompatibility between the land use and the purposes of a GHG permit.

Also, if the Minister decides excluded land, and the excluded land covers more than a block, that block can not form part of the area of the GHG permit.

Land that is excluded land ceases to be within the area of the GHG permit if the block identified as containing the excluded land is relinquished or ceases to be within the area of the subject GHG permit, or a GHG lease is granted over the area of the permit and the land becomes excluded land for the GHG lease.

Minister may add excluded land

Clause 47 enables excluded land to be added to a GHG permit. The addition of the land can only occur if the holder consents. The conditions in relation to the tenure may be changed to reflect the addition of the land. An example of a change in conditions would be a change to the approved work program to reflect the additional land over which exploration can be conducted.

Area of GHG permit reduced on grant of GHG lease

Clause 48 requires the area of the GHG permit to be reduced on the grant of a GHG lease. The grant of the GHG lease from a GHG permit gives the

GHG lease holder additional rights including GHG storage. The reduction of the area from the GHG permit ensures that the relinquishment condition is met only from land within the area of the GHG permit. If the whole of the area of the GHG permit coincides with land in a GHG lease, the GHG permit ends if and when the GHG lease is granted.

Effect of ending of declaration of potential storage area

Clause 49 provides that a declaration of a potential storage area may extend beyond the usual 12 year maximum term after the GHG permit took effect. If after the 12 years has elapsed, and the declaration for a potential storage area ends, then that part of the GHG permit also ends.

Part 4 Work programs

Division 1 Function and purpose of work program

Function and Purpose

Clause 50 provides for the function and purpose of a work program.

Division 2 Requirements for proposed initial work program

Operation of div 2

Clause 51 provides for the operation of this division.

Program period

Clause 52 requires that any proposed work program must state its period and the period must be the same as that in the relevant call for tenders. The requirement for the period to be the same as that in the call ensures that the applications can be assessed on an equal basis.

General requirements

Clause 53 provides for the contents of a proposed work program. The proposed program is intended to detail the exploration and testing activities proposed to be conducted during the work program period, but not all authorised activities that can be carried out under the permit. The specification of contents of the work program assists in obtaining all the information necessary to enable a decision to be made in respect to the work program.

Water issues

Clause 54 requires the applicant to have regard to groundwater issues and the potential impacts the GHG exploration activities may have on groundwater. This will assist in the decision making process, a part of good natural resources management.

Division 3 Approval of proposed initial work programs

Criteria

Clause 55 provides the criteria to be used in deciding whether to approve an initial work program. The criteria are based on the potential of the area of the GHG permit for the discovery of a suitable GHG storage reservoir, the type of work to be undertaken, and when and where it is to occur, in relation to the GHG permit. This ensures that the program is adequate to explore the area. The concept of the potential of an area is not to be considered to limit the application of new ideas. The intention is to ensure that the work program adequately tests the applicant's concept regarding the potential of the area to safely and securely store GHG stream.

Also, in approving the initial work program, the Minister must also consider any relevant authorisation required under the *Water Act 2000*.

Verification may be required

Clause 56 provides for the Minister to require information supplied or work done to be verified by an independent and appropriately qualified person. The cost will be borne by the applicant. This will assist in the decision making process for the best work program submitted.

Referral to Water Act Minister of proposed work programs

Clause 57 relates back to the provision about water issues. If potential groundwater issues arise the Minister must not proceed with the decision on grant of the GHG until the Minister administering *Water Act 2000* has received a copy of the work program and approved the program to the extent it relates to potential groundwater issues. This is a key measure to prevent contamination of groundwater.

Division 4 Requirements for proposed later work programs

Operation of div 4

Clause 58 provides for the operation of this division.

General requirements

Clause 59 provides for the general requirements in respect to later work programs. The later work programs must comply with the initial work program requirements so as to provide a consistency of content for all proposed programs. Additional requirements relate to the extent of compliance with the previous work program, any amendments and the effect of any GHG stream storage site discovery.

This additional information is to ensure that the proposed work program is consistent with the other key factors that impact upon future activities. For example, if the work program has not been completed, then the proposed program should reflect that absence of the information that would have been acquired.

Likewise, the results of exploration, in particular a discovery of a GHG stream storage site, may influence the work program by requiring additional work to confirm the suitability of a storage reservoir discovery. If a discovery was not made during the previous program period, then new exploration concepts may be used for future exploration.

Program period

Clause 60 requires the proposed later work program to state the period to which it is to apply. The period of the work program will generally be 4 years so as to correspond to what will generally be the initial term for a

GHG permit. However, the Minister may approve a longer term. It would be meaningless to allow for the approval of a work program for a period that extends beyond the current term of the GHG permit, as there is no guarantee that the GHG permit would be renewed.

Implementation of evaluation program for potential storage area

Clause 61 provides that an evaluation program for a declared potential storage area in the permit becomes part of the work program for the GHG permit. The proposed later work program for the GHG permit must also include work necessary to implement the evaluation program.

Division 5 Approval of proposed later work programs

Application of div 5

Clause 62 provides for the application of this division.

GHG permit taken to have work program until decision on whether to approve proposed work program

Clause 63 provides for the continuation of the current work program until the later work program is decided. This provision is required to ensure that there is always a current work program for any GHG permit.

Deciding whether to approve proposed program

Clause 64 provides for approval or refusal of the proposed later work program. This clause states the matters to be considered in approving a later work program. The approval process requires the consideration of the standard criteria used in assessing the original work program plus the extent of compliance with, and any change (and reason for the change) to the existing work program.

This clause also provides for the consideration of any discovery made, storage viability report or independent assessment on the GHG permit. This information is needed to ensure that the work program is consistent with the exploring for potentially suitable storage sites within the GHG permit.

Steps after, and taking effect of, decision

Clause 65 details the steps to be taken after making a decision regarding the later work program. The holder is to be notified of the decision. If the Minister decides to refuse to approve the work program, then the applicant has the right of appeal against that decision. This right of appeal is necessary as the applicant may have already expended significant funds in relation to previous exploration activities and the new program would be likely to be based, in part, on the investment already made.

Division 6 Amending work programs

Restrictions on amending work program

Clause 66 prevents an amendment to the period of the work program to ensure that the work is carried out in the time originally set. There is to be no restriction on other amendments provided they are made in accordance with the procedures in this division. The restriction ensures that there is certainty in relation to circumstances under which amendments to the work program will be considered.

Applying for approval to amend

Clause 67 allows for the amendment of the approved work program and specifies that the application must be made at least 20 business days before the relevant period ends. The time is specified to ensure that the application can be assessed within the relevant period, to which the amendment relates and in the context that the reasons for the amendment are relatively current.

Requirements for making application

Clause 68 provides that the application must be made in the approved form and be accompanied by the prescribed fee.

Deciding application

Clause 69 provides for the circumstances when an application to amend the work program or substitute work will be considered by the Minister. The inability to change the initial work program relates to the program being set as a result of the tender process. The inability to change the work program is to ensure the integrity of the work program that was proposed in the

tender and approved by the Minister, is carried out in full. Substitution provides for a degree of flexibility to enable the holder to undertake a work program that best achieves their exploration objectives. Substitution cannot be undertaken in relation to the initial work program.

This clause also provides for other circumstances when an amendment to the work program will be considered. The application is not to be related to holder's financial or technical resources or ability to manage GHG storage exploration as these are a reflection of the manner in which the holder undertakes their business, and may call into question their ability to meet the capability criteria.

The failure to secure the timely access to the necessary equipment and technical resources is an indication of the ability to manage GHG storage exploration. The results of GHG storage exploration are not considered to be a valid reason for amending a work program, otherwise by substitution, as it is an inherent risk associated with exploration. However, the holder of a GHG permit is not to be disadvantaged by an event beyond their control which could not have been prevented by a reasonable person in their position.

Also, this clause enables the Minister to defer the relinquishment days for a period that relates to the circumstances of the amendment. The deferral of one relinquishment day does not effect later relinquishment days or provide for any extension to the term of the GHG permit.

This clause also enables the Minister to require the relinquishment of additional land in consideration of the approval of the amendment.

Steps after, and taking effect of, decision

Clause 70 provides for the actions to be taken after the decision made regarding the application to amend the work program and for when the decision is to take effect. There is to be no appeal in relation to the Minister's decision as it relates to the management of the State's resources.

Part 5 Key mandatory conditions

Division 1 Preliminary

Operation of pt 5

Clause 71 provides for the imposition of mandatory conditions on a GHG permit. The imposition of mandatory conditions ensures the standardisation of key conditions for all GHG permits. The holder of a GHG permit is required to comply with key provisions including relinquishment, notice of entry and compensation provisions of this Act.

Division 2 Standard relinquishment condition and related provisions

Standard relinquishment condition

Clause 72 provides for relinquishment of part of the area of the GHG permit. This relinquishment is to make land available for exploration, via further tender processes, on a regular basis. This is intended to provide opportunities for new explorers with different exploration concepts.

The relinquishment is to be made by way of a notice lodged at a stated place. All late relinquishments take effect as of the due date. The deferral of a relinquishment day under another provision of this Act relates only to that day and does not result in a deferral of later relinquishment days or an extension of the term of the GHG permit. The holder of the GHG permit can also relinquish more than the required amount. Any additional amount can be considered as contributing to the requirement to be met at the next relinquishment day.

Consequence of failure to comply with relinquishment condition

Clause 73 provides for notification to be given in a case of non-compliance with relinquishment and if the GHG permit holder still fails to relinquish within 20 business days the GHG permit is cancelled. This is to prevent permit holders from ‘land-banking’ and allows for the land to be re-tendered.

Part usually required to be relinquished

Clause 74 gives the percentage of the number of original notional sub-blocks to be relinquished. The amount is to be one-twelfth (8.33 per cent) per annum resulting in one-third of the original area to be relinquished every 4 years. The 4 year period is the maximum time that a GHG permit can exist without a relinquishment.

Sub-blocks that can not be counted towards relinquishment

Clause 75 provides for what land cannot be counted as an area relinquished from a GHG permit for the relinquishment condition. This land includes an area relinquished under an additional or penalty relinquishment, the area the subject of a GHG storage lease, and any application for a GHG storage lease or a potential storage area. Areas that are declared as potential storage areas, or applications for potential storage areas may be relinquished, however the application or declaration for the potential storage area no longer has effect.

Adjustments for sub-blocks that can not be counted

Clause 76 provides that if the amount of land available for relinquishment is less than the amount of land to be relinquished, then the relinquishment condition is considered to have been met. This is to ensure that there is no requirement to relinquish land still subject to the permit, for example where an application for a GHG storage lease or potential storage area has been made and not decided and the land can still be considered to be part of the GHG permit. If the application for a potential storage area or GHG lease is not granted, then that land will have to be relinquished to the extent sufficient to meet the relinquishment condition.

Adjustment for particular potential storage areas

Clause 77 provides that the relinquishment condition has been complied with if all land subject to the GHG permit, other than the area of a declared potential storage area for the GHG permit, is relinquished, even though the necessary area amount has not been met.

Relinquishment must be by blocks

Clause 78 provides for the relinquishment to be made by blocks. The relinquishment by blocks ensures the integrity of the administrative process

whereby the area of the GHG permit is related to specific blocks and ensures that a reasonable area unit for exploration is made available. Where a block contains an area that cannot be counted as a relinquishment, then only the remainder of the block is required to be relinquished.

Ending of GHG permit if all of its area relinquished

Clause 79 clarifies that the GHG permit ends if all of the area of the permit, including any potential storage area, is relinquished from the GHG permit.

Division 3 Other mandatory conditions

Compliance with test plan for GHG storage injection testing

Clause 80 provides for a GHG permit holder to apply to the Minister to perform injection testing on the potential storage reservoir. Because of the different geology and amounts needed for injection this provision allows each plan to be evaluated individually. The ability to impose conditions allows for any precautions to be taken to make the testing safe and the eventual fate of the injected substance to be known and potential impacts properly managed.

Restriction on substances that may be used for GHG storage injection testing

Clause 81 provides that only GHG stream or water may be injected for testing. This makes injecting an unauthorised substance a breach and is to prevent injection of inappropriate substances that may cause environmental or other harm. The purpose is to determine potential storage of CO_2 thus the requirement for water or GHG stream, which is either pure CO_2 or consists overwhelmingly of CO_2.

Restriction on substances that may be used for GHG stream storage

Clause 82 provides that only GHG stream may be used for storage. The purpose of the storage is to reduce the amount of carbon dioxide released into the atmosphere, particularly from stationary energy plants. Flue gases, for example, will not be allowed as storage stream.

Restriction on GHG streams that may be used

Clause 83 qualifies further the substances allowed under the definition of GHG stream. The substance must consist overwhelmingly of CO_2 with incidental amounts only of substances derived from the carbon capture and storage process and approved detection agents, for example, odourant. This is consistent with the aim of storing CO_2.

Water Act authorisation required for taking or interference with water

Clause 84 prohibits the holder of a GHG permit taking or interfering with water unless the appropriate authorization under the *Water Act 2000* has been granted.

Obligation to consult with particular owners and occupiers

Clause 85 requires that the holder of a GHG permit must consult with owners and occupiers of land where authorised activities are likely to be carried out. The requirement to consult is intended to provide information at an early stage of the exploration activities and thereby assist in the development of good landholder relations. This clause does not exempt the holder from the requirement to comply with provisions relating to notice of entry and compensation in relation to the authorised activities.

Annual rent

Clause 86 requires that the holder of a GHG permit to pay the annual rent for the permit.

Civil penalty for nonpayment of annual rent

Clause 87 imposes a civil penalty of 15 per cent for the nonpayment of the annual rent. The civil penalty is intended to provide an incentive for the timely payment of the rent. This aligns with the practice contained in the *Petroleum and Gas (Production and Safety) Act 2004*.

Requirement to have work program

Clause 88 provides that the holder of a GHG permit must have an approved work program.

Compliance with GHG storage exploration activities in work program

Clause 89 requires that the holder of a GHG permit must comply with the approved work program. The work program is the minimum amount of work that the holder must complete during the period for which the work program applies. The holder can undertake work in addition to that in the approved work program. Compliance with any approved work program ensures that the holder maintains a minimum level of exploration in the GHG permit, and compliance with the initial work program is a key part of maintaining the integrity of the tender process. Failure to comply with the work program is considered to be a significant breach of the mandatory conditions.

Penalty relinquishment if work program not finished within extended period

Clause 90 provides that when a holder has received an extension of time to comply with the work program and has not completed the work at the end of that extension the holder must relinquish a part of the original sub-blocks of the GHG permit that corresponds to the amount of the work that was not finished for the approved work program.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause in that it does not provide for an appeal in relation to the penalty relinquishment. The holder in applying for an extension to complete the work program has already obtained a benefit not available to a tenure holder where there has been no change in holder. Therefore it is appropriate for there to be a penalty relinquishment in proportion of the work not completed in time. An appeal in these circumstances is not warranted.

Obligation to give proposed later work program

Clause 91 requires that the holder of the GHG permit must submit a later work program between 40 and 100 business days before the end of the current approved work program. The requirement to submit a later work program is to ensure that there is sufficient time to assess and approve the later work program, thereby ensuring that there is an obligation to continue to explore the land subject to the GHG permit.

If the later work program has not been approved before the end of the current work program, the holder is not considered to be in breach of the

requirement to have an approved work program. The provision of an increased fee for late lodgement of a later work program is intended to be an incentive to encourage the timely submission of the later work program.

Consequence of failure to comply with notice to give proposed later work program

Clause 92 provides that on failure to lodge a later work program, as required by the notice given to the holder, the GHG permit is cancelled.

Part 6 Renewals

Conditions for renewal application

Clause 93 provides for the conditions for a renewal application for a GHG permit. An application cannot be made if there are payments owing to the State or security still to be paid. The requirement that there is no money outstanding is a reflection of the capability of the applicant. The application cannot be made more than 60 business days before the end of the term, so that the extent of compliance in relation to the conditions of the previous term can be properly considered.

Requirements for making application

Clause 94 provides for the requirements of a renewal application for a GHG permit. The application is to include a proposed later work program that complies with those requirements and an application fee. The increased fee for the late lodgement of the renewal application is to encourage the timely submission of renewal applications, by GHG permit holders.

Continuing effect of GHG permit for renewal application

Clause 95 provides for the GHG permit to continue until the application for renewal has been decided. The continuation is needed as the only way for GHG permit to be granted is by a tender process. If the tenure ended, then a tender process would have to be undertaken and the original applicant may not be successful. This would be inappropriate if the reason for the GHG

permit ending was the failure of the consideration of the renewal to be completed by the Minister before its expiry date.

Also, some exploration activities will need to continue after the due expiry date. An example of the continuation of activities is injection testing especially if conditions imposed on the testing require further work to be completed. For example, potential leakage pathways may need sealing for safety or environmental reasons.

Deciding application

Clause 96 places the restrictions on deciding the application to renew the GHG permit. A GHG permit can only be renewed if the holder continues to satisfy the capability criteria, has substantially complied with the conditions of the permit and the provisions of this Act, the Minister has approved the holder's proposed work program, and a relevant environmental authority under the *Environmental Protection Act 1994* has been issued for the proposed GHG permit.

The renewal application cannot be decided if the holder has been required under this Act to apply for a GHG storage lease and the application for the lease has not been decided. The decision on the GHG storage lease may result in a different later work program being approved and conditions being placed on the GHG permit. The applicant may be required to pay the annual rent and give security before the Minister decides to grant the renewal. This is to ensure that all of the administrative arrangements have been completed prior to the permit being renewed.

Provisions and term of renewed GHG permit

Clause 97 provides for provisions of the GHG permit that must be decided in respect to the renewal application. There are restrictions in relation to the term, area, start date and the presence of potential storage areas for the renewed GHG permit. These restrictions ensure that the basic provisions in respect of a GHG permit are maintained and cannot be subsequently changed to allow for an increased term or area. An additional provision is required in relation to potential storage areas as these can continue past the expiry date for the GHG permit.

Criteria for decisions

Clause 98 requires that the same criteria be used for the decision to grant the GHG permit as for its renewal. The application of the same criteria will ensure a consistency in the decision making process, regarding the provisions, throughout the life of the tenure.

Information notice about refusal

Clause 99 provides for the applicant to be given an information notice if the renewal of the GHG permit is refused. The requirement for giving an information notice is appropriate considering that the holder has invested a large amount of funds in exploration activity in the area of the permit.

When refusal takes effect

Clause 100 states that the refusal to renew a GHG permit does not take effect until after the date for an appeal against the decision passes. This date ensures that if the holder decides to appeal and the appeal is successful, then the GHG permit continues and would not have to be reinstated. As the GHG permit continues, applications cannot be made for a new GHG tenure over the area of the original permit.

Part 7 Potential storage areas

Applying for potential storage area

Clause 101 details the process for applying for a declaration of a potential storage area within a granted GHG permit. A potential storage area enables the holder of a GHG permit who has discovered an underground reservoir suitable for the storage of GHG stream, the opportunity to retain an interest in and later develop the discovery. The declaration is useful for situations where there is no available GHG stream for storage. An application can be made for whole or part of a GHG permit to be declared a potential storage area. The future storage viability may be dependent upon changes in technology to store GHG stream, the development of infrastructure such as pipelines, or market opportunities.

There is no limitation on the number of potential storage areas that can be declared for each GHG permit or the timing of the submission of the

application. This clause provides for the requirements of the application including a requirement to provide a report in relation to the discovery in the area of the application. The report needs to meet the standard of a storage viability report. The report is required to demonstrate that the storage reservoir will be suitable. An evaluation program relating to the potential GHG storage and for market opportunities is also required. The evaluation program may require additional exploration or testing to be undertaken in relation to the discovery.

Deciding potential storage area application

Clause 102 provides for the matters to be considered in relation to the decision to declare a potential storage area including the size of the area and form a single parcel of land. Regard will be had to whether or not the holder has complied with existing conditions of the GHG permit. An information notice will be issued if the application is refused.

Inclusion of evaluation program in work program

Clause 103 provides for the evaluation program that accompanied the application to become part of the approved work program for the GHG permit. The incorporation of the evaluation program into the work program ensures that there is an obligation for the holder to undertake the evaluation program.

Term of declaration

Clause 104 enables a potential storage area to be declared for a maximum term of 10 years. A shorter period would only be considered in relation to discoveries known at the time of grant to be in the area of the GHG permit or made during the early years of the permit. The holder of a GHG permit is able to have an area no longer declared a potential storage area by giving the Minister a notice to that effect.

Potential storage area still part of GHG permit

Clause 105 states that potential storage area remains part of the original GHG permit and retains the rights and obligations associated with that tenure. The administration of and obligations in relation to a potential storage area are simplified by remaining part of the GHG permit.

Part 8 Provisions to facilitate transition to GHG storage lease

Application of pt 8

Clause 106 states that the division only applies if the Minister considers that the holder should apply for a GHG storage lease because within whole or part of the GHG permit, GHG stream is or soon will be available for storage. The application of the division provides a mechanism for the State to manage its storage resources to meet the needs of the community to reduce greenhouse gas emissions.

Ministerial direction to apply for GHG lease

Clause 107 provides for action that the Minister may take if the holder of a GHG permit does not apply for a GHG storage lease. The action may include excision of part or the cancellation of the GHG permit. The basis for this action must be supplied to the holder who has at least 6 months to make a submission as to why a lease application should not be made. The limit of 6 months for the submission is considered sufficient to enable the holder of the permit adequate time to assess the basis for the action and to undertake a review of the discovery to determine if the holder would like to proceed with storage development.

Taking proposed action

Clause 108 provides for the limitations on proposed action in relation to the holder of the GHG permit. The limitations ensure that appropriate consideration has been given to any submission and the result of any application for a GHG storage lease has been decided. The decision to take action does not take effect until an information notice has been issued to the holder.

Chapter 3 GHG injection and storage leases

Part 1 Key authorised activities

Operation of pt 1

Clause 109 provides for the operation of this division. A GHG lease is for the injection and storage of GHG stream and is not to be used for retention of a GHG storage reservoir. This clause also provides that the *Petroleum and Gas (Production and Safety) Act 2004* safety provisions will apply to authorised activities of a GHG lease. Activities may be carried out by specialised contractors engaged by the GHG lease holder to undertake some of the authorised activities.

Principal authorised activities

Clause 110 provides for the type of exploration and storage activities that the GHG lease holder can undertake. Evaluating the feasibility of GHG stream storage can also be undertaken. Monitoring the behaviour of the injected GHG stream begins as soon as injection begins. This is in line with the requirements of the development plan and the data obtained will form the basis of reports for environmental, water, safety and tenure management.

GHG stream pipeline and water pipeline construction and operation

Clause 111 enables the holder of a GHG lease to construct and operate GHG stream and water pipelines that are wholly within the area of the lease or contiguous leases held by the same holder. These pipelines generally link injection wells in the lease or leases to a central gathering point or processing plant.

Incidental activities

Clause 112 provides for the GHG lease holder the right to undertake incidental activities necessary to facilitate the efficient and responsible

storage of GHG stream. These activities, or structures to be constructed, are temporary and will be required to be removed upon the cessation of GHG lease activities.

Part 2 Transition from GHG permit to GHG lease

Division 1 Applying for GHG lease

Who may apply

Clause 113 provides that the holder of a GHG permit may apply for a GHG lease over all or part of the area of the GHG permit. A person other than the holder may apply jointly with or with the permission of the holder. The ability for the GHG lease to be granted to others enables the GHG permit holder to have a lease granted to parties to reflect the commercial interest in the lease.

Requirements for making permit-related application

Clause 114 requires that an application for a GHG lease be made on the approved form and for the additional information to be included in the application. This material includes statements in relation to capability criteria, the development plan and verification of ability and resources for the project. The additional information is intended to assist in the timely assessment of the application.

Requirements for verification statement

Clause 115 requires the verification statement to be made by and independent, qualified person who can determine that the applicant has the requisite financial and technical resources and the ability to carry out the storage project. Due to the long-term nature of GHG stream storage it is important to establish early in the decision-making process whether or not an applicant will be suitable to meet all of the requirements for an extended length of time.

Continuing effect of GHG permit for permit-related application

Clause 116 provides that if a GHG permit-related application for a GHG lease is not decided before the GHG permit ends, then the GHG permit continues until the specified events in this clause happen. The land subject to the GHG lease is likely to have completed exploration wells and equipment that the applicant will use as part of their injection and storage activities. The continuation of the GHG permit enables the holder of the GHG permit to access these wells and equipment, ensuring they are maintained in proper working order. Also, injection testing could continue and further geological data gathered.

Division 2 Deciding permit-related applications

Deciding whether to grant GHG lease

Clause 117 provides that the Minister may grant the GHG lease if the Minister is satisfied that the requirements for grant, detailed in this Act, have been met.

Requirements for grant

Clause 118 provides that the holder of a GHG permit must meet specific requirements in relation to the application and has substantially complied with the conditions of the GHG permit. The area proposed for the lease must be appropriate and must contain an adequately identified storage site.

Substantial compliance relates to when an application is submitted towards the end of a work program year and the expectation is that the work program for all previous years has been completed. The GHG lease can only be granted if GHG stream storage is likely within 5 years or the applicant has entered into a contract, a coordination arrangement or other arrangement for GHG stream storage.

It may be that an applicant is also the owner of, or negotiating with, the owner of a power station who is proposing to capture greenhouse gas for storage. The work to build or reconfigure the power station may take some years to complete, thus the 5 year time-frame given.

Exception for particular relevant arrangements

Clause 119 is intended to ensure that all supply of GHG stream contracts are genuine and thereby GHG stream will be provided to meet the contract. If the Minister is not satisfied that the contract is genuine, then the Minister may refuse to grant a GHG lease. This provision is intended to prevent the grant of a GHG lease as a means of retaining access to land when the holder, under normal circumstances, would have had to relinquish the land.

Provisions of GHG lease

Clause 120 provides the list of provisions to be decided for the GHG lease. There is no term for a lease. Each lease will determined on a case-by-case basis and when the injection ceases and wells have been decommissioned the holder is required to apply for surrender of the lease using the relevant provisions of this Act.

Provisions about grant and conditions of GHG lease for significant project

Clause 121 provides for the conditions and grant of a GHG lease that has been declared a significant project. The Coordinator-General's conditions for the GHG lease prevail to the extent of any inconsistency over GHG lease conditions of this Act. This aligns with the process under the *Petroleum and Gas (Production and Safety) Act 2004*.

Information notice about refusal

Clause 122 provides that for a decision to refuse the grant of the GHG lease, the applicant has the right of appeal against that decision. This right of appeal is necessary, as the applicant may have already expended significant funds in relation to previous exploration activity.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause in that it does not provide for an appeal in relation to any conditions that the Minister may set in relation to the approval. The Minister setting conditions is consistent with the Minister's initial approval of the work program and the Minister's role as the custodian of the State's resources.

When refusal takes effect

Clause 123 states that the refusal to grant the GHG lease does not take effect until after the date for an appeal against the decision passes. This date ensures that if the holder decides to appeal and the appeal is successful, then the appeal provisions in this Act apply.

Part 3 Obtaining GHG lease by competitive tender

Division 1 Preliminary

Operation of pt 3

Clause 124 provides for the operation of this division. A GHG lease can only be granted by competitive tender or by application by an existing GHG permit holder. This approach allows informed decisions to be made for managing this new industry and also allows for appropriate management of the State's resources. Safety, long-term liability and risk minimisation issues are all contemplated in this Act and are specific to GHG operations.

Division 2 Calls for tenders

Call for tenders

Clause 125 provides for the ability to have and set the conditions relating to a call of tenders for the grant of a GHG lease. A call for tenders is considered to be the key element in ensuring that the State has competition in this new industry. The tender process:

- provides a transparent process for the awarding of a GHG lease; and
- ensures that the State achieves the best possible development program for the storage sites identified in the area of the proposed GHG lease.

The call for tenders must provide additional information on any other conditions that may be imposed on the preferred tenderer and any special criteria and their weighting to be used in deciding the tender. The

requirement to provide this information is to ensure the openness of the tender process.

Right to tender

Clause 126 provides the right for a person to make an application for a GHG lease subject to a call for tenders. The application cannot be made after the closing time and the tender must be submitted for all of the land subject to the tender and not just part of the land. The restriction on the application being made for all of the land provides an equal setting for the assessment applications.

Right to terminate call for tenders

Clause 127 enables the Minister to publish a gazette notice at any time to terminate the tender process. The ability to terminate the tender process has the potential to reduce the possibility of conflict of land use arising. The tender process may take several months, during which an issue may arise that would result in a conflict with GHG exploration and storage. The preference is to be able to terminate the tender process rather than allowing of the conflict to arise. The tender process is a means of allocating the right to explore and use the State's resources. Compensation is not to be payable as no allocation of the State's resources has occurred.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The grant of a GHG lease is the State exercising its rights in respect of managing the State's GHG storage reservoirs.

The ability to terminate a call for tenders is required to protect the State's interest in the management of those resources. Up until an application for a GHG lease in response to a call for tenders is granted, the applicant has no rights to the tenure. Therefore, the termination of the previously advertised call for tenders in no way affects the rights of the applicant, as the applicant is aware of the risk associated with any tender process prior to submitting the tender application. It should be noted that in commercial practice, tenders may be cancelled at any time. The tender process for GHG leases is no different.

Division 3 Deciding tenders

Process for deciding tenders

Clause 128 provides for the Minister to decide a call for tenders in any manner the Minister considers appropriate. The Minister may use any process that is considered appropriate to decide the tender.

Provisions for preferred tenderers

Clause 129 provides for the preferred tenderer to address a number of matters required by the Minister. Payment of the annual rent for the first year, and the security, is to ensure that all the necessary financial transactions are completed before the grant of the GHG lease. There may be a requirement for other processes to be completed before the grant of the GHG lease. The clause also provides that if the preferred tenderer does not comply with the matters, then the tenderer is no longer the preferred tenderer, and the Minister may select another tenderer as the new preferred tenderer.

Deciding whether to grant GHG lease

Clause 130 requires for the consideration of all tenders and a decision on whether to grant a GHG lease. If required, the tender assessment process can be modified to address the specific requirements of the tender. A GHG lease can only be granted if the applicant is an eligible person and the Minister approves the tenderer's proposed development plan. Payment of the annual rent for the first year and the security is to ensure that all the necessary financial transactions are completed before the grant of the GHG lease. There may be a requirement for other processes to be completed before the grant of the GHG lease.

Provisions of GHG lease

Clause 131 provides that if the Minister decides to grant a GHG lease then the provisions of the lease are to be decided as if the application was a permit-related GHG lease application. This ensures a similarity of process in deciding the provisions for all GHG leases.

Criteria for decisions

Clause 132 provides for the matters to be considered in deciding to grant the GHG lease including any special criteria contained in the tender document. The capability criteria are to be considered so as to ensure that the GHG lease will only be granted to a holder who has the resources and ability to complete the proposed development plan in full and on time. The ability to set the weighting of the criteria is intended to allow for the selection criteria to be set to reflect the uniqueness of each area released for tender.

Notice to unsuccessful tenderers

Clause 133 requires that a notice be given to unsuccessful tenderers. The giving of the notice provides closure on the tender process for the unsuccessful tenderers.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause.

A tender process for the grant of a GHG lease ensures that the best possible outcome can be obtained in relation to the management of the State's resources. The grant of the GHG lease is a decision made by the Minister as the steward of the State's resources. The unsuccessful applicants have no rights to the grant of a GHG lease. Therefore, an appeal against this decision is not considered appropriate.

It is also envisaged that the advertisement calling for tenders for a GHG lease will detail information about the criteria that will be used to decide competitive tender applications. Further, it is envisaged that the whole competitive tender assessment process will be transparent and publicly available to all potential tender applicants prior to the applicants submitting their tenders.

Note that the *Judicial Review Act 1991*, in particular section 32 'Request for statement of reasons', applies to the decision making process about which this notice is given.

Part 4 Term and area provisions

Term of GHG lease

Clause 134 provides that there is no fixed term for GHG leases. Each reservoir used for storage of GHG stream will vary in size and geology. The cessation of injection of GHG stream into a reservoir and decommissioning of the wells does not signal the end of the project. Monitoring is required to continue and a GHG lease will stay current until the application to surrender has been approved. This will only occur when the requirements for surrender have been met. Some GHG leases may remain current for many years post-closure so that risks are reduced to as low as practicable.

Area of GHG lease

Clause 135 provides for the area of the GHG lease. There are limitations on the area and land that can be included in a GHG lease. These limitations ensure that only one GHG tenure can be granted over any land. The gazettal of land over which a lease cannot be granted ensures that land is unavailable where the land use is not compatible with GHG stream storage.

References to sub-blocks of GHG lease

Clause 136 ensures the continuation of the integrity of the description of land subject of the GHG lease by sub-blocks.

Minister's power to decide excluded land

Clause 137 enables land to be excluded from a GHG lease. The exclusion may relate to a specific type of land or an area in the lease. Land requiring specific procedures in relation to it being accessed is the most likely to be excluded at grant. The excluded land within the boundaries of the lease is likely to be the same as for the pre-existing GHG permit.

Minister may add excluded land

Clause 138 enables excluded land to be added to a GHG lease. The addition of the land can only occur if it complies with the area provision in this Act and if the lease holder consents. The conditions in relation to the tenure may be changed to reflect the addition of the land. An example of a

change in conditions would be a change to the approved development plan to reflect the additional land over which GHG storage activities may be conducted.

Part 5 Development plans

Division 1 Function and purpose of development plan

Function and purpose

Clause 139 provides for the function and purpose of a development plan. The development plan is the key element in ensuring the timely, safe and orderly process of GHG stream storage and also forms an important criterion in assessing the holder's performance in undertaking these activities. The provision of this information and the requirement for having approved plans allows for appropriate management of this new industry and with other resources in the area.

Division 2 Requirements for proposed initial development plans

Operation of div 2

Clause 140 provides for the operation of this division.

General requirements

Clause 141 details what the initial development plan must contain. This includes information about the storage capacity of the site, the composition of the GHG stream to be injected, a monitoring plan and the types of activities to be undertaken. The information enables an assessment of whether there are sufficient resources available and whether the activities are appropriate to achieve the permanent and safe storage of the GHG stream within the reservoir.

It is intended that the information provided for each year of the plan must be quite detailed and more general information must also be provided on the proposed development over the whole of the GHG lease. Provision is made for a regulation to provide details about the form of the information to be supplied in the plan.

Site plan

Clause 142 details the requirements of a site plan that is a part of the development plan. Detailed information about the reservoir site enables the applicant for a GHG lease to explain why, in the applicant's opinion; the site is suitable for permanent and safe storage of a GHG stream. A comprehensive site plan will be a very important part of the approval process for the development plan.

Petroleum wells to be assumed

Clause 143 provides for extra information to be added to the development plan should the proposed GHG lease holder assume responsibility for petroleum wells in the lease area. A description of storage activities includes whether the wells will be used for monitoring, injection of GHG stream or other relevant activity.

Water issues

Clause 144 provides for potential groundwater issues to be addressed by the proposed GHG lease holder. The types of issues that need addressing will include the pressures that will be exerted, through injection of compressed CO_2 onto surrounding structures and how that pressure may ultimately impact on groundwater.

Monitoring and verification plan

Clause 145 provides for a monitoring and verification plan to be included in the development plan. This plan is crucial for the following reasons:

- safety
- environmental
- water impacts
- tenure management

- community understanding and acceptance

This requirement is consistent with the Ministerial Council on Mineral and Petroleum Resources (MCMPR) Regulatory Guiding Principles for carbon capture and storage—"*Monitoring and verification is required to ensure operationally safe performance of CCS projects; particularly the condition of the injection well and the conditions in the storage reservoir. It also verifies that the amount of CCS stream measured has actually been injected as well as its behaviour over time. In the long-term, monitoring can confirm the continued storage of the CCS stream in its intended location or storage formation. Verification of the methods used in monitoring and the data collected will bring confidence to the process.*

Current scientific understanding indicates that effective monitoring and verification of the stored CCS stream is a key component for minimising risks. While the probability of a leakage, on the basis of current scientific knowledge, is understood to very low, the costs of such an incident could be high. Although projects will necessarily be assessed on a case-by-case basis, any monitoring and verification system needs to ensure industry provides accurate and relevant information, which is readily available to the community and independently verifiable." (page 37)

Plan Period

Clause 146 provides for the period to which the development plan is to apply. Generally the plan will be for a period of 5 years, which is considered adequate in the context of the construction and operation of plant and equipment necessary for GHG stream storage. This period is also sufficient to allow for a review of the migration of the injected GHG stream and the remaining storage space in the reservoir.

Division 3 Approval of proposed initial development plans

Criteria for decision

Clause 147 provides for the criteria that must be considered in deciding to approve a proposed development plan. These criteria best represent the key elements in determining the appropriateness of a development plan. Chief among these is what is in the best interests of the State having regard to the public interest. Public interest is defined in this Act.

Also, in approving the initial development plan, the Minister must also consider any relevant authorisation required under the *Water Act 2000*.

Verification may be required

Clause 148 provides for the Minister to seek verification from the applicant on data supplied, the source of the data, or work done to date on the plan. The verification must be done by an independent person who is appropriately qualified and the cost of the verification is to be borne by the applicant. This provision will assist in the decision-making process and will show whether the activities proposed in the plan are achievable technically, financially, practically and in the time-frame proposed.

Referral to Water Act Minister of proposed development plans

Clause 149 provides that the Minister must not approve a development plan that has identified potential groundwater issues until the Minister administering the *Water Act 2000* has approved the part of the plan relating to these issues. This is in line with the government's water management strategies and is a key measure to prevent contamination of groundwater.

Division 4 Requirements for proposed later development plans

Operation of div 4

Clause 150 provides for the operation of this division.

General requirements

Clause 151 provides for the requirements of a later development plan. A later development plan must comply with the initial development plan requirements to ensure that there is consistency in content and form for all development plans. It is the intention of this clause that a 'significant change' should only be considered as a change in relation to the amount, location and type of activities which may impact on the interests of the State and others, or (particularly with any proposal for the reduction of activities), when the activities are not in line with best resource utilisation practice.

It is not intended that the provisions of this clause should require a later development plan every time there is a 'minor' change to the proposed activities on the lease. Reasons must accompany any significant change in activities to clarify the aim of the change and to ensure that there is no detrimental effect to the development of the remaining storage reservoirs in the area of the lease. If the significant change involves a reduction of GHG stream injection, then the proposed plan must include an evaluation of the storage potential and the market opportunities for storage.

Division 5 Approval of proposed later development plans

Application of div 5

Clause 152 provides for the application of this subdivision.

GHG lease taken to have development plan until decision on whether to approve proposed development plan

Clause 153 provides that until the later plan is decided the lease is taken to have a development plan (even though the plan period has actually ended) and the lease holder is allowed to undertake any authorised activities for the lease.

Deciding whether to approve proposed plan

Clause 154 provides for the matters that must be considered in deciding whether to approve the proposed plan. The criteria have been selected to ensure that GHG stream storage is technically and financially. This is consistent with a GHG lease being a GHG stream injection and storage tenure and is not to be used for retaining access to land with no intention of undertaking GHG storage.

Steps after, and taking effect of, decision

Clause 155 provides for an information notice to be given if the decision is not to approve the proposed later plan. An information notice is appropriate as the holder is likely to have invested in plant and infrastructure for GHG stream storage during the early plans. The decision generally takes effect

after the time for an appeal ends; otherwise it is the day of effect specified in the information notice.

Division 6 Amending development plans

Restrictions on amendment

Clause 156 provides for a lease holder to amend the development plan albeit with certain restrictions. The plan cannot be amended if injection of the GHG stream is to cease nor can it be amended if it would not comply with the later plan requirements. The restriction is necessary as the initial plan was approved above other tenderers and so any changes to the overall project cannot be done simply through amendments.

Applying for approval to amend

Clause 157 provides for the application to the Minister with a fee as prescribed.

Deciding application

Clause 158 provides for the matters to be considered when an application is decided.

Steps after, and taking effect of, decision

Clause 159 provides that the Minister must give a notice of the decision whether or not to approve the amendment sought for the development plan.

Part 6 Key mandatory conditions for GHG leases

Operation of pt 6

Clause 160 provides for the imposition of mandatory conditions on a GHG lease. This imposition of mandatory conditions ensures the standardisation of key conditions for all GHG leases. The holder of a GHG lease is required to comply with key provisions including GHG substances that can

be injected and stored, security, notice of entry, consultation and compensation provisions of this Act.

Compliance with test plan for GHG storage injection testing

Clause 161 provides for a GHG lease holder to apply to the Minister to perform injection testing on the potential storage reservoir. Because of the different geology and amounts needed for injection this provision allows each plan to be evaluated individually. The ability to impose conditions allows for any precautions to be taken to make the testing safe and the eventual fate of the injected substance to be known and potential impacts properly managed.

Restriction on substances that may be used for GHG storage injection testing

Clause 162 provides that only GHG stream or water may be injected for testing. This makes injecting an unauthorised substance a breach and prevents the injection of inappropriate substances that may cause environmental or other harm. The purpose is to determine potential storage of CO_2 thus the requirement for water or GHG stream which is either pure CO_2 or consists overwhelmingly of CO_2.

Restriction on substances that may be used for GHG stream storage

Clause 163 provides that only GHG stream may be used for storage. The purpose of the storage is to reduce the amount of carbon dioxide released into the atmosphere, particularly from stationary energy plants. Flue gases, for example, will not be allowed.

Restriction on GHG streams that may be used

Clause 164 qualifies further the substances allowed under the definition of GHG stream. The substance must consist overwhelmingly of CO_2 with incidental amounts only of substances derived from the carbon capture and storage process and approved detection agents, for example, odourant.

Water Act authorisation required for taking or interference with water

Clause 165 provides that any water taken or interfered with by the GHG lease holder must first have the relevant approvals granted under the *Water Act 2000*.

Obligation to consult with particular owners and occupiers

Clause 166 requires that the holder of the GHG lease must consult with the owners and occupiers of land in the lease area about the carrying out of activities. This consultation is intended to keep the owners and occupiers informed of the timing and extent of authorised activities to be undertaken on the land and thereby assist in the development of good landholder relations. The clause does not exempt the holder of the GHG lease from the need to comply with notice of entry and compensation provisions of this Act.

Obligation to commence GHG stream storage

Clause 167 provides that the holder of the GHG lease must commence GHG stream storage within 5 years of the lease taking effect or the commencement day as approved on the GHG lease. The specification of a start date is to ensure that a GHG lease is granted for the purpose of GHG storage and not as a means to retain land.

Annual rent

Clause 168 requires that a GHG lease holder must pay the annual rent for the lease.

Civil penalty for nonpayment of annual rent

Clause 169 imposes a civil penalty of 15 per cent for the nonpayment of the annual rent. The civil penalty is intended to provide an incentive for the timely payment of the rent.

Requirement to have development plan

Clause 170 provides that the holder of a GHG lease must have a development plan for the lease.

Compliance with development plan

Clause 171 requires the holder of the GHG lease to comply with their approved development plan. Compliance with the development plan ensures that the whole process of injection for storage of GHG stream occurs in a safe, timely and orderly manner. The site plan and monitoring plan within the development plan are critical elements to risk minimisation

for the lease. In the case of a GHG lease being granted as a result of a tender process, compliance with the development plan is essential to ensure the integrity of the tender process. Failure to comply with the development plan is considered to be a significant breach of the mandatory conditions.

Obligation to give proposed later development plan

Clause 172 requires that the holder of the GHG lease must submit a later development plan and the times and occasions when a later development plan is required. The later plan must comply with the later development plan requirements. The later plan is required because an initial development plan has a maximum 5 year term or there may be occasions when a significant change to the activities is imminent or the lease holder may become aware that the nature and extent of activities are changing to the extent that a later plan is required. For any of these situations a new plan needs to be submitted for approval. The timeframes relating to the submission of the proposed later development plan ensures that there is adequate time to assess and approve the later development plan. The provision of a late fee is intended to be an incentive to encourage the timely submission of the later development plan.

It may be considered that there is as a breach of a fundamental legislative principle triggered by this clause. The late lodgement fee is proposed to encourage the timely submission of later development plans, by GHG lease holders, for Ministerial approval. The time for lodgement of a later development plan has been determined with a view to completing the necessary work of assessing, and approving or rejecting the later development plan before the expiry of the current development plan approved for the GHG lease. The late lodgement of the later development plan greatly reduces the time for this. To discourage the late lodgement of later development plans, and to reduce unnecessary increases in the Minister's and administering department's work loads, an application fee greater than the lodgement fee is proposed.

The GHG lease holder has 40 to 100 business days, before the end of the current approved development plan period, to submit the later development plan without incurring the proposed larger application fee. This is a reasonable timeframe for lodgement, considering the GHG lease holder has known of this date since the approval of the current development plan.

Consequence of failure to comply with notice to give proposed later development plan

Clause 173 provides that on failure to lodge a later development plan as required by the notice given to the holder, the GHG lease is cancelled.

Part 7 Surrenders

When surrender is permitted

Clause 174 provides details about when the holder of a GHG lease may surrender the lease only through an application that is approved.

Part of GHG lease area cannot be surrendered

Clause 175 provides that the whole lease must be surrendered and not a part only. The area of the lease covers the area of storage as detailed in the development plan for the lease. Monitoring the GHG stream is to be continuous for the life of the project and post-closure of wells. Surrendering the whole lease is the practical and common sense approach where the purpose of the lease is to permanently store the injected GHG stream underground.

Timing of surrender application

Clause 176 provides that application for surrender may only be made after injection of GHG stream has ceased and wells have been decommissioned as required.

Requirements for making surrender application

Clause 177 provides details about the requirements for a surrender application, these being that the surrender application must be made on the approved form and be accompanied by the application fee. This clause also provides for the surrender application to be accompanied by a report containing details about the authorised activities conducted on the area the subject of the surrender application.

The report is required to detail the results of the activities; the applicant's modelling of the behaviour of GHG streams injected; information relevant

to the modelling and the applicant's analysis of the information; the applicant's assessment of the behaviour of GHG streams injected; the expected migration pathway or pathways of the GHG streams; the short-term and long-term consequences of the migration; the applicant's suggestions for the approach to be taken by the State, if the surrender is approved, to monitor and verify the behaviour of the GHG streams; and any other information that may be prescribed.

This report is necessary to show the extent of the area used for injection and how the GHG stream has behaved since the beginning of injection and in relation to the predicted migration pathways. Impacts on surrounding geology and likely leakage pathways will form part of the report. These are all critical in determining the type, frequency and duration of monitoring that should take place; further reporting that will be needed and any action to be undertaken that will reduce risks to as low as reasonably practicable.

Minister may require further report or work for surrender of GHG lease

Clause 178 provides provides that the Minister may require the applicant to provide a report about how the risks associated with the activities performed under the GHG lease have been reduced as much as is reasonably practicable; or to carry out further work to reduce risks. The key to reducing risks is in the selection of the site for storage. The incentive for surrendering the lease in a shorter timeframe therefore lies in the exploratory work done in the permit stage and in the accuracy of detail in the development plan. Non-compliance with this provision may attract a penalty. Ensuring risks are very low gives confidence to the public regarding safety and the environment

Deciding application

Clause 179 provides that the Minister may only approve the surrender if the listed details have been met. Further, this clause provides that the Minister must consider, in deciding whether to approve the surrender, the extent to which the applicant for the surrender has complied with the conditions of the GHG lease. If reports have not been submitted or the reports do not provide clear details the decision on surrender will be delayed until there is compliance and until an accurate appraisal of the site can be ascertained. The GHG stream must be behaving in an acceptable manner and risks reduced as low as reasonably practicable before surrender will be permitted.

Notice and taking effect of decision

Clause 180 provides for the Minister, on approval of the surrender, to give the applicant for the surrender a notice about the decision. The surrender then takes effect the day after the decision is made.

Responsibility for injected GHG streams after decommissioning

Clause 181 provides that on surrender of the GHG lease the injected GHG stream becomes the property of the State. This creates certainty for responsibility of both the reservoir and the GHG stream contained therein.

Chapter 4 Coordination with other authorities

Part 1 Preliminary

Relationship with chs 2, 3 and 5

Clause 182 provides that the coordination of activities with other authorities is subject to the chapters about GHG exploration permits, GHG leases and general requirements. Chapters 2, 3 or 5 prevail when there is an inconsistency. Restrictions and requirements must be complied with.

What is an *overlapping authority*

Clause 183 provides for the types of authorities that will be considered overlapping authorities, should a GHG authority be granted over all or part of these.

What is an exploration authority (non-GHG)

Clause 184 lists the authorities mentioned in the previous clause:

- an authority to prospect under the *Petroleum and Gas (Production and Safety) Act 2004* or the *Petroleum Act 1923*;

- or any of the following under the *Mineral Resources Act 1989*—

  (i) a mining claim;

  (ii) an exploration permit;

  (iii) a mineral development licence or

- a geothermal exploration permit under the *Geothermal Exploration Act 2004*.

General provision about the power to grant GHG authorities for land subject to other authorities

Clause 185 provides that subject to the other provisions of this chapter and chapters 2, 3 and 5 related to granting of overlapping authorities for GHG authorities, where there is another Act relating to the overlapping authority under that Act, this does not limit or affect the power under this Act to grant an overlapping GHG authority or to carry out authorised GHG activities.

Part 2 Coordination arrangements for GHG leases

GHG coordination arrangements that may be made

Clause 186 provides for an arrangement to allow for the orderly and safe coordination of GHG authorities with overlapping authorities. The coordination arrangement will allow for a structured and safe approach to GHG activities, and petroleum production or mining activities in the area. The coordination arrangement may relate to the timing of activities and the sharing of infrastructure. The ability to enter into a GHG coordination arrangement should ensure efficient and safe industry operations.

Other provisions about and effect of GHG coordination arrangement

Clause 187 provides that a GHG coordination arrangement may be for any term; and have more than 2 relevant leases; and be included in, or form part of, a coordination arrangement under the *Petroleum and Gas (Production and Safety) Act 2004*. A person, other than the lease holder, may also be a

party to the arrangement. This allows independent contractors doing work for the lease holder to be included in the arrangement. The proposed GHG coordination arrangement must be approved by the Minister.

Applying for Ministerial approval of proposed GHG coordination arrangement

Clause 188 provides for the parties to any proposed coordination arrangement to apply jointly for the Minister's approval. If the arrangement is inconsistent with the current development plan, a new plan must be submitted.

Ministerial approval of proposed GHG coordination arrangement

Clause 189 provides the criteria by which the Minister may approve or refuse a proposed coordination arrangement. The requirement for the Minister's approval acts to ensure that the arrangement is in the best interest of the State, consistent with the purposes of relevant legislation and that the coordination arrangement is appropriate in the context of the spatial relationship of the lease.

Approval does not confer right to surrender or renew

Clause 190 provides that while a coordination arrangement may have a term longer than the term of the lease, the approval of such an arrangement does not obligate the Minister to renew the other relevant lease or allow surrender of the GHG lease.

Grant of pipeline licence

Clause 191 provides for the grant of a pipeline licence if the coordination agreement provides for the grant of a pipeline licence. As the intention is to encourage greater efficiency in relation to the use of infrastructure, in particular pipelines, then the coordination agreement may extend to cover the grant of a pipeline licence. Even though a pipeline licence is to be granted, the grant is still subject to other provisions about the grant of a pipeline licence in the *Petroleum and Gas (Production and Safety) Act 2004* relating to the capability of the holder of the licence to operate the pipeline. This is required to ensure that the pipeline licence holder is capable of operating a pipeline.

Amendment or cancellation by parties to arrangement

Clause 192 provides for the agreement to be amended or cancelled by the parties to the agreement with the Minister's approval. The power to amend or cancel the agreement is needed as circumstances may change and the agreement may no longer be appropriate. The approval of the Minister is required to ensure that the outcome is in the public interest and that there is no detrimental effect.

Minister's power to cancel arrangement

Clause 193 provides for the Minister to be able to cancel the arrangement. This power is needed if there are reasons why the agreement is considered to no longer be relevant or appropriate. The Minister is required to give the parties a notice of intention to cancel the agreement and to consider any submission made. An information notice is to be issued in relation to the decision to cancel the agreement. An information notice is appropriate as the parties may incur an expense or a disruption to an authorised activity for a GHG authority as a result of the decision.

Cancellation does not affect relevant leases

Clause 194 states that the cancellation does not affect any relevant lease.

Part 3 Obtaining GHG lease if overlapping authority

Division 1 Preliminary

Application of pt 3

Clause 195 provides how this part applies for applicants for a GHG lease in an overlapping authority situation.

Division 2 Requirements for application

Requirements for making application

Clause 196 provides details of requirements for the application including a GHG statement and GHG assessment criteria information. The assessment criteria include the requirements of the safety provisions under the *Petroleum and Gas (Production and Safety) Act 2004*; the development plan requirements, particularly those relating to overlapping authorities; the economic and technical viability of concurrent activities, the public interest and the potential for the parties to make a GHG coordination arrangement. The details provided assist in the decision-making process. Clarity and accuracy are encouraged so that decisions on approval may be made in a timely manner.

Content requirement for GHG statement

Clause 197 provides details of what is required in the statement and includes a safety management plan, an assessment of technical and commercial feasibility and an assessment of the likely effect on the future use of resources and proposals for the minimisation of potential adverse effects on possible future safe and efficient use of the resources.

Division 3 Consultation provisions

Applicant's information obligation

Clause 198 provides the GHG lease applicant to give a copy of the GHG lease, apart from the capability criteria, to the holder of the overlapping authority. It is essential that this information is received by any overlapping authority holder and the Minister may refuse the application if this has not been done.

Submissions by overlapping authority holder

Clause 199 provides the overlapping authority holder may make submissions to the Minister about the GHG lease application within 4 months of receiving the copy of the GHG lease application. The clause provides a list of possible information for a submission. If a submission is made a copy must also be given to the GHG lease applicant.

Division 4 Resource management decision if overlapping non-geothermal authority about exploration

Application of div 4

Clause 200 provides that this subdivision applies to overlapping authority holders who have made a submission within the 4 months time-frame and have requested priority for their lease, provided there has been no priority given already under another Act. Geothermal exploration permit holders are not included because at this stage there is no legislation in place for those holders to apply for a geothermal lease.

Resource management decision

Clause 201 provides that the Minister must make a resource management decision about whether to grant the GHG lease, give priority to the overlapping authority holder or to do neither.

Criteria for decision

Clause 202 provides that the Minister must have regard to the GHG statement; the GHG assessment criteria; the holder submissions and the public interest. By considering all of the information provided, the Minister can make an informed decision and may decide against both. For example, both may be detrimental to another resource in the area like groundwater and it would not be in the public interest to grant a GHG lease nor a particular overlapping authority.

Restrictions on giving overlapping authority priority

Clause 203 provides for restrictions on giving overlapping authority priority. The priority may only be given if a coordination arrangement cannot be made or it is not technically or commercially feasible for the GHG lease applicant to enter into an arrangement and it would not be in the public interest to grant priority to the GHG lease applicant.

Division 5 Process if resource management decision is to give overlapping authority priority

Application of div 5

Clause 204 provides that this division applies if a resource management decision was required and the decision was to give the overlapping authority holder priority either in full or for a part only of the area.

Notice to applicant and overlapping authority holder

Clause 205 provides for a notice to be given to the parties about the decision and invite the overlapping authority holder to apply for a lease, for all or part of the land as decided, within 6 months of receiving the notice. Six months is considered a reasonable amount of time to apply for the relevant lease and is not too long for the GHG lease applicant to wait for an outcome.

Relevant lease application for all of the land

Clause 206 provides for when an overlapping authority holder is applying for all of the land for a lease the GHG lease application cannot proceed until the overlapping lease application has been decided. If it is decided to grant all of the land for the relevant lease the GHG lease application is taken to have lapsed.

Relevant lease application for part of the land

Clause 207 provides that when an overlapping authority is applying for a lease over only part of the land, in the 6 month application period, the GHG lease application may amend the GHG lease application for all or part of the remainder of the land. Unless an amendment is made a decision cannot be made about the GHG lease application until the overlapping lease application has been decided.

No relevant lease application

Clause 208 provides a decision on grant of a GHG lease may be made if the overlapping authority holder does not apply for the relevant lease within the 6 month period.

Division 6 Resource management decision not to grant and not to give priority

Lapsing of application

Clause 209 provides that a GHG lease application is taken to have lapsed if a resource management decision was required and the decision was not to grant to the overlapping authority holder or to the GHG lease applicant. This clause is to remove doubt in that situation.

Division 7 Deciding application

Application of div 7

Clause 210 sets out the circumstances when this division applies. If the overlapping authority holder has not made a submission within the relevant period, or does not wish to have any priority, and a resource management decision gave priority to the overlapping authority holder or was not to give priority to the overlapping authority holder and the Minister decides to grant the GHG lease.

Application may be refused if no reasonable prospects of GHG coordination arrangement

Clause 211 provides that applications do not remain unresolved for excessive periods. If there are no reasonable prospects that a coordination arrangement will be made, the Minister may refuse the application.

Additional criteria for deciding provisions of GHG lease

Clause 212 sets out the additional criteria the Minister must consider when deciding provisions of the GHG lease. These include the GHG statement and assessment criteria and a consideration of the safety issues.

Publication of outcome of application

Clause 213 provides that a notice about the decision is to be published. It is in the public interest to publish this notice.

Part 4 Priority to particular mining or petroleum lease applications

Earlier mining or petroleum lease application

Clause 214 provides that where a mining or petroleum lease application has been made prior to the application for the GHG lease (in what would be an overlapping situation) the GHG lease application cannot be decided before the mining or petroleum application has been decided.

Proposed mining or petroleum lease for which EIS approval given

Clause 215 provides for priority to be given to those proponents who have been granted approval for the preparation of a voluntary Environmental Impact Statement under the *Environmental Protection Act 1994* for a project that is, or includes, a proposed mining lease or petroleum lease. This is because the Environmental Impact Statement process is potentially publicly available from that point and so the trigger point for priority has been advanced ahead of the point of application for the lease.

Proposed mining or petroleum lease declared a significant project

Clause 216 provides for priority to be given to those proponents of a project that is declared a 'significant project' under the *State Development and Public Works Organisation Act 1971* where the project is, or includes, a proposed mining lease or petroleum lease. This is because an Environmental Impact Statement is required for a 'significant project' and the Environmental Impact Statement process is potentially publicly available from that point, and so the trigger point for priority has been advanced ahead of the point of application for the lease.

Part 5 GHG lease applications in response to invitation under another Act

Application of pt 5

Clause 217 provides for the application of this part whereby a GHG lease application is made in response to an invitation given because of a resource management decision under another Act.

Additional ground for refusing application

Clause 218 ensures that the Minister can refuse to grant a GHG lease application if it is considered that the application, which was invited as a result of a resource management decision not to grant a mining or petroleum lease, is not being progressed in a timely manner. This is necessary to ensure the integrity of the original resource management decision.

Part 6 Additional provisions for GHG authorities

Division 1 Restrictions on authorised activities other than for GHG leases

Overlapping mining or petroleum lease

Clause 219 provides when land in the area of a mining or petroleum lease is also GHG authority land (other than a GHG lease). The authorised activities for the GHG authority may only be carried out if a safety management plan is required and is in place, and if any objections properly submitted have been decided in favour of allowing the GHG authorised activities.

Overlapping exploration authority (non-GHG)

Clause 220 applies if land is in the area of a GHG authority, other than a GHG lease, and in the area of a non-GHG exploration authority. Any authorised activities for the GHG authority cannot be carried out on the land if carrying it out adversely affects the activities of the other exploration authority and these activities have already started.

Resolving disputes

Clause 221 applies if an overlapping mining or petroleum lease holder has objected to the carrying out of a GHG storage activity by a GHG authority holder. This clause also applies if there is a dispute between a GHG permit holder and an exploration authority (non-GHG) holder about whether an authorised activity for the permit can be carried out under clause 220.

If there is a dispute between a GHG permit holder and an exploration authority (non-GHG) holder about whether an authorised activity for the permit can be carried out, either party may ask the Minister to decide. There is opportunity for submissions to be made, about the matter, to the Minister. The decision made by the Minister is binding on the parties and conditions may be attached to the decision. This method of resolving disputes should deter a party from objecting for arbitrary or obstructive reasons.

Division 2 Additional conditions

Notice of grant by particular GHG authority holders

Clause 222 requires a GHG authority holder, apart from GHG leases, to notify other authority holders or applicants in the area of the grant of the GHG authority. This is a normal business consideration and has practical application if, for example, infrastructure and costs could be shared.

Condition to notify particular other authority holders of proposed start of particular authorised activities

Clause 223 requires the GHG authority holder to notify any overlapping authority holders, other authority holders sharing a common boundary, or *Petroleum and Gas (Production and Safety) Act 2004* data acquisition authority holders of the following:

- when the designated activity is to start; and
- where the designated activity is to be carried out; and
- the nature of the activity.

Notification must be given again if the GHG authority holder is changing the land area where the activities will be carried out.

Continuance of GHG coordination arrangement after transfer

Clause 224 provides that if a GHG lease, the subject of a coordination arrangement, is transferred, the GHG lease holder must continue with the coordination arrangement while there is an overlapping situation.

Division 3 Restriction on Minister's power to amend GHG lease if overlapping authority

Interests of overlapping authority holder to be considered

Clause 225 provides that if there is an overlapping authority for a GHG lease, the GHG lease may be amended under clause 374 only if the interests of the overlapping authority holder have been considered.

Part 8 Additional provisions for development plans if overlapping authority

Operation of pt 8

Clause 226 provides for the operation of this part, that is the additional requirements for an overlapping tenure situation.

Statement about interests of overlapping authority holder

Clause 227 provides that a statement must be included in the development plan showing that the GHG applicant has considered the interests of any

overlapping authority. The GHG assessment criteria are to be used in compiling this statement.

Consistency with overlapping authority's development plan and with any relevant coordination arrangement

Clause 228 provides that the proposed development plan must be consistent with any relevant coordination arrangement. The coordination arrangement must make sense and be achievable, thus the requirement for consistency.

Additional criteria for approval

Clause 229 provides that the Minister must consider the additional information provided when deciding whether to approve the plan or amendment.

Part 9 Additional provisions for safety management plans

Grant of GHG lease does not affect obligation to make plan

Clause 230 provides that regardless of the GHG lease applicant providing a GHG statement as required, a safety management plan under the *Petroleum and Gas (Production and Safety) Act 2004* is still required for any GHG operating plant. The safety management plan may be audited at any time.

Requirements for consultation with particular overlapping authority holders

Clause 231 provides that for an operating plant that will be used for GHG storage activities the operator must use reasonable attempts to consult with an overlapping authority holder if the activities may adversely affect the safe and efficient use of the other resources. The plans may be amended to incorporate any reasonable suggestions made by the overlapping authority if these are commercially and technically feasible. This is a common-sense provision to maximize safety for all operators and others who may be in the area, for example independent contractors.

Application of P&G Act provisions for resolving disputes about reasonableness of proposed provision

Clause 232 provides that when a dispute arises about the reasonableness of proposed provisions of the overlapping authority holder to the safety management plan this dispute must be dealt with under the relevant provisions of the *Petroleum and Gas (Production and Safety) Act 2004* as the *Petroleum and Gas (Production and Safety) Act 2004* deals with GHG safety management plans.

Chapter 5 General provisions for GHG authorities

Part 1 GHG injection and storage data acquisition authorities

Division 1 Obtaining authority

Who may apply for GHG data acquisition authority

Clause 223 provides for a GHG tenure holder to enter land, contiguous to the tenure, to conduct geophysical surveys under a GHG data acquisition authority. The need to extend a geophysical survey beyond the bounds of the GHG tenure is to enable the full acquisition of data, at depth, for the GHG tenure. The failure to acquire a full data set at depth results in poor quality data and uncertainty in the definition of the geological target. A GHG data acquisition authority can not be issued over land within another GHG tenure.

If an adjacent GHG tenure exists over an area of land that another holder of a GHG tenure wishes to conduct a geophysical survey, then the holder must conduct the survey under the authority of, and with the agreement of, the holder of the adjacent tenure. A GHG data acquisition authority cannot be used for activities other than those defined.

Requirements for making application

Clause 234 provides that the application for the GHG data acquisition authority must be made on the approved form and be accompanied by the prescribed fee.

Deciding application

Clause 235 provides that the Minister may grant or refuse a GHG data acquisition authority. The authority is a temporary authority and is intended to provide for only sufficient time for the acquisition of geophysical data to be completed.

This clause also provides that the payment of the rent and security for the GHG data acquisition authority must be made as part of the condition to grant the GHG data acquisition authority. This ensures that all the necessary financial transactions are completed before the grant of the authority, thus showing its applicant's *bona fides*.

Provisions of authority

Clause 236 provides that a GHG data acquisition authority must state its area including the term (limited to a maximum of 12 years), area, relinquishment days, conditions not inconsistent with the mandatory conditions provided for in this Act, and the day the GHG permit takes effect. The ability to decide these provisions enables conditions to be set addressing issues specific to a particular GHG permit.

Any conditions placed on the authority are not to be inconsistent with the mandatory conditions for the GHG tenure to which it relates to ensure that the authority is not used for another purpose.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The right of entry to owner or occupier lands is balanced by the application of private land, public land, and compensation provisions in this Act.

Notice of refusal

Clause 237 provides for a notice to be given to the applicant for a GHG data acquisition authority regarding a decision to refuse the GHG data acquisition application.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause. The holder of a GHG tenure may apply to the Minister for a GHG data acquisition authority, the granting of which would allow the applicant to conduct geophysical surveys on land contiguous to their GHG tenure. The proviso is that the contiguous land is not to be subject to another GHG tenure. The GHG tenure holder only has rights, provided for under this Act, in relation to land that is considered part of their GHG tenure. This is except where the Minister has granted a GHG data acquisition authority. The GHG tenure has no rights, provided under this Act, to land outside the boundary of their GHG tenure to conduct the key authorised activities detailed for GHG tenure under this Act.

The ability to acquire geophysical survey data is intended to assist in providing full data coverage up to the boundary of the GHG tenure in question, both to assist the GHG tenure holder and eventually, to form part of the data collected by the State.

The grant of a GHG data acquisition authority is to be made by the Minister in relation to the State's resources and, because it does not limit any authorised activity within the GHG tenure already held by the applicant, it is not considered appropriate for an appeal to apply.

Division 2 Provisions for GHG data acquisition authorities

Key authorised activities

Clause 238 provides for the right to carry out authorised activities that can be undertaken under a GHG data acquisition authority and that the carrying out of the activities is subject to other provisions of this Act.

Additional condition of relevant GHG tenure

Clause 239 provides for a condition on a GHG data acquisition authority to become a condition for the relevant GHG tenure. This provision ensures that the holder of the relevant GHG tenure must comply with the condition. Failure to comply with condition means that disciplinary action can be taken.

Authority holder is the relevant GHG tenure holder from time to time

Clause 240 provides that the holder of the GHG data acquisition authority is the holder of the relevant GHG tenure to which the GHG data acquisition authority relates.

Authority ends if relevant GHG tenure ends

Clause 241 provides for the GHG data acquisition authority to end if the related GHG tenure ends. As the GHG data acquisition authority was granted for the sole purpose of conducting a geophysical survey to acquire data for the related GHG tenure, this purpose no longer exists if the GHG tenure ends.

Relationship with subsequent GHG tenure

Clause 242 provides for where a GHG tenure is granted over land covered by a GHG data acquisition authority after the GHG data acquisition authority was granted. The authority continues to exist and the conducting of a geophysical survey can occur. However, if the carrying out of the geophysical survey conflicts with the authorised activities under the GHG tenure, then the GHG tenure activities take priority. The assignment of this priority recognises the GHG tenure holder's right to undertake authorised activities in the area of their tenure.

Also, a GHG data acquisition authority holder cannot conduct geophysical surveys on the GHG tenure without first obtaining the agreement of the GHG tenure holder, the agreement is still current, and the agreement has been submitted to the chief executive.

Although an earlier right has been provided to the holder of the GHG data acquisition authority, the GHG tenure holder should be aware of the details of activities (what and where) to be conducted under the authority.

The GHG data acquisition authority has been granted for a limited period (up to 1 year) when there is no overlapping GHG tenure. The holder of the data acquisition authority should not be impeded in conducting the activities as the activities directly relate to a contiguous GHG tenure which was granted before any subsequent GHG tenure.

The reason behind granting a GHG tenure over land already subject to a GHG data acquisition authority (even though the authority holder had certain, but lesser rights before the GHG tenure holder), is that there is no

possibility of GHG injection or storage within the area of the GHG data acquisition authority by the authority holder. The State has given higher priority to the activities under the GHG tenure in order to promote the earlier injection and storage of a GHG stream.

Annual rent

Clause 243 provides that rent must be paid for by a GHG data acquisition authority. The amount, the way the payment is to be made, and the due date for the rental will be prescribed under a regulation.

End of authority report for GHG data acquisition authority

Clause 244 provides that within 6 months after the end of a GHG data acquisition authority, a report is required to be submitted to the chief executive about the authority when it was current. Details of the requirements for this end of authority report will be prescribed under a regulation.

Part 2 GHG storage viability assessment

Minister's power to require GHG viability report

Clause 245 enables the Minister to request, by notice, that the holder of a GHG tenure obtains a GHG viability report on the whole or part of a GHG tenure. The purpose of the GHG viability report is to provide information on the viability of GHG stream storage in an area of a GHG tenure. The request must state the reasons why the Minister is of the opinion that it is viable to carry out GHG stream storage in the area and what drew the Minister to this conclusion. The notice must also state that a GHG viability report is required, and give a reasonable timeframe for the GHG tenure holder to provide the report. The purpose of the report is to provide a detailed assessment of the potential of natural underground reservoirs, within the area of the GHG tenure, to store a GHG stream.

Required content of GHG viability report

Clause 246 provides for the content of a GHG viability report. The data in support of the information and conclusions is also required to accompany the report. The information being sought covers all aspects in relation to the development of a GHG stream storage site, such as identifying each GHG storage reservoir within the area asked to be reported on and the GHG tenure holders opinions about the viability or future viability for GHG stream storage. Technical data relating to the geology of GHG storage reservoirs in the area and market and financial data relevant to the opinions proffered, must also accompany the report.

The provision of the data and information enables an assessment of the validity of the conclusions in relation to the viability for GHG stream storage.

Minister's power to obtain independent viability assessment

Clause 247 enables the Minister to obtain an independent GHG viability assessment in respect to the viability of carrying out GHG stream storage in all or part of the area of the GHG tenure. The independent report provides a mechanism for the Minister to determine the viability of carrying out GHG stream storage in relation to any GHG storage reservoir and thereby address any public concerns that this resource is not being developed to its capacity.

The Minister is to advise the GHG tenure holder of the Minister's intention to obtain an independent assessment and whether the State will seek to recover costs for the assessment. The power to obtain an independent GHG viability assessment may be used as a means of verifying the conclusions in the GHG viability report prepared by the GHG tenure holder. As the GHG tenure holder may be required to pay for the cost of an independent GHG assessment, it will encourage the tenure holder to fully address all issues in relation to the viability of carrying out GHG stream storage. The GHG holder has the right to make a written submission on why the Minister should not seek an independent GHG viability assessment.

Costs of independent viability assessment

Clause 248 provides for the circumstances for the recovery of reasonable costs of the independent viability assessment to be recovered from the GHG tenure holder. If the GHG tenure holder fails to pay the reasonable costs, then these costs can be recovered as a debt.

Part 3 Ownership and decommissioning of GHG stream pipelines

Application of pt 3

Clause 249 provides for the application of this part to pipelines operated or constructed under a GHG tenure.

General provision about ownership while tenure is in force for pipeline

Clause 250 provides the circumstances when a pipeline is taken to be, or remains, the personal property of the holder of a GHG tenure.

Ownership afterwards

Clause 251 outlines what happens to the ownership of the pipeline when the GHG tenure, or any subsequent GHG tenure ends, or the land on which the pipeline is constructed ceases to be in the area of the GHG tenure. The clause is also subject to any condition of the former GHG tenure, and provides that if the pipeline is decommissioned, the GHG tenure holder, or former GHG tenure holder, may dispose of it to anyone else.

Obligation to decommission pipelines on cessation or reduction of tenure

Clause 252 provides for the decommissioning of a pipeline in certain listed circumstances. The holder (or former holder) of the GHG tenure must decommission the pipeline on the relevant land, in the way prescribed under a regulation, before the land ceases to be in the area of the GHG tenure, or the GHG tenure ends, or at a later date set by the Minister.

The intention of this clause is to ensure that the decommissioning is carried out by the GHG holder and not by the State. However, where another GHG tenure or petroleum authority is granted before the decommissioning day, and this pipeline's operation becomes an authorised activity for this tenure or authority, the above requirement for decommissioning a pipeline does not apply.

Part 4 Reporting and information provisions

Division 1 General reporting provisions

Requirement of GHG tenure holder to report outcome of GHG storage injection testing

Clause 253 provides for the results of GHG storage injection testing, on a GHG tenure, to be submitted to the chief executive and within the timeframes stated. It is a requirement that the results of GHG storage injection testing detail the amount of water taken during the testing.

Monitoring reports by GHG lease holder

Clause 254 provides for when, and to whom, a monitoring report needs to be submitted. A monitoring report may also be required upon the request of:

- the chief executive of the department in which this Act is administered, or
- the chief executive of the department in which the *Environmental Protection Act 1994* is administered, or
- the chief executive of the department in which the *Water Act 2004* is administered

This clause also provides a definition of a monitoring report.

Relinquishment report by GHG permit holder

Clause 255 provides for a relinquishment report to be submitted to the chief executive in the timeframes stated. A relinquishment report provides details on areas relinquished (as required by the provisions of this Act), or other areas of a GHG tenure voluntarily surrendered (providing these areas do not consist of the whole of the area of a GHG tenure). The report must include details about the authorised activities for the GHG tenure carried out in the relinquished or surrendered area, the results of these activities, and any other matters prescribed under a regulation.

End of tenure report

Clause 256 provides for an end of tenure report to be submitted to the chief executive in the timeframes stated. An end of tenure report provides details on that area of the GHG tenure that was within the GHG tenure immediately before it ended (called the 'relevant area'). The report must include details about the authorised activities for the GHG tenure carried out in the relevant area, the results of these activities, and any other matters prescribed under a regulation. However, the end of tenure report need not contain details about, or results of, activities for which a report has already been submitted to the chief executive.

Power to require information or reports about authorised activities to be kept or given

Clause 257 provides for a regulation, or the chief executive, for services to the State, to require a GHG authority holder to keep (as prescribed under a regulation) stated information or types of information, obtained from authorised activities conducted within the GHG authority. This clause also provides for a regulation, or the chief executive, for services to the State, to require a GHG authority holder to lodge a notice with stated information, types of information or stated reports at stated times or intervals, about activities conducted within the GHG authority. This stated information may include exploration data and conclusions based on this data. Any of this information or reports, that are required to be lodged with a notice, must be submitted to the chief executive.

Reports must meet the standards that are to be prescribed in terms of both content and electronic file formats. The standards are established to ensure that subsequent explorers or developers can use the reports to assess prospects for the discovery of GHG storage sites, and that they are not forced into unnecessary expenditure to repeat investigations because they have been inadequately documented. Adherence to these requirements will contribute to the development of comprehensive national databases of mineral, hydrocarbon and GHG storage site prospects. In more practical terms, report assessment will be simplified, and the standards will ensure that data can be stored and maintained for their future availability to industry participants.

Division 2 Records and samples

Requirement to keep records and samples

Clause 258 provides for a GHG tenure holder to keep records and samples (as prescribed under a regulation), obtained from authorised activities conducted within the GHG tenure, for a period prescribed under a regulation. These samples or records may include such things as samples of core or fluid obtained from drilling activities, or the results of the analysis of these core or fluid samples.

Requirement to give records and samples

Clause 259 provides that where a GHG tenure holder is required to keep a record or sample, a copy of the record or part of the sample must be submitted to the chief executive in the timeframes stated. This clause also provides for the chief executive to require the lodgement of more of a sample in the timeframes stated in this clause. Also, the chief executive may ask for more of a sample.

Records and samples about authorised activities form a vital part of the exploration database maintained and made publicly available.

Samples particularly will be used to assess the integrity of GHG storage sites for effective long-term storage.

Division 3 Releasing required information

Meaning of *required information*

Clause 260 provides a definition of 'required information'. 'Required information' is information in any form, about authorised activities carried out under a GHG authority that the holder has lodged to comply with various provisions of this Act. For example, records and samples submitted as required by this Act.

Public release of required information

Clause 261 provides for the chief executive to release any required information to the public, after the end of the confidentiality period (prescribed by regulation) has passed, irrespective of whether the GHG

authority the required information relates to has ended or not. Any confidentiality period, prescribed under a regulation, ceases if the required information relates to an authorised activity conducted on the area of a GHG authority that is no longer within the area of the authority.

For example, a well may have been drilled within a GHG tenure and a well completion report about this drilling may have been submitted to the required office. Then, the area the well was drilled in was relinquished from the tenure. The chief executive may then, if the confidentiality period has not ended, release the report to the public.

Chief executive may use required information

Clause 262 provides for the chief executive to use any required information for purposes related to this Act, irrespective of whether the GHG authority the required information relates to has ended or not. This is for the betterment of the geoscientific information available about the State.

Also, the ending of the GHG authority does not affect the authorisation for the chief executive to publicly release required information. For example, an end of GHG tenure report may still be released publicly, even though the tenure has ended.

Part 5 General provisions for wells

Division 1 Responsibility for wells

Former petroleum wells assumed by GHG tenure holder

Clause 263 provides that this Act applies to any matters in relation to a petroleum well, the responsibility for which has been assumed by the GHG tenure holder, as if the well was a GHG well.

Requirements for drilling GHG well

Clause 264 provides for a prescribed standard for the drilling of a GHG well, including ensuring that any relevant requirements about construction and drilling standards for water bore drilling activities under the *Water Act 2000* are complied with. The standard will assist in ensuring that wells are

drilled safely and minimise the potential for damage to natural underground reservoirs or the possibility of adversely affecting future exploitation of other natural resources in or around the area of the well.

Division 2 Decommissioning of wells

Application of div 2

Clause 265 provides that the division applies to a GHG well drilled or a well that is, or has been, a petroleum well for which the holder has assumed responsibility.

Restriction on decommissioning well

Clause 266 provides that a GHG well may only be decommissioned when the storage reservoir to which the well relates has no available storage capacity for any further injection of a GHG stream.

Obligation to decommission

Clause 267 requires that a GHG well be decommissioned. For a GHG lease, the well is to be decommissioned when the GHG storage reservoir to which the well relates does not have any further storage space for GHG stream injection.

For a GHG permit, a well is to be decommissioned when the GHG permit ends or land where the well is located ceases to be in the area of the GHG permit. However, decommissioning of a well is not required if the area ceases to be in the area of GHG permit because of the grant of a GHG lease of that area.

For a GHG well to be properly decommissioned, the well must be plugged and abandoned in the way prescribed under regulation, any relevant requirements under the *Water Act 2000* for the decommissioning of water bores have been complied with and Minister administering the *Water Act 2000* has been given a notice about the decommissioning in the approved form.

The requirement for the well to be properly decommissioned will ensure that the State does not inherit a liability in relation to the well.

Right of entry to facilitate decommissioning for GHG permit

Clause 268 provides for a right of entry to decommission a GHG well after a GHG permit ends. This provision enables entry to lands to decommission a well if this obligation had not been met before the GHG permit ended.

The provisions within this Act in relation to the entry onto public or private land still apply as if the GHG well was still within the area of a GHG permit. Even though the GHG permit may have ended, the decommissioning activity may be conducted as if the decommissioning was an authorised activity for the GHG permit.

Responsibility for well after decommissioning

Clause 269 provides for who has the responsibility for a GHG well upon decommissioning. A GHG well remains the responsibility of the holder of a GHG tenure until the tenure ends or the area in which the well is located ceases to be in the area of a GHG tenure. When a GHG well is decommissioned according to the prescribed standard, the well is transferred to the State upon the ending of the GHG tenure or when the area in which the well is located ceases to be in the area of a GHG tenure.

The State's ownership of the well enables the well to be subsequently transferred to the landowner or the holder of a concurrent or subsequent granted geothermal, mineral or petroleum tenure, tenement or authority. This enables the reuse of the well and therefore minimises additional impacts upon the land.

Part 6 Security

Operation and purpose of pt 6

Clause 270 provides for the Minister to require security for a GHG authority or a proposed GHG authority. The security given ensures compliance with this Act and any authority issued pursuant to this Act, or secures any amounts payable by the holder or proposed holder, such as rent and penalties imposed for breaches under this Act. The security may also be used to pay compensation to an owner or occupier of land, where the person authorised by the chief executive has entered this land to exercise

remedial powers, and the owner or occupier of the land has suffered a cost, damage or loss because of the exercise of these remedial powers.

Power to require security for GHG authority

Clause 271 provides that the Minister may, at any time, require security from a GHG authority holder (or proposed holder). The security does not have to be given by the GHG authority holder or applicant, unless the holder or applicant has been given a notice (requiring security of at least the amount and in the form prescribed under a regulation) or an information notice (in all other cases).

Minister's power to require additional security

Clause 272 provides that the Minister may, at any time, require an increased amount of security from a GHG authority holder. If the prescribed security amount is amended, the Minister needs to send a notice to the GHG authority holder, requiring the holder to submit additional security up to the amount of security that has been amended by the regulation.

In other cases, the procedure to require additional security involves the Minister giving the GHG authority holder an information notice stating the proposed requirement, and inviting the holder to make written submissions about the requirement within a stated period that must not be less than 20 business days.

The Minister must consider any written submission from the GHG authority holder received within the stated period before making the requirement. This clause also states when this requirement takes effect.

Interest on security

Clause 273 provides for the State to keep any interest that accrues on cash securities given for GHG authorities under this part.

Power to use security

Clause 274 provides for the State to use the security given for a GHG authority and any interest accrued on cash securities, for matters detailed in this part.

Replenishment of security

Clause 275 provides that the Minister may, at any time and in a reasonable way, amend the amount of security to replenish any of the utilised security in order to maintain the determined security level for a GHG authority, or may require another amount of security to be given for the GHG authority.

Security not affected by change in authority holder

Clause 276 provides that any security held for a GHG authority remains as security for the GHG authority and may be used by the State, irrespective of whether there has been a transfer of, or any change in, percentage holdings for the GHG authority. The name of the holder of any unconditional financial institution security, or similar instrument, given as security for a GHG authority, is taken to have changed as a consequence of the change in the holder. If and when any cash security is to be refunded, it will be refunded to that holder of the GHG authority that was noted in the GHG register as being the last holder of the GHG authority before it ended.

Retention of security after GHG authority ends

Clause 277 allows for the security given for a GHG authority to be held for one year after the GHG authority has ended. If there is a claim for an amount of this security and this claim has not been properly assessed, this claimed amount may be held until such time as the claim has been properly assessed.

Part 7 Private land

Division 1 Preliminary

Application of pt 7

Clause 278 describes the application of this Part; that is, this part applies to all private land, unless the holder of the GHG authority is also the holder of the land.

Division 2 Requirement for entry notice for entry to private land in area of GHG authority

Requirement for entry notice to carry out authorised activities

Clause 279 lists the restrictions on entry to carry out authorised activities for a GHG authority. Authorised activities for GHG authorities cannot be carried out on private land unless a notice (an 'entry notice') has been given to each owner and occupier of the land at least 10 business days before the proposed entry.

However, a person may enter private land to carry out authorised activities without giving an entry notice, where the entry is required because of a dangerous or emergency situation that exists (or may exist) on the land proposed to be entered. In these circumstances, the person must, if practicable, notify each owner and occupier of the land orally before entering the land.

A person acting under the auspices of the GHG authority may also enter private land to carry out authorised activities without giving an entry notice, however each owner and occupier of the land must agree to the entry with the person (called a 'waiver of entry notice').

Waiver of entry notice

Clause 280 lists the requirements for a waiver of entry notice. The waiver of entry notice may be given only by signed writing and state that the owner or occupier has been told that it is not compulsory that they have to agree to the waiver, list the authorised activities proposed to be carried out on the land, the period of entry, and when and where on the land the activities are proposed to be carried out.

During the period of entry stated in the waiver of entry notice, the owner or occupier cannot withdraw the waiver of entry notice. The entry consent ceases to have effect after the period of entry stated in the waiver of entry notice.

Required contents of entry notice

Clause 281 outlines the required contents of an entry notice. Each of the following must be stated in an entry notice:

- the land proposed to be entered (generally described as a lot-on-plan);
- the period of entry on the land (called the 'entry period');
- the proposed authorised activities on the land stated in this entry notice;
- where (specifically on the land previously described) and when (specific periods within the previously identified entry period) the authorised activities are proposed to be carried out; and
- the contact details of the holder of the GHG authority, or the contact details of a person authorised to discuss the matters stated in the entry notice.

The entry period cannot be longer than 6 months (where the entry notice is for a GHG permit) or 12 months (where the entry notice is for any other GHG authority). This period may be longer for a GHG tenure providing each relevant owner and occupier agrees in writing to a longer period.

Where an authorised activity proposed by a GHG authority holder is unlikely to significantly disrupt the day-to-day activities the occupier of the land normally carries out on the land, the notice of entry requirements about proposed authorised activities (and where and when the authorised activities are proposed to be carried out) may be complied with by generally describing the nature and extent of the activities.

An information statement in the approved form, containing the rights and obligations of GHG authority holders, occupiers and owners in relation to the entry of land under a GHG authority, must be included with (or accompany) the entry notice.

Giving entry notice by publication

Clause 282 provides for the chief executive to approve, in certain circumstances, the giving of an entry notice by publication. In some cases, particularly those relating to certain authorised activities proposed under a GHG data acquisition authority, it is more practical for an entry notice to be given by publication, rather than having to give each owner and occupier the entry notice individually.

However, the chief executive must be reasonably satisfied that the publication of the notice is reasonably likely to adequately inform each of the owners and occupiers of land the subject of the entry notice, about the proposed entry, at least 10 business days prior to this entry occurring.

Where the chief executive has approved the giving of an entry notice by publication, the published entry notice must state where a copy of the information statement, which would normally have been included with or accompanied the entry notice, may instead be obtained or inspected free of charge.

Division 3 Requirement for further notice before carrying out authorised activities on private land

Application of div 3

Clause 283 provides that this division applies when authorised activities are to first commence on the land. This notice is intended to supplement the entry notice provision as the entry notice could be given many months before the activities actually commence.

Requirement to give further notice

Clause 284 provides for a later notice to be given at least two business days before the commencement of authorised activities on the land. A shorter period may be agreed for the giving of the notice. The notice can be given in any form.

Failure to give further notice

Clause 285 provides a penalty if the holder of the GHG authority does not give the later notice. Failure to give a notice, however, does not prevent the holder from carrying out authorised activities.

Division 4 Access to private land outside area of GHG authority

Subdivision 1 Preliminary

Application of div 4

Clause 286 provides that the division applies to private land outside the area of a GHG authority.

Subdivision 2 Access rights and access agreements

Access rights of GHG authority holder

Clause 287 provides the right, the exercise of which is restricted, for a GHG authority holder to cross land to access the holder's GHG authority (called 'access rights', with the land in question being called 'access land'), or conduct certain activities on this access land to assist in the accessing of the holder's GHG authority. These activities may include constructing a track or opening and closing gates.

Restriction on exercise of access rights

Clause 288 provides when access rights may be exercised. These rights may be exercised only when the entry is required because of a dangerous or emergency situation that exists (or may exist). These rights may also be exercised only when a written or oral agreement (called an 'access agreement') has been obtained about the exercising of the rights from each owner and occupier of the land (where a permanent impact on the land is likely to be made), or each occupier of the land (where a permanent impact on the land is not likely to be made). A definition of permanent impact on the land is detailed, and an example of a permanent impact given. An example of where a permanent impact on the land is not likely to be made is also detailed.

Owner or occupier must not unreasonably refuse to make access agreement

Clause 289 provides that an owner or occupier cannot unreasonably refuse to make an access agreement. This clause also provides that an owner or occupier may make reasonable and relevant conditions part of the access agreement. If an access agreement is not made within 20 business days after the GHG authority holder has asked the owner or occupier, the owner or occupier is taken to have refused to agree to the access.

Principles for deciding whether access is reasonable

Clause 290 provides the principles to be applied in deciding whether access is reasonable. These include whether it is reasonably necessary for the holder to cross the land to allow entry to the GHG authority, or carry out activities on the land to allow for the crossing of the land, or whether the owner or occupier has unreasonably refused to make an access agreement.

The holder of the GHG authority must first show that they cannot use formed roads as access. If the holder shows that they cannot use formed roads as access, consideration must be given to the nature and extent of any impact the exercise of the access rights will have on the land and the owner or occupier's use and enjoyment of it, and how, when and where, and the period during which the authority holder proposes to exercise the access rights.

Provisions for access and access agreements

Clause 291 provides for the notice of entry provisions to apply to the entry of access land. However, any access agreement made may contain details about the waiver of this requirement or an alternative to this requirement. If an access agreement contains alternative provisions to the notice of entry provisions, the notice of entry provisions do not apply to the entry so long as the alternative provisions are in force.

Access agreements may also contain compensation provisions in relation to the exercise of the rights, or future exercise of the access rights by the GHG authority holder. It is also provided that this division does not limit an owner or occupier granting a GHG authority holder a right of access to the land by other means, for example, by the grant of an easement.

Access agreement binds successors and assigns

Clause 292 provides that the access agreement binds all parties to it and each of their personal representatives. The agreement also binds all future holders in the title and all assigns.

Subdivision 3 Land Court resolution

Power of Land Court to decide access agreement

Clause 293 provides for any party to apply to the Land Court. Any conditions imposed by the Land Court about the exercise of the access rights are considered to be the access agreement between the parties (where one does not already exist) or the conditions of the access agreement (where one already exits).

Power of Land Court to vary access agreement

Clause 294 provides for the Land Court, when applied to by a party to an access agreement, to vary any condition of an access agreement, providing there has been a material change in circumstances. This clause does not prevent the parties to an access agreement, by consensus, varying the access agreement.

Criteria for deciding access

Clause 295 provides that the Land Court must have regard to particular matters when making a decision under this subdivision.

Division 5 Provisions for dealings or change in ownership or occupancy

Entry notice or waiver of entry notice or access agreement not affected by a dealing

Clause 296 states that a dealing with a GHG authority (that is, a transfer or a mortgage) does not affect an entry notice, waiver of entry notice or access agreement given or made for a GHG authority.

Change in ownership or occupancy

Clause 297 applies where there has been a change of occupancy or ownership after an entry notice has been given for a GHG authority. In this case, the holder of the relevant GHG authority is taken to have given a notice to the new owner or occupier, and the holder of a relevant GHG authority is not required to give the new owner or occupier a notice at least 10 business days before entry. Also, the change of ownership or occupancy does not affect the entry period stated in the notice.

Where a waiver of entry notice has previously been given by a GHG authority holder and agreed to by the owner and occupier of the subject land, and the ownership or occupancy of this land changes, the new owner or occupier is taken to have agreed to that waiver of entry notice.

When the holder of a relevant GHG authority becomes aware that there has been a change to the occupancy or ownership of the land the subject of an entry notice or a waiver of entry notice, the GHG authority holder must (within 15 business days of becoming aware of the change), give a copy of the entry notice or waiver of entry notice to the new owner or occupier.

If the holder does not give a copy of the entry notice or waiver of entry notice to the new owner or occupier within 15 business days of becoming aware that there has been a change to the occupancy or ownership of the land the subject of an entry notice or a waiver of entry notice, then these provisions no longer apply and the entry notice or waiver of entry notice will have to be given or negotiated with the new owner or occupier.

Division 6 Periodic notice after entry of land

Notice to owners and occupiers

Clause 298 applies when a GHG authority holder has entered private land to conduct authorised activities, or access land has been entered to exercise the rights over the land. The GHG authority holder is required to give a notice about authorised activities conducted on the land and where these activities were carried out. If no authorised activities were conducted, the notice must state this fact.

This notice must be given to each owner and occupier of the land within 3 months after the end of those relevant periods stated in this clause for entry notices and waiver of entry notices.

Division 7 Access to carry out rehabilitation and environmental management

Right of access for authorised activities includes access for rehabilitation and environmental management

Clause 299 provides that any right to enter private land to conduct authorised activities, that a GHG authority holder enjoys, includes the right to enter land to carry out rehabilitation or environmental management activities required by the GHG holder under the *Environmental Protection Act 1994*.

Part 8 Public land

Division 1 Public roads

Subdivision 1 Preliminary

Significant projects excluded from div 1

Clause 300 states that this division does not apply to a GHG authority that is, or is included in, a project declared under the *State Development and Public Works Organisation Act 1971*, to be a significant project. However, this does not limit, or otherwise affect, the conditions the Coordinator-General may recommend for the GHG authority pursuant to Part 4 of the *State Development and Public Works Organisation Act 1971*.

What is a *notifiable road use*

Clause 301 defines the meaning of notifiable road use for a GHG authority and details 'threshold rates'.

Subdivision 2 Notifiable road uses

Notice of notifiable road use

Clause 302 provides for a notice to be given to a public road authority, by a GHG authority holder, where the GHG authority holder proposes to use the road for a notifiable road use. This clause also details when the notice is to be given, and what contents the notice must contain.

Directions about notifiable road use

Clause 303 provides for a 'road use direction' to be given to the GHG authority holder by the public road authority. This road use direction is to contain details about the way the notifiable road use is to be carried out, or is proposed to be carried out. Besides stating that the road use direction must be reasonable, it also states what the 'road use direction' must be about.

This clause also provides that the road use direction may require the GHG authority holder to carry out an assessment of the impacts likely to arise from the notifiable road use and to consult with the public road authority in carrying out the assessment. However, this clause also outlines when the assessment is not required.

Obligation to comply with road use directions

Clause 304 provides for it to be a condition of the GHG authority that the authority holder complies with the road use direction, unless there is a reasonable excuse.

Subdivision 3 Compensation for notifiable road uses

Liability to compensate public road authority

Clause 305 provides for compensation to be paid by a GHG authority holder, to a public road authority, for damage caused, or that may be caused, by notifiable road uses. This liability is called the holder's 'compensation liability' to the public road authority.

Compensation agreement

Clause 306 provides for the GHG authority holder and the public road authority to enter into an agreement (called a 'compensation agreement'). This clause also outlines what the compensation agreement relates to, what it must detail, and lists other matters that may be addressed in the agreement.

Deciding compensation through Land Court

Clause 307 provides for the public road authority or the GHG authority holder to apply to the Land Court to decide the compensation liability. The Land Court may only decide compensation that is not subject to a compensation agreement. This clause also details what the Land Court must have regard to when making a decision on the compensation application.

Criteria for decision

Clause 308 provides details about what the Land Court must take into account when deciding a compensation liability.

Land Court review of compensation

Clause 309 provides for the public road authority or the GHG authority holder to apply to the Land Court to review the original compensation agreement between the GHG authority holder and the public road authority, agreed to by these two parties or as determined by the Land Court. However, there must have been a material change in circumstances since the agreement or decision.

This clause also outlines what details the Land Court must have regard to in making the review decision, and provides for the Land Court to either confirm the original agreement or decision, or amend it in a way the Land Court sees fit.

Compensation to be addressed before carrying out notifiable road use

Clause 310 provides for it to be a condition of a GHG authority that no notifiable road use may be carried out on a public road, unless a compensation agreement is in place, the public road authority has given

written authorisation to the GHG authority holder to conduct the notifiable road use, or that an application has been made to the Land Court to make a decision about compensation. This clause also provides that the written authorisation must be given by the public road authority for each renewal of the GHG authority.

Compensation not affected by change in administration or holder

Clause 311 provides that the compensation agreement or decision about compensation liability binds all parties to it and each of their personal representatives. The agreement also binds all successors and all assigns.

Division 2 Other public land

Requirement for entry notice to carry out authorised activities

Clause 312 provides details on when this clause applies. This clause also outlines when a person requires the approval of the public land authority (called the 'public land authority approval') to carry out authorised activities for the GHG authority on public land, or cross public land to enter the GHG authority. Further, the clause provides that the public land authority approval cannot be unreasonably withheld, and that if it is, the public land authority must give an information notice about the decision to refuse to allow the GHG authority holder to carry out the authorised activities.

Waiver of entry notice

Clause 313 lists the requirements for a waiver of entry notice. The waiver of entry notice may be given only by signed writing and state that the public land authority has been told that it is not compulsory that they have to agree to the waiver, list the authorised activities proposed to be carried out on the land, the period of entry, and when and where on the land the activities are proposed to be carried out.

During the period of entry stated in the waiver of entry notice, the public land authority cannot withdraw the waiver of entry notice. The entry consent ceases to have effect after the period of entry stated in the waiver of entry notice.

Required contents of entry notice

Clause 314 outlines the required contents of an entry notice. Each of the following must be stated in an entry notice:

- the land proposed to be entered (generally described as a lot-on-plan);
- the period of entry on the land (called the 'entry period');
- the proposed authorised activities on the land stated in this entry notice;
- where (specifically on the land previously described) and when (specific periods within the previously identified entry period) the authorised activities are proposed to be carried out; and
- the contact details of the holder of the GHG authority, or the contact details of a person authorised to discuss the matters stated in the entry notice.

The entry period cannot be longer than 6 months (where the entry notice is for a GHG permit) or 12 months (where the entry notice is for any other GHG authority). This period may be longer for a GHG tenure providing each relevant owner and occupier agrees in writing to a longer period.

Conditions public land authority may impose

Clause 315 provides for a public land authority to impose conditions on a 'public land authority approval' with certain restrictions. The conditions imposed by the 'public land authority approval' cannot be irrelevant or unreasonable, or be a condition that is the same or substantially the same as, or inconsistent with, a condition of the GHG authority or the relevant environmental authority for the GHG authority. This clause also provides for the public land authority to give an information notice to the GHG authority holder, if the public land authority sets a condition in the 'public land authority approval' that has not been agreed to or requested by the GHG authority holder.

Part 9 Access to land in area of particular other authorities

Application of pt 9

Clause 316 details when this part applies. This part applies to land outside the area of a GHG authority (called 'the first authority'), that is within the area of another GHG authority, petroleum tenure or authority under the *Petroleum and Gas (Production and Safety) Act 2004* or the *Petroleum Act 1923* or a mining tenement under the *Mineral Resources Act 1989* (called 'the second authority'). This clause also provides that if this land is also private land or public land, then this part does not limit the 'Private Land' or 'Public Land' provisions of this Chapter.

Access to land in area of mining lease or petroleum lease

Clause 317 provides that when the holder of the first authority wishes to enter land within the area of the second authority, then the first authority holder must obtain the written consent of the second authority holder before entering the subject land. The first authority holder is then required to lodge a notice, with the chief executive, stating that the written consent of the second authority holder has been given.

Access to land in area of another type of authority

Clause 318 provides for when the holder of the first authority wishes to enter land within the area of the second authority that is not a petroleum lease or mining lease. The first authority holder may cross the land or carry out activities on the land that are reasonably necessary to allow the crossing of the land to access the first authority, or carry out activities that are reasonably necessary to allow the crossing of the land to access the first authority (for example, opening a gate) providing the written consent of the second authority holder is first obtained. However, this clause also provides that the right to cross the land of the second authority, or the carrying out of reasonable activities necessary to allow the crossing of the second authority, may only be exercised if it does not adversely affect the carrying out of an authorised activity for the second authority. This is irrespective of whether the authorised activity for the second authority has started or not.

Part 10 General compensation provisions

General liability to compensate

Clause 319 provides that each GHG authority holder is liable for compensation, to each relevant owner or occupier of private and public land (called an 'eligible claimant'), for any compensable effect the eligible claimant suffers because of authorised activities for the GHG authority, or that is caused by the exercise of access rights over access land for the authority, or consequential damages the 'eligible claimant' incurs because of a compensable effect.

This clause also outlines what a 'compensable effect' is, what a 'relevant owner or occupier' are and what a 'compensation liability' is. Note, however, that this clause does not apply for a public land authority in relation to a notifiable road use.

The intention of this clause, particularly in defining what a compensable effect is, was to align it with, where possible, the compensation provisions of the *Petroleum and Gas (Production and Safety) Act 2004*, which in turn was based on the compensation provisions in the *Mineral Resources Act 1989*.

Compensation agreement

Clause 320 provides for the holder of the GHG authority and an eligible claimant to enter into an agreement (called a 'compensation agreement'). This agreement may relate to all or part of the compensation liability or future compensation liability of the GHG authority holder to the eligible claimant. The clause outlines various matters that must be addressed in the compensation agreement, and various matters that may be addressed in the compensation agreement.

Deciding compensation through Land Court

Clause 321 provides for either the eligible claimant or the GHG authority holder to apply to the Land Court to determine the compensation liability or future compensation liability to the eligible claimant. The Land Court can only determine the compensation liability or future compensation

liability to the eligible claimant to the extent it is not already covered in a compensation agreement.

Land Court review of compensation

Clause 322 provides for either the eligible claimant or the GHG authority holder to apply to the Land Court to review the original compensation agreement if there has been a material change in circumstances. This clause also provides for the Land Court to amend or confirm the original compensation agreement.

Orders Land Court may make

Clause 323 provides for the Land Court to make appropriate orders it sees fit to enforce any decision made by it under this part, and may order monetary or non-monetary compensation.

Compensation to be addressed before entry to private land

Clause 324 provides that the holder of a GHG authority must not enter private land unless the holder owns the land, or unless an eligible claimant for the land is a party to a compensation agreement with the authority holder, or an application has been made to the Land Court for deciding a compensation agreement, or an emergency situation exists, or unless an eligible claimant for the land is a party to an agreement (called a 'deferral agreement') that allows for a compensation agreement to be entered into after the entry. This clause also outlines details about the contents of the deferral agreement.

Compensation not affected by change in ownership or occupancy

Clause 325 provides that a compensation agreement, or the Land Court decision about compensation, binds all parties to it. The agreement or decision also binds all future successors and assigns and all future successors and assigns for the area of the GHG authority until the authority ends.

Part 11 Ownership of equipment and improvements

Application of pt 11

Clause 326 provides for the application of this part to equipment taken on to, or improvements placed on, land in the area of a GHG authority that is in force and to equipment or improvements taken on or used for an authorised activity for a GHG authority that is in force, with stated exceptions.

Ownership of equipment and improvements

Clause 327 provides the circumstances what and when equipment or improvements is taken to be, or remains, the personal property of the holder of a GHG authority.

Part 12 General provisions for conditions and authorised activities

Division 1 Other mandatory conditions for all GHG authorities

Operation of div 1

Clause 328 provides for general mandatory conditions for all GHG authorities.

Obligation to prevent spread of declared pests

Clause 329 provides for a GHG authority holder to do all things reasonably necessary to prevent the spread of the reproductive material of any declared pest (both flora and fauna), either when conducting authorised activities on the GHG authority, or when entering or leaving the GHG authority. This may involve, for example, washing down vehicles and other equipment before moving these from one area to another.

Requirement to consider using formed roads

Clause 330 provides for the GHG authority holder, when entering land, to consider using formed roads wherever practical. If the holder decides not to use a formed road, the holder must take reasonable steps to consult with the owner of the land before entry.

Obligation to comply with Act and prescribed standards

Clause 331 provides for the obligation to comply with this Act and prescribed standards. When conducting authorised activities for a GHG authority, the holder of the authority must comply with this Act, any standard (including any Australian standard, or code, or protocol) provided for by the GHG authority that must be complied with when carrying out an activity, and any standard (including any Australian standard, or code, or protocol) prescribed under a regulation in circumstances where the authority does not provide for a standard for carrying out an activity under the GHG authority.

Obligation to survey if Minister requires

Clause 332 provides for the Minister, by the issuance of a notice to the GHG authority holder, to require the holder to survey or re-survey the area of the authority within a reasonable period as stated in the notice. All costs must be paid by the holder in complying with the notice. The GHG authority holder must have the survey (or re-survey) carried out in a way prescribed by the Minister and by a person who is registered as a cadastral surveyor under the *Surveyors Act 2003*.

Notice of petroleum discovery

Clause 333 provides that if in the course of authorised GHG activities, a GHG authority holder discovers petroleum; the chief executive must be notified within 3 business days of the discovery. The notice must contain details about the discovery and any other information prescribed by regulation.

Division 2 General provisions for when authority ends or area reduced

Obligation to remove equipment and improvements

Clause 334 provides for the removal of equipment (which includes machinery or plant) or improvements in certain listed circumstances, even where the equipment or improvements were not owned by the holder. Where equipment (which includes machinery or plant) or improvements are used for an authorised activity under a GHG authority, or for exercising access rights for the authority, the holder (or former holder) must remove the equipment or improvements from the land prior to the removal day, unless the owner of the land agrees otherwise.

The intention of this clause is to ensure that the removal of the equipment or improvements is conducted by the holder (or former holder) and not by the State, the landowner, nor the occupier of the land.

Authorisation to enter to facilitate compliance

Clause 335 provides the holder (or former holder) with the right to enter that land subject to the provisions of this division, or to cross other land to enter that land the subject of this division, so that the holder (or former holder) can comply with this division's provisions.

It may be considered that there is a breach of fundamental legislative principles triggered by this clause, as there is a power to enter without warrant and the effect this entry has on the rights of owners or occupiers.

It may be considered that there is a breach of fundamental legislative principles triggered by this clause, as there is a power to enter without warrant and the effect this entry has on the rights of owners or occupiers.

However, although there is no warrant required to enter the land, the occupier or owner of the land generally instigates the procedure for the removal of equipment and improvements and is not too concerned about the procedure for allowing entry onto their land, providing the end result is the removal of the offending equipment or improvements from the subject land. This right of entry is balanced by application of the private land, public land and compensation provisions of this Act.

If the former holder intends to enter the land and any occupier of the land is present at the land, the former holder also must show, or make a reasonable

attempt to show, the occupier the former holder's authorisation under this section.

It should also be noted that the there are two safeguards against any unnecessary effect upon the rights of the occupier or owner drafted in this Act for this clause. First, the Minister's power under this clause does not extend to allowing entry to a structure, or a part of a structure, used for residential purposes, without the consent of the occupier of the structure or part of the structure. Second, every attempt must be made by the former holder, who has the entry authorisation, to show the occupier or owner the former holder's authorisation.

Division 3 Provisions for authorised activities

Authorised activities may be carried out despite rights of owner or occupier

Clause 336 provides that authorised activities for a GHG authority may be conducted, irrespective of the rights of an owner or occupier of the land on which the activities are conducted. However, there are restrictions which apply.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as the rights of landholders may be overridden.

However, the Bill, while creating e certain rights of access to private land, also contains numerous checks and balances to minimise and control land use conflict issues arising from this access. These provisions include a duty of care, compensation and restitution provisions, notification requirements, restrictions on activities that can be undertaken and penalties for contravening these requirements.

The provision of access is essential for the exploration and development of GHG storage sites to be able to proceed. Given the number of checks and balances provided, the minimal number of tenure likely to be involved, the relatively small "footprint" of GHG storage sites and the sparsely populated nature of the area of prime interest, this should not, however, be a significant issue.

It should also be noted that Parliament has already considered, and allowed, access of this nature to mineral, petroleum geothermal energy explorers, miners and developers under other legislation.

General restrictions on right to carry out authorised activity

Clause 337 provides for what restrictions the carrying out of an authorised activity for a GHG authority or the exercise of the access rights of a GHG authority holder are subject to.

Who may carry out authorised activity for GHG authority holder

Clause 338 provides details about who may carry out (exercise) authorised activities for a GHG authority. The persons carrying out the authorised activities for the holder must be acting within the scope of the person's authority from the holder. This clause also details how this authority may be implied or expressed.

Part 13 GHG register

GHG register

Clause 339 provides for the chief executive to keep a register about GHG authorities, coordination arrangements, and any other documents related to this Act or another Act that the chief executive considers appropriate (for example, mortgages over GHG authorities and other dealings as defined under this Act).

Keeping of register

Clause 340 provides for the chief executive to keep the register in the way the chief executive considers appropriate. This may include keeping the register in an electronic form. This clause also provides a requirement for the chief executive to amend the register to reflect changes to any information recorded in the register, and when the change is to be made. The chief executive must record when the information was amended and, for certain listed dealings, when the approval for the dealing took effect.

Access to register

Clause 341 requires the chief executive to keep the register open for public inspection during certain listed times and lists the places the register may be inspected. This clause also provides that extracts from the register

including, among other things, details such as who is the principal holder of particular GHG authority and the addresses for service of notices of principal holders of GHG authorities, may be searched for and obtained upon payment of the prescribed fee.

Also, if a person asks for a copy of all of a notice, document or information held in the register, or a copy of part of a notice, document or information held in the register, the copy must be given to the person upon the payment of the prescribed fee.

Note that certain particulars that the chief executive must include in the register may not be released to a person due to privacy reasons.

Arrangements with other departments for copies from GHG register

Clause 342 provides provides that the chief executive may enter into an arrangement to supply other government departments with a copy of all or part of a notice, a document or information held in the GHG register, without requiring a fee.

However, the government departments cannot use this information provided by the chief executive for commercial purposes. Further, the government departments cannot include this information on a data base without the chief executive's approval.

Supply of statistical data from GHG register

Clause 343 provides provides that the chief executive may enter into an agreement to allow a person access to any required statistical data at a cost that is part of the terms of the agreement. By entering into an agreement, the chief executive is able to supply a person data derived from information or instruments kept on the GHG register at a cost determined in the agreement. The agreement must also include certain provisions as detailed.

Also, for privacy reasons, the chief executive must exclude any GHG authority particulars and personal information that may allow a person to identify a person or a GHG authority to whom or which the instrument or information relates.

This clause may be perceived as being administrative in character, with the regulation of affairs between departments of the State being a matter of administrative, rather then legal, concern.

However, the GHG register, as with the petroleum register, geothermal register and the register maintained under the *Mineral Resources Act 1989*, is a public register. As such, the information contained therein must not be open to manipulation or modification in such a manner as to become incorrect or to breach privacy principles. Further, unauthorised use of information obtained from the GHG register also needs to be prevented. This clause will give certainty to the parameters for use of this important information.

Chief executive may correct register

Clause 344 provides for the chief executive to correct the GHG register, providing the chief executive is satisfied about certain listed matters, and the chief executive also records the details of the register before the correction and the time, date and circumstance of the correction.

Part 14 Dealings

Division 1 Preliminary

What is a *dealing* with a GHG authority

Clause 345 provides a listing of permitted dealings that must be recorded on the GHG register. These include:

- a transfer of all or part of any holdings in a GHG authority,
- a mortgage of all or part of any holdings in a GHG authority,
- a release, transfer or surrender of a mortgage,
- a sublease, or a share in a sublease, of a GHG lease,
- a transfer of a sublease and
- a change to a GHG authority holder's name even if the holder continues to be same person after the change. For example, where the name of a company changes (say from a 'Limited' to a 'Pty Ltd' company) that is the holder of a GHG authority, and there has been no change to the company's ACN or ARBN number [given to a company

by the Australian Securities and Investments Commission upon its registration under the *Corporations Act 2001* (Cwlth)].

There are other commercial dealings (for example Deeds and Farm-In Agreements) that may be entered into by the holder of a GHG authority and another party. However, there is no compulsion for these to be recorded on the GHG register.

Prohibited dealings

Clause 346 provides a listing of prohibited dealings, including the transfer of a 'divided part' of a GHG tenure. Examples of the transfer of a 'divided part' of a GHG tenure, that are a prohibited dealing, are also detailed. The examples given for prohibited dealings may be further explained as follows:

- (Company) Pty Ltd has a 100% holding in a GHG lease, and this company wishes to transfer one hectare of this lease to an eligible person; and
- (Company) Pty Ltd holds 100% of a GHG lease and this company wishes to transfer that area of the GHG lease, below a geological stratum, to an eligible person.

However, the effect of the above may be able to be achieved by way of a sublease, which is a permitted dealing.

What is a *third party transfer*

Clause 347 provides the definition of a third party transfer of a GHG authority.

Division 2 Registration of dealings generally

Registration required for all dealings

Clause 348 provides for a permitted dealing to be noted on the GHG register. This clause also provides that a registered dealing takes effect on the day the transfer was concluded (for a third party transfer) or on the day the dealing was given to the chief executive for registration.

Approval requirement for third party transfer

Clause 349 provides that a third party transfer must be approved by the Minister before it can be noted on the GHG register. This has the effect that a third party transfer is the only dealing that requires Ministerial approval before being registered.

Obtaining registration other than third party transfer

Clause 350 provides that to be registered, a dealing (other than a third party transfer) must only be registered by giving the chief executive a notice of the dealing in the approved form and the approved form is accompanied by the prescribed fee. This has the effect that a dealing, other than a third party transfer, does require Ministerial approval before being noted on the GHG register.

Effect of approval and registration

Clause 351 provides that the mere registration, or approval and registration, of a dealing does not give itself any more validity or effect than it would have had, had the provisions in relation to dealings not taken effect.

Division 3 Approval and registration of third party transfers

Applying for approval

Clause 352 provides for any party to a third party transfer, to apply to the Minister for approval and registration of the third party dealing. The application cannot be made if one of the parties to the third party transfer is not an eligible person. The application must be accompanied by the prescribed fee and must, if any of the interest being transferred is subject to a mortgage, be accompanied by the consent of the mortgagee; and if the

Deciding application

Clause 353 provides the criteria the Minister must take into consideration, or the actions required to be completed, when the Minister is deciding whether or not to approve the third party transfer. The approval may only be granted if:

- The proposed transferee is the holder of a relevant environmental authority, under the *Environmental Protection Act 1994*, for the GHG authority, and
- If any financial assurance is required under the *Environmental Protection Act 1994*, it has been given, or if no financial assurance or extra financial assurance was required, that the Minister is advised of this fact, and
- If the third party transfer is that of a GHG tenure, the Minister has considered the relevant criteria under chapter 2 or 3 for obtaining that type of GHG tenure.

Security may be required

Clause 354 provides that the Minister, as a condition of deciding to approve the third party transfer, may require the proposed transferee to give security for GHG authority as if the transferee was an applicant for the GHG authority. If this security is not provided, the Minister may refuse the third party transfer application.

Information notice about refusal

Clause 355 provides that if the Minister decides not to grant the approval of a third party transfer, the Minister must give an information notice about the decision.

Part 15 Enforcement of end of authority and area reduction obligations

Power of authorised person to ensure compliance

Clause 356 provides for the chief executive to authorise a person (called an 'authorised person') when a GHG authority holder (or former holder) has not decommissioned GHG wells, has not decommissioned pipelines or has not removed equipment or improvements.

The authorised person may enter land and do all things necessary to ensure the remedial requirement is complied with and enter any other land to cross for access to the other land. The authorisation given to the authorised

person must be in writing and may be given on conditions the Minister sees as appropriate. This clause also provides that the authorised person cannot enter residential structures without the consent of the occupier.

Requirements for entry to ensure compliance

Clause 357 provides for a notice of entry to be given 10 business days before the entry to land for remedial purposes. This notice must be given to the occupier of the land (if the land has an occupier) or to the owner of the land (if the land has no occupier). This clause also provides details about what information the notice must detail, and provides for the chief executive to approve, in certain listed circumstances, the giving of the entry notice by publication.

Also, this clause provides that if the occupier of the land is present on the land when remedial activities are about to take place, the authorised person must show the occupier of the land the person's authorisation.

It may be considered that there is a breach of fundamental legislative principles triggered by this clause, as there is a power to enter without warrant, and the effect this entry has on the rights of owners or occupiers.

However, although there is no warrant required to enter the land, the occupier or owner of the land generally instigates the procedure for the decommissioning of a GHG well or pipeline, or removal of equipment and improvements, and will not generally be concerned about the procedure for allowing entry onto their land, providing the end result is the decommissioning of the GHG well or pipeline, or removal of the offending equipment or improvements from the subject land.

There are two safeguards against any unnecessary effect upon the rights of the occupier or owner drafted in this Act for this clause. First, the chief executive's power under this clause does not extend to allowing entry to a structure, or a part of a structure, used for residential purposes, without the consent of the occupier of the structure or part of the structure. Second, every attempt must be made, by the authorised person who has the entry authorisation, to show the occupier or owner the authorisation.

It should also be noted that each owner and occupier of the subject land is to be given a detailed notice about the entry to the subject land 10 days before the actual entry is to occur.

Duty to avoid damage in exercising remedial powers

Clause 358 provides that the authorised person is to take as reasonable care as is practicable not to cause too much inconvenience nor create too much damage.

Notice of damage because of exercise of remedial powers

Clause 359 provides for the authorised person, if in exercising remedial powers the person damages land or something on the land, to give a notice of damage directly to the owner and occupier of the land, where possible, or display the notice in a prominent place where it is likely to come to the attention of the owner or occupier. The notice must state the particulars of the damage, and that pursuant to the provisions in this Act about compensation for the exercising of remedial powers, the owner or occupier may claim compensation from the State.

Compensation for exercise of remedial powers

Clause 360 provides details about an owner or occupier claiming compensation arising from a loss because of the exercise of remedial powers.

Ownership of thing removed in exercise of remedial powers

Clause 361 provides that when exercising remedial powers and a thing is removed, the thing becomes the property of the State, and the State may deal with it by destroying it, giving it away, or selling it.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is an effect on the property rights of the holder or the former holder. However, it is envisaged that provisions in this Act (General provisions for conditions and authorised activities) will be the first legislative step taken by the Minister when requiring the former GHG authority holder to enter land previously within the area of the GHG authority or access land, to remove equipment and improvements from the subject land.

It is also envisaged that the second legislative step will be for the chief executive to give authority to a person to decommission a GHG well or pipeline, or remove equipment and improvements from the subject land.

The exercise of these remedial powers on the subject land is to keep good faith with the landholders of Queensland; they having some legislative guarantee that if, where the previous GHG authority holder has failed to decommission a GHG well or pipeline, or remove equipment and improvements, that the chief executive can authorise someone to rectify this failure.

Neither the State, nor the landholder, should be expected to cover the costs of this remediation, which may be more than the amount of the security that is held for the subject GHG authority. Consequently, the thing removed should become the property of the State, so that the costs of removal and sale may be recovered at no expense to the landholder or the State.

Nonetheless, this clause still provides for the return of the proceeds of the sale, less the costs of the remediation and the sale, to the former owner of the thing.

Recovery of costs of and compensation for exercise of remedial power

Clause 362 provides for the State to recover costs and compensation, brought about by the exercise of the remedial powers, as a debt. However, any sale of the things that were removed must be deducted from these costs.

Part 16 Dealing with serious situations

What is a serious situation

Clause 363 provides a definition of serious situation for a GHG storage reservoir. The situations all relate to the GHG stream. The serious situation provisions align with the Commonwealth and Victorian Government's GHG legislation.

Minister's power to give direction

Clause 364 provides for the Minister give a direction if there is a reasonable belief that either, a serious situation has arisen or may arise, and the GHG tenure holder is in a position to take remedial action.

Requirements for giving serious situation direction

Clause 365 states the requirements of a serious situation Ministerial direction that may be given by an information notice or orally.

Failure to comply with serious situation direction

Clause 366 provides that the GHG tenure holder given a serious situation direction must comply and non-compliance may attract a high penalty. Safety and risk reduction are key issues of this legislation and these provisions seek to address these and will assist in promoting community confidence in the GHG storage process.

Serious situation direction applies despite other instruments

Clause 367 provides that a direction issued under this part will apply regardless of what is contained in work programs, development plans or other instruments of this Act.

Powers under P&G Act not affected

Clause 368 provides does not alter the dangerous situation provisions or other safety provisions of the safety chapter of the *Petroleum and Gas (Production and Safety) Act 2004*. Both provisions apply for GHG tenure holders.

Part 17 Miscellaneous provisions

GHG authority does not create an interest in land

Clause 369 provides that a GHG authority does not create an interest in the land. That is, the GHG authority holder only has the rights of using the land for the purposes as prescribed in this Act.

Joint holders of a GHG authority

Clause 370 provides for dealing with joint holders of a GHG authority. While the presumption of joint ownership of a GHG authority arises from the *Property Law Act 1974* (section 33 at the time of writing), this clause clarifies this issue.

In line with existing property interest provisions in the *Land Title Act 1994* (section 56) and the *Land Act 1994* (section 145), this section is inserted to remove any doubt as to how joint ownership will be dealt with in the GHG register. A person who is eligible to hold a GHG authority under this Act may hold it as a joint tenant or as a tenant in common.

However, if an application for a GHG authority or dealing with a GHG authority, e.g. an third party assignment or a mortgage is lodged and does not show whether co-owners are to hold as tenants in common or as joint tenants, the co-owners will be recorded as tenants in common. Where the application shows applicants as tenants in common and no shares, the register will show their shares as being equal.

Minister's power to ensure compliance by GHG authority holder

Clause 371 provides for the Minister to ensure compliance by a GHG authority holder, where the holder of a GHG authority has not complied with a requirement under this Act, and no other provision of this Act allows someone other than the holder to ensure compliance with the requirement. This clause provides for the Minister, by issuing a notice containing the details listed in this clause, to do any action the Minister considers appropriate to ensure all or part of the requirement is complied with once the Minister has considered submissions given by the GHG authority holder in response to the notice and given the GHG authority an information notice.

Interest on amounts owing to the State

Clause 372 provides for interest to accrue, and become available to the State, when any amounts (such as rent, a civil penalty for non-payment of rent, or an annual licence fee) are owed under this Act. This clause provides details of the amount of interest and when the interest begins to accrue.

Recovery of unpaid amounts

Clause 373 provides for the State to recover an amount, including interest, as a debt, when a provision of this Act requires GHG authority holder to pay this amount (and any interest).

Power to correct or amend authority

Clause 374 provides the power for the Minister to amend an authority at any time, with certain restrictions. For example, the Minister may amend the authority to correct a clerical or formal error, and record the particulars of the amendment in the GHG register, by issuing a notice to the holder of the authority.

The Minister may also amend the authority by issuing a notice to the holder of the authority, and making the amendment, if it does not affect the interests of the holder or anyone else and the holder has agreed to the amendment in writing.

However, this clause does not apply for a mandatory condition for, or the term of the authority, or for an amendment to a work program (for a GHG permit) or development plan (for a GHG lease).

The official cannot amend the authority if the authority (as amended) would be inconsistent with the mandatory conditions applying to that type of authority.

Replacement of instrument for GHG authority

Clause 375 allows for the replacement of an original authority, where the original authority has been lost, destroyed or stolen.

The authority holder must apply for a replacement authority to the Minister on the approved form. The Minister must consider the application and, if reasonably satisfied that the authority has been lost, destroyed or stolen, replace the authority.

If the Minister decides to refuse the application, the Minister must give the applicant an information notice about why the application was refused.

Joint and several liability for conditions and for debts to State

Clause 376 states that if more than one person holds a GHG authority, each holder is jointly and severally responsible for complying with the conditions of the authority and liable for all debts payable under this Act and unpaid by the holder of the authority to the State.

Notice of authority holder's agents

Clause 377 provides for person, carrying out functions under this Act, to refuse to deal with a person claiming to be acting as an agent for a GHG authority holder, unless the authority holder has given the official a notice, stating that the agent is representing the holder.

Chapter 6 Enforcement, offences and proceedings

Part 1 Noncompliance action for GHG authorities

Division 1 Preliminary

Operation of div 1

Clause 378 provides a process for action against holders of a GHG authority (including a licence or authorisation) for noncompliance. It is noted that this division does not limit the ability to take other noncompliance actions.

Division 2 Noncompliance action by Minister

Types of noncompliance action that may be taken

Clause 379 provides for a number of noncompliance actions which depend on the GHG authority type. These include reducing the term of a GHG permit or GHG data acquisition authority, amending or imposing conditions, suspension or cancellation of the GHG authority or, in the case of GHG permit for example, taking such actions as reducing the permit area or withdrawing the work program approval. This clause also provides for a monetary penalty to be used in place of other actions in some cases.

This clause provides a head of power that may be construed as being quasi-judicial.

While this may be argued, procedural fairness (due process) to the holder before such a decision is made, has been provided for in this Act. Any penalties imposed by the Minister will be commensurate with the severity of the noncompliance and will be considered in the context of the grounds for which such an action has been taken.

When noncompliance action may be taken

Clause 380 provides for details about when noncompliance action can be taken. These reasons include a GHG authority being obtained falsely, any noncompliance with this Act, the failure to pay an amount due and other reasons associated with improper actions under a GHG authority.

Division 3 Procedure for noncompliance action

Notice of proposed noncompliance action other than immediate suspension

Clause 381 provides that the Minister give notice to the GHG authority holder that a noncompliance action will be taken, what action is proposed, and details of the facts and grounds for the action. The notice must include provision for the GHG authority holder to lodge a submission about the proposal within a stated period, which must not be less than 20 business days.

Considering submissions

Clause 382 provides that the Minister must consider any submission made and, if no further action is contemplated, advise the GHG authority holder.

Decision on proposed noncompliance action

Clause 383 provides for the Minister, once any submissions have been considered, to take the proposed noncompliance action. The Minister, in deciding the action, must consider whether the person is a suitable person to hold a GHG authority having regard to any criteria for deciding whether to grant a GHG authority of the same type

Notice and taking effect of decision

Clause 384 provides that an authority holder must be given notice of the noncompliance decision and the date it takes effect.

Consequence of failure to comply with relinquishment requirement

Clause 385 provides for the consequence of failure to comply with the relinquishment requirement. This clause specifies that if the holder of the GHG authority does not comply with the relinquishment before a day specified in a notice, the GHG authority is cancelled.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause in that it provides for an automatic cancellation of a GHG authority without a right of appeal if the holder fails to comply with the relinquishment condition. The holder of a GHG authority must be given a notice stating that the holder of the authority must comply with the relinquishment condition within 20 business days. Only if the holder does not comply with the relinquishment condition is the authority cancelled. The cancellation does not take effect until another notice is given.

Part 2 General offences

Division 1 Restrictions relating to GHG storage activities

Restriction on GHG storage activities

Clause 386 restricts the carrying out of GHG tenure activities in relation to land, except in certain circumstances listed in this clause.

The purpose of this clause is to penalise persons who conduct GHG storage activities on land that is not within the area of a GHG authority or in other allowable circumstances detailed in this clause.

GHG tenure holder's measurement obligations

Clause 387 provides that the holder of GHG tenure must measure GHG streams used for GHG stream storage in accordance with the relevant measurement scheme for the meter, ensure the meter complies with prescribed requirements and that the measurement is made at the times and in the way prescribed.

Duty to avoid interference in carrying out GHG storage activities

Clause 388 requires a person who is conducting activities under a GHG authority to carry out the activities without unreasonably interfering with other activities being properly conducted by other persons. As authorised activities under a GHG authority may impinge on the rights of the other tenure holders and landowners and occupiers, there is a need to ensure all parties cooperate. For example, a person carrying out an authorised activity for a GHG authority must not unreasonably interfere with a grazier going about their day-to-day business.

Division 2 Interference with authorised activities

Obstruction of GHG authority holder

Clause 389 prohibits a person, without reasonable excuse, from obstructing a GHG authority holder from the GHG authority holder's right of access, or obstructing the holder while the holder carries out activities authorised by the GHG authority. However, when entering land to conduct authorised activities, the GHG authority holder must comply with the relevant clauses of this Act. As authorised activities under a GHG authority may impinge on the rights of other tenure holders, land owners and occupiers, there is a need to ensure all parties cooperate.

Restriction on building on pipeline land for GHG tenure

Clause 390 provides a restriction if land is pipeline land for 1 or more GHG tenures. A person, other than a holder of any of the GHG tenures must not construct a place a structure on the land unless consent is obtained from all the GHG tenure holders.

Restriction on changing surface of pipeline land for a GHG tenure

Clause 391 restricts a person from changing the surface of pipeline land for a GHG tenure that may result in a change to the depth of burial of a pipeline except in certain listed circumstances.

Division 3 Other offences

False or misleading information

Clause 392 provides that a person must not make an entry in a document knowing that it is false or misleading in a material particular.

Also, where directed or required under this Act, a person must not give a document or thing that the person knows is false or misleading in a material particular.

Executive officers must ensure corporation complies with Act

Clause 393 requires the executive officers of a corporation to ensure that the corporation complies with the designated provisions of this Act. If a corporation commits a particular offence against one of this Act's designated provisions, each of the executive officers commits the offence of failing to ensure that the corporation complies. Also, it is specified that it is evidence that each of the executive officers failed to ensure the corporation complied with the designated provisions this Act if there is evidence that the corporation has been convicted of an offence against a designated provision of this Act. The clause also provides defences for an executive officer of a corporation in relation to the offence.

Of the offences listed, apart from those in chapter 6, part 2 (General offences), it could be said that they confine executive officer responsibility to ensuring the corporation complies with specific operational or administrative requirements such as the lodging of required reports. Of the general offences, it might be said that the elements of the offences are all matters that require proof of the offence and should fall within the executive officer's knowledge or responsibility.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is a reversal of onus of proof.

However, this provision is a standard clause in many pieces of legislation, including the *Child Care Act 2002*, *Property Agents and Motor Dealers Act 2000*, and the *Environmental Protection Act 1994*. It is appropriate that an executive officer, who is in a position to influence the conduct of the corporation, should be accountable for offences committed against provisions of this Act by the corporation. However, it should be noted that there are standard defences within this provision relating to whether the executive officer was in a position to influence the corporation's conduct in relation to the offence or, if the executive officer was in this position, that the officer exercised reasonable diligence to ensure the corporation complied with the provision.

Attempts to commit offences

Clause 394 provides for it to be an offence if a person attempts to commit an offence against this Act. Section 4 of the Criminal Code applies to this clause.

Part 3 Appeals

Who may appeal

Clause 395 provides that a person whose interests are affected by a decision detailed in Schedule 1 to this Act, may appeal against the decision to the Land Court. Any person who has been, or is entitled to be given an information notice under this Act is considered a person affected by the decision.

Period to appeal

Clause 396 details when an appeal must commence, and allows for the Land Court to extend the appeal making period.

Starting appeal

Clause 397 outlines how an appeal to the Land Court is started.

Stay of operation of decision

Clause 398 provides the Land Court the ability to grant a stay of the decision. This clause also lists the conditions of the stay and provides that the period of a stay is not to extend past the time when the appeal body decides the appeal. The appeal affects the decision, or the carrying out of the decision, only if the decision is stayed.

Hearing procedures

Clause 399 provides for the appeal hearing procedure, which must be in accordance with the rules for the Land Court, or by directions of the Land Court where the rules make no provision for the appeal. The appeal is by way of rehearing.

Land Court's powers on appeal

Clause 400 provides for how the Land Court may confirm a decision, set aside and substitute another decision, or set aside and return the issue to the original decider with appropriate directions from the Land Court. Where the Land Court sets aside and substitutes another decision, the substituted decision is taken to be the original decider's decision.

Restriction on Land Court's powers for decision not to grant GHG lease

Clause 401 provides that if a Land Court is to decide an appeal against a decision not to grant a GHG lease the Land Court cannot exercise some of the Land Court's power in relation to the decision on the ground that any resource management decision for the application for the GHG lease was to give an overlapping authority priority, in whole or part.

Appeals from Land Court's decision

Clause 402 provides details about appealing the Land Courts decision. An appeal to the Court of Appeal from the Land Court may only be made on a question of law.

Part 4 Evidence and legal proceedings

Division 1 Evidentiary provisions

Application of div 1

Clause 403 describes when this division applies.

Authority

Clause 404 provides that it is not necessary to prove the chief executive's or the Minister's power to do anything under this Act, unless a party to a proceeding requires proof otherwise.

Signatures

Clause 405 provides that a signature purporting to be the signature of the chief executive or the Minister is evidence of the signature it claims to be.

Other evidentiary aids

Clause 406 provides that a certificate, purporting to be signed by the chief executive and stating certain matters as outlined in this clause, are to be taken as evidence of the matter.

Division 2 Offence proceedings

Offences under Act are summary

Clause 407 provides that offences against this Act are summary offences. This clause also provides for when and where a proceeding for an offence must be brought.

Statement of complainant's knowledge

Clause 408 provides that, in the case of a complainant initiating a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day, is evidence that the matter came to the complainant's knowledge on that day.

Conduct of representatives

Clause 409 applies to a proceeding for an offence if it is relevant to prove a person's, (or an actual or apparent representative of a person's) state of mind.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as there is a reversal on the onus of proof. However, it is appropriate that a person, who is in a position to influence the conduct of their representative, should be accountable for offences committed against provisions of this Act by the representative. However, it should be noted that there are defences within this provision relating to whether the person was in a position to influence the representative's conduct in relation to the offence or, if the person was in this position, that the person exercised reasonable diligence to ensure the representative complied with the provision.

Additional orders that may be made on conviction

Clause 410 provides for additional orders a court may make on the conviction of a person for an offence against this Act, including forfeiture of certain things to the State.

Chapter 7 Miscellaneous provisions

Part 1 Applications, lodging documents and making submissions

Place for making applications, lodging documents or making submissions

Clause 411 provides that if an application is to be made, or a document has to be given to the Minister or the chief executive, a submission must be made, the address to make the application, or lodge the document or submission is that detailed on the relevant approved form. If there is no approved form, or the approved form does not detail the address to make

the application, or lodge the document or submission, the address is that of the department as displayed on the department's website.

Substantial compliance with application requirements may be accepted

Clause 412 provides that a person who has to decide an application may accept an application where all the requirements of the application have not been met; providing the person believes that the application substantially complies with the requirements.

Additional information may be required about application

Clause 413 provides for when the Minister is making a decision about an application, the Minister may request further information about the application, needed to properly assess the application. The Minister may also require the applicant to supply a statutory declaration verifying any information within the application, or verifying any further information requested under this clause, or an independent report by a suitably qualified person.

The Minister may also require a survey or re-survey of the area of a GHG authority. The survey must be carried out in a manner approved by the Minister, and by a person who is registered as a cadastral surveyor under the *Surveyor's Act 2003*.

Further, the Minister may refuse an application if the applicant does not give the required information or the statutory declaration about the application to the chief executive within the required timeframe. All costs in complying with this clause must be borne by the applicant.

Particular criteria generally not exhaustive

Clause 414 provides that the Minister, where the Minister has to consider particular criteria in making a decision about an application, may not only consider the particular criteria, but may also take into consideration any other criteria the Minister considers relevant.

Particular grounds for refusal generally not exhaustive

Clause 415 provides that the Minister may, where particular grounds exist for which the Minister may refuse an application, refuse the application on another reasonable and relevant ground.

Amending applications

Clause 416 provides for a person who has made an application under this Act to amend the application before it has been decided, providing the Minister agrees to the amendment.

Where the amendment to the application is to change an applicant, all other applicants must agree to this change. The amended applicant will then be considered an applicant from the making of the application, for the purposes of deciding the application.

This clause also provides that if the application is a tender for a GHG tenure, the proposed work program or development plan cannot be amended after the applicant has become the preferred tenderer for the tender, or the tender cannot otherwise be amended after the closing of tenders.

However, a change to a GHG authority applicant's name, where the applicant is a corporation, may be made after the closing of the tenders. For example, this may apply where the name of a company changes (say from a 'Limited' to a 'Pty Ltd' company) and the company is the applicant for a GHG authority, and there has been no change to the company's ACN or ARBN number [given to a company by the Australian Securities and Investments Commission upon its registration under the *Corporations Act 2001* (Cwlth)]. Again, the amended applicant will then be considered an applicant from the making of the application, for the purposes of deciding the application.

Withdrawal of application

Clause 417 provides for an applicant to withdraw an application, by giving a notice to the Minister. Generally, this notice must be made before the application is decided or, in the case of an application for a GHG authority, before the authority is granted. The withdrawal of the application by the applicant takes place when the notice of withdrawal is given.

If the applicant is the preferred tenderer for a call for tenders, the withdrawal of the application does not affect the Minister's power to decide other applications in response to the same call for tenders.

Minister's power to refund application fee

Clause 418 provides for the Minister to refund whole or part application fees upon the refusal or withdrawal of an application.

Part 2 Other miscellaneous provisions

General public interest criteria for Ministerial decisions

Clause 419 provides that in making decisions about applications or grants under this Act, the Minister must take into account the public interest. Also, irrespective of whether this Act requires or permits the Minister to make a decision giving consideration to the public interest, the Minister may still consider the public interest in making the decision.

Provision for entry by State to carry out authority-related activity

Clause 420 provides that in exercising a right entry to lands to carry out any GHG authority-related activity, the right may be exercised for the State by any person authorised by the chief executive. It is a requirement that before entry, the person authorised by the chief executive is to give the owner of the land a notice of the proposed entry 5 business days before the proposed entry.

Name and address for service

Clause 421 provides for a person, who has lodged a signed notice with the chief executive, to nominate another person at a stated address as being the address for the service of a notice or other document for this Act.

Additional information about reports and other matters

Clause 422 provides for the Minister or chief executive to request further written information about a notice or copy of a document, a report or

information given previously. This request can be given by the Minister or chief executive by a notice, given to a person previously requested under this Act to give a notice, copy of a document, report, or information; and the person has given the official this notice, copy of a document, report, or information. The person must comply with the Minister's or chief executive's notice within a reasonable timeframe as stated in this notice.

References to right to enter

Clause 423 provides for what other rights are referred to when referring to a right to enter a place.

Application of provisions

Clause 424 provides the relationship with another provision of this Act, another law, or a provision of another law, if those other provisions or laws apply.

Protection from liability for particular persons

Clause 425 provides when a 'designated person' (an official, a public service officer or employee, a contractor carrying out activities relating to the administration of this Act, or a person who is required to comply with a serious situation direction given under this Act) may be protected from civil liability for an act done, or omission made, honestly and without negligence under this Act.

If a civil liability is prevented from being attached to a 'designated person', the liability instead attaches to the State. A definition of 'civil liability' is also provided for in this clause.

It may be considered that this provision offends the fundamental tenent of equality before the law. However, given that shifting of the liability to the State, nobody's interests are adversely affected by this provision.

Delegation by Minister or chief executive

Clause 426 provides for the Minister or chief executive to delegate their respective powers under this Act. This clause also provides to whom the Minister or chief executive can delegate their respective powers to under this Act. The Minister and the chief executive may delegate their respective powers to an appropriately qualified public service officer or employee, or

an appropriately qualified contractor carrying out activities, relating to the administration of this Act, for the department.

It may be considered that there is a breach of a fundamental legislative principle triggered by this clause, as it may be perceived that it is not appropriate to delegate the Minister's or chief executive's powers to a contractor. However, there are restrictions in this clause that require the contractor to be appropriately qualified and be carrying out activities pursuant to the administration of this Act for the department. It is envisaged that the Minister's or chief executive's powers will be delegated to a contractor in rare and unusual circumstances, such as when a public service officer or employee, is not considered suitably qualified to be delegated such powers.

Ministerial directions about the giving of information

Clause 427 provides gives statutory recognition to any direction, manual, guideline or other similar publications which may be made, published or maintained by the Minister. These publications will, among other things:

- provide information and guidance for departmental staff;
- assist a person preparing a document required under this Act such as:
    - an application,
    - other supporting information related to development plans and the like; and
    - dealings, such as the transfer of any holdings in a GHG authority; or
- assist a person to otherwise provide information to the Minister or chief executive for a purpose under this Act.

Timeframes within which a person must provide information to the department must be detailed in the direction about the giving of information. The minimum timeframe for a person to provide information will be 20 business days; however a longer period to provide information may also be stated, depending on the nature of the information required by the Minister.

The making, publishing and maintenance of directions under this clause is to provide clear guidance about any information required to be provided with, or in support of, an application, or for the continuing administration of any GHG authority, granted under this Act.

The policy underlying the making, publication and maintenance of directions is to clearly place the onus of responsibility on applicants and holders to be aware of the information required to be given to the Minister or chief executive relating to applications (or in other circumstances required by this Act) and to ensure the information provided is correct.

The guidance provided by the directions is intended to minimise noncompliance with the completion of applications and required accompanying information, as well as any other information required to be provided from time to time under this Act.

The assistance to persons lodging the information through the directions will facilitate smoother processing and administration of the legislation and minimise applications failing where they are incorrect or where insufficient information is provided.

A non-exhaustive list of examples is included with the clause. The examples simply demonstrate instances where information might be required. For example, a later work program might be required with an application. A direction could be made and published by the Minister, containing details about the information requirements in the later work program, how this information is to be provided with the application and the most appropriate form the information may take or how it may be provided.

All directions, and a record of directions made, will be kept by the chief executive and be readily available to the public. A record will also be kept of the dates the directions were published and if any directions are superseded, when they were superseded.

Approved forms

Clause 428 provides for the chief executive to approve forms for use under this Act.

Regulation-making power

Clause 429 provides for the Governor in Council to make regulations about, among other things, fees payable under this Act and the imposition of a penalty, for contravening a regulation, of no more than 20 penalty units.

Chapter 8 Transitional provisions

Definitions for ch 8

Clause 430 provides the definitions for the transitional provisions.

Conversion of Zerogen's P&G Act ATPs

Clause 431 provides for the conversion of the two authorities to prospect (ATPs), administered under the *Petroleum and Gas (Production and Safety) Act 2004*, held by Zerogen. Zerogen is a wholly owned company of the government. On assent these ATPs become GHG permits and cease to be administered under the *Petroleum and Gas (Production and Safety) Act 2004*. Zerogen, a wholly owned company of the government, was the successful tenderer over two ATPs, numbers 830 and 835 for GHG exploration. The intention has always been to convert these ATPs over to GHG permits.

New GHG permit for Zerogen

Clause 432 provides that a GHG permit will be granted to Zerogen over identified parts of an authority to prospect (ATP) number 722 [held by another company and administered under the *Petroleum and Gas (Production and Safety) Act 2004*] and other areas not covered by applications for, or granted ATPs or PLs. Zerogen, through a commercial arrangement with the holder of ATP 722, has been conducting GHG exploration since early 2006. The holder of ATP 722 is agreeable to the granting of the GHG permit over certain areas of its ATP.

It is recognised that this may constitute a fundamental legislative principle issue. However as GHG rights are only being created by these proposed amendments it is considered that no existing rights are being impinged on. Furthermore as the State owns the rights to GHG storage there does not appear to be a breach of rights. It may be argued that by circumventing the tender process that the State is precluding the possible rights of companies competing in a tender process. However the priority grant of a tenure is considered to be in the best interests of the public and the state that testing being undertaken on this site takes precedence over any other GHG storage right. On balance it is considered that the interests of the State must prevail.

GHG storage is of such significance in mitigating the effects of climate change by making deep cuts to CO_2 emissions. On this particular site Zerogen has been working specifically, exclusively and openly on testing of GHG storage and the project has been closely and publicly monitored. Further to this the Petroleum and Gas (Production and Safety) Regulations 2004 were specifically amended to allow Zerogen to undertake GHG storage testing on this particular site and they have always fulfilled the stringent conditions imposed on the GHG storage exploration and testing and have undertaken comprehensive community consultation.

Authorised activities under Zerogen GHG permits may start from assent

Clause 433 provides that on assent Zerogen may carry out GHG permit activities subject to the provisions of this Act as if this Act had commenced. This will allow the planned exploration and testing to continue. If this was not the case, all work on the project would have to cease for approximately one year. This would be such an impediment that it may not be sustainable both financially and technically.

Deciding provisions of new GHG permit

Clause 434 requires Zerogen to give the Minister a new work program that complies with the requirements for an initial work program.

Test plan for new GHG permit

Clause 435 provides that Zerogen may submit a test plan to the Minister for approval even if the test plan provisions have not have commenced.

Functions under chapter may be performed before assent

Clause 436 reiterates the fact that on assent Zerogen can perform functions validly as if this Act had commenced.

Chapter 9 Amendment of other Acts

Part 1 Amendment of Aboriginal Land Act 1991

Act amended in pt 1

Clause 437 provides that part 1 amends the *Aboriginal Land Act 1991*.

Amendment of s 41 (Provision about resumption of transferred land etc.)

Clause 438 provides that 'relevant purpose', for this section, is extended so that it means any purpose for which land may be taken under the *Acquisition of Land Act 1967* by a constructing authority, other than a purpose under the *State Development and Public Works Organisation Act 1971*, the *Petroleum and Gas (Production and Safety) Act 2004* and the *Greenhouse Gas Storage Act 2008*.

Amendment of s 78 (Provision about resumption of granted land etc.)

Clause 439 provides that 'relevant purpose', for this section, is extended so that it means any purpose for which land may be taken under the *Acquisition of Land Act 1967* by a constructing authority, other than a purpose under the *State Development and Public Works Organisation Act 1971*, the *Petroleum and Gas (Production and Safety) Act 2004* and the *Greenhouse Gas Storage Act 2008*.

Part 2 Amendment of Coastal Protection and Management Act 1995

Act amended in pt 2

Clause 440 provides that part 2 amends the *Coastal Protection and Management Act 1995*.

Amendment of schedule (Dictionary)

Clause 441 amends the definition of 'interest, for land' to include a GHG injection and storage lease granted under the *Greenhouse Gas Storage Act 2008*.

Part 3 Amendment of Dangerous Goods Safety Management Act 2001

Act amended in pt 3

Clause 442 provides that part 3 amends the *Dangerous Goods Safety Management Act 2001*.

Amendment of s 3 (Application of Act)

Clause 443 provides that the *Dangerous Goods Safety Management Act 2001*, other than part 7 (Hazardous Materials Emergencies) and the other provisions of the *Dangerous Goods Safety Management Act 2001* relevant to that part, do not apply to the land that is used to carry out GHG stream storage under the *Greenhouse Gas Storage Act 2008* or a GHG storage stream pipeline under the *Greenhouse Gas Storage Act 2008*, other than within the boundaries of a major hazard facility or dangerous goods location.

Part 4 Amendment of Duties Act 2001

Act amended in pt 4

Clause 444 provides that part 4 amends the *Duties Act 2001*.

Amendment of s 137 (Exemption—mining and petroleum legislation)

Clause 445 amends the *Duties Act 2001* to extend the exemptions for transfer duty on a dutiable transaction to include the grant of a sublease under a GHG coordination arrangement under the *Greenhouse Gas Storage Act 2008*.

Part 5 Amendment of Electrical Safety Act 2002

Act amended in pt 5

Clause 446 provides that part 5 amends the *Electrical Safety Act 2002*.

Amendment of s 6 (Application of Act to mines and petroleum plant)

Clause 447 provides that certain parts of the *Electrical Safety Act 2002* do not apply to GHG storage plant, meaning private plant or an electrical installation that is operated under *Greenhouse Gas Storage Act 2008* and the subject to inspection under the *Petroleum and Gas (Production and Safety) Act 2004*.

Part 6 Amendment of Electricity Act 1994

Act amended in pt 6

Clause 448 provides that part 6 amends the *Electricity Act 1994*.

Amendment of s 40H (Contracting out of s 40E, 40G(a) or (b) or 97)

Clause 449 provides for the amendment to correct a minor typographical error.

Amendment of s 53 (Making or amending terms of standard large customer or street lighting customer retail contract)

Clause 450 provides that the amendment, provided for in the *Mines and Energy Legislation Amendment Act 2008* to section 49(4) of the *Electricity Act 1994*, makes it clear that a standard large customer retail contract is between a large customer or street lighting customer and a retail entity. It isn't considered necessary for this type of contract to be renamed in the heading of section 53 of the *Electricity Act 1994*. Therefore, the heading is amended.

Amendment of chapter 5A, pt 1, div 2, hdg (Definitions for ch 5A)

Clause 451 provides for the amendment to correct a minor legislative drafting error.

Amendment of chapter 5A, pt 8, div 4, hdg (General offences for ch 5A)

Clause 452 provides for the amendment to correct a minor legislative drafting error.

Part 7 Amendment of Environmental Protection Act 1994

Act amended in pt 7

Clause 453 provides that part 7 amends the *Environmental Protection Act 1994*.

Replacement of s 18 (Meaning of *environmentally relevant activity*)

Clause 454 provides an amendment consequential to clause 459 and clause 460.

Amendment of s 19 (Environmentally relevant activity may be prescribed)

Clause 455 provides an amendment consequential to clause 459 and clause 460.

Amendment of s 37 (When EIS process applies)

Clause 456 provides an amendment consequential to clause 459 and clause 460.

Amendment of s 38 (Who is an *affected person* for a project)

Clause 457 provides an amendment consequential to clause 459 and clause 460.

Amendment of ch 4 hdg (Development approvals and registration (other than for mining or petroleum activities))

Clause 458 provides an amendment consequential to clause 459 and clause 460, omitting the term 'petroleum' and inserting 'chapter 5A' activities.

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

Clause 459 omits chapter 4A from the *Environmental Protection Act 1994*. Petroleum activities that were regulated under this chapter are now

regulated under new chapter 5A. The legislative intent regarding the regulation of petroleum activities under chapter 4A is unchanged and is transferred to new chapter 5A.

Insertion of new ch 5A

Clause 460 inserts a new chapter 5A.

Chapter 5A Other environmental authorities

Part 1 Preliminary

309A What this chapter is about

Clause 460 inserts new section 309A, which states that chapter 5A provides for environmental authorities for environmentally relevant activities which require an environmental authority under section 426A (also amended, *below*). The section stipulates that these activities are greenhouse gas storage activities and petroleum activities, that each of these activities is a 'chapter 5A activity' and that an environmental authority for a chapter 5A activity is an 'environmental authority (chapter 5A activities)'.

Types of environmental authorities (chapter 5A activities)

Clause 460 inserts new section 309B, which provides that an environmental authority (chapter 5A activities) can be a code compliant authority or a non-code compliant authority. A code compliant authority is an environmental authority (chapter 5A 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 (chapter 5A activities) other than a code compliant authority.

Levels for chapter 5A activities

Clause 460 inserts new section 309C, which states that each chapter 5A activity must be prescribed under a regulation as a level 1 chapter 5A activity, or a level 2 chapter 5A activity, depending on the risk of environmental harm.

What is a *relevant resource authority*

Clause 460 inserts new section 309D, which states that a 'relevant resource authority' for a chapter 5A activity, an environmental authority (chapter 5A activities) or an application for, or about, an environmental authority (chapter 5A activities), is the resource authority, or proposed resource authority, to which the activity, environmental authority or application relates. A resource authority is, under the *Greenhouse Gas Storage Act 2004*:

- a GHG storage exploration permit (also called a GHG permit),
- a GHG injection and storage lease (also called a GHG lease),
- a GHG injection and storage data acquisition authority (also called a GHG data acquisition authority);

or

- a petroleum tenure granted and administered under the *Petroleum Act 1923* or
- a petroleum authority granted or administered under the *Petroleum and Gas (Production and Safety) Act 2004* or
- a licence, permit, pipeline licence, primary licence, secondary licence or special prospecting authority granted under the *Petroleum (Submerged Lands) Act 1982*.

What is *resource legislation*

Clause 460 inserts new section 309E, which states that the meaning of resource legislation is any of the Acts mentioned in section 309D(2) which includes the *Greenhouse Gas Storage Act 2008*, the *Petroleum and Gas (Production and Safety) Act 2004*, the *Petroleum Act 1923* and the *Petroleum (Submerged Lands) Act 1982*.

What is a *relevant chapter 5A activity*

Clause 460 inserts new section 309F, which defines a relevant chapter 5A activity for an application for an environmental authority (chapter 5A activities) or an environmental authority (chapter 5A activities).

What is a *chapter 5A activity project*

Clause 460 inserts new section 309G, which states that a 'chapter 5A activity project' is all chapter 5A activities of the same type under the same Act carried out, or proposed to be carried out, under 1 or more relevant resource authority for that type of chapter 5A activity, in any combination, as a single integrated operation.

Part 2 Applying for and obtaining environmental authority

Division 1 Preliminary

309H Definitions for pt 2

Clause 460 inserts new section 309H, which provides definitions for this part.

Division 2 General provisions for applications

Subdivision 1 Restriction on who may apply

Restriction

Clause 460 inserts new section 309I, which states that a person can only apply for an environmental authority (chapter 5A activities) if the person is the holder of, or applicant for, a relevant resource authority.

Subdivision 2 Chapter 5A activity projects

Single application required for chapter 5A activity project

Clause 460 inserts new section 309J, which applies to a person who applies for an environmental authority (chapter 5A activities) that consists of chapter 5A activities to be carried out as a chapter 5A project.

In these circumstances, a single application for 1 environmental authority (chapter 5A activities) is required. If any relevant chapter 5A activity is a level 1 chapter 5A activity, division 4 must be complied with. However a submission under section 310K cannot be made about any relevant chapter 5A activity that is a level 2 chapter 5A activity. In granting the application, the administering authority may issue 1 environmental authority (chapter 5A activities) for all the activities; or 2 or more environmental authorities (chapter 5A activities) for the activities.

Single environmental authority required for chapter 5A activity project

Clause 460 inserts new section 309K, which applies if an environmental authority (chapter 5A activities) has been granted for a chapter 5A project. The authority holder cannot apply for a separate environmental authority (chapter 5A activities) for an additional chapter 5A activity intended to be undertaken as part of the chapter 5A project. However, this section does not prevent the holder from applying to amend or replace the environmental authority (chapter 5A 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

Clause 460 inserts new section 309L, which outlines the application of this subdivision in relation to joint applications.

Joint application may be made

Clause 460 inserts new section 309M, which 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

Clause 460 inserts new section 309N, which 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

Clause 460 inserts new section 309O, which 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 clause 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.

Division 3 Level 2 chapter 5A activities

Subdivision 1 Code compliant authorities

Operation of sdiv 1

Clause 460 inserts new section 309P, which provides outlines the operation of subdivision 1 in relation to the process to obtain an environmental authority (chapter 5A activities) for a level 2 chapter 5A 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

Clause 460 inserts new section 309Q, which provides 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 chapter 5A authority and all relevant chapter 5A 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

Clause 460 inserts new section 309R, which provides that the administering authority must make a decision to grant the application, if the application complies with section 309Q, otherwise it must refuse the application.

Steps after granting application and the giving of financial assurance

Clause 460 inserts new section 309S, which provides that, if the administering authority decides to grant the application, then within 8 business days after the decision is made, it must:

- issue the environmental authority in the approved form, and
- insert it in the appropriate register, and
- give the applicant a copy of the authority.

However, if, under section 312O, financial assurance has been required for the proposed environmental authority (chapter 5A activities), the steps need not be taken until the requirement has been complied with.

Code compliance condition

Clause 460 inserts new section 309T, which provides that a code compliant authority will include a condition that the applicable codes of environmental compliance for the relevant chapter 5A activities for the authority must be complied with.

Applicable codes include any relevant codes of environmental compliance for relevant chapter 5A 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

Clause 460 inserts new section 309U, which provides for the operation of this subdivision in relation to the process to obtain an environmental authority (chapter 5A activities) for a level 2 chapter 5A 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

Clause 460 inserts new section 309V, which provides 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 chapter 5A authority and all relevant chapter 5A 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.

Conditions may be requested

Clause 460 inserts new section 309W, which provides that the applicant may apply to the administering authority to impose a particular condition on the environmental authority (chapter 5A activities).

Deciding application

Clause 460 inserts new section 309X, which provides 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

Clause 460 inserts new section 309Y, which provides the criteria the administering authority must consider when deciding whether to grant or refuse an application.

Conditions that may and must be imposed

Clause 460 inserts new section 309Z, which provides the conditions that may and must be imposed on the environmental authority (chapter 5A 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

Clause 460 inserts new section 310, which provides the steps the administering authority must take after granting the application and the giving of financial assurance.

Information notice about particular decisions

Clause 460 inserts new section 310A, which provides 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 chapter 5A activities

Operation of div 4

Clause 460 inserts new section 310B, which provides that this division provides the process to obtain, by application, an environmental authority (chapter 5A activities) for a level 1 chapter 5A activity.

Requirements for application

Clause 460 inserts new section 310C, which provides the requirements and content of an application for an environmental authority (chapter 5A).

The application must describe each resource authority and all relevant activities for the application, 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

Clause 460 inserts new section 310D, which provides 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 resource authority, all relevant 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

Clause 460 inserts new section 310E, which provides 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

Clause 460 inserts new section 310F, which provides 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

Clause 460 inserts new section 310G, which provides the obligation and requirements of the applicant to make public notice of the application.

Required contents of application notice

Clause 460 inserts new section 310H, which provides the content that is required in the application notice.

Declaration of compliance

Clause 460 inserts new section 310I, which provides 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 310G and 310H. 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

Clause 460 inserts new section 310J, which provides the procedure for accepting substantial compliance of the application notice.

Right to make submission

Clause 460 inserts new section 310K, which provides the rights of a person to make a submission about an application to the administering authority within the submission period.

Acceptance of submission

Clause 460 inserts new section 310L, which provides 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

Clause 460 inserts new section 310M, which provides the statutory timeframes for the administering authority to make a decision to either grant or refuse an application.

Criteria for decision

Clause 460 inserts new section 310N, which provides 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

Clause 460 inserts new section 310O, which provides 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.

Steps after granting application and the giving of financial assurance

Clause 460 inserts new section 310P, which provides the steps the administering authority must take after granting the application and the giving of financial assurance.

Information notice about particular decisions

Clause 460 inserts new section 310Q, which provides 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 (chapter 5A activities)

Term

Clause 460 inserts new section 310R, which provides the term of an environmental authority (Chapter 5A activities). An environmental authority continues in force unless it is cancelled, surrendered or suspended under this chapter.

Part 3 Amendments by application

Division 1 Making amendment application

Who may apply for amendment

Clause 460 inserts new section 310S, which provides 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 a condition of a relevant Environmental Code of Compliance.

Code compliance condition may be amended

Clause 460 inserts new section 310T, which provides 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

Clause 460 inserts new section 310U, which provides 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

Clause 460 inserts new section 310V, which provides the procedures and timeframes for the administering authority to decide if an EIS is required for an amendment application.

Public notice may be required if application is for level 1 activity

Clause 460 inserts new section 310W, which provides 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

Clause 460 inserts new section 310X, which provides the procedures and timeframes for the public notice process.

Deciding application

Clause 460 inserts new section 310Y, which provides the administering authority to decide to grant or refuse the application, and sets out the relevant statutory timeframes for this process.

Criteria for decision

Clause 460 inserts new section 310Z, which provides 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 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 chapter 5A activities carried out under the environmental authority before deciding the application.

Division 3 Miscellaneous provisions

Steps after making decision

Clause 460 inserts new section 311, which provides the required steps the administering authority must undertake after making a decision on an amendment application.

When amendment takes effect

Clause 460 inserts new section 311A, which provides the different circumstances under which the amendment may take effect.

Information notice about particular decisions

Clause 460 inserts new section 311B, which provides 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

Clause 460 inserts new section 311C, which provides 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

Clause 460 inserts new section 311D, which provides 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

Clause 4604 inserts new section 311E, which provides 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

Clause 460 inserts new section 311F, which provides that this section applies if the environmental authority (chapter 5A 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 chapter 5A activities for the environmental authority, comply with the code compliance condition.

Audit statement may be required

Clause 460 inserts new section 311G, which provides 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 authority have complied with the conditions of the environmental authority.

Deciding application

Clause 460 inserts new section 311H, which provides 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 resource legislation for the transfer to the proposed transferee of any relevant resource authority when making a decision.

Additional ground for refusal

Clause 460 inserts new section 311I, which provides an additional ground for refusal of a transfer application.

Steps after making decision

Clause 460 inserts new section 311J, which provides the required steps the administering authority must undertake after making a decision on a transfer application.

Part 5 Surrenders

Division 1 Surrender applications

Surrender only by approval

Clause 460 inserts new section 311K, which provides that an environmental authority (chapter 5A activities) may be surrendered only if an application has been made under this division and the administering authority has approved the surrender. A holder of an environmental authority (chapter 5A activities) must make a surrender application if required under section 312A. The holder can make a surrender application at any other time.

Requirements for surrender application

Clause 460 inserts new section 311L, which provides 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 311M), 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 2 Final rehabilitation reports

Content requirements for final rehabilitation report

Clause 460 inserts new section 311M, which provides the content requirements for a final rehabilitation report.

Amending report

Clause 460 inserts new section 311N, which provides the grounds and requirements for amending a final rehabilitation report.

FRR assessment report may be given

Clause 460 inserts new section 311O, which provides that the administering authority may give the person who submitted a final rehabilitation report and assessment report about the final rehabilitation report.

Division 3 General provisions for processing surrender applications

Deciding application

Clause 460 inserts new section 311P, which provides that the administering authority must consider each surrender application and, within 20 business days after the application is received by the authority, approve or refuse the surrender.

Criteria for decision

Clause 460 inserts new section 311Q, which provides the criteria the administering authority must consider when making a decision about a surrender application.

Steps after making decision

Clause 460 inserts new section 311R, which provides the required steps the administering authority must undertake after making a decision on a surrender application.

Division 4 Additional surrender process provisions for greenhouse gas storage activities

Subdivision 1 Preliminary

Application of div 4

Clause 460 inserts new section 311S, which provides that this division applies for a surrender application for an environmental authority (chapter 5A activities) only if the proposed authority is for greenhouse gas storage activities.

Subdivision 2 Residual risks requirements

Payment may be required for residual risks of rehabilitation

Clause 460 inserts new section 311T, which provides that the administering authority may require the applicant to pay the administering authority a stated amount within a stated reasonable period for the residual risks of the area the subject of the environmental authority.

Criteria for decision to make requirement

Clause 460 inserts new section 311U, which provides the criteria for make the decision to require the payment described in section 311T.

Amount and form of payment

Clause 460 inserts new section 311V, which provides that the administering authority must decide the amount and the form of the payment and criteria for deciding the amount.

Information notice about GHG residual risks requirement

Clause 460 inserts new section 311W, which provides that if a GHG residual risks requirement is made for the surrender application, the notice about the approval of the application under the applied provisions must include an information notice about the decision to make the requirement.

Restriction on surrender taking effect if residual risks requirement made

Clause 460 inserts new section 311X, which provides that if a GHG residual risks requirement is made for the surrender application, a decision to approve the surrender does not take effect and particulars of the surrender must not be recorded under the applied provisions until the requirement has been complied with.

Subdivision 3 Directions

Directions to carry out rehabilitation may be given if surrender refused

Clause 460 inserts new section 311Y, which provides that if the administering authority decides to refuse the surrender application the administering authority may give the applicant a written direction to carry out further stated rehabilitation within a stated reasonable period. The direction must be given to the applicant with the notice of the refusal of the application required under applied provisions. The notice of refusal must include an information notice about the decision to give the direction.

Division 5 Additional surrender provisions for petroleum activities

Application of div 5

Clause 460 inserts new section 311Z, which provides that this division applies to an environmental authority (chapter 5A activities) only if it is for petroleum activities.

Surrender may be partial

Clause 460 inserts new section 312, which provides that the administering authority may approve a partial surrender of an environmental authority, and grounds for the authority to refuse such an application.

When surrender application required

Clause 460 inserts new section 312A, which provides the circumstances in which a surrender application is required.

Notice by administering authority to make surrender application

Clause 460 inserts new section 312B, which provides 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

Clause 460 inserts new section 312C, which provides 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.

Part 6 Amendment, cancellation or suspension by administering authority

Division 1 Conditions for amendment, cancellation or suspension

Subdivision 1 Amendments

Corrections

Clause 460 inserts new section 312D, which provides the grounds for the administering authority amend an environmental authority (chapter 5A activities) to correct a clerical or formal error.

Other amendments

Clause 460 inserts new section 312E, which provides the grounds and requirements for the administering authority to amend an environmental authority (chapter 5A activities).

Subdivision 2 Cancellation or suspension

Conditions for cancellation or suspension

Clause 460 inserts new section 312F, which provides the circumstances in which the administering authority can cancel or suspend an environmental authority (chapter 5A activities).

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

Application of div 2

Clause 460 inserts new section 312G, which provides for the application of this division.

Notice of proposed action

Clause 460 inserts new section 312H, which provides 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

Clause 460 inserts new section 312I, which provides the administering authority must consider any written representation made within the period stated in the notice under section 312H by the environmental authority holder.

Decision on proposed action

Clause 460 inserts new section 312J, which provides the requirements and procedure for the administering authority to decide on a proposed action.

Notice of proposed action decision

Clause 460 inserts new section 312K, which provides 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

Clause 460 inserts new section 312L, which provides the steps for the administering authority to make corrections to an environmental authority (chapter 5A activities).

Steps for amendment by agreement

Clause 460 inserts new section 312M, which provides the steps the administering authority must take for an amendment by agreement.

Steps for amendment without agreement or for cancellation or suspension

Clause 460 inserts new section 312N, which provides the steps the administering authority must take to amend, cancel or suspend an environmental authority (chapter 5A activities) without agreement.

Part 7 Financial assurance

Financial assurance may be required before authority is issued or transferred

Clause 460 inserts new section 312O, which provides that the administering authority can decide to grant an application for, or to transfer, an environmental authority (chapter 5A 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 financial assurance if not previously required or to require a change to financial assurance

Clause 460 inserts new section 312P, which provides outlines the grounds and procedure the administering authority must undertake for requiring a change to financial assurance.

Replenishment of financial assurance

Clause 460 inserts new section 312Q, which provides 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

Clause 460 inserts new section 312R, which provides that part 8 applies if 2 or more persons jointly hold an environmental authority (chapter 5A activities).

Appointment of principal holder

Clause 460 inserts new section 312S, which provides 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

Clause 460 inserts new section 312T, which provides 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 *Environmental Protection Act 1994* 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

Clause 460 inserts new section 312U, which provides 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

Clause 460 inserts new section 312U, which provides the grounds for the administering authority to refuse an application for or to transfer a non-code compliant authority.

Amendment of s 316 (Annual fee and return)

Clause 461 provides a nomenclature amendment consequential to clause 459 and clause 460.

Amendment of s 318A (Changing anniversary day)

Clause 462 provides a nomenclature amendment consequential to clause 459 and clause 460.

Amendment of s 367 (Claims on financial assurances)

Clause 463 provides a nomenclature amendment consequential to clause 459 and clause 460.

Replacement of s 426A (Environmental authority required for petroleum activity)

Clause 464 provides a nomenclature amendment consequential to clause 459 and clause 460.

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

Clause 465 provides a nomenclature amendment consequential to clause 459 and clause 460.

Amendment of s 452 (Entry of place—general)

Clause 466 provides a nomenclature amendment consequential to clause 459 and clause 460.

Amendment of s 520 (Dissatisfied person)

Clause 467 provides a nomenclature amendment consequential to clause 459 and clause 460.

Amendment of s 540 (Required registers)

Clause 468 provides a nomenclature amendment consequential to clause 459 and clause 460.

Amendment of s 579 (Compensation)

Clause 469 provides amendments consequential to clause 459 and clause 460.

Insertion of new ch 13, pt 11

Clause 470 inserts a new part 11 into chapter 13.

Part 11 Transitional provisions for Greenhouse Gas Storage Act 2008

Division 1 Preliminary

Definitions for div 1

Clause 470 inserts new section 647, which provides definitions for this division.

Division 2 Provisions for Zerogen

New environmental authority for Zerogen's converted GHG permits

Clause 470 inserts new section 648, which provides that on assent the old environmental authorities (petroleum activities) in force immediately before assent held by Zerogen for authorities to prospect numbered 830 and 835 administered under the *Petroleum and Gas (Production and Safety) Act 2004*, cease to be environmental authorities for petroleum activities; and are taken to be environmental authorities (chapter 5A activities) for greenhouse gas storage activities.

The converted authorities are non-code compliant, for a level 2 chapter 5A activity. The conditions of the converted authorities are all of the conditions of the old authorities that are relevant to the carrying out of greenhouse gas storage activities under the authority to prospect to which the converted authority relates. Chapter 5A applies to the converted authorities.

New environmental authority for Zerogen's new GHG permit

Clause 470 inserts new section 649, which provides that, on assent, Zerogen is taken to have been granted an non-code compliant, level 2 chapter 5A activity environmental authority (chapter 5A activities) for all greenhouse gas storage activities authorised under the GHG permit, the conditions of which are all of the conditions of the environmental authority (chapter 5A activities) No. PEN 200040607, granted on 22 October 2007

as in force on assent that are relevant to the carrying out of greenhouse gas storage activities under the CCS permit. Chapter 5A applies to the environmental authority.

Division 3 Provisions for replacement of former chapter 4A with chapter 5A

References to former chapter 4A

Clause 470 inserts new section 650, which provides that a reference in an Act or a document to former chapter 4A is taken to be a reference to chapter 5A, and, a reference in an Act or a document to a particular provision of former chapter 4A (called the 'repealed provision') is taken to be a reference to the provision of chapter 5A that corresponds, or substantially corresponds, to the repealed provision.

Environmental authorities (petroleum activities) other than converted authorities

Clause 470 inserts new section 651, which provides that for an environmental authority (petroleum activities) in force under former chapter 4A immediately before assent, other than the converted authorities, the environmental authority is taken to be an environmental authority (chapter 5A activities) granted under chapter 5A that is:

- of the same level, and
- for the same activities, and
- subject to the same conditions.

References to environmental authorities (petroleum activities)

Clause 470 inserts new section 652, which provides that a reference in an Act or a document to an environmental authority (petroleum activities) is taken to be a reference to an environmental authority (chapter 5A activities) for either greenhouse gas storage activities if the environmental authority is a converted authority, or, if otherwise, to petroleum activities.

Migration of undecided applications

Clause 470 inserts new section 653, which provides if, immediately before assent, an application has been made under former chapter 4A, but not decided, the application is taken to have been made under chapter 5A for the corresponding matter under that chapter.

Migration of decisions and documents

Clause 470 inserts new section 654, which provides that for a decision or document in force immediately before assent given under former chapter 4A about a matter under that chapter, on assent, the decision or document is taken to have been given under chapter 5A about the corresponding matter under that chapter, but that the time at which the decision or document was given does not change.

Migration of outstanding appeals

Clause 470 inserts new section 655, which provides that if, immediately before assent, an appeal about a matter under former chapter 4A had not been decided, on assent the appeal is taken to be an appeal about the corresponding matter under chapter 5A.

Amendment of sch 2 (Original decisions)

Clause 471 provides for amendments consequential to clause 459 and clause 460.

Amendment of sch 4 (Dictionary)

Clause 472 provides definitions consequential to amendments made by clause 460 and clause 461.

Part 8 Amendment of Fire and Rescue Service Act 1990

Act amended in pt 8

Clause 473 provides that part 8 amends the *Fire and Rescue Service Act 1990*.

Amendment of s 95 (Application of part)

Clause 474 provides that part 9 (Off-site plans for dangerous goods) of the *Fire and Rescue Service Act 1990* does not apply in respect of persons or substances in or about a well to which the *Greenhouse Gas Storage Act 2008* applies.

Part 9 Amendment of Foreign Ownership of Land Register Act 1988

Act amended in pt 9

Clause 475 provides that part 9 amends the *Foreign Ownership of Land Register Act 1988*.

Amendment of s 4 (Interpretation)

Clause 476 amends the definition of 'interest in land' so that the definition does not include any estate or interest in land (other than a market garden, business or residence area) granted under the *Greenhouse Gas Storage Act 2008*.

Part 10 Amendment of Forestry Act 1959

Act amended in pt 10

Clause 477 provides that part 10 amends the *Forestry Act 1959*.

Amendment of s 37 (Mining leases over State forest, timber reserve or forest entitlement area)

Clause 478 provides that the Governor in Council or the chief executive may, among other things, impose provisions, reservations or conditions on the grant of a GHG authority under the *Greenhouse Gas Storage Act 2008*.

Amendment of s 39 (Interfering with forest products on State forests etc.)

Clause 479 provides that person shall not interfere with, or cause to be interfered with, any forest products on any State forest, timber reserve etcetera unless under the authority of, and in compliance with a lease, licence, permit, agreement or contract granted or made under the *Forestry Act 1959*, the *Land Act 1994*, the Mining Acts or the *Greenhouse Gas Storage Act 2008*.

Amendment of s 44 (Construction of other Acts etc.)

Clause 480 provides that provides that the *Greenhouse Gas Storage Act 2008* is to be subject to part 6 (Control and disposal of forest products and quarry material) of the *Forestry Act 1959*.

Amendment of s 45 (Forest products etc. which are the property of the Crown)

Clause 481 provides that the *Greenhouse Gas Storage Act 2008*.

Amendment of s 47 (Sale of forests products on Crown holdings or mining leases etc.)

Clause 482 provides that the Minister administering the *Forestry Act 1959* may give directions to the chief executive for the *Forestry Act 1959* with

respect to the selling or getting of forest products on or in any lease granted under the *Greenhouse Gas Storage Act 2008*.

Amendment of s 53 (Interference with forest products on Crown holdings and mining leases)

Clause 483 provides that a person must not, among other things, interfere with destroy a tree, or get other forest products or quarry material, on any lands, the property of the Crown, that are included in a lease or other entitlement granted under the *Forestry Act 1959* otherwise than in accordance with a permit, lease, licence, agreement or contract granted or made under the *Land Act 1962*, the *Greenhouse Gas Storage Act 2008* or another Act.

Amendment of sch 3 (Dictionary)

Clause 484 defines 'GHG storage Act' as the *Greenhouse Gas Storage Act 2008*.

Part 11 Amendment of Geothermal Exploration Act 2004

Act amended in pt 11

Clause 485 provides that part 11 amends the *Geothermal Exploration Act 2004*.

Insertion of new s 7A

Clause 486 inserts new section 7A, which provides for other purposes of this Act to facilitate the operation of the *Greenhouse Gas Storage Act 2008*.

7A Relationship with Greenhouse Gas Storage Act 2008

Clause 486 which inserts new section 7A, provides the relationship between the *Geothermal Exploration Act 2004* and the *Greenhouse Gas Storage Act 2008* (GHG storage Act) is contained in Chapter 4, Part 5 of the *Geothermal Exploration Act 2004* and chapter 4, parts 2 to 10 of the *Greenhouse Gas Storage Act 2008*.

Amendment of s 12 (Geothermal energy reservation in land grants)

Clause 487 provides for an amendment to section 12 of the *Geothermal Exploration Act 2004*, to provide that any grant of a right relating to land under any other Act is taken to contain a reservation to the State of the exclusive right to enter land and carry out any geothermal energy activity (i.e. geothermal exploration or any activity related to the extraction or production of geothermal energy).

Insertion of new s 12A

Clause 488 inserts new section 12A into the *Geothermal Exploration Act 2004*, which provides that the State's right to enter land and carry out any geothermal energy activity may be exercised by anyone authorised by the chief executive. The authorised person may only do so after having first given at least 5 business days notice of the proposed entry.

This amendment will allow the chief executive to authorise the obtaining of pre-competitive geoscience data by the Geological Survey of Queensland and others for the benefit of the State. This data will then be released publicly, enabling members of the mining industry to better focus their own exploration work.

Amendment of s 13 (Prohibition on geothermal exploration without permit)

Clause 489 amends section 13 of the *Geothermal Exploration Act 2004,* by clarifying that a person authorised under section 12A to carry out geothermal energy activities does not commit an offence under section 13, provided they act within the scope of their authority.

Insertion of new ch 4, pt 5

Clause 490 inserts new chapter 4, part 5.

Part 5 Provisions for GHG authorities

Division 1 Preliminary

Relationship with other provisions

Clause 490 inserts new section 83A, which provides that any requirements or restrictions under this new part are additional to what is already required by the *Geothermal Exploration Act 2004*.

What is an *overlapping GHG authority*

Clause 490 inserts new section 83B, which provides that an overlapping GHG authority is all or part of any GHG authority in the area of a geothermal permit or proposed permit.

General provision about permits for land subject to GHG authority

Clause 490 inserts new section 83C, which provides that generally the *Greenhouse Gas Storage Act 2008* or GHG authorities do not limit or affect granting of permits under the *Geothermal Exploration Act 2004* or carrying out authorised activities for the permit.

Division 2 Restrictions on authorised activities

Permit overlapping with GHG lease

Clause 490 inserts new section 83D, which provides when land in the area of a permit is also GHG lease land the authorised activities for the permit may only be carried out if the GHG authority holder has not objected to the activity or if an objection has been made and the Minister has decided the activity may be carried out.

Overlaps with other GHG authorities

Clause 490 inserts new section 83E, which provides if land is in the area of a permit and a GHG authority apart from a GHG lease. Authorised activities for the permit cannot be carried out on the land if carrying it out

adversely affects the GHG authority activities and these activities have already started.

Resolving disputes about the restrictions

Clause 490 inserts new section 83F which applies if a permit overlaps a GHG lease and the lease holder has objected to the carrying out of a permit activity. This clause also applies if there is a dispute between the holders about whether an authorised activity for the permit can be carried out under that section. If there is a dispute either party may ask the Minister to decide. There is opportunity for submissions to be made, about the matter, to the Minister. The decision made by the Minister is binding on the parties and conditions may be attached to the decision. This method of resolving disputes should deter a party from objecting for arbitrary or obstructive reasons.

Division 3 Additional conditions

Notice by geothermal exploration permit holder to particular GHG authority holders or applicants

Clause 490 inserts new section 83G, which requires a permit holder, to notify GHG authority holders or applicants in the area of the grant of the permit. This is a normal business consideration and has practical application if, for example, infrastructure could be shared with the costs also shared.

Condition to notify particular GHG authority holders of proposed start of any authorised activity

Clause 490 inserts new section 83H, which requires the permit holder to notify any overlapping GHG authority holders or a GHG authority holder sharing a common boundary with the permit holders of the following:

- when the designated activity is to start; and
- where the designated activity is to be carried out; and
- the nature of the activity.

Notification must be given again if the GHG authority holder is changing the land where the activities will be carried out.

Division 4 Additional provisions for safety management plans

Requirements for consultation with particular GHG tenure holders

Clause 490 inserts new section 83I, which provides that for an operating plant that will be used for geothermal activities the operator must use reasonable attempts to consult with an overlapping GHG authority holder if the activities may adversely affect the safe and efficient use of the other resources. The plans may be amended to incorporate any reasonable suggestions made by the overlapping GHG authority if these are commercially and technically feasible. This is a common-sense provision to maximize safety for all operators and others who may be in the area, like independent contractors.

Application of P&G Act provisions for resolving disputes about reasonableness of proposed provision

Clause 490 inserts new section 83J, which provides that for an operating plant that will be used for geothermal exploration activities, the operator must use reasonable attempts to consult with an overlapping GHG authority holder if the activities may adversely affect the safe and efficient use of the other resources. The plans may be amended to incorporate any reasonable suggestions made by the overlapping GHG authority if these are commercially and technically feasible. This is a common-sense provision to maximize safety for all operators and others who may be in the area, like independent contractors.

Division 5 Restriction on power to amend permit if overlapping GHG authority

Interests of overlapping GHG authority holder to be considered

Clause 490 inserts new section 83K, which provides that if there is an overlapping permit, the permit may be amended under section 72 only if the interests of the overlapping GHG authority holder have been considered.

Insertion of new s 136A

Clause 491 inserts new section 136A into the *Geothermal Exploration Act 2004,* which protects prescribed persons from civil liability for acts done or omissions made honestly and without negligence under the Act and provides that any liability attaches instead to the State.

Amendment of schedule (Dictionary)

Clause 492 provides for GHG-related definitions to be included in the dictionary.

Part 12 Amendment of Integrated Planning Act 1997

Act amended in pt 12

Clause 493 provides that part 12 amends the *Integrated Planning Act 1997*.

Amendment of s 1.3.5 (Definitions for terms used in *development*)

Clause 494 expands the definition for 'material change of use' so that all chapter 5A activities under the *Environmental Protection Act 1994* are caught under this definition.

Amendment of s 5.1.7 (Infrastructure charges)

Clause 495 provides that an infrastructure charge must not be levied for a work or use of land authorised under the *Greenhouse Gas Storage Act 2008*.

Amendment of s 5.1.17 (Regulated infrastructure charges)

Clause 496 provides that a regulated infrastructure charge must not be levied for a work or use of land authorised under the *Greenhouse Gas Storage Act 2008*.

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

Clause 497 provides amendments to Schedule 8 of the *Integrated Planning Act 1997* to include 'a GHG storage activity' in certain items within the tables of this schedule.

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

Clause 498 provides that 'GHG storage activities, Any aspect of development for a GHG storage activity carried out under a GHG authority under the *Greenhouse Gas Storage Act 2008* is inserted in schedule 9 in table 5 (All aspects of development).

Amendment of sch 10 (Dictionary)

Clause 499 provides definitions for 'GHG storage activity' and also amends the definition of 'material change of use' and 'specified activity'.

Part 13 Amendment of Land Act 1994

Act amended in pt 13

Clause 500 provides that part 13 amends the *Land Act 1994*.

Amendment of s 20 (Dealing with mining interests)

Clause 501 provides a 'mining interest' is to include a GHG authority and also extends the provisions of section 20 of the *Land Act 1994* to include the *Greenhouse Gas Storage Act 2008*

Amendment of s 43 (Only Parliament may delete land from or cancel an existing deed of grant in trust)

Clause 502 provides that 'relevant purpose', for this section, is extended so that it means any purpose for which land may be taken under the *Acquisition of Land Act 1967* by a constructing authority, other than a purpose under the *Greenhouse Gas Storage Act 2008*.

Part 14 Amendment of Land Protection (Pest and Stock Route Management) Act 2002

Act amended in pt 14

Clause 503 provides that part 14 amends the *Land Protection (Pest and Stock Route Management) Act 2002*.

Amendment of sch 3 (Dictionary)

Clause 504 amends the definition of 'owner, of land' to include 'for land subject to a GHG injection and storage lease under the *Greenhouse Gas Storage Act 2008*—the holder of the lease'.

Part 15 Amendment of Land Title Act 1994

Act amended in pt 15

Clause 505 provides that part 15 amends the *Land Title Act 1994*.

Amendment of s 185 (Exceptions to s 184)

Clause 506 provides that the exception to section 184 of the *Land Title Act 1994* is extended to include the interest of a GHG authority holder under the *Greenhouse Gas Storage Act 2008* under an access agreement under that Act that was made before the registered proprietor became the registered proprietor of the lot and under that Act, binds the registered proprietor.

Part 16 Amendment of Local Government Act 1993

Act amended in pt 16

Clause 507 provides that part 16 amends the *Local Government Act 1993*.

Amendment of s 4 (Meaning of *owner* of land)

Clause 508 amends the definition of 'owner of land' to include a lessee under the *Greenhouse Gas Storage Act 2008*.

Part 17 Amendment of Mineral Resources Act 1989

Act amended in pt 17

Clause 509 provides that part 17 amends the *Mineral Resources Act 1989*.

Insertion of new s 3B

Clause 510 inserts new section 3B, which provides the relationship between the *Mineral Resources Act 1989* and the *Greenhouse Gas Storage Act 2008* (GHG storage Act) is contained in part 7AAC of this Act and chapter 4 of the GHG storage Act.

Insertion of new pt 7AAC

Clause 511 inserts new part 7AAC.

Part 7AAC Provisions for GHG authorities

Division 1 Preliminary

Relationship with pts 3 to 7AAB

Clause 511 inserts a new section 318ELAM, which provides how the relationship between the new part 7AAC will function with the existing parts 3 through to 7AAB. Restrictions and requirements remain but if a provision in this part conflicts with a provision of any of parts 3 to 7 this part prevails to the extent of the inconsistency.

What is an *overlapping GHG authority*

Clause 511 inserts new section 318ELAN, which provides that an overlapping GHG authority is all or part of any GHG authority in the area of a mining tenement or proposed mining tenement.

What is the *GHG public interest*

Clause 511 inserts new section 318ELAO, which provides a definition of public interest for the purposes of GHG storage provisions. The public interest is a matter that must be considered in the making of a number of decisions and the definition is broad enough to include the benefits to the State and also overarching government policy such as the Queensland Climate Smart 2050 initiative.

General provision about mining tenements for land subject to GHG authority

Clause 511 inserts new section 318ELAP, which provides that generally the *Greenhouse Gas Storage Act 2008* or GHG authorities do not limit or affect granting of mining tenements under the *Mineral Resources Act 1989* or carrying out authorised activities for a mining tenement.

Division 2 Obtaining mining lease if overlapping GHG tenure

Subdivision 1 Preliminary

Application of div 2

Clause 511 inserts new section 318ELAQ, which provides this division will apply in situations for a person making a mining lease application where there is already a GHG tenure in place that would constitute an overlapping GHG tenure should the mining lease be granted.

Subdivision 2 Requirements for application

Requirements for making application

Clause 511 inserts new section 318ELAR, which makes provisions for additional requirements, over and above the regular application requirements, for the proposed mining lease application. These additional requirements include a "GHG statement", and other information that addresses the "GHG assessment criteria". The clause defines what the "GHG assessment criteria" are. The Minister may need to make a resource management decision later on and will consider this criteria when making the decision. The potential for the parties to make a coordination arrangement and the public interest as defined will be considered.

Content requirements for GHG statement

Clause 511 inserts new section 318ELAS, which provides the content requirement of the GHG statement, a part of the application requirements. The statement should show the applicant has turned their mind to how the proposed mining activities may impact on future GHG activities and whether or not it is technically and commercially feasible to carry out coordinated activities.

Subdivision 3 Consultation provisions

Applicant's information obligation

Clause 511 inserts new section 318ELAT, which provides the mining lease applicant to provide a copy of the mining lease application to the GHG tenure holder within 10 business days of making the application. The overlapping situations are potentially very sensitive for a range of reasons and chief among these will be safety. The holder of the GHG tenure needs to be able to see the type and nature of activities proposed by the mining lease applicant and where and when the activities will be carried out. If this requirement is not complied with properly the Minister may refuse the mining lease application.

Submissions by GHG tenure holder

Clause 511 inserts new section 318ELAU, which provides the GHG tenure holder may make submissions about the proposed mining lease within 4 months after receiving the copy of the application. Four months is considered ample time to consider the application and the potential ramifications of it on the GHG tenure. The submissions may include that the holder does not object to the granting of the lease, or the holder does not wish priority and may include information or a proposal. The information submitted is not limited to those suggested in this provision. The GHG tenure holder must give a copy of any relevant submissions to the mining lease applicant.

Subdivision 4 Resource management decision if overlapping GHG permit

Application of sdiv 4

Clause 511 inserts new section 318ELAV, which provides that this subdivision will apply if the GHG tenure referred to above is a GHG exploration permit and:

- the holder of this permit has made submissions in time, and
- has given a copy to the applicant, and

- has stated the permit holder wishes to be granted priority in the overlapping area.

If priority has already been given for any of the relevant land under the *Greenhouse Gas Storage Act 2008*, this subdivision does not apply. If the mining lease applicant has complied with the requirements on consultation and the GHG permit holder has remained silent about the mining lease application, there is an assumption that there is no objection to the granting of the overlapping mining lease or the GHG permit holder does not want priority.

Operation of sdiv 4

Clause 511 inserts new section 318ELAW, which provides for the Minister to make a resource management decision about whether to recommend grant of the mining lease or give any priority, or not recommending grant or not giving priority.

Criteria for decision

Clause 511 inserts new section 318ELAX, which provides for a number of provisions the Minister must consider in making the decision. Both parties have information already provided to assist in the decision-making process and the Minister has to consider the public interest as well in making this decision. In may not be in the public interest for either party to proceed in this area of the State at this time.

Restrictions on giving overlapping authority priority

Clause 511 inserts new section 318ELAY, which provides restrictions on giving priority to the GHG permit holder. The focus is on the ability for the parties to make a coordination arrangement together with the public interest best being served by not granting a mining lease.

Subdivision 5 Process if resource management decision is to give any overlapping authority priority

Application of sdiv 5

Clause 511 inserts new section 318ELAZ, detailing when this subdivision applies, which is if the decision was to give priority to the GHG permit holder.

Notice to applicant and GHG permit holder

Clause 511 inserts new section 318ELBA, which provides for the applicant and GHG permit holder to be given notice of the resource management decision, and that the GHG permit holder be given six months from the time of the notice to apply for a GHG lease over that decided area (be it whole or part) within the mining lease application area.

GHG lease application for all of the land

Clause 511 inserts new section 318ELBB, which provides for when the GHG lease applicant, who has been given priority, lodges a GHG lease application for the whole of that land, then the mining lease application cannot be advanced. Also, if a decision is made to grant the GHG lease, the mining lease application lapses.

GHG lease application for part of the land

Clause 511 inserts new section 318ELBC, which provides that when the GHG lease applicant, who has been given priority, lodges a GHG lease application for part of that land, the mining lease applicant may amend their application to include whole or part of the remaining land. If the mining lease applicant decides not to amend their application to include whole or part of the remaining land, then their application cannot be advanced until the GHG lease application is decided. When a decision is made to grant the GHG lease over only part of the land, the mining lease holder may still amend their application to include just the remaining area.

No GHG lease application

Clause 511 inserts new section 318ELBD, which provides that if the GHG lease application, that has priority does not lodge a GHG lease application for whole or part of that land, then the mining lease application can be decided.

Subdivision 6 Resource management decision not to recommend grant and not to give priority

Lapsing of application

Clause 511 inserts new section 318ELBE, which provides that a GHG lease application is taken to have lapsed if a resource management decision was required and the decision was neither to recommend the granting of the mining lease nor to give priority to the GHG lease applicant. This clause is to remove doubt in that situation.

Subdivision 7 Deciding application

Application of sdiv 7

Clause 511 inserts new section 318ELBF, which sets out the circumstances when this subdivision applies. If the GHG tenure holder has not made a submission within the relevant period or does not wish to have any priority and a resource management decision gave priority to the overlapping authority holder or was not to give priority to the overlapping authority holder and the Minister decides to recommend the grant the mining lease.

Application may be refused if no reasonable prospects of GHG coordination arrangement

Clause 511 inserts new section 318ELBG, which provides that applications do not remain unresolved for excessive periods. If there are no reasonable prospects for a coordination arrangement to be made, the Minister may refuse the application without making any recommendation to the Governor in Council.

Additional criteria for deciding provisions of mining lease

Clause 511 inserts new section 318ELBH, which provides that regard must be had to the GHG assessment criteria, the GHG statement, any holder submissions and the potential affect of the mining lease on the GHG activities when recommendations about the lease are made.

Publication of outcome of application

Clause 511 inserts new section 318ELBI, which ensures that a notice of the resource management decision and the reasons for that decision are published, aside from any commercial in confidence information. The intention is to provide greater transparency of decision making.

Division 3 Priority to particular GHG lease applications

Earlier GHG lease application

Clause 511 inserts new section 318ELBJ, which provides that where a GHG lease application has been made prior to the application for the mining lease (in what would be an overlapping situation) the mining lease application cannot be decided before the GHG lease application has been decided.

Proposed GHG lease for which EIS approval given

Clause 511 inserts new section 318ELBK, which provides for priority to be given to those proponents who have been granted approval for the preparation of a voluntary Environmental Impact Statement under the *Environmental Protection Act 1994* for a project that is, or includes, a proposed GHG lease. This is because the Environmental Impact Statement process is potentially publicly available from that point and so the trigger point for priority has been advanced ahead of the point of application for the lease.

Proposed GHG lease declared a significant project

Clause 511 inserts new section 318ELBL, which provides for priority to be given to those proponents of a project that is declared a "significant project" under the *State Development and Public Works Organisation Act*

1971 where the project is, or includes, a proposed GHG lease. This is because an Environmental Impact Statement is required for a "significant project" and the Environmental Impact Statement process is potentially publicly available from that point, and so the trigger point for priority has been advanced ahead of the point of application for the lease.

Division 4 Mining lease applications in response to invitation under GHG storage Act

Application of div 4

Clause 511 inserts new section 318ELBM, which provides for the application of this part whereby a mining lease application is made in response to an invitation given because of a resource management decision under the *Greenhouse Gas Storage Act 2008*.

Minister may refuse application

Clause 511 inserts new section 318ELBN, which ensures that the Minister can refuse the application for a mining lease if it is considered that an application that was invited as a result of a resource management decision is not being progressed in a timely manner. This is necessary to ensure the integrity of the original resource management decision.

Division 5 Additional provisions for particular mining tenements

Subdivision 1 Restrictions on authorised activities for particular mining tenements

Prospecting permit overlapping with GHG lease

Clause 511 inserts new section 318ELBO, which provides when land in the area of a prospecting permit is also GHG lease land the authorised activities for the prospecting permit may only be carried out if the GHG lease holder has not objected or if an objection has been made and the Minister has decided the activity may be carried out.

Other overlapping authorities

Clause 511 inserts new section 318ELBP, applies if land is in the area of a mining tenement and a GHG authority, other than a prospecting permit over a GHG lease. Authorised activities for the mining tenement cannot be carried out on the land if carrying it out adversely affects the GHG authority activities and these activities have already started.

Resolving disputes

Clause 511 inserts new section 318ELBQ which applies if a prospecting permit overlaps a GHG lease and the lease holder has objected to the carrying out of a prospecting permit activity by the prospecting permit holder. This clause also applies if there is a dispute between the holders about whether an authorised activity for the mining tenement can be carried out under that section. If there is a dispute either party may ask the Minister to decide. There is opportunity for submissions to be made, about the matter, to the Minister. The decision made by the Minister is binding on the parties and conditions may be attached to the decision. This method of resolving disputes should deter a party from objecting for arbitrary or obstructive reasons.

Subdivision 2 Provisions about conditions

Notice by mining tenement holder to particular GHG authority holders or applicants

Clause 511 inserts new section 318ELBR, requires a mining tenement holder, apart from the holder of a mining lease, to notify GHG authority holders or applicants in the area of the grant of the mining tenement. This is a normal business consideration and has practical application if, for example, infrastructure could be shared with the costs also shared.

Restriction on recommendation to amend conditions of particular mining leases

Clause 511 inserts new section 318ELBS provides that if there is an overlapping GHG authority for a mining lease, the mining lease condition may be amended under section 294 only if the interests of the overlapping GHG authority holder have been considered.

Condition to notify particular GHG authority holders of proposed start of particular authorised activities

Clause 511 inserts new section 318ELBT, which requires the mining tenement holder to notify any overlapping GHG authority holders or a GHG authority holder sharing a common boundary with the mining tenement holders of the following:

- when the designated activity is to start; and
- where the designated activity is to be carried out; and
- the nature of the activity.

Notification must be given again if the GHG authority holder is changing the land where the activities will be carried out.

Requirement to continue GHG coordination arrangement after renewal of or dealing with mining lease

Clause 511 inserts new section 318ELBU provides that if a mining lease, the subject of a coordination arrangement is for renewal, assignment, consolidation or subletting, the mining lease holder must continue with the coordination arrangement while there is the overlapping situation with the GHG lease.

Amendment of s 403 (Offences regarding land subject to mining claim or mining lease)

Clause 512 provides an addition to section 403 so that this now includes the *Greenhouse Gas Storage Act 2008*.

Insertion of new s 764A

Clause 513 inserts new section 764A into part 19, division 7 of the *Mineral Resources Act 1989.* New section 764A makes it clear that, to the extent they're relevant, the public interest provisions [i.e. sections 147A(1)(d), 197A(1)(e) and 286A(1)(g)] apply to applications for the renewal of exploration permits, mineral development licences and mining leases that were received, but not decided, before those public interest provisions commenced.

Any future decision to reject the renewal of an exploration permit, mineral development licence or mining lease in the public interest is likely to be

highly contentious and liable to challenge under the *Judicial Review Act 1991*. While the Government believes it is highly unlikely a Court would find that these amended decision-making powers did not apply to applications received prior to the amendments to the powers commencing, this cannot be guaranteed. The amendment is therefore being made to ensure certainty.

The powers in sections 147A(1)(d), 197A(1)(e) and 286A(1)(g) to consider the public interest were inserted by the *Mineral Resources and Other Legislation Amendment Act 2005*. This current amendment is not intended to limit the interpretation of the application of other amendments to the *Mineral Resources Act 1989* made by the *Mineral Resources and Other Legislation Amendment Act 2005*.

Amendment of pt 19, div 10 hdg (Transitional provision for Clean Energy Act 2008)

Clause 514 amends the heading of part 19, division 10 of the *Mineral Resources Act 1989*. This is a consequential amendment required because of the amendment being made in clause 515.

Insertion of new s 767A

Clause 515 inserts a new section 767A into part 19, division 10 of the *Mineral Resources Act 1989*. New section 767A makes it clear that section 208(3A) applies to an application lodged under that section but not decided before section 208(3A) commenced.

Any future decision to reject the addition of mineral (f) to a mineral development licence in the public interest is likely to be highly contentious and liable to challenge under the *Judicial Review Act 1991*. While the Government believes it is highly unlikely a Court would find that this amended decision-making power did not apply to an application received prior to the amendment to the power commencing, this cannot be guaranteed. The amendment is therefore being made to ensure certainty.

The power in section 208(3A) to consider the public interest was inserted by the *Clean Energy Act 2008*. This current amendment is not intended to limit the interpretation of the application of other amendments to the *Mineral Resources Act 1989* made by the *Clean Energy Act 2008*.

Insertion of new pt 19, div 11, sdiv 3

Clause 516 inserts a new subdivision 3 into part 19, division 11 of the *Mineral Resources Act 1989*. New subdivision 3 contains new section 772, which makes it clear that, to the extent they're relevant, the amendments to the *Mineral Resources Act 1989* made by the *Mines and Energy Legislation Amendment Act 2008* apply to any applications received, but not decided, before those amendments commenced.

This amendment is particularly important in relation to the powers recently given to the Minister to reject various applications in the public interest and to impose conditions on various applications for mining tenure in the public interest. Any future decisions made under those powers are likely to be highly contentious and liable to challenge under the *Judicial Review Act 1991*. While the Government believes it is highly unlikely a Court would find that an amended decision-making power did not apply to an application received prior to the amendment to the power commencing, this cannot be guaranteed. The amendment is therefore being made to ensure certainty.

This clause also inserts new section 773 into the *Mineral Resources Act 1989* to correct references in sections 27(1), 54(1) and 68(1) for *Mineral Resources Act 1989* amendments under the *Mines and Energy Legislation Amendment Act 2008*.

Amendment of schedule (Dictionary)

Clause 517 provides for GHG- related definitions to be included in the dictionary.

Part 18 Amendment of Nature Conservation Act 1992

Act amended in pt 18

Clause 518 provides that part 18 amends the *Nature Conservation Act 1992*.

Amendment of s 27 (Prohibition on mining)

Clause 519 extends the prohibition on mining in the detailed national parks and national parks to include the prohibition of GHG storage activities in these areas.

Amendment of s 45 (Conservation agreements)

Clause 520 provides that conservation agreements cannot be entered into without the written consent of a GHG authority holder, if the agreement will affect materially the rights of the GHG authority holder.

Replacement of s 70QA (Prohibition on mining in forest reserves)

Clause 521 extends the prohibition on mining in forest reserves to include the prohibition of GHG storage activities in these areas.

Amendment of schedule (Dictionary)

Clause 522 provides definitions for 'GHG authority' and also amends the definition of 'interest' and 'State land'.

Part 19 Amendment of Petroleum Act 1923

Act amended in pt 19

Clause 523 provides that part 19 amends the *Petroleum Act 1923*.

Amendment of s 2 (Definitions)

Clause 524 provides GHG related definitions to be included in the *Petroleum Act 1923*.

Insertion of new s 4A

Clause 525 inserts new section 4A, which provides for other purposes of this Act to facilitate the operation of the *Greenhouse Gas Storage Act 2008*.

Amendment of s 18 (Authority to prospect)

Clause 526 provides for a clarification for ATP holders. This is to put beyond doubt that GHG stream storage may only be done under the *Greenhouse Gas Storage Act 2008*.

Amendment of s 40 (Lease to holder of authority to prospect)

Clause 527 provides expands the section to include GHG storage activity.

Amendment of s 44 (Form etc. of lease)

Clause 528 provides GHG stream storage as an activity cannot be undertaken in this case. This is to ensure that GHG stream storage may only be done under the *Greenhouse Gas Storage Act 2008*.

Amendment of s 74Z (Obligation to comply with Act and prescribed standards)

Clause 529 expands the definition of standard to include international standards, codes or protocols. There are no Australian Standards for things like GHG stream pipelines but the United States of America has a pipeline standard for transporting carbon dioxide which may be suitable in the interim for Queensland.

Amendment of s 75U (Obligation to decommission)

Clause 530 provides that where the responsibility for a petroleum well is to be assumed by the incoming GHG tenure holder the obligation to decommission does not apply.

Insertion of new pt 6FA

Clause 531 inserts new part 6FA.

Part 6FA Provisions for GHG authorities

Division 1 Preliminary

Relationship with other provisions

Clause 531 inserts new section 78CA, which provides how the relationship between the new part will function with the existing provisions of the *Petroleum Act 1923*. Restrictions and requirements remain.

What is an *overlapping GHG authority*

Clause 531 inserts new section 78CB, which provides that an overlapping GHG authority is all or part of any GHG authority in the area of a petroleum tenure under the *Petroleum Act 1923*.

General provision about 1923 Act petroleum tenures for land subject to GHG authority

Clause 531 inserts new section 78CC, which provides that generally the *Greenhouse Gas Storage Act 2008* or GHG authorities do not limit or affect carrying out authorised activities for petroleum authorities under the *Petroleum Act 1923*.

Division 2 Restrictions on authorised activities for authorities to prospect

Overlapping GHG lease

Clause 531 inserts new section 78CD, which provides when land in the area of a an authority to prospect is also GHG lease land, the authorised activities for the authority to prospect may only be carried out if the GHG lease holder has not objected to the activity, or if an objection has been made and the Minister has decided the activity may be carried out.

Overlapping other GHG authorities

Clause 531 inserts new section 78CE, which provides which applies if land is in the area of an authority to prospect and a GHG authority other

than a GHG lease. Authorised activities for the authority to prospect cannot be carried out on the land if carrying it out adversely affects the GHG authority activities and these activities have already started.

Resolving disputes about the restrictions

Clause 531 inserts new section 78CF, which provides if an authority to prospect overlaps a GHG lease and the lease holder has objected to the carrying out of an authority to prospect activity. This clause also applies if there is a dispute between the holders about whether an authorised activity for the authority to prospect can be carried out under that section. If there is a dispute either party may ask the Minister to decide. There is opportunity for submissions to be made, about the matter, to the Minister. The decision made by the Minister is binding on the parties and conditions may be attached to the decision. This method of resolving disputes should deter a party from objecting for arbitrary or obstructive reasons.

Division 3 Leases with overlapping GHG authority

Subdivision 1 Continuance of coordination arrangements after renewal or dealing

Requirement to continue GHG coordination arrangement

Clause 531 inserts new section 78CG, which provides that if a petroleum lease, the subject of a coordination arrangement is for renewal, transfer, subletting or a share in the lease, the petroleum lease holder must continue with the coordination arrangement while there is the overlapping situation with the GHG lease.

Subdivision 2 Later development plans

Operation of sdiv 2

Clause 531 inserts new section 78CH, which provides for the operation of this part, that is the additional requirements for an overlapping tenure situation.

Statement about interests of GHG tenure holder

Clause 531 inserts new section 78CI, which provides that a statement must be included in the development plan showing that the petroleum lease holder has considered the interests of any overlapping GHG tenure holder. The safety provisions, consultation, changes proposed and the GHG public interest are to be used in compiling this statement. The GHG public interest, defined in this clause, must be considered also.

Consistency with GHG tenure's development plan and with any relevant coordination arrangement

Clause 531 inserts new section 78CJ, which provides that the proposed development plan must be consistent with any relevant coordination arrangement. The coordination arrangement must make sense and be achievable, thus the requirement for consistency.

Division 4 Provisions for all 1923 Act petroleum tenures

Subdivision 1 Safety management plans

Requirements for consultation with particular GHG tenure holders

Clause 531 inserts new section 78CK, which provides that for an operating plant that will be used for petroleum activities the operator must use reasonable attempts to consult with an overlapping GHG authority holder if the activities may adversely affect the safe and efficient use of the other resources. The plans may be amended to incorporate any reasonable suggestions made by the overlapping GHG authority if these are commercially and technically feasible. This is a common-sense provision to maximize safety for all operators and others who may be in the area, like independent contractors.

Application of 2004 Act provisions for resolving disputes about reasonableness of proposed provision

Clause 531 inserts new section 78CL, which provides that when a dispute arises about the reasonableness of proposed provisions of the GHG tenure holder to the safety management plan, this dispute must be dealt with under

the relevant provisions of the *Petroleum and Gas (Production and Safety) Act 2004*.

Subdivision 2 Other provisions

Condition to notify particular GHG authority holders of proposed start of particular authorised activities

Clause 531 inserts new section 78CM, which requires a petroleum tenure holder under the *Petroleum Act 1923* to notify any overlapping GHG authority holders or a GHG authority holder sharing a common boundary with the petroleum tenure holders of the following:

- when the designated activity is to start; and
- where the designated activity is to be carried out; and
- the nature of the activity.

Notification must be given again if the GHG authority holder is changing the land where the activities will be carried out.

Restriction on power to amend

Clause 531 inserts new section 78CN, which provides that if there is an overlapping authority for a petroleum lease, the petroleum lease may be amended under section 125 of the *Petroleum Act 1923* only if the interests of the overlapping authority holder have been considered.

Amendment of s 79M (Application of pt 6J)

Clause 532 provides for the inclusion of GHG authority in this section.

Part 20 Amendment of Petroleum and Gas (Production and Safety) Act 2004

Act amended in pt 20

Clause 533 provides that part 20 amends the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 3 (Purpose of Act)

Clause 534 provides for a new heading for section 3 from 'Purpose' to 'main purpose'.

Insertion of new s 3A

Clause 535 inserts new section 3A, which provides for other purposes of this Act to facilitate the operation of the *Greenhouse Gas Storage Act 2008* by allowing survey licences and pipeline licences and extending the safety provisions to include safety for GHG storage activities. Some provisions about investigations and enforcement have also been extended.

Insertion of new section 6B

Clause 536 inserts new section 6B, which provides the relationship between the *Petroleum and Gas (Production and Safety) Act 2004* and the *Greenhouse Gas Storage Act 2008* is contained in chapter 3A of the *Petroleum and Gas (Production and Safety) Act 2004* and chapter 4 of the *Greenhouse Gas Storage Act 2008*.

Amendment of s 16 (What is a *pipeline*)

Clause 537 provides for a pipelines to transport GHG streams.

Amendment of s 22 (What is an authorised activity)

Clause 538 provides for what an authorised activity is for GHG authorities.

Amendment of ch 2 hdg (Petroleum tenures and related matters)

Clause 539 amends the heading to reflect the changes.

Amendment of s 31 (Operation of div 1)

Clause 540 provides for renumbering to reflect changes.

Amendment of s 32 (Exploration and testing

Clause 541 provides for an inclusion of GHG stream storage as an activity that cannot be undertaken in this case. This is to put beyond doubt that GHG stream storage may only be done under the *Greenhouse Gas Storage Act 2008*.

Amendment of s 64 (Operation of div 4)

Clause 542 provides for an insertion in the note to include overlapping GHG tenures.

Amendment of s 73 (Permitted period for production or storage testing)

Clause 543 provides for a clarification for authority to prospect holders. This is to put beyond doubt that GHG stream storage may only be done under the *Greenhouse Gas Storage Act 2008*.

Amendment of s 108 (Operation of sdiv 1)

Clause 544 provides for renumbering to reflect the amendments.

Amendment of s 109 (Exploration, production and storage activities)

Clause 545 provides for an inclusion of GHG stream storage as an activity that cannot be undertaken in this case. This is to put beyond doubt that GHG stream storage may only be done under the *Greenhouse Gas Storage Act 2008*.

Amendment of s 110 (Petroleum pipeline and water pipeline construction and operation)

Clause 546 provides for a definition of petroleum pipeline and excludes GHG stream transportation.

Amendment of s 150 (Operation of div 5)

Clause 547 provides for an insertion in the note to include overlapping GHG tenures.

Amendment of s 152 (Permitted period for production or storage testing)

Clause 548 provides for an inclusion of GHG stream storage as an activity that cannot be undertaken in this case. This is to put beyond doubt that GHG stream storage may only be done under the *Greenhouse Gas Storage Act 2008*.

Amendment of s 180 (Key authorised activities)

Clause 549 provides for renumbering and slight amendment.

Amendment of s 193 (Operation of div 2)

Clause 550 provides for renumbering and slight amendment.

Amendment of s 292 (Obligation to decommission)

Clause 551 provides that where the responsibility for a petroleum well is to be assumed by the incoming GHG tenure holder the obligation to decommission does not apply.

Amendment of s 293 (Right of entry to facilitate decommissioning)

Clause 552 provides a minor drafting correction.

Amendment of s 340 (Right to grant if particular requirements met)

Clause 553 provides for a renumber.

Insertion of new ch 3A

Clause 554 inserts new chapter 3A.

Chapter 3A Provisions for GHG authorities

Part 1 Preliminary

Relationship with chs 2 and 3

Clause 554 inserts section 392AA, which provides how the relationship between the new chapter 3A, will function with the existing chapter 2 or 3. Restrictions and requirements remain but if a provision in this chapter conflicts with a provision of chapters 2 or 3 this chapter will prevail to the extent of the inconsistency.

What is an *overlapping GHG authority*

Clause 554 inserts section 392AB, which provides that an overlapping GHG authority is all or part of any GHG authority in the area of a petroleum authority or proposed petroleum authority.

What is the *GHG public interest*

Clause 554 inserts section 392AC, which provides a definition of public interest for the purposes of GHG storage provisions. The public interest is a matter that must be considered in the making of a number of decisions and the definition is broad enough to include the benefits to the State and also overarching government policy such as the Queensland Climate Smart 2050 strategy.

General provision about petroleum authorities for land subject to GHG authority

Clause 554 inserts section 392AD, which provides that generally the *Greenhouse Gas Storage Act 2008* or GHG authorities do not limit or affect

granting of petroleum authorities under the *Petroleum and Gas (Production and Safety) Act 2004* or carrying out authorised activities for petroleum authorities.

Part 2 Obtaining petroleum lease if overlapping GHG tenure

Division 1 Preliminary

Application of pt 2

Clause 554 inserts section 392AE, which provides this division will apply in situations for a person making a petroleum lease application where there is already a GHG tenure in place that would constitute an overlapping GHG tenure should the petroleum lease be granted.

Division 2 Requirements for application

Requirements for making application

Clause 554 inserts section 392AF, which provides for additional requirements, over and above the regular application requirements, for the proposed petroleum lease application. These additional requirements include a 'GHG statement', and other information that addresses the 'GHG assessment criteria'. The clause defines the 'GHG assessment criteria'. The Minister may need to make a resource management decision later on and will consider this criteria when making the decision. The potential for the parties to make a coordination arrangement and the public interest as defined will be considered.

Content requirement for GHG statement

Clause 554 inserts section 392AG, which provides the content requirement of the GHG statement, a part of the application requirements. The statement should show the applicant has turned their mind to how the proposed petroleum lease activities may impact on future GHG activities and whether or not it is technically and commercially feasible to carry out

coordinated activities. The statement must include a proposed safety management plan for all operating plant where the petroleum lease activities may affect safe and efficient carrying out of the GHG storage activities.

Division 3 Consultation provisions

Applicant's information obligation

Clause 554 inserts section 392AH, which provides the petroleum lease applicant to provide a copy of the petroleum lease application to the GHG tenure holder within 10 days of making the application. The overlapping situations are potentially very sensitive for a range of reasons and chief among these will be safety. The holder of the GHG tenure needs to be able to see the type and nature of activities proposed by the petroleum lease applicant and where and when the activities will be carried out. If this requirement is not complied with properly the Minister may refuse the petroleum lease application.

Submissions by GHG tenure holder

Clause 554 inserts section 392AI, which provides the GHG tenure holder may make submissions about the proposed petroleum lease within 4 months after receiving the copy of the application. Four months is considered ample time to consider the application and the potential ramifications of it on the GHG tenure. The submissions may include that the holder does not object to the granting of the lease, or the holder does not wish priority and may include information or a proposal. The information submitted is not limited to those suggested in this provision. The holder must give a copy of any relevant submissions to the petroleum lease applicant.

Division 4 Resource management decision if overlapping GHG permit

Application of div 4

Clause 554 inserts section 392AJ, which provides that this division will apply if the GHG tenure referred to above is a GHG exploration permit and:

- the holder of this permit has made submissions in time, and
- has given a copy to the applicant, and
- has stated the permit holder wishes to be granted priority in the overlapping area.

If priority has already been given for any of the relevant land under the *Greenhouse Gas Storage Act 2008*, this division does not apply. If the petroleum lease applicant has complied with the requirements on consultation and the GHG permit holder has remained silent on the petroleum lease application, there is an assumption that there is no objection to the granting of the overlapping petroleum lease or the GHG permit holder does not want priority

Resource management decision

Clause 554 inserts section 392AK, which provides that the Minister must make a resource management decision about whether to grant the petroleum lease, give priority to the overlapping authority holder, or to do neither.

Criteria for decision

Clause 554 inserts section 392AL, which provides for a number of provisions the Minister must consider in making the decision. Both parties have provided information already to assist and the Minister has to consider the public interest as well in making this decision. In may not be in the public interest for either party to proceed in this area of the State at this time.

Restrictions on giving overlapping authority priority

Clause 554 inserts section 392AM, which provides restrictions on giving priority to the GHG permit holder. The focus is on the ability for the parties to make a coordination arrangement together with the public interest would be best served by not granting a petroleum lease.

Division 5 Process if resource management decision is to give overlapping authority priority

Application of div 5

Clause 554 inserts section 392AN, detailing when this division applies, which is if the decision was to give priority to the GHG permit holder

Notice to applicant and GHG permit holder

Clause 554 inserts section 392AO, which provides for the applicant and GHG permit holder to be given notice of the resource management decision, and that the GHG permit holder be given six months from the time of the notice to apply for a GHG lease over that decided area (be it whole or part) within the petroleum lease application area.

GHG lease application for all of the land

Clause 554 inserts section 392AP, which provides for when the GHG lease applicant, who has been given priority, lodges a GHG lease application for the whole of that land, then the petroleum lease application cannot be progressed. Also, if a decision is made to grant the GHG lease, the petroleum lease application lapses.

GHG lease application for part of the land

Clause 554 inserts section 392AQ, which provides that when the GHG lease applicant, who has been given priority, lodges a GHG lease application for part of that land the petroleum lease applicant may amend their application to include whole or part of the remaining land. If the petroleum lease applicant decides not to amend their application to include whole or part of the remaining land, then their application cannot be advanced until the GHG lease application is decided. When a decision is

made to grant the GHG lease over only part of the land, the petroleum lease holder may still amend their application to include just the remaining area.

No relevant lease application

Clause 554 inserts section 392AR, which provides that if the GHG lease application, that has priority, does not lodge a GHG lease application for whole or part of that land, then the petroleum lease application can be decided.

Division 6 Resource management decision not to grant and not to give priority

Lapsing of application

Clause 554 inserts section 392AS, which provides that a GHG lease application is taken to have lapsed if a resource management decision was required and the decision was neither to recommend the granting of the petroleum lease nor to give priority to the GHG lease applicant. This clause is to remove doubt in that situation.

Division 7 Deciding application

Application of div 7

Clause 554 inserts section 392AT, which sets out the circumstances when this division applies. If the GHG tenure holder has not made a submission within the relevant period or does not wish to have any priority and a resource management decision gave priority to the overlapping authority holder or was not to give priority to the overlapping authority holder and the Minister then decides to recommend the grant of the petroleum lease.

Application may be refused if no reasonable prospects of GHG coordination arrangement

Clause 554 inserts section 392AU, which provides that applications do not remain unresolved for excessive periods. If there are no reasonable prospects for a coordination arrangement to be made, the Minister may refuse the petroleum lease application.

Additional criteria for deciding provisions of petroleum lease

Clause 554 inserts section 392AV, which provides that regard must be had to the GHG assessment criteria, the GHG statement, any holder submissions and the potential affect of the petroleum lease on the GHG activities when recommendations about the lease are made.

Publication of outcome of application

Clause 554 inserts section 392AW, which ensures that a notice of the resource management decision and the reasons for that decision are published, aside from any commercial-in-confidence information. The intention is to provide greater transparency of decision making.

Part 3 Priority to particular GHG lease applications

Earlier GHG lease application

Clause 554 inserts section 392AX, which provides that where a GHG lease application has been made prior to the application for the petroleum lease (in what would be an overlapping situation) the petroleum lease application cannot be decided before the GHG lease application has been decided.

Proposed GHG lease for which EIS approval given

Clause 554 inserts section 392AY, which provides for priority to be given to those proponents who have been granted approval for the preparation of a voluntary Environmental Impact Statement under the *Environmental Protection Act 1994* for a project that is, or includes, a proposed GHG lease. This is because the Environmental Impact Statement process is potentially publicly available from that point and so the trigger point for priority has been advanced ahead of the point of application for the lease.

Proposed mining or petroleum lease declared a significant project

Clause 554 inserts section 392AZ, which provides for priority to be given to those proponents of a project that is declared a "significant project"

under the *State Development and Public Works Organisation Act 1971* where the project is, or includes, a proposed GHG lease. This is because an Environmental Impact Statement is required for a 'significant project' and the Environmental Impact Statement process is potentially publicly available from that point, and so the trigger point for priority has been advanced ahead of the point of application for the lease.

Part 4 Petroleum lease applications in response to invitation under GHG storage Act

Application of pt 4

Clause 554 inserts section 392BA, which provides for the application of this part whereby a petroleum lease application is made in response to an invitation given because of a resource management decision under the *Greenhouse Gas Storage Act 2008*.

Additional ground for refusing application

Clause 554 inserts section 392BB, which ensures that the Minister can refuse the application for a petroleum lease if it is considered that an application that was invited as a result of a resource management decision is not being progressed in a timely manner. This is necessary to ensure the integrity of the original resource management decision.

Part 5 Additional provisions for petroleum authorities

Division 1 Restrictions on authorised activities for particular petroleum authorities

Overlapping GHG lease

Clause 554 inserts section 392BC, which provides when land in the area of a an authority to prospect; a data acquisition authority or a water

monitoring authority is also GHG lease land the authorised activities for the petroleum authority may only be carried out if the GHG lease holder has not objected to the activity or to the safety management plan or if an objection has been made and the Minister has decided the activity may be carried out.

Overlapping GHG permit

Clause 554 inserts section 392BD, which applies if land is in the area of the listed petroleum authorities and a GHG permit. Authorised activities for the petroleum authority cannot be carried out on the land if carrying it out adversely affects the GHG authority activities and these activities have already started.

Resolving disputes

Clause 554 inserts section 392BE applies if a petroleum authority overlaps a GHG lease and the lease holder has objected to the carrying out of a petroleum authority activity. This clause also applies if there is a dispute between the holders about whether an authorised activity for the petroleum authority can be carried out under that section. If there is a dispute either party may ask the Minister to decide. There is opportunity for submissions to be made, about the matter, to the Minister. The decision made by the Minister is binding on the parties and conditions may be attached to the decision. This method of resolving disputes should deter a party from objecting for arbitrary or obstructive reasons.

Division 2 Additional conditions

Notice by authority to prospect holder to particular GHG authority holders or applicants

Clause 554 inserts section 392BF, requires an authority to prospect holder, to notify GHG authority holders or applicants in the area of the grant of the authority to prospect. This is a normal business consideration and has practical application if, for example, infrastructure could be shared with the costs also shared.

Condition to notify particular GHG authority holders of proposed start of particular authorised activities

Clause 554 inserts section 392BG, which requires the petroleum authority holder to notify any overlapping GHG authority holders or a GHG authority holder sharing a common boundary with the petroleum authority holders of the following:

- when the designated activity is to start; and
- where the designated activity is to be carried out; and
- the nature of the activity.

Notification must be given again if the GHG authority holder is changing the land where the activities will be carried out.

Requirement to continue GHG coordination arrangement after renewal of or dealing with petroleum lease

Clause 554 inserts section 392BH, which provides that if a petroleum lease, the subject of a coordination arrangement, is for renewal, transfer, or subletting, the petroleum lease holder must continue with the coordination arrangement while there is the overlapping situation with the GHG lease.

Division 3 Restriction on Minister's power to amend petroleum lease if overlapping GHG tenure

Interests of overlapping GHG tenure holder to be considered

Clause 554 inserts section 392BI, which provides that if there is an overlapping authority for a petroleum lease, the petroleum lease may be amended under section 848 of the *Petroleum and Gas (Production and Safety) Act 2004* only if the interests of the overlapping authority holder have been considered

Part 6 Additional provisions for development plans if overlapping GHG tenure

Operation of pt 6

Clause 554 inserts section 392BJ, which provides for the operation of this part, that is the additional requirements for an overlapping tenure situation.

Statement about interests of GHG tenure holder

Clause 554 inserts section 392BK, which provides that a statement must be included in the development plan showing that the petroleum lease applicant has considered the interests of any overlapping GHG tenure holder. The GHG assessment criteria are to be used in compiling this statement.

Consistency with GHG tenure's development plan and with any relevant coordination arrangement

Clause 554 inserts section 392BL, which provides that the proposed development plan must be consistent with any relevant coordination arrangement. The coordination arrangement must make sense and be achievable, thus the requirement for consistency.

Additional criteria for approval

Clause 554 inserts section 392BM, which provides that the Minister must consider the additional information provided when deciding whether to approve the plan or amendment.

Part 7 Additional provisions for safety management plans

Grant of petroleum lease does not affect obligation to make plan

Clause 554 inserts section 392BN, which provides that regardless of the petroleum lease applicant providing a GHG statement as required, a safety management plan is still required for any operating plant. The safety management plan may be audited at any time.

Requirements for consultation with particular GHG tenure holders

Clause 554 inserts section 392BO, which provides that for an operating plant that will be used for petroleum activities the operator must use reasonable attempts to consult with an overlapping GHG authority holder if the activities may adversely affect the safe and efficient use of the other resources. The plans may be amended to incorporate any reasonable suggestions made by the overlapping GHG authority if these are commercially and technically feasible. This is a common-sense provision to maximize safety for all operators and others who may be in the area, like independent contractors.

Application of provisions for resolving disputes about reasonableness of proposed provision

Clause 554 inserts section 392BP, which provides that when a dispute arises about the reasonableness of proposed provisions of the GHG tenure holder to the safety management plan this dispute must be dealt with under the relevant provisions of the *Petroleum and Gas (Production and Safety) Act 2004*.

Amendment of s 400 (Restriction if there is an existing mining lease)

Clause 555 provides for GHG lease to be included for the restrictions.

Amendment of s 402 (Licence may extend transportation right to other prescribed substances)

Clause 556 provides for GHG stream to be included in the licence provisions.

Amendment of s 422 (Obligations in operating pipeline)

Clause 557 extends the pipeline transport of petroleum to other substances.

Amendment of s 476 (Notice requirements)

Clause 558 provides for the correction of the section referenced.

Replacement of ch 5, pt 4 (Access to land in area of another petroleum authority or a mining tenement)

Clause 559 replaces the 'Chapter 5, Part 5' heading with a 'Part 4' heading. This part now applies for access to land in area of particular other authorities, not just another petroleum authority or mining tenement.

Amendment of s 528 (Application of pt 4)

Clause 560 extends application of part to include GHG authority.

Amendment of s 547 (Requirement to keep records and samples)

Clause 561 deletes the word 'basic' when referring to exploration data.

Amendment of s 553 (Power to require information or reports about authorised activities to be kept or given)

Clause 562 deletes the word 'basic' when referring to exploration data.

Amendment of s 557 (Obligation to comply with Act and prescribed standards)

Clause 563 expands the definition of standard to include international standards, codes or protocols. There are no Australian Standards for things like GHG stream pipelines but the United States of America have a

pipeline standard for transporting carbon dioxide which may be suitable in the interim for Queensland.

Amendment of s 573 (Deciding application)

Clause 564 provides an extension to the period allowed, from 3 months to 6 months, to meet the conditions imposed when the Minister give an indication of the likely approval of the dealing. This period is now aligned with that provided for in the *Petroleum Act 1923* for the similar provision.

Amendment of s 669 (Making safety requirement)

Clause 565 expands the making safety requirement to include GHG storage activities.

Amendment of s 670 (What is an *operating plant*)

Clause 566 expands this section to include GHG storage activity, GHG authority and GHG stream pipeline. Adding these to the definition of operating plant triggers the requirement for GHG operators to have a safety management plan.

Amendment of s 675 (Content requirements for safety management plans)

Clause 567 provides for an extension of the section to include GHG authority where there are multiple operating plant with different operators on the same GHG tenure. This requires more detail in the safety management plan.

Amendment of s 690 (Content requirements for safety reports)

Clause 568 provides for a renumber and expands out the provision.

Replacement of s 691 (Obligation to give information to coal or oil shale exploration tenement holder)

Clause 569 replaces section 691 in an expanded version to reflect the inclusion of GHG operators and their safety management plans.

Replacement of s 699A (Operator's obligation for adjacent or overlapping coal mining operations)

Clause 570 replaces section 699A in an expanded version to reflect the inclusion of GHG operators and their safety management plans.

Amendment of s 705 (Application of sdiv 1)

Clause 571 provides for the operator of an operating plant in the area of a GHG lease and there is potential for the operations to affect the safety or efficiency of the GHG lease activities.

Amendment of s 705A (Requirement to have principal hazard management plan)

Clause 572 provides that the operator in this case must have a principle hazard management plan and must consult with the GHG lease holder.

Amendment of s 705B (Content requirements for principal hazard management plan)

Clause 573 provides for an expansion of the content to include a relevant GHG lease or GHG wells.

Amendment of s 705C (Resolving disputes about provision proposed by mining lease holder)

Clause 574 expands the section on resolving disputes to include relevant GHG leases.

Amendment of s 708B (Chief inspector may issue safety alerts and instructions)

Clause 575 expands the section to include GHG storage activities into safety alerts and instructions.

Amendment of s 736 (Functions)

Clause 576 provides for an expansion of this section related to the safety inspector's functions for GHG storage activities.

Amendment of s 744 (Inspector's additional entry power for emergency or incident)

Clause 577 expands this section to include GHG stream.

Amendment of s 746 (Authorised officer's additional entry power for petroleum authority)

Clause 578 expands this section to include GHG authority.

Amendment of s 769 (Testing seized things)

Clause 579 expands this section to include GHG stream.

Amendment of s 780 (Power to give compliance direction)

Clause 580 expands this section to include the GHG storage Act.

Amendment of s 781 (Requirements for giving compliance direction)

Clause 581 expands this section to include the GHG storage Act.

Amendment of s 802 (Restriction on pipeline construction or operation)

Clause 582 expands this section to include GHG storage Act and GHG tenure.

Amendment of s 892 (Provisions for deciding application and grant of petroleum lease)

Clause 583 expands this section.

Amendment of s 910 (Renewal application provisions apply for making and deciding grant application)

Clause 584 expands this section.

Amendment of sch 2 (Dictionary)

Clause 585 expands the dictionary to include GHG related definitions.

Part 21 Amendment of Queensland Competition Authority Act 1997

Act amended in pt 21

Clause 586 provides that part 21 amends the *Queensland Competition Authority Act 1997*.

Amendment of s 70 (Meaning of *facility*)

Clause 587 extends the definition of 'facility' for the *Queensland Competition Authority Act 1997* to include GHG stream transmission and distribution infrastructure, as well as defining what 'GHG stream' means.

Part 22 Amendment of Queensland Heritage Act 1992

Act amended in pt 22

Clause 588 provides that part 22 amends the *Queensland Heritage Act 1992*.

Amendment of schedule (Dictionary)

Clause 589 amends the definition of 'owner in relation to land' to include 'for land the subject of a GHG authority under the *Greenhouse Gas Storage Act 2008*—the person who holds the interest'.

Part 23 Amendment of State Development and Public Works Organisation Act 1971

Act amended in pt 23

Clause 590 provides that part 23 amends the *State Development and Public Works Organisation Act 1971*.

Amendment of s 26 (Declaration of significant project)

Clause 591 provides that if a proposed GHG injection and storage lease under the *Greenhouse Gas Storage Act 2008* is declared a significant project, the minister administering the *State Development and Public Works Organisation Act 1971* must give a copy of the gazette notice about the declaration, to the Minister administering the *Greenhouse Gas Storage Act 2008*.

Amendment of s 35 (Coordinator-General evaluates EIS, submissions, other material and prepares report)

Clause 592 provides that the coordinator-general may, in evaluating an EIS submission, state conditions under section 49E.

Amendment of s 35I (Coordinator-General's change report)

Clause 593 provides that the Coordinator-General may, in making the evaluation about a change in a project or a condition of a project, state conditions under section 49E.

Amendment of pt 4, div 6, sdiv 1, hdg (Relationship for non-code compliant environmental authority (petroleum activities)

Clause 594 provides for the amendment to the heading of this subdivision.

Amendment of section 47B (Application of sdiv 1)

Clause 595 provides that this sub-division applies if the project involves a proposed environmental authority (Chapter 5A) under the *Environmental*

Protection Act 1994 and were the proposed authority to be issued, it would be a non-code compliant authority for chapter 5A of the *Environmental Protection Act 1994*. This is a consequence of amendments to the *Environmental Protection Act 1994* made by the *Greenhouse Gas Storage Act 2008*.

Insertion of new pt 4, div 6B

Clause 596 inserts new part 4, division 6B.

Division 6B Relationship with Greenhouse Gas Storage Act 2008

Application of div 6B

Clause 596 inserts section 49D, which provides that this division applies if the project deals with a proposed GHG injection and storage lease under the *Greenhouse Gas Storage Act 2008*

Application of Coordinator-General's report to proposed lease

Clause 596 inserts section 49E, which provides that the Coordinator-General's report may set conditions for the EIS and if conditions are set, a copy of the report must be given to the Minister of the department in which the *Greenhouse Gas Storage Act 2008* is administered.

Amendment of section 175A (EIS must not, under particular other Acts, be required for PNG pipeline project)

Clause 597 provides for the amendment to this section as a consequence of amendments to the *Environmental Protection Act 1994* made by the *Greenhouse Gas Storage Act 2008*.

Part 24 Amendment of Survey and Mapping Infrastructure Act 2003

Act amended in pt 24

Clause 598 provides that part 24 amends the *Survey and Mapping Infrastructure Act 2003*.

Amendment of s 21 (Power to place a permanent survey mark)

Clause 599 provides that a surveyor may place a permanent survey mark on land a GHG tenure under the *Greenhouse Gas Storage Act 2008* if its holder consents to the placement of the mark.

Part 25 Amendment of Torres Strait Islander Land Act 1991

Act amended in pt 25

Clause 600 provides that part 25 amends the *Torres Strait Islander Land Act 1991*.

Amendment of s 3 (Definitions)

Clause 601 provides for the expansion of the definition of 'interest' to include the *Greenhouse Gas Storage Act 2008*.

Amendment of s 128 (Creation of interests in transferrable and claimable land)

Clause 602 extends section 128 so that nothing in the *Torres Strait Islanders Land Act 1991* prevents the creation of an interest in transferable land if the interest is also a GHG authority under the *Greenhouse Gas Storage Act 2008*.

Part 26 Amendment of Valuation of Land Act 1944

Act amended in pt 26

Clause 603 provides that part 26 amends the *Valuation of Land Act 1944*.

Amendment of s 26 (Valuation of petroleum leases)

Clause 604 provides how the unimproved value of GHG lease is calculated, as well as defining what a GHG lease is.

Part 27 Amendment of Water Supply (Safety and Reliability) Act 2008

Act amended in pt 27

Clause 605 provides that part 27 amends the *Water Supply (Safety and Reliability) Act 2008*.

Amendment of sch 3 (Dictionary)

Clause 606 provides amendments to delete the Schedule 3, definitions for 'mining activity' and 'petroleum activity' and redefines 'wastewater' so that water generated from a GHG storage activity as defined under the *Environmental Protection Act 1994*, section 145X, is excluded from the definition of 'wastewater'.

Part 28 Amendment of Whistleblowers Protection Act 1994

Act amended in pt 28

Clause 607 provides that part 28 amends the *Whistleblowers Protection Act 1994*.

Amendment of sch 2 (Offences endangering the environment)

Clause 608 provides an amendment to schedule 2 to provide when a person may make a public interest disclosure, if there is a substantial and specific danger to the environment, in relation to all provisions for which a contravention is an offence under the *Greenhouse Gas Storage Act 2008*, *Petroleum Act 1923* and the *Petroleum and Gas (Production and Safety) Act 2004*.

Part 29 Amendment of Workplace Health and Safety Act 1995

Act amended in pt 29

Clause 609 provides that part 29 amends the *Workplace Health and Safety Act 1995*.

Amendment of s 3 (Application of Act)

Clause 610 provides that a GHG authority under the *Greenhouse Gas Storage Act 2008* also has application under section 3 of the *Workplace Health and Safety Act 1995*.

Schedule 1 Decisions subject to appeal

The insertion of this schedule provides details of which decisions, made under this Act, may be appealed.

Schedule 2 Dictionary

The insertion of this schedule provides details of definitions used in this Act.