Strategic Cropping Land Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the Strategic Cropping Land Bill 2011

Policy objectives and the reasons for them

The purpose of the Bill is to implement a legislative framework that recognises the State's strategic cropping land (SCL) as a finite resource that must be protected against the impacts of development and preserved for future generations. The Bill will utilise planning and development powers to manage development impacts and, in identified areas, protect such land from developments that will have a permanent impact and diminish the productivity of the land.

In recent times, Queensland's SCL resources have been subject to an increasing range of competing land uses, including resource developments, like mining and coal seam gas projects, and urban expansion. The pressure to use SCL areas for non-agricultural uses has escalated as the economies of the resource sector have changed and urban growth continues.

As Queensland grows, this Bill will strike a balance between these competing land uses and ensure that there is no overall loss of agricultural productivity associated with the State's SCL in the long term.

The Bill provides a consistent process for assessing and deciding whether developments are able to proceed on SCL, providing clarity and certainty for investment decisions by the agriculture, urban development and resources sectors.

The Bill will apply to resource developments, including mining, petroleum, gas and geothermal energy, and to statutory regional plans, local government planning schemes and development applications, outside areas identified for urban purposes, made assessable by Local Governments under the *Sustainable Planning Act 2009*.

The Bill contributes to a broad suite of Queensland Government initiatives which manage the expansion of Queensland's resources sector and

population growth by minimising land-use conflict and protecting the environment and our natural resources.

Other initiatives include the Land Access framework for resource exploration and development; Coal Seam Gas regulatory framework; Resource Exploration and Urban living policy; statutory regional planning; and the regionalisation strategy.

By balancing competing land uses, the Government's initiatives also support sustainable regional development.

Achievement of policy objectives

The Bill provides a framework for the identification of SCL and assessment of impacts of development on SCL, across an area of the state extending from Mossman, north of Cairns and south to the New South Wales border near St George.

This area, some 42 million hectares or 24% of the State, extends from the coast, west to areas such as Clermont, Emerald, Roma and St George.

The Bill establishes eight criteria and five zones to be used in identifying whether land is SCL or non-SCL. The scientific criteria contained in the Bill and applied to identify SCL are consistent across the zones but have different threshold values relevant to the soil and landscape features within each zone. The five zones accommodate regional differences in climate, land forms and cropping systems.

There are two Protection Areas — one in central Queensland in the Emerald and Springsure area and one in southern Queensland in the Darling Downs, South Burnett, Lockyer Valley and Scenic Rim area. The Protection Areas cover some 4.78 million hectares and the Management Area will cover approximately 37.2 million hectares.

Developments on SCL, whether in a Protection or Management Area will be conditioned to avoid and minimise impacts on SCL and restore any temporary impacts that may occur.

Developments in a Protection Area will not be able to permanently impact the SCL unless exceptional circumstances for the development are demonstrated. Developments in the Management Area, and exceptional circumstances projects in a Protection Area, will be required to mitigate any unavoidable permanent impacts.

The Bill specifically provides for:

- *The identification of SCL* — maps are to be used by land holders and developers to identify the zones and protection and management areas and land where SCL is expected to exist. The maps also act as a trigger for developers to identify when they should confirm whether the land is or is not SCL.

- *Validating whether land is SCL or not* — where a proponent wants to confirm the land as either being SCL or not being SCL, the Bill requires the land to be analysed through an on-ground assessment against eight scientific soil criteria, and where the project is in a Management Area, to demonstrate whether the land has a defined history of cropping.

  The Bill also provides development proponents with the option of accepting how the trigger map locates SCL for their development and to proceed to commence the development assessment process. A person may also seek to validate land against the requirements, without the land being subject to a development proposal.

- *Assessment of the development impacts on the land* — the development must reasonably avoid and minimise the impacts to the SCL to the greatest extent practicable. The development may be conditioned for any temporary impacts, to restore the land to its pre-development condition. Conditions may also be imposed to manage, restrict or prohibit any impacts from the development.

  The SCL assessment process ties in with the existing assessment processes under the *Sustainable Planning Act 2009* (SPA), *Environmental Protection Act 1994* (EP Act) and the various resource Acts.

  The Bill identifies that there will be a SCL State Planning Policy and the SCL matters it will deal with for its operation. Concurrence agency roles and referral triggers are to be established under the Sustainable Planning Regulation 2010 for the Integrated Development Assessment System (IDAS).

  The SCL assessment process also links with the environmental authority requirements under the EP Act and align with resources Act authorities to ensure that relevant resource developments account for SCL considerations and requirements.

- *Projects to be approved in exceptional circumstances* — where a project is likely to have permanent impacts on SCL in a Protection Area, the project cannot proceed unless it demonstrates exceptional circumstances.

  To demonstrate exceptional circumstances, the project must satisfy the two-pronged test which requires evidence that on a state wide basis there are no alternative sites for the project and that the project presents an overwhelming and significant community benefit to the State.

  The Minister may also, through a regulation, declare a class of project to be an exceptional circumstance project. In deciding to declare a class of project, the Minister must apply strict decision rules in the Bill. The Bill prescribes most resources developments from being declared.

- *Mitigation* — development that will have a permanent impact on SCL is required to address the consequent loss of productive cropping value of the land by providing mitigation.

  The mitigation arrangement is designed to ensure no loss of agricultural productive value in the long term. Mitigation can be provided through either a mitigation deed or a payment into the mitigation fund. Mitigation deeds and payments from the mitigation fund are to establish projects and other activities that have an enduring public benefit and increase the overall cropping productivity of the local areas affected by the permanently impacted SCL. The Government will administer the mitigation fund and seek advice from a community advisory group before making a decision on expenditure from the fund or entering a Deed.

- *Developments that are exempt from the Bill* — some activities have been identified which, due to their nature and benefits to the community and State, have been exempted from the Bill.

  These include:

  Infrastructure and existing strategic port lands under the *Transport Infrastructure Act 1994;*

  Certain infrastructure under the *Electricity Act 1994*;

Identified functions, powers and developments under the *State Development and Public Works Organisation Act 1971,* except for significant projects under Part 4 of this Act.

Other identified developments, including for key resource areas and developments of a prescribed and relatively small size, including for many farm diversification developments, are provided for by amendment of the Sustainable Planning Regulation 2009.

- *Appeals* — appeals against decisions made under the Bill will be appealable to the Planning and Environment Court, except for appeals against conditions imposed on a resource authority or an environmental authority for resources developments which will be to the Land Court.

  These arrangements make the full range of resolution avenues including mediation, direction hearings and appeal to a higher jurisdiction, available to the appellant. The Land Court is the ordinary jurisdiction to appeal resource activity conditions and the arrangements under this Bill will enable review on SCL protection decisions for a resource development to occur in conjunction with any other review action.

- *Transitional project arrangements* — the Bill provides transitional arrangements for resource developments that had achieved certain stages in the development assessment process as at 31 May 2011. Depending on the advanced stage of the project, these arrangements enable the eligible projects to either proceed without SCL conditions or to continue, with conditions requiring that the developments avoid and minimise their impacts and mitigate any permanent impacts on SCL that are unavoidable.

  A transitional provision has been included for the Springsure Creek coal project (related to the exploration permit for coal, EPC 891). The special provisions have been provided because significant elements of the approval process were administratively complete at 31 May 2011 and were finalised on 2 June 2011. The Bill provides that any authorities issued for the mining project to proceed will be strictly conditioned to minimise impacts on SCL.

- *Strategic Cropping Land Science and Technical Implementation Committee (STIC)* — the STIC will be established to advise the Minister responsible for the Act, on scientific and technical issues

relating to the implementation of the SCL validation criteria and related advisory roles specified by the Minister.

- *Enforcement* — enforcement powers have been established under the Bill to enable the Act to be properly and effectively administered. Provisions have been provided for authorised officers to enter property without consent or warrant in limited circumstances.

  Limited power of entry without consent or warrant is justified when consent cannot be obtained to carry out necessary functions under this Bill. In many circumstances, the interests of persons from whom consent is required may be inconsistent with the interests of the Chief Executive in achieving the purposes of this Bill. Otherwise, standard enforcement provisions allow authorised persons to enter land only with consent or under a warrant.

- *Offences* — have been introduced to ensure that the framework can be effectively enforced. The offences and penalties established by the Bill are consistent with the level and types of penalties for environmental harm already enforceable under the EP Act.

- *No compensation will be payable under the Act* — the Bill expressly provides that no liability or compensation can be sought for any loss or damage arising from the commencement of the Act, including any suite that may otherwise arise due to the exercise or purported exercise of a power under the Act. The provisions reflect the accepted precedents established under common law.

Alternative ways of achieving policy objectives

There is no alternative way other than the proposed Act of achieving the policy objectives of this Bill.

While State Planning Policy 1/92 provides protection for good quality agricultural land, it does not address the land use pressures from resources developments or provide clear circumstances where development cannot proceed.

To address this issue, the Bill establishes a separate Act for SCL, which provides assessment and decision processes that align with the existing resource and development legislation.

A less efficient alternative would be to regulate development on the SCL entirely in each individual resource Act and the SPA. The Bill provides a process that integrates with existing statutory assessment processes.

Estimated cost for government implementation

The implementation of the *Strategic Cropping Land Act 2011* will have financial implications for the Queensland Government. Assessment and administration costs will be incurred in the processing and assessment of applications for SCL validation, development impacts and exceptional circumstances. These costs will be funded through application fees under a user pays cost recovery model. Full recovery of costs through a schedule of application fees was proposed in a Regulatory Assessment Statement as the most economically efficient cost recovery model. Application fees will be included in the regulation to the Act.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of Fundamental Legislative Principles (FLPs) for the Act are as follows:

No compensation payable

The Bill provides that no compensation is payable by the State or an official for, or in connection with, the enactment or operation of this Act or a statutory instrument under it. Established legal principles provide that the State cannot be held liable for passing an Act of Parliament that may result in any loss or financial harm to a person affected by the legislation.

The provisions in the Bill merely reflect this principle and provide clear notice that the Bill will be subject to the principle's application.

Power to enter land and search for, or seize documents or other property, without a warrant

The Bill allows authorised officers to enter property without consent in limited circumstances required for assessment, enforcement and compliance activities. Generally, officers will be required to provide notice before they enter the property. However, a warrant will not be necessary in many circumstances. An authorised person may also seize a thing at the place they have entered without consent or a warrant if the authorised person reasonably believes the thing is evidence of an offence against this Bill.

While legislation that confers the power to enter premises, and search for or seize documents or other property, without a warrant issued by a judge or other judicial official is considered to be a breach of fundamental legislative principles, the breach is justified.

The breach is mitigated as entry without a warrant is only provided for in limited circumstances. Predominantly these circumstances arise where it is necessary to enter the land to give effect to compliance measures and for assessment associated with an application made under the Bill. No entry is permitted in the place or part of a place where a person resides. If a person refuses to consent, or withdraws consent previously given, a warrant will then be required.

This entry power is necessary to give immediate effect to compliance measures such as the stop work notice to stop the suspected commission of an offence causing impacts on the SCL and to gain evidence about the offence without potentially frustrating proceedings.

Consultation

The Bill has been prepared following extensive consultation with key stakeholders, the community, government agencies and local government. Key stakeholders have been engaged through a Stakeholder Advisory Committee which has met 12 times since early 2010. The committee includes representatives from the agricultural, resource and urban development sectors, as well as representatives from local government and natural resource management groups.

Public feedback was sought on four different matters: a discussion paper in February 2010; a policy framework in August 2010; a Regulatory Assessment Statement in May 2011; and a draft State Planning Policy in August 2011. Stakeholder feedback was also sought on the proposed criteria for identifying SCL which was released in April 2011.

The department's website was regularly updated to provide the progress updates on the implementation of Government policy. This included full details of each of the documents released for public consultation and other documents to support the implementation.

This included:

- Protecting Queensland's strategic cropping land: Proposed criteria for identifying SCL

- Protecting Queensland's strategic cropping land: Guidelines for applying the proposed SCL criteria
- Protecting Queensland's strategic cropping land: A technical assessment of the proposed criteria for identifying SCL
- Protecting Queensland's strategic cropping land: An independent expert review of the criteria for identifying SCL
- Draft Trigger Maps
- Transitional Arrangements
- An online mapping tool.

All relevant Local Councils were provided with a copy of the draft State Planning Policy for SCL and invited to make a submission. Many of those were consulted directly about the Draft State Planning Policy for Strategic Cropping Land. (SPP).

Within Government, an interagency steering committee has oversighted the development of the policy, framework, the SPP and the Bill. The steering committee has executive level representatives from the Department of Environment and Resource Management; Department of Employment, Economic Development and Innovation (resources and agriculture representatives); Office of the Coordinator-General; Treasury; Department of the Premier and Cabinet; and the Department of Local Government and Planning.

Consistency with legislation of other jurisdictions

There is no precedent for this Bill in the legislation of other jurisdictions. The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another State.

This Bill when enacted will be the first legislation in Australia to regulate development on SCL for its protection and management for the long term that specifically includes the regulation of resource developments such as mining, gas and petroleum exploration and production.

Notes on provisions

Chapter 1 Preliminary

Part 1 Introduction

Short title

Clause 1 provides that the Act may be cited as the *Strategic Cropping Land Act 2011*.

Commencement

Clause 2 provides for the Act to commence on the date of assent or 30 January 2012, whichever is later.

Part 2 Purposes and application of Act

Purposes of Act

Clause 3 provides that the purposes of the Act are to:

- protect land that is highly suitable for cropping; and
- manage the impacts of development on that land; and
- preserve the productive capacity of that land for future generations.

Strategic cropping land (SCL) is a finite resource that must be protected into the future to ensure it is conserved for growing food and fibre crops, which support economic growth for Queensland's regional communities. Therefore, it is important to strike a balance between the State's agricultural, resource and development industries. The purposes of the Act reflect that objective.

How the purposes are achieved

Clause 4 of the Act provides generally how the purposes of the Act will be achieved.

The purposes of the Act will be achieved in several key phases and principles are established to protect and manage the impacts of development on SCL or potential SCL.

The Bill provides for the identification of SCL resources through mapping areas of potential SCL and validating the location of SCL against the zonal criteria and, for potential SCL in the management area, the cropping history test. Clause 4 then provides for the purposes to be achieved through the SCL assessment process which assesses the potential impacts of development on SCL and imposes appropriate conditions. The Bill's purposes are lastly achieved through the consideration of exceptional circumstances for development projects in a protection area that are likely to have permanent impacts and mitigation requirements for any permanent impacts that occur on SCL in the management area and the protection areas.

The assessment of the potential impacts of a development on SCL will be managed through a comprehensive assessment process, which is integrated with the existing planning and development assessment frameworks for all forms of development, including resource development and certain developments under the *Sustainable Planning Act 2011*. The Bill identifies criteria for the chief executive to consider when determining where developments should be prohibited, restricted, conditioned or exempt. The Act provides for a suite of mechanisms for achieving this purpose, including assessment criteria, the imposition of conditions on approvals, a State Planning Policy under the *Sustainable Planning Act 2009* (SPA) and assessment and compliance codes.

An "exceptional circumstances test" has been established to ensure the Act provides a fair balance between protecting the SCL resource and managing the impacts of development that have an overwhelmingly significant benefit to the community. Where a project demonstrates exceptional circumstances, it may proceed in an area where it would otherwise be prohibited. The project will still be assessed to ensure it avoids and minimises its impacts to the greatest extent possible and will be required to restore any temporary impacts.

Where the project has permanent impacts on SCL that cannot be avoided, the development proponent must mitigate those impacts. The exceptional

circumstances framework ensures that perverse outcomes do not arise where a project will have an overwhelmingly significant benefit to the community but can not proceed because there are no alternative sites for it to be located.

The Act will preserve the productive capacity of the land by requiring developments that have a temporary impact to fully restore the land to its pre-development status. Developments that have a permanent impact on SCL—whether in the management area or a protection area where exceptional circumstances have been demonstrated—must mitigate for the lost cropping productivity of the land. Mitigation can be fulfilled through a payment into the mitigation fund or by undertaking a deed for activities or projects that will provide an enduring public benefit and address the lost productive capacity of the permanently impacted land.

Act binds all persons

Clause 5 provides that the Act is binding on all persons, including the States and the Commonwealth to the extent permitted by the legislative power of Parliament. However, the Commonwealth and the States cannot be prosecuted for any offence against the Act.

Exclusions from this Act

Clause 6 provides for developments to which this Act does not apply. The provision identifies a range of developments that are critical to provide essential community services and infrastructure of State importance and other government projects that are provided as a community service such as electricity, roads and other transport infrastructure.

The powers of the Governor in Council, Minister and Coordinator-General under the *State Development and Public Works Organisation Act 1971* (State Development Act), except for Part 4 of that Act, are primarily used to facilitate projects that are a priority to the State and other activities that benefit the community, such as state development areas which provide for long term planning and development of strategic land assets in Queensland. Consequently, most processes related to the exercise of an official's powers under the State Development Act will also be exempt.

For example, where a state development area (SDA) is declared by the Governor in Council and the Minister administering the State Development Act has approved the development scheme for the area, any developments

in the SDA are exempt and will not require an SCL assessment when seeking necessary development approvals.

While not obliged to, the Coordinator-General will consider the SCL framework when performing the functions and exercising the powers under the State Development Act.

Projects declared as significant projects and functions under Part 4 of the State Development Act are not exempt from this Act. These projects are generally private projects that have sought a declaration or assistance from the Coordinator-General to facilitate the approval process.

It is also made clear through this clause, that developments that are not proposed within a SCL zone will not be captured by this Act.

Relationship with resource Acts and Environmental Protection Act

Clause 7 provides that subject to clause 6 the Act applies despite any resource Act or the Environmental Protection Act.

The intent of this clause is to ensure that development on SCL and potential SCL, other than development that the Act does not apply to, is regulated regardless of provisions in a resource Act or the Environmental Protection Act.

Part 3 Interpretation

Division 1 Dictionary

Dictionary

Clause 8 provides that the dictionary is contained in schedule 2 of the Act to define particular words used throughout the Act.

Division 2 Key definitions

Subdivision 1 Definitions about cropping land

Strategic cropping land, SCL and decided non-SCL

Clause 9 defines the terms SCL and decided non-SCL that are used throughout the Act.

Potential SCL

Clause 10 defines the term potential SCL that is used throughout the Act and clarifies that where the land has been validated under Chapter 2 Part 2 of the Act, it is no longer potential SCL.

SCL Principles

Clause 11 provides five principles for SCL that underpin the application of the Act. The principles are:

Protection—the protection of SCL is primary in the application of this Act and in achieving its purposes. This principle ensures that the value of SCL as a finite and irreplaceable resource is not outweighed by shorter term values associated with development, particularly economic values. In pursuit of this principle, developments in a protection area that will have permanent impacts will not be able to proceed unless exceptional circumstances can be demonstrated.

Avoidance—developments proposed to be located on SCL, must take all reasonable steps to ensure that the development footprint avoids SCL to the extent reasonably practical. This principle will also support decisions of the chief executive to impose conditions on a development to ensure that the impacts of the development do in fact avoid SCL as deemed appropriate though the SCL assessment.

Minimisation—where developments can not avoid SCL, where ever possible impacts of the development on the land must be minimised. Minimising could include reconfiguring the development footprint to lessen the area of SCL that will be affected or adopting an alternative development method, such as directional drilling to access a resource deposit. Adopting development practices or methods that allow for the land

to be restored to its pre-development condition will also be considered to be consistent with the minimisation principle.

The minimisation principle will also support the decisions of the chief executive to impose conditions to ensure that the impacts of the development are in fact minimised in accordance with the outcomes of the SCL assessment.

Mitigation—where permanent impacts do arise from the approved development, mitigation is required to address the lost productive capacity of the land for cropping. Mitigation is intended to be a final resort after all attempts to reasonably avoid and minimise the impacts of the development have been exhausted.

Productivity—this principle aims to ensure that any dealings involving SCL and mitigation measures in particular, provide for the endurance of the resource for future generations. Productivity is the principle that underpins the application of the powers and functions of this Act in ensuring the purposes are achieved while balancing competing land needs.

Identified permanently impacted land

Clause 12 defines the term identified permanently impacted land that is used throughout the Act.

Subdivision 2 Definitions about development

Development

Clause 13 defines the term development that is used throughout the Act. Development refers to developments that are assessed through the SPA framework and resource activities under the identified resource Acts.

When development has a permanent impact or temporary impact

Clause 14 defines the terms permanent impact and temporary impact that are used throughout the Act.

The Act establishes a definition for permanent impact based on the affect to cropping. While some types of resource activity have been identified because they will inherently have a permanent impact on the land, a

regulation-making provision allows for additional activities to be listed as having permanent impacts. This includes establishing levels of temporary impact that when occurring cumulatively will have a permanent impact.

When development is in exceptional circumstances

Clause 15 defines exceptional circumstances to be either development prescribed in a regulation or development decided to be so in an exceptional circumstances decision.

Subdivision 3 Divisions about Acts and authorities under them

Planning Act, IDAS and development approval

Clause 16 provides a definition for these terms, that when referred to throughout the Act is the same, consistent with or a reference to the *Sustainable Planning Act 2009* and its provisions.

Resource Act and resource activity

Clause 17 defines the terms resource Act and resource activity that are used throughout the Act. These terms provide a singular reference throughout the Act to the various resource Acts affected by this Act and the activities that are authorised under them.

Resource authority

Clause 18 defines the term resource authority which is used throughout the Act.

Environmental authority

Clause 19 defines the term environmental authority which is used throughout the Act.

Source authority

Clause 20 provides for the term source authority to be used when referring to development approvals, environmental authorities and resource authorities collectively.

Division 3 References in provisions

Functions

Clause 21 defines how the term function can be interpreted when referred to in the Act.

References for applications and applicants

Clause 22 defines how references throughout the Act to an application and the applicant are to be interpreted.

Where the application reference relates to an application made under the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act), the reference is only to the preferred tenderer the Minister for Mines has decided to grant the resource authority to, under section 41 of the P&G Act.

To be clear, a reference to an applicant for the P&G Act is not a reference to an applicant under section 844 of that Act. The P&G Act provides for each person who submits a tender to be an applicant. However this Act only applies to the tenderer to whom the Mines Minister grants the authority to prospect under the P&G Act. This Act does not apply to the tender process itself.

References in decisions to the land

Clause 23 defines how a reference throughout the Act to about a decision and the land affected by that decision are to be interpreted.

References to source authorities

Clause 24 defines how a reference throughout the Act to a source authority is to be interpreted.

Chapter 2 Identifying strategic cropping land

Part 1 Maps, zones, criteria and areas

Division 1 Definitions

This part provides the definitions for terms relating to mapping used throughout this Part and the Act.

Trigger map

Clause 25 defines the term trigger map that is used throughout the Act. The purpose of the trigger map is to identify land that is potential SCL and must be validated or elected to be treated as SCL, prior to a development undergoing an assessment to determine its impacts on SCL and what conditions, if any, the CE may place on the development.

Zone map and zone

Clause 26 defines the terms zone map and zone that are used throughout the Act.

Five zones will be established upon commencement to determine the extent of this Act's application. SCL criteria for each zone, used for the validation process, will also be given effect.

Zonal criteria and zonal criteria-compliant land

Clause 27 defines the terms zonal criteria and zonal criteria-compliant that are used throughout the Act. Schedule 1 prescribes criteria for each zone that identify SCL in that zone.

Protection area map and protection area

Clause 28 defines the terms protection area map and protection area that are used throughout the Act. SCL within a protection area is afforded a

higher level of protection against development than land in the management area. Developments in a protection area that will have permanent impacts on the land will be prohibited unless exceptional circumstances can be demonstrated.

Management area

Clause 29 defines the term management area that is used throughout the Act.

Map generally

Clause 30 defines how the term map should be interpreted when the type of map has not been specified.

Division 2 Map amendments

Subdivision 1 Preliminary

What is a zonal amendment and a protection area amendment

Clause 31 defines the terms zonal amendment and a protection area amendment as they are used throughout this Part.

When a map amendment is minor

Clause 32 identifies when an amendment to the map will be considered minor and thereby only requires the approval of the chief executive and publishing on the department's website to be validly made.

Subdivision 2 Amendments by the chief executive

Minor amendments

Clause 33 provides how the chief executive must make minor amendments to the maps for the amendment to be valid and effected.

Trigger map amendments

Clause 34 allows the chief executive to amend the trigger map by adding or removing potential SCL.

The trigger map may only be amended where the chief executive is satisfied that the area added to the map is likely to have land that is highly suitable for cropping. Alternatively, the chief executive must be satisfied that the land to be removed is not expected to be suitable for cropping. Any amendments to the trigger map must be approved through a regulation before it takes affect.

Resources projects that had received their final approvals prior to the land becoming potential SCL, will not be captured by the change and may continue to operate under the conditions imposed on the development approval or resource authority when it was issued. Future projects and expansions, renewals and amendment of these existing permits on that land however, will need to address the requirements of this Act before the future approval is issued.

Where the map amendments include additional land as potential SCL, any existing resources applications may be required to satisfy the provisions of this Act including validating the land and an SCL assessment. These steps will be required despite the fact that when the development application was made, this Act did not apply. Resource developments that have not received their resource authority will be subject to the change and, irrespective of the progress of the project through the assessment process, will undergo an SCL assessment and be accordingly conditioned or prevented from being undertaken.

The development assessment framework under SPA, however, has existing provisions for managing these types of changes to the assessment requirements.

Development approvals and resource authorities for projects that elected to be assessed according to the trigger map and have subsequently been approved and conditioned on that basis will not be affected by the change in the trigger map. The approval or authority and any conditions imposed on it, remain in affect and unchanged by the mapping amendment. However after the change has taken effect, permit holders may apply to the administering authority to have the permit amended to remove the SCL conditions if the change in the trigger maps is to remove the potential SCL from the development footprint.

Subdivision 3 Zonal and protection area amendments

Power to amend by regulation

Clause 35 allows the Minister to make changes to extend or contract the boundaries or create new zones and protection areas. Where the Minister decides to make a new zone or area the amendment will not take effect until approved through a regulation.

A new protection area may be established within an existing zone or created simultaneously with the creation of a new zone.

Ministerial notice of proposed amendment

Clause 36 requires the Minister to advertise an intended change to a zone or protection areas and invite public submissions to the Minister within 21 days.

Ministerial decision on whether to amend

Clause 37 requires that, prior to a regulation being made for a new zone or protection area, the Minister must consider any public submissions received and the required criteria, including whether the land within the amendment area is likely to be highly suitable for cropping.

Division 3 Access to maps

Record-keeping obligations for maps

Clause 38 establishes the record keeping requirements of the chief executive in relation to maps.

Public access to maps and draft amendments

Clause 39 requires the chief executive to keep maps and draft maps published on the department's website and make them available to the public for inspection and purchase. The map has effect when made in the regulation, however will cease to have effect if, the regulation for the amendment is disallowed.

Part 2 Deciding what is strategic cropping land

This part outlines the process required to determine whether potential SCL on the trigger map is, in actual fact, SCL or not—the validation process. When determining whether land is SCL the chief executive must be satisfied that the land or parts of the land, demonstrate all eight of the zonal criteria. Where the land is in a management area, the chief executive must also determine whether the land demonstrates the required history of cropping.

Division 1 Application Stage

Subdivision 1 General provisions for making application

Who may apply

Clause 40 provides that an eligible person can submit a *validation application* for the land. The clause also establishes that the chief executive may make the *validation decision* for the application to recording in the decision register either SCL or non-SCL and that these are both *a final decisions*.

Further, an application is a prohibited application if a final decision has already been made for the land; or there is, in a protection area, a validation application already for the land; or in the management area a decision or application for cropping history exists for a particular property or a decision or application exists for zonal criteria for particular land.

Who is an eligible person

Clause 41 defines who is eligible to apply for a validation decision over the land.

As the land must be validated before a development occurs, the validation process may be undertaken by a person other than the land's owner and includes a person who has made an application under a resource Act.

Therefore this provision identifies the range of persons who may wish to or would be required to apply to have the land validated.

General application requirements

Clause 42 states the requirement for a validation application.

Subdivision 2 Applications relating to a protection area

Additional requirement for assessment against zonal criteria

Clause 43 states that a validation application in the protection area must also include an assessment of whether or not the land is zonal criteria compliant.

Subdivision 3 Applications relating to the management area

Additional requirements

Clause 44 provides that this subdivision applies to the management area.

Application must be property-based

Clause 45 states that the application must be made on a property basis.

What is a property

Clause 46 defines the term property, which is required for the validation process when determining whether the land has the required cropping history (the cropping history test). While the chief executive's validation decision will apply to the land identified in the application—variably a development area or tenure area or a land owner's property—the cropping history test is determined on a property basis, which may include land that does not form part of the application area.

The definition of property provides for different cropping enterprise configurations, where the enterprise's land may be jointly or separately

owned by, individuals, conglomerates or family companies, but all of the enterprise's owners are not registered owners of each land parcel that forms the enterprise property.

Further, the definition is blind to any physical features, such as a road or waterway that separate the property's land parcels. In determining the extent of the parcels of land that form the property, the definition should be interpreted to identify whether the parcels would be adjoining if the road or waterway was not located between the parcels.

References to the property in this part for application

Clause 47 provides in this part that a reference to a property is a reference to each of the properties the application is for.

Additional application requirements

Clause 48 establishes the requirements for a validation application in the management area. To provide a high level of flexibility for applicants, the two validation requirements in a management area—addressing the zonal criteria and the cropping history test—may be applied for separately (and in no specific order) or together. This provision caters for the different permutations requiring the application to address the zonal criteria, demonstrate the required history of cropping, or both.

When a property has the *required cropping history*

Clause 49 identifies what must be demonstrated before the chief executive may be satisfied that the cropping history test for a property has been met.

The cropping history test requires the property has had land within it cultivated at least 3 times between 1 January 1999 and 31 December 2010, or that perennial crops were established on the property or timber plantations existed on the property for a total collective period of 3 years.

The individual crops and the time period for perennial crops do not need to be grown consecutively. However the cropping history test will not be demonstrated where the three crops or perennial crops are grown simultaneously on different areas of the property. The following examples have been included for further clarity.

Example 1—A property had an established peach orchard at the commencement of the relevant period on 1 January 1999. After 2 years of

the required period, new owners purchased the property and replaced the orchards with sown pastures for grazing. The property was again sold in June 2009 and the new owners cultivated an area of the land and established corn stands. While the crops were not grown consecutively, and were not in the same sub-class of the cropping history test (perennial or season/cultivation crop), this property would satisfy the chief executive that the cropping history had been demonstrated (perennial crops over two years and another crop).

Example 2—a property is a mixed-grazing property, meaning that both cropping and grazing occur on different parts of the property, with the cropped areas split between three paddocks (P1, P2 and P3). During the summer season in year 1, P1 has an established corn crop, which has an annual cycle; P2 is growing the summer crop, sorghum; and P3 is fallow in preparation of a winter wheat crop. At the end of the annual cycle (two seasons), this property will have demonstrated that the property had been cropped twice—the summer (sorghum) and the winter crop (wheat) or the annual crop (corn) and either of the seasonal crops (sorghum or wheat). Another crop at any other time in the period will provide the property with the required cropping history.

Example 3—a resource development application and validation application have been submitted to the department, which includes an area that forms part of the property in Example 2. The application is for a part of the property which is used exclusively for grazing and therefore has never been cropped. Because P1, P2 and P3 have been regularly cropped as reflected in Example 2, the chief executive would be satisfied that the property has the required cropping history and the land covered by the resource application meets the cropping history test as it is part of the property.

Things that are not crops for required cropping history

Clause 50 establishes exceptions to the definition of cropping history. Uses for domestic purposes, such as a vegetable patch or a few fruit trees that have been established are not considered a crop for the purpose of demonstrating the required cropping history. Carbon sequestration forests, subject to a covenant that prevents the trees from being harvested are not considered crops.

Subdivision 4 Other provisions

Methodology for criteria assessment must comply with any prescribed guidelines

Clause 51 provides that an application assessment of whether land is zonal criteria compliant must comply with any statutory guideline prescribed under a regulation. The requirement does not apply if no such guideline is made under the regulation.

The clause also states for what the guideline must provide for.

Public access to application

Clause 52 requires the details of a SCL validation application to be published on the department's website. The purpose of this provision is to make validation applications accessible to the general public to enable them to make an informed submission. This allows for public scrutiny of the information to be considered by the chief executive in decision-making.

Division 2 Notice and submission stage

Application of div 2

Clause 53 provides the time period during which this division applies.

Notice to owners

Clause 54 requires the validation applicant to personally notify all of the owners that the validation application has been submitted and provide them with a copy of the application. Owners are defined in Schedule 2 Dictionary.

Public notice of application

Clause 55 establishes the public notification process that the validation applicant must comply with. The notice must be published in a newspaper that generally circulates in each of the local government areas that may be affected by the application. The notice must provide sufficient information

to allow an interested person to identify the land and review the application and decide whether to make a submission.

The notification requirement under this provision may be undertaken in conjunction with another required public notification provision for a resource authority application or associated with an environmental impact statement. The public notification requirement will only be satisfied where the joint notice addresses each of the requirements under this clause.

The notice must contain prescribed information related to making a submission.

Acceptance of submissions

Clause 56 provides for the chief executive to accept submissions made about a validation application.

Amending application

Clause 57 allows for an applicant to make significant amendments to their validation application only before it is publically notified and to make minor amendments at any stage prior to the application being decided by the chief executive.

Division 3 Decision Stage

Subdivision 1 Preliminary

Application of div 3

Clause 58 establishes that the decision stage does not commence until the public submission stage has been completed.

Subdivision 2 What has to be decided for a protection area

Application of sdiv 2

Clause 59 establishes that this subdivision only applies to land that is in a protection area.

Criteria decision

Clause 60 requires the chief executive to make a *criteria decision* about whether any of the land is zonal criteria compliant.

Validation decision if any of the land is zonal criteria compliant

Validation decision if any of the land is zonal criteria compliant

Clause 61 requires the chief executive, after determining whether areas of land are zonal criteria compliant, to only record the decision in the decision register if the decided land is larger than the areas specified.

What is the *minimum size*

Clause 62 provides the minimum area that must be identified for a validation decision about the SCL criteria for each of the five SCL zones. The minimum size thresholds will ensure that the areas on the validated land can be productively cropped using standard cropping practices.

Validation decision otherwise

Clause 63 provides that where zonal criteria complaint land does not meet the minimum size requirement for the zone, the chief executive must register a decision that the land is non-SCL.

Subdivision 3 What has to be decided for the management area

Application of sdiv 3

Clause 64 provides that the subdivision applies to validation decisions for land in the management area.

Decision if application only addresses required cropping history

Clause 65 applies if a cropping history application is for land in one or more properties and requires how a cropping history decision for each property must be recorded in the decision register.

The clause provides that certain validation decisions must be made in defined circumstances.

If it is decided that a property does not have a cropping history the whole property must be recorded on the decision register as non-SCL on the decision register.

If it is decided that a property has a cropping history and no criteria decision has previously been made for part of the property, only the cropping history decision is recorded on the decision register.

If it is decided that a property has a cropping history and a previous criteria decision is that a part of the property is zonal criteria compliant, those areas of the property are to be recorded as SCL on the decision register.

If it is decided that a property has a cropping history and a previous criteria decision is that a part of the property is *not* zonal criteria compliant, those areas of the property are to be recorded as non-SCL on the decision register.

Decision if application only addresses zonal criteria

Clause 66 applies for a criteria application related only to zonal criteria on any part of the property.

If an applicant is only eligible to make an application for part of the property (for example a holder of a resource tenure that covers only a part of the property) the criteria decision can only be made for that part of the property.

If a previous cropping history decision has not been made, then the criteria decision must be recorded on the decision register.

If the criteria decision is that none of the property is zonal criteria compliant then the whole property is to be recorded in the decision register as non-SCL.

If a previous cropping history decision has confirmed that the property has a cropping history, any area that is decided to be zonal criteria compliant and has the required minimum area must be recorded as SCL and any areas not meeting both those requirements together are to be recorded as non-SCL.

Both matters addressed—threshold cropping history decision

Clause 67 requires that if an application over an area of land is for a decision about cropping history and zonal criteria, then the chief executive must make the cropping history decision and if that decision is that the property does not have a cropping history the property is to be recorded as non-SCL on the decision register.

Both matters addressed – deciding application if cropping history decided

Clause 68 provides that if; under section 67 the decision is that the property has the required cropping history, the chief executive must make the criteria decision.

If an applicant is only eligible to make an application for part of the property (for example a holder of a resource tenure that covers only a part of the property) the criteria decision can only be made for that part of the property.

Any area that is decided to be zonal criteria compliant and has the required minimum area must be recorded as SCL and any areas not meeting both those requirements together are to be recorded as non-SCL on the decision register.

Subdivision 4 Making validation decision

Criteria for decision

Clause 69 requires that, when making the validation decision, the chief executive must consider any submissions about the application that have been accepted and, the application is, or includes, a criteria application, the criteria guidelines.

Decision period

Clause 70 provides for a period in which the decision must be made.

Notice and taking effect of decision

Clause 71 requires the chief executive to notify the applicant and any other identified eligible person of the validation decision.

Each eligible person has the right to appeal the chief executive's decision. The validation decision does not take effect until the appeal period has ended or at the conclusion of an appeal against the decision.

Effect of validation decision

Clause 72 provides that once a validation decision has taken effect it attaches to the land and is binding on all eligible persons and their successors.

A future validation decision cannot be made for the land, once the decision takes effect. However in a management area a further application and decision may be made where either the cropping history test or the zonal criteria were not addressed and decided in an earlier decision.

Division 4 Appeals against validation decisions

Appeal to Planning and Environment Court

Clause 73 provides that an eligible person who has received an information notice about a decision may appeal that decision to the Planning and Environment Court.

Part 3 Land registry records for particular validation decisions

Record required for SCL and decided non-SCL

Clause 74 provides that after the chief executive's decision is recorded in the decision register, a record of that decision is to be kept so that a search of the land registry will show the record. Keeping of the record in this way allows persons with an interest in the land to be aware of the decision about SCL and decided non-SCL.

Correcting, updating or removing registry record (SCL)

Clause 75 provides for the chief executive to give a notice to the land registrar seeking to amend, update or remove the registry record. The chief executive may utilise this provision to correct a minor error or to amend a record where development on the land has had a permanent impact and is no longer considered to be SCL. A record cannot be removed unless the chief executive is satisfied that the land has been subject to a permanent impact.

Chapter 3 Development on strategic cropping land or potential strategic cropping land

Part 1 When development is permitted

Development with a permanent impact

Clause 76 makes it an offence for a person to carry out development on SCL or potential SCL that has a permanent impact on the land. The higher-level indictable offence provides for permanent impacts that occur

as a result of a wilful action. The maximum penalties and the terms or imprisonment reflect the gravity of the offence.

The effect of a wilful offence leading to the permanent destruction of the land for cropping justifies the proposed jail-term should a court choose to impose it. Strategic cropping land is a finite and highly limited soil resource that cannot be recreated once it is lost. The lesser offence includes actions of gross negligence as the effects of these actions will result in the same loss and impact to the arable soil, as any offence arising from a reckless or intentional action.

The proposed periods of imprisonment will provide an additional deterrent for potential offenders, particularly where the large profits able to be derived from some forms of unlawful development mean that a monetary penalty is not sufficient to prevent the offender's conduct. In the envisaged cases, the private economic gains from an unlawful action which permanently impacts on SCL are expected to far outweigh any fine that may be imposed. However the personal and enduring affect of a custodial sentence, which may be recorded as a criminal conviction, is anticipated to be an effective deterrent to potential offending actions.

Development with a temporary impact

Clause 77 makes it an offence to carry out development on SCL or potential SCL that has a temporary impact on the land. The higher-level penalties provide for temporary impacts that occur as a result of a wilful action. In addition to the significant fines that have been provided for these offences, an offender may be given a restoration notice, under clause 153, that will require that land to be restored to its pre-development condition.

Exemptions

Clause 78 provides exemptions to the offences in sections 76 and 77, where the impacts of a development have been permitted through a development approval or resource authority.

Where a change of the trigger map or a voluntary validation of the land changes the status of the land to SCL or potential SCL (when it was previously recorded as neither), a person will not be committing an offence where they are carrying out the development in accordance with a valid approval or authority.

Emergency activity defence

Clause 79 provides a defence to the offences in sections 76 and 77, for activities that are undertaken on the SCL or potential SCL in response to an emergency situation. The defendant is still required to reasonably limit the impacts of the emergency activities on the land and restore the land (where possible), after the emergency activity has been completed.

Failing to take reasonable measures to avoid any impacts to the SCL or potential SCL or ensure the activities impacts are restorable and then restored at the completion of the works, may still constitute an offence.

Part 2 State planning policy and codes

Division 1 Policies and codes for IDAS

State planning policy for SCL

Clause 80 mandates a State planning policy for SCL under the *Sustainable Planning Act 2009* (Planning Act) and provides for the State planning policy to contain applicable codes under IDAS for SCL which address the Act's purposes and how the Act achieves them.

Division 2 Standard conditions code for resource activities

Standard conditions code

Clause 81 provides for a code which contains standard conditions for resource development on SCL or potential SCL to be made by regulation.

The code will not permit resource development which has a permanent impact on SCL or potential SCL within a protection area. Any activities that can not be undertaken in accordance with the standard code must be assessed and conditioned under Part 4 of this Chapter before they can be undertaken.

Part 3 Development approvals

Division 1 Preliminary

Application of pt 3

Clause 82 provides for this part to apply to developments on SCL or potential SCL that will be assessed under IDAS in accordance with the Planning Act.

Division 2 Requirements for development applications

Operation of div 2

Clause 83 clarifies that division 2 imposes requirements for making development applications and specifies that a development application will not be considered properly made for the purpose of the Planning Act if the requirements of the Planning Act are not met.

Requirement that land be, or elected to be treated as, SCL

Clause 84 requires an applicant to provide evidence that the land has been validated under Chapter 2, Part 2 of the Act or elect that for the purpose of the SCL assessment, the land shown on the trigger map as potential SCL is taken to be SCL.

Evidence of validation is provided via copy of a relevant information notice about a validation decision or a registry record (SCL).

The clause requires that in deciding an application where the applicant has elected to adopt the trigger map, the chief executive must assess the impact of the development on the land as if the potential SCL had been validated as being SCL. This does not prevent the land from being validated in the future, by the applicant or another eligible person.

The affect of the election is only relevant to that applicant. Subsequent development application over the land will still be required to provide

evidence that the land has been validated or elect to be assessed against the trigger map.

Location requirements

Clause 85 requires an applicant to provide information which clearly indicates the location of all SCL or potential SCL on the site, the location of the proposed development on the SCL or potential SCL and the footprint of the proposed development.

This information is required to enable the chief executive for the SCL assessment to determine whether the development has avoided or minimised the impacts of the development to the full extent that is reasonably practicable. This information may also be considered by the chief executive to determine appropriate conditions to be imposed, should the development be approved.

Development in exceptional circumstances

Clause 86 requires an applicant for development in exceptional circumstances to provide evidence that the development is of a type prescribed by regulation to be development in exceptional circumstances, or a copy of the relevant exceptional circumstances decision.

Report

Clause 87 requires an applicant to provide a report which addresses the impact of the proposed development on SCL or potential SCL and identifies any constraints on the configuration of the development or its operation which have occurred as a result of the need to minimise impacts on the SCL or potential SCL.

In common with section 85, this information is required by the chief executive for the SCL assessment to determine whether the development has avoided or minimised the impacts of the development to the full extent that is reasonably practicable. This information may also be considered by the chief executive to determine appropriate conditions to be imposed—such as identifying areas within the application areas where activities on the SCL or potential SCL are not allowed or are restricted—should the development be approved.

Prescribed matters

Clause 88 specifies that the application must include any information prescribed under regulation.

Division 3 Miscellaneous provisions

Development must comply with mitigation requirement

Clause 89 applies to development that if approved will have a permanent impact on the land. This clause specifies that any requirement for mitigation imposed under Chapter 5 is taken to be a condition of the development approval.

The effect of this provision allows enforcement action to be taken against the holder of the development approval for a breach of the development approval, where the holder has failed to fulfil the mitigation requirement.

Part 4 Strategic cropping land protection assessment for environmental and resource authorities

Division 1 Preliminary

Application and operation of pt 4

Clause 90 specifies that Part 4 applies to resource activities on SCL or potential SCL. This clause also provides for the chief executive to decide the impact of the resource activity and to determine whether conditions are imposed on either or both of the environmental authority or resource authority. The provision applies irrespective of whether the land changes from not being SCL or potential SCL, to being SCL or potential SCL.

Division 2 Restrictions of environmental authority being issued

Application of div 2

Clause 91 provides that the restrictions on the issue of environmental authorities under this division do not apply if the resource activity complies with a standard conditions code under clause 81.

SCL protection decision required before environmental authority can be issued

Clause 92 requires that an environmental authority for a resource activity can not be issued until an SCL protection decision has been made under section 98 for resource activity.

Restriction on issuing authority for identified permanently impacted land in protection area

Clause 93 specifies that an environmental authority can only be issued for a resource activity which has permanent impacts in a protection area if it is in exceptional circumstances in accordance with Chapter 4.

Division 3 Applying for and obtaining SCL protection decision

Subdivision 1 Assessment applications

Who may apply

Clause 94 specifies that a person who has applied or is entitled to apply for a resource authority or an environmental authority may apply for a SCL protection decision for the resource activity. This clause also sets out circumstances in which a person can make an assessment application for a resource activity as if an earlier decision had not been made. These circumstances include when the earlier decision was made, the resource activity was not in exceptional circumstances but has subsequently become development in exceptional circumstances.

General requirements

Clause 95 sets out the minimum requirements for an assessment application including the use of an approved form, a description of the land including the real property decision, a description of the resource activity proposed and payment of the appropriate fee prescribed by regulation.

Additional requirements for making a development application also apply

Clause 96 provides that the requirements under Part 3, division 2 (relating to IDAS development applications made under the Planning Act) also apply to applications relating to resource applications. In addition this clause also specifies that for the purpose of resource applications, the footprint of the development also includes infrastructure relating to the resource activity.

Subdivision 2 Amending application

Amending application

Clause 97 enables an applicant to make permitted amendments to their application. Permitted amendments may be either minor amendments or other amendments if the chief executive is satisfied that the amendment would not adversely affect the chief executives ability to decide the application. Permitted amendments can only be made before the application is decided and the chief executive must be notified of the amendment. Other than permitted amendments, no other amendments may be made to the application.

Subdivision 3 Deciding application

What must be decided

Clause 98 sets out the requirements for an SCL protection decision. Specifically the SCL protection decision must include a decision about the extent of the permanent and temporary impacts resulting from the resource activity and a decision regarding imposing conditions. In the event that

SCL protection conditions are to be imposed, the decision must specify to which of the authorities conditions will attach.

SCL protection conditions generally

Clause 99 sets the broad parameters for SCL protection conditions which may be imposed on either the environmental authority or the resource authority. The SCL protection conditions may limit the carrying out of the resource activity, direct installation and operation of particular plant and equipment and require payment of security to ensure compliance with any SCL conditions imposed or payment of any expenses associated with compliance action.

In making the SCL assessment decision and determining appropriate conditions for the resource activity, the chief executive may identify areas of SCL or potential SCL where, to protect the SCL resource, activities can not be undertaken or only identified activities that will have a temporary impact can be undertaken, on that land.

In these circumstances, the chief executive can impose a condition on the resource activity's authority that all or identified activities are prohibited on the identified land. Other conditions may be imposed that allow activities on the identified areas, but only those activities, whether specified or not, that would only have a temporary impact on the land.

A condition may also be imposed which directs the authority holder to operate in a specified fashion, undertake a required action or refrain from doing something, where the chief executive considers the direction necessary or desirable to achieve the Act's purpose. For example, the chief executive may direct the holder of coal seam gas authority to conduct direction drilling from an area of the land that is not SCL or potential SCL.

The chief executive may also require a financial assurance from the authority holder, to be held in the event that that the development does not comply with a condition or to cover the department's expenses in relation to a compliance activity. The chief executive may choose to require a financial assurance in conjunction with a restoration condition imposed for any temporary impacts that result from the development. Where the authority holder fails to fully restore the land to its pre-development condition, the department may draw on the financial assurance to undertake the remaining restoration works.

Criteria for decision

Clause 100 sets out the criteria the chief executive must consider in making an SCL protection decision. The chief executive must consider the extent and effect of the resource activities to determine whether the impacts are likely to be temporary or permanent. The chief executive must also consider whether the development has been configured to avoid and minimise the resources activity's impacts to the greatest extent possible.

Information notice about assessment decision

Clause 101 requires the chief executive to provide the applicant with assessment certificate for the SCL protection decision and specifies matters which must be stated in the assessment certificate.

SCL protection conditions apply to issued authority

Clause 102 relates to SCL protection conditions imposed on either or both of the proposed authorities. In particular this clause specifies that SCL protection conditions are taken to be conditions of the imposed authority and where inconsistencies arise, the SCL protection condition prevails to the extent of any inconsistency.

Division 4 SCL protection conditions imposed under Act

Condition requiring compliance with mitigation requirement

Clause 103 provides that where an approved resource activity has a permanent impact on the land, the mitigation requirement under Chapter 5 is taken to be a condition of the resource authority.

Condition empowering financial assurance changes

Clause 104 provides for the chief executive to change a financial assurance condition at anytime, provided the chief executive gives the authority holder at least 20 business days to make submissions regarding the proposed change and considers any statements the authority holder provides within the notice period.

Condition empowering replenishment of financial assurance

Clause 105 provides for the chief executive to issue a notice requiring the holder of a current authority to replenish the financial assurance where part of the assurance has been used. The chief executive must give the authority holder at least 20 business days to comply with the notice.

Division 5 Other provisions about financial assurance

General provisions

Clause 106 provides generally for how the state must handle a financial assurance paid under an authority condition. The State may use the financial assurance and any interest that it accrues, to undertake any of the activities provided for in clause 99(1)(d). Where it is deemed necessary, the State may retain all or part of the financial assurance until any claims against the assurance have been settled or the chief executive is satisfied not claim is likely to be made.

New holder must comply with financial assurance condition

Clause 107 requires a person who has become the holder of an authority that has a financial assurance condition, to give a financial assurance before carrying out any activities under the authority.

Division 6 Appeals against decisions under part

Right of appeal to Land Court

Clause 108 provides for holders of a resource authority who have been given an information notice in relation to an SCL assessment decision, may appeal the decision to the Land Court.

Land Court mediation

Clause 109 allows any party to an appeal in the Land Court (under s108) may ask for mediation.

Nature of appeal

Clause 110 provides for the appeal to be heard anew

Land Court's powers for appeal

Clause 111 provides that the Land Court has the same powers as the chief executive when hearing an appeal against a decision made under this Part.

Decision for appeal

Clause 112 provides for the Land Court to make orders and directions in relation to the appeal decision.

Chapter 4 Exceptional Circumstances

Where development in a protection area is likely to have permanent impacts on SCL or potential SCL, it will not be permitted to proceed unless exceptional circumstances under this Chapter can be demonstrated.

A decision that a development is exceptional circumstances identifies that the development is more significant than protecting the SCL resource. The two exceptional circumstances criteria—no alternative site and significant community benefit—provided in Part 2—have been established to ensure that only developments that present a scarce and overwhelmingly significant opportunity that benefit the State, will be able to proceed.

Part 1 Prescribed exceptional circumstances

Power to prescribe a type of development

Clause 113 provides for the Minister to make a regulation to identify classes of development that are considered to provide an overwhelmingly significant benefit to Queensland.

It is not intended that developments that would not otherwise meet the exceptional circumstances criteria, are to be prescribed by regulation under this provision. However, where certain developments, are identified that may have some intrinsic feature that provides a significant benefit to the community and the State, these developments can be prescribed as exceptional circumstances.

Recognising a category of development with exceptional circumstances does not provide that class of development with an exemption from the Act. The only effect of an exceptional circumstances decision is that the development falling within a category prescribed by regulation will be allowed to proceed in a protection area, where that the development may have permanent impacts on SCL or potential SCL.

Developments of the type listed in the regulation will still be assessed against Chapter 3 of the Act and will be required to avoid and minimise the any impacts on SCL to the greatest extent possible. Where permanent impacts are unavoidable, mitigation arrangements will need to be made under Chapter 5 of the Act where the development permanently impacts SCL.

The Minister cannot make a regulation for resource activities under the *Mineral Resources Act 1989*, *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004* to be considered exceptional circumstance developments. This does not prevent a resource development proponent from applying for exceptional circumstances for their particular development under clause 115.

Public notice of proposal and submissions

Clause 114 provides for the Minister to publish a notice about the intention to make a regulation for a class of development to be an exceptional circumstance development. The notice must be circulated throughout the State and invite the public to make submissions about the proposal. The Minister must provide a submission period of at least 21 days, before forming an opinion about whether or not to make the regulation.

Part 2 Decided exceptional circumstances

Division 1 Application stage

Who may apply

Clause 115 clarifies that exceptional circumstances applications are only required for developments in a protection area that will or are likely to have a permanent impact on SCL or potential SCL.

The section provides for any person who can apply for a development approval or a resource authority to apply for exceptional circumstances.

Who must decide exceptional circumstances application

Clause 116 provides that the Coordinator-General and the Minister can decide exceptional circumstance applications.

The Coordinator-General will decide any applications that relate to developments seeking to be, or which have been declared a significant project under Part 4 of the *State Development and Public Works Organisation Act 1971*. Once an application has been made to the Coordinator-General for a declaration, an application for exceptional circumstances for that project will be decided by the Coordinator-General in accordance with this Chapter.

The Minister will decide all other exceptional circumstance applications, including for example, where an application is made for exceptional circumstances prior to an application for a significant project declaration being made under the *State Development and Public Works Organisation Act 1971*. In this circumstance, the Minister will be the decision-maker for the application where the Minister has yet to make a decision, but a significant project declaration application is made to the Coordinator-General.

Additionally, where the Coordinator-General has made a decision about a declaration application under Part 4 of the *State Development and Public Works Organisation Act 1971* and the decision is that the development is not a significant project, the Minister will be the decision-maker for any

subsequent exceptional circumstance application that may be made by the development proponent.

Requirements for application

Clause 117 requires applications for exceptional circumstances to provide a description of the development and its footprint in relation to the SCL or potential SCL on the land; address the exceptional circumstances criteria; and pay the prescribed fee.

What is a significant community benefit

Clause 118 defines the term significant community benefit, as used throughout this Act.

A significant community benefit, in carrying out the development on the land, means that the development must be represent both an overwhelmingly significant opportunity of benefit to the State and the benefit of carrying out the development outweighs the State's interest in protecting the land as SCL.

Public access to application

Clause 119 provides that a description of the exceptional circumstances application must be made available to the public on the department's website. The application document must also be made available for viewing and purchase upon request.

The information must remain available until the application is decided, withdrawn or lapses.

Division 2 Notice and submission stage

Application of div 2

Clause 120 provides that Division 2, relating to the notice and submission stages of the application, do not take effect until 14 days have passed since an application for exceptional circumstances was made or, within 14 days after the after the applicant complies with an application requisition or is given a notice that no application requisition will be given.

Where an acknowledgment has been received the applicant may continue with the public notification process in Division 2. Otherwise, if an application requisition has been issued, the applicant must not publish the notice under Division 2 until the requisition has been complied with.

Public notice of application

Clause 121 requires the exceptional circumstances applicant to publish a notice within the surrounding local government areas and a newspaper that has State-wide circulation.

The purpose of the notice is to advise the public of the exceptional circumstances application and provide sufficient information for an interested person to decide whether or not to make a submission on the application. The notice does not need to contain a comprehensive or technical description of the site and development proposal. Instead, the notice should provide general information and direct a person to the department's website or a service centre for further information, if it is sought.

Interested persons will have at least 21 days to make a submission on the application.

Acceptance of submissions

Clause 122 provides for the Coordinator-General and the chief executive—where the Minister is the decision maker—to accept properly made submissions that are received with in the submission period.

Amending application

Clause 123 provides for the applicant to amend an exceptional circumstances application prior to the public notice being published. Minor amendments and other amendments the decision-maker is satisfied will not inhibit an interested person from making a submission may be made at any time prior to the application being decided.

Division 3 Decision stage

Application of div 3

Clause 124 provides that Division 3 applies at the end of the submission stage for an exceptional circumstances application that has not been withdrawn or refused.

Chief executive's report if required decider is the Minister

Clause 125 requires the chief executive to prepare a report on the submissions received under clause 122. The report is to be used by the Minister to decide whether a project demonstrates exceptional circumstances.

While the requirements of the report are not prescribed, the chief executive should ensure the report adequately and accurately reflects the content of the submissions received. The report will assist the Minister to form an opinion in relation to the community's view on the application.

Deciding application

Clause 126 provides that the Minister cannot make a decision on the application until the chief executive has provided the Minister with a copy of the submission report.

The decider—whether the Minister or the Coordinator-General—can decide that a development demonstrates exceptional circumstances only where it meets the exceptional circumstances criteria. To meet the criteria, the development must demonstrate that there is no alternative site where the development could be reasonably located and the development has a significant community benefit.

Sole criterion for deciding no alternative site

Clause 127 provides criteria for the decision-maker to consider in determining whether there is another site within Queensland where the development could be undertaken. These criteria are exclusive. The decision-maker can not consider any matters that are not identified in this provision.

In deciding whether there is an alternative site for a resource development, the decision-maker must consider the availability of the resource at the State-wide level. Therefore, if the resource can be located elsewhere in the State, the decision-maker must decide that the "no alternative site" criteria can not be met and therefore exceptional circumstances do not exist.

For the purpose of the no alternative site criteria, a reference to a resource must be interpreted blind to any distinctions between classification, grade or quality of the resource to be extracted or obtained through the development. For example, if the application relates to a resource development seeking a mining lease in a protection area and the development is seeking to extract coal, the decision-maker must turn their mind to alternative coal deposits across the State, irrespective of whether those deposits harbour thermal or coking coal.

However, a proposed alternative site that, due to a legal restriction could not be developed, such as a mineral deposit within a national park, will not be considered by the decision-maker.

Clause 127 also provides a number of factors that are to be disregarded by the decision-maker. Primary among these is the ownership of the alternative site and whether or not the applicant would be able to obtain tenure or a resource authority for the proposed alternative site—for example, where an alternative site has been identified for a coal seam gas project, but that site is already subject to a permit, whether held by the applicant or another person. As the resource could legally be obtained from this site, it will remain a viable alternative for the no alternative site criteria and, consequently exceptional circumstances would not be given for the development.

For developments requiring an approval under IDAS, an alternative site is one where the development can reasonably be carried out. If the development will provide a service to an identified community or locale, the decision-maker must consider alternative sites within the context of the community or locale the development will service. For example, if the proposed development is a new school to service a rural community, alternative site must be within a reasonable distance of that community. Additionally, where the development is for a proposed extension to an airport, alternative sites will be limited to the land adjoining the airport.

Sole criterion for deciding significant community benefit

Clause 128 provides criteria for the decision-maker to consider in determining whether the development will have a significant community benefit if it was approved for the site. These criteria are exclusive. The decision-maker can not consider any matters that are not identified in this provision.

For the decision-maker to decide that the development has a significant community benefit, the development must demonstrate that it:

- provides a public benefit
- benefits the State; and
- would result in significant adverse social, environmental and economic impacts to the State if the development does not proceed.

While the development must demonstrate public benefits, it may also have a private or personal benefit for the developer or investors. This will not disqualify the project from having a significant community benefit, provided the public benefits far outweigh (in relative terms) the private benefits. Similarly, a project that services a community may provide a statewide benefit where it alleviates the pressure on those services in the surrounding communities. An example would be where the development proposes to build a hospital in a rural community. While someone living in Brisbane, is unlikely to rely on the services provided by the new hospital, it may relieve the pressure on surrounding hospitals and major city hospitals and is therefore providing a State benefit.

While significantly adverse economic impacts arising from the development not proceeding are a valid consideration, the decision-maker must not decide the significance of the community benefits solely on economic considerations and particularly the economic benefits that the State may derive from the development, such as through royalties for resource activities or land taxes that may be collected by the State.

Notice and taking effect of a decision

Clause 129 requires the decision-maker to give an applicant a notice of the exceptional circumstances decision as soon as practicable after the decision is made. Where the decision is that the development does not demonstrate exceptional circumstances, the applicant must also be given an information notice with reasons for the decision and advising the applicant of their appeal rights available through the Planning and Environment Court.

Where a project has demonstrated exceptional circumstances, it must obtain the necessary development approvals or resource authority. The impacts of the development on the SCL and potential SCL will be assessed through the approval processes, to ensure the development still avoids and minimises the impacts to the greatest extent possible of the development on any SCL and will be conditioned accordingly.

Division 4 Appeals against exceptional circumstances decision

Appeal to Planning and Environment Court

Clause 130 provides for the applicant to appeal the exceptional circumstances decision to the Planning and Environment Court.

Chapter 5 Mitigation

Part 1 Preliminary

What is Mitigation

Clause 131 defines the term mitigation to be either a payment to the mitigation fund or a mitigation deed reflecting the mitigation value of the land permanently impacted by the development.

The development approval or resource authority holder may choose to mitigate the development using both methods. Where this is the case the total mitigation must not be less than the mitigation value.

What is the mitigation value of identified permanently impacted land

Clause 132 defines the term mitigation value, which is the dollar value, determined by the total area permanently impacted by the development and

the mitigation rate prescribed in the regulation. The mitigation value is reflective of the lost productive capacity of the land, arising from the permanent impacts.

The prescribed mitigation rates relate to the market value of arable (irrigated and non-irrigated) land within identified mitigation zones. These zones largely align with the five SCL zones; however, there are additional sub-zones for the Western Downs and Queensland Coastal zones.

What are mitigation measures

Clause 133 defines a mitigation measure to be an activity that is undertaken to address the loss of productive capacity of permanently impacted SCL or potential SCL.

A mitigation measure could include research and development into cropping systems, techniques and methods or other activities that address the mitigation criteria in clause 135.

What is a mitigation deed

Clause 134 defines a mitigation deed as an undertaking between the chief executive and the development approval or resource authority holder, for the completion of mitigation measures aimed at addressing the lost productive capacity of the SCL arising from the permanent impacts of the development.

What are the *mitigation criteria*

Clause 135 lists the mitigation criteria, which must be addressed before the chief executive can enter into a mitigation deed or approve expenditure from the mitigation fund. The mitigation must satisfy all of the mitigation criteria.

There are six general criteria that must be achieved by a mitigation measure. A mitigation measure must:

7. aim to increase the productivity of cropping in the State; and
8. provide a public, rather than a private, benefit; and
9. aim to provide an enduring effect; and
10. be quantifiable and able to be independently valued; and

11. benefit the largest possible number of cropping agribusinesses; and

12. if a cropping activity or system existed for identified permanently impacted land to which the measures relate, provide a benefit to that type of activity or system in the relevant local area.

A contribution to a cropping activity or system may be achieved through research and development activities.

When determining the local area that was impacted by the lost SCL resource arising from the development, the chief executive should consider the local government area boundaries, catchment and sub-catchments areas and the operational area of the regional natural resource management (NRM) groups within the community. The regional NRM groups are bodies recognised by the Government, which organise on-ground works and community NRM events.

Part 2 Mitigation for identified permanently impacted land

Division 1 Mitigation requirement

Application of div 1

Clause 136 provides that Division 1 applies to development approval and resource authority holders where all or part of the land subject to the development footprint will be permanently impacted by the development.

Prohibition on carrying out development without prior mitigation

Clause 137 requires the development approval and resource authority holder to fulfil the mitigation requirement, by entering a mitigation deed or making a payment to the mitigation fund, prior to commencing the development on SCL or potential SCL.

The provision establishes offences where this requirement is not complied with.

Division 2 Mitigation deeds

Deed requirements

Clause 138 establishes the requirements for a mitigation deed. In addition to addressing the mitigation criteria established in Clause 135, a mitigation deed must also comply with the mitigation and productivity principles in Clause 11.

A mitigation deed can not include an activity that is or could be a condition of the development approval or resource authority. For example, a mitigation deed can not be entered for activities that are designed to restore or rehabilitate the land or surrounding SCL. These activities are an ordinary requirement of an approval or authority for developments that impact the land and will not address the lost productive capacity of the SCL resource, as required by the Act.

Entry into mitigation deed by the chief executive

Clause 139 requires the chief executive to seek advice from the Community Advisory Group (CAG) established under Part 4, about the proposed mitigation deed. The CAG's advice must be sought prior to the chief executive executing the deed.

Mitigation deed binds holder's successors

Clause 140 provides that a mitigation deed binds successors to the development approval or resource authority holder who is a party to the mitigation deed. It also binds successors for the area of the source authority. For example, where a resource authority has been issued and the parent company which holds the authority restructures, transferring the rights under the authority between two subsidiary companies.

Part 3 Strategic cropping land mitigation fund

Establishment

Clause 141 establishes the SCL mitigation fund.

Purpose and administration

Clause 142 establishes the purpose of the mitigation fund and provides for the financial administration of the fund. The mitigation fund collects mitigation payments made by development proponents under clause 131, which can be amalgamated and allocated to fund mitigation measures such as research, development, extension or infrastructure projects that will benefit the productive capacity of the cropping activity or system or the locality.

Payments from fund

Clause 143 provides for the chief executive to approve amounts to be paid from the mitigation fund, where the CAG have been consulted and the measures proposed to be funded meet the mitigation criteria and required principles of the Act.

Individual payments into the mitigation fund can be pooled to fund larger, more strategic mitigation measures. The chief executive with advice from the CAG, can identify projects, such as an enduring research program, that would require more funding than the amount received from the mitigation value of a single project. In these circumstances, the chief executive may allocate funds that have been received under clause 131 from separate developments, which address the individual projects' impacts in the same locality or to similar cropping activities or systems.

The chief executive may also approve payments for the fund, without consulting the CAG, where those payments are for an expense incurred by the chief executive or a member of the CAG, in performing their functions in the Act. CAG expenses would include payment of reasonable travel, accommodation and similar expenses that the members will incur when travelling for meetings or conducting CAG business.

Reporting requirement for mitigation measures

Clause 144 requires the recipient of a payment from the mitigation fund to provide periodic reports to the chief executive on the progress of the mitigation measures and the related expenditure of the allocated funds.

Part 4 Community advisory group

Establishment

Clause 145 requires the chief executive to establish community advisory groups. The chief executive may elect to establish a single group to consider mitigation deeds and fund payments, or establish multiple groups that represent different areas where cropping is undertaken. The areas for the community advisory groups may, but need not, align with the local areas identified by the chief executive under clause 135.

Functions

Clause 146 establishes that the functions of advisory groups are to advise the chief executive about mitigation measures under mitigation deeds or payments from the mitigation fund.

Membership

Clause 147 provides for the chief executive to appoint a chairperson and other members to a community advisory group.

Part 5 Miscellaneous provisions

Record of and access to mitigation measures

Clause 148 requires the chief executive to keep a record of all mitigation measures under a mitigation deed or funded from the mitigation fund to be published on the department's website.

Reports submitted by deed holders and recipients of a payment from the mitigation fund, under clauses 138 and 144 respectively, must also be made available on the department's website.

Mitigation guidelines

Clause 149 provides for the chief executive to make guidelines about a range of mitigation matters, including the practices of the community advisory group, how the mitigation requirements may be met and how funding from the mitigation fund relates and may contribute to other funding programs.

Where guidelines are developed for the purpose of this Chapter, they must be made available on the department's website.

Chapter 6 Power to require compliance

Part 1 Stop work notices

Power to give stop work notice

Clause 150 provides for an authorised person to give a person a stop work notice if the authorised person reasonably believes the person has committed, is committing, or is involved in an activity that is likely to result in the commission of an SCL offence. The stop work notice requires the recipient to stop committing the suspected offence or avoid the likely commission of the offence.

Stop work notices will be applied to suspected offences to ensure that further impacts, whether permanent or temporary, are not inflicted on the SCL or potential SCL while the department undertakes a more comprehensive investigation of the matter.

Requirements for giving stop work notice

Clause 151 provides the requirements for the contents of a stop work notice.

The notice may be given orally where it is not practical to give a written notice. However where the notice is given orally, written confirmation must be provided as soon as practicable. This circumstance is likely to occur where the authorised person happens across an unauthorised activity on SCL. The authorised person may approach the suspected offender and require that person to stop the activity. As soon as possible afterwards, the authorised person must prepare a written notice and issue that to the person.

Offence to contravene stop work notice

Clause 152 makes it an offence for a person issued with a stop work notice not to comply with it without a reasonable excuse. Due to the irreversible nature of impacts that may result and therefore the gravity of the offence, this provision provides for significant maximum penalties and a possible term of imprisonment. The maximum penalty for a wilful offence is 4,165 penalty units or 5 years imprisonment. Offences that are not wilful will face a maximum penalty of 3,000 penalty units.

The provision also provides for the stop work notice to direct the recipient on actions that are required for the person to comply with the notice.

The offences have been established to deter potential offenders from undertaking unlawful or unauthorised activities that have an impact on SCL.

To protect SCL, which is a finite resource, a stop work notice may be issued as an interim measure while a more comprehensive investigation is completed.

Part 2 Restoration notices

Division 1 General provisions

Power to give restoration notice

Clause 153 provides for an authorised person to give a person a restoration notice where the authorised person reasonably believes that the person has committed, is committing or is involved in an activity that is likely to result

in an SCL offence. A restoration notice can only be given where the authorised person believes that the impacts arising from the activity are capable of being rectified.

The authorised person may state on the notice specific actions that must be undertaken to restore the land and provide for a time or interval when the authorised person will return to monitor compliance with the notice.

Requirements for giving restoration notice

Clause 154 states the requirements for a restoration notice, including the period within which the restoration works must be completed.

Offence to contravene restoration notice

Clause 155 makes it an offence for a person issued with a restoration notice to contravene the notice without a reasonable excuse. The maximum penalty for this offence is 3,000 penalty units.

Land registry record of restoration notice

Clause 156 provides for the chief executive to request the land registrar to keep a record of the restoration notice in the land registry to ensure that a person making a search of the registry will be aware that a restoration notice has been issued over that parcel of land.

Division 2 Transfers of land the subject of a restoration notice

Application of div 2

Clause 157 provides that the division applies to land transfer transactions, where the land is subject to a restoration notice and will be enforceable against the transferee (such as a new owner of the land) and any of their successors.

Transferee becomes a recipient as well

Clause 158 provides that the recipient of the restoration notice and any person who subsequently obtains an interest in the land will be held jointly and severally responsible.

Where the department undertakes restorative measures, or completes a partially restored site, as a result of a failure by the recipient or their transferee to complete the restoration work, the chief executive may make a claim against either or both the recipient and the transferee, to recover the costs and expenses incurred by the department in doing the work. However a previous owner of the land will not be held liable, criminally or otherwise, for a contravention of the restoration notice that occurs after the transfer took effect.

Chief executive may extend compliance period

Clause 159 provides for the chief executive to extend the restoration period of the notice, where requested by the transferee. The chief executive may elect to extend the period stated even where the request was received after the end of the period stated in the notice. The extension has no other effect on the notice, other than to extend the time within which the restoration activity must be completed.

Division 3 Miscellaneous provision

Chief executive's power to amend restoration notice

Clause 160 provides that the chief executive may amend a restoration notice.

As an example, the chief executive may amend the restoration notice because of changes in technology that relate to the steps identified in the restoration notice that the recipient must undertake.

Amendments to restoration notices can only be made either with the recipient's agreement in writing, or after the chief executive has:

- given the recipient notice of the proposed amendment and the reasoning for it;
- provided the recipient 28 days to make submissions about the proposed amendment; and

- considered all submissions made in the required period.

The chief executive must notify the recipient about the decision to amend the restoration notice.

Part 3 General provisions about compliance notices

Meaning of compliance notice

Clause 161 provides for the term compliance notice to be used when referring to restoration and stop work notices collectively.

Declaratory provisions

Clause 162 provides that a restoration and stop work notice may be issued, whether or not proceedings have commenced for the matter. The provision clarifies that issuing a stop work notice for an activity does not prevent the authorised officer from also giving the recipient a restoration notice in relation to that activity. Further, issuing a compliance notice under this Part does not limit or otherwise affect, any other compliance avenue available to the chief executive or another party under this Act, the Planning Act or a resource Act relating to the matter.

Other persons bound by compliance notice

Clause 163 provides that a compliance notice binds the recipient's successors. Where the recipient is the holder of a development approval or resource authority, the notice binds any person who holds that development approval or resource authority.

It is also taken that the successors or holders of the authority are taken to have received the compliance notice and that any reference in the notice to the recipient includes both the recipient and the successor. The clause further provides that any compliance action expenses owing to the State by the recipient become owing by the recipient and the successor or holder of the authority.

Power to remedy compliance notice contravention

Clause 164 provides for an authorised person to take any reasonable steps, and if necessary, use reasonable force to ensure compliance with a compliance notice.

Any reasonable expenses incurred by the State in undertaking a compliance action under this Part, including the cost of services that the State provides for itself, can be recovered from the recipient as a debt.

Effect on compliance notice of subsequent acquittal in relevant proceeding

Clause 165 provides that where a recipient of a stop work notice is acquitted in a proceeding against them, the stop work notice will cease to have effect. Similarly, where the recipient of a restoration notice is acquitted of any offence against this Act, the restoration notice is taken never to have had any effect. However, any compliance action taken relating to a notice is not invalidated or effected by the acquittal.

Part 4 Appeals against decision to give stop work or restoration notice

Appeal to Planning and Environment Court

Clause 166 provides the recipient—of an information notice about a decision under this chapter—the right to appeal the decision within 28 days of the notice being issued. The appeal is made to the Planning and Environment Court.

Chapter 7 Investigation and Enforcement

Part 1 General provisions about authorised persons

Division 1 Appointment

Authorised persons

Clause 167 prescribes that this chapter provides for the appointment of authorised persons, and gives authorised persons particular powers. The purpose of these provisions is to ensure the chief executive has available suitably qualified persons who can help the chief executive process applications under this Act and deal with issues about compliance.

Functions of authorised persons

Clause 168 outlines the functions of an authorised officer, which are to:

- help the processing of applications under this Act
- investigate, monitor and enforce compliance with the Act;
- investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- facilitate the exercise of powers under the Act.
- give stop work notices and restoration notices, and taking compliance action if they are not complied with.

Authorised officers have powers related to the processing of applications to assist the chief executive in situations where consent for access to land or consent to carry out application assessment activities cannot be obtained.

Appointment and qualifications

Clause 169 states that the chief executive may, by instrument in writing, appoint an officer of the department as an authorised person, if the chief

executive is satisfied that the person has the necessary expertise or experience.

Appointment conditions and limit on powers

Clause 170 specifies that an authorised person holds office on the conditions stated in their instrument of appointment, or in a notice signed by the chief executive given to the authorised person, or in a regulation.

The instrument of appointment, the signed notice or a regulation, may limit the powers of an authorised person.

When office ends

Clause 171 states that the office of an authorised person ends if the term of office stated in a condition of office ends, or under another condition of office, the office ends; or the authorised person resigns. However, the clause does not limit the ways the office of a person as an authorised person ends.

Resignation

Clause 172 provides that an authorised person may resign by signed notice given to the chief executive.

Division 2 Identity cards

Issue of identity card

Clause 173 requires the chief executive to issue an identity card to each authorised person. The identity card must contain a recent photo of the person, a copy of their signature and identify them as an authorised person under the Act and stating the expiry date of the card. This clause does not prevent a single identity card being issued to a person for this Act and other purposes.

Production or display of identity card

Clause 174 ensures that the authorised officer produces or displays their identity card to a person when exercising powers in relation to that person

under this Act. If that is not practicable, then the authorised person must produce their identity card at the first reasonable opportunity.

The purpose of the clause is to ensure a person, in relation to whom a power is being exercised, can readily identify an authorised officer in a timely way.

Return of identity card

Clause 175 requires an authorised officer to return their identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse. The maximum penalty for this offence is 50 penalty units.

Division 3 Miscellaneous provisions

References to exercise of powers

Clause 176 states that if a provision of this chapter refers to the exercise of a power by an authorised person; and there is no reference to a specific power; the reference is to the exercise of all or any authorised persons' powers under this chapter or a warrant, to the extent the powers are relevant.

Reference to document includes reference to reproductions from electronic document

Clause 177 provides that in Chapter 7 a reference to a document includes a reference to an image or writing produced from an electronic document; or not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

Part 2 Entry of places by authorised persons

Division 1 Power to enter

General power to enter places

Clause 178 prescribes the circumstances when an authorised person may enter a place.

This clause does not authorise entry to any part of the place where a person resides.

If entry was authorised by consent then the power is subject to any conditions of the consent and ceases if the consent is withdrawn. If the power to enter is under a warrant, the entry is subject to the terms of the warrant.

The Clause includes circumstances where an authorised person may enter a place without consent or warrant. This power is limited to circumstances where the authorised person requires access related to stopping an SCL offence; to undertake compliance actions; to conduct activities related to applications and authorities; to access land it is necessary to cross for certain purposes and to access a place after reasonable attempts to locate an occupier have not been successful.

Powers of entry without warrant in these circumstances is justified when consent cannot be obtained to carry out necessary functions under this Act. In many circumstances, the interests of persons from whom consent may be required may be inconsistent with the interests of the Chief executive in achieving the purposes of this Act.

Procedure for particular entries not by notice or consent or under a warrant

Clause 179 provides requirements if an authorised person intends to enter a place for prescribed purposes related to applications, authorities, stop work notices and compliance notices. Entry may be without warrant or consent if the authorised person produces or displays their identity card in the required way; tells the occupier of the purpose of the entry and that the entry is permitted under this Act without consent or warrant.

This power is justified when access with consent cannot be obtained because the interests of persons from whom consent may be required may be inconsistent with the interests of the Chief executive in achieving the purposes of this Act.

Division 2 Entry by consent or after reasonable attempts to locate an occupier

Subdivision 1 Preliminary

Application of div 2

Clause 180 provides that this division applies if an authorised person intends to ask an occupier of a place for consent to enter the place.

Subdivision 2 Provisions for entry by consent

Incidental entry to ask for access

Clause 181 provides that the authorised person may, without the occupier's consent or a warrant, enter land around premises at the place to an extent that is reasonable to contact the occupier. For this purpose the authorised person may enter part of the place the authorised person reasonably considers that members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

Matters authorised person must tell occupier

Clause 182 ensures that the authorised officer has explained to the occupier the purpose of the entry, including the powers intended to be exercised; that the occupier is not required to give consent; and that the consent may be given subject to conditions and may be withdrawn at any time.

Consent acknowledgement

Clause 183 provides that where consent is given the authorised person may ask the occupier to sign an acknowledgement of consent. The clause provides the minimum details to be included in the acknowledgement.

The clause also provides that if the occupier signs the acknowledgment, a copy must be given to the occupier.

The clause further provides that if proceedings arise about whether the occupier consented to entry and an acknowledgement notice is not produced in evidence, the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Entry only by warrant or other authorisation if consent refused

Clause 184 states that if the occupier refuses consent to enter, the authorised person must not enter the place unless the entry is under a warrant or is otherwise authorised under a power of entry.

Subdivision 3 Entry after reasonable attempts to locate an occupier

Entry power and requirement

Clause 185 provides that an authorised person may enter a place, other than where a person is residing or apparently resides, if they are unable, after reasonable attempts, to locate an occupier. The Authorised person must leave a notice in a conspicuous place and in a reasonably secure way stating the date, time and purpose of the entry.

Division 3 Entry under warrant

Subdivision 1 Obtaining warrant

Application for warrant

Clause 186 states that an authorised person may apply to a magistrate for a warrant for a place.

The authorised person must prepare a written application that states the grounds on which the warrant is sought; the written application must be sworn; and the magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Issue of warrant

Clause 187 provides the criteria that the magistrate must be satisfied of, in order to issue a warrant for the place.

The clause also provides the details that the warrant must state, including that within 14 days after the warrant's issue, the warrant ends.

Electronic application

Clause 188 allows an application for a warrant to be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of urgent circumstances or other special circumstances, including, for example, the authorised person's remote location.

The application may not be made before the authorised person prepares the written application but may be made before the written application is sworn.

Additional procedure if electronic application

Clause 189 provides, for an electronic application, that the magistrate must be satisfied that the application is necessary and that it was properly made. The provision also provides how, once the magistrate issues the original warrant, a duplicate warrant is to be issued by the magistrate or otherwise how a duplicate warrant is to be completed by the authorised officer. A duplicate warrant, in either circumstance, is as effectual as the original.

This clause also provides that the authorised person must, as soon as is reasonable, send to the magistrate the written application and secondly if the authorised person completed a form of warrant —the duplicate warrant.

The magistrate must keep the original warrant and, on receiving the documents from the authorised officer mentioned above attach the documents to the original warrant; and give the original warrant and documents to the clerk of the court of the relevant magistrate's court.

If an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and the original warrant is not produced in evidence; the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power. This clause does not limit the ability to make an application for a warrant.

Defect in relation to a warrant

Clause 190 provides that a warrant, including a duplicate warrant, is not invalidated by a defect in the warrant or compliance with this subdivision unless the defect affects the substance of the warrant in a material particular.

Subdivision 2 Entry procedure

Entry procedure

Clause 191 states the actions, if an authorised person is intending to enter a place under a warrant or duplicate warrant, that the authorised person must do, or make reasonable attempts to do before entering the place.

However, the clause provides that the authorised person need not undertake these actions if the authorised person reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.

Part 3 Other authorised persons' powers and related matters

Division 1 General powers of authorised persons after entering places

Application of div 1

Clause 192 provides that the power under this division may be exercised if an authorised person enters a place under an entry power, other than the power related to access land or a public place or if the entry was only under the stop work notice service power.

However, if the authorised person enters under by consent or under a warrant, the powers under this division are subject to any conditions of the consent or terms of the warrant.

General powers

Clause 193 provides an authorised person with a range of powers, each a general power.

The authorised person may take a necessary step to allow the exercise of a general power. The power includes taking on to a place any reasonably required person, for instance persons with technical qualifications to assist in application processing when consent for entry cannot otherwise be obtained for the purpose.

The clause further provides conditions on specific general powers.

Power to require reasonable help

Clause 194 gives an authorised person the power to require help of an occupier of the place or a person at the place to give the authorised person reasonable help to exercise a general power, including, for example, to produce a document or to give information.

When making the help requirement, the authorised person must inform the person that it is an offence not to comply with a help requirement without a reasonable excuse.

Offence to contravene help requirement

Clause 195 establishes a maximum penalty of 100 penalty units for a failure of a person to comply with a help requirement without a reasonable excuse. It is a reasonable excuse for an individual not to comply with a

help requirement if complying might tend to incriminate the individual or expose the individual to a penalty unless the document or information is required to be held or kept by the defendant under this Act.

Division 2 Powers after entry under stop work notice service power

Powers

Clause 196 provides that if an authorised officer uses an entry power and the entry was only under the stop work notice service power, the authorised officer may only give the occupier the stop work notice; and take into or onto the place any person the authorised officer reasonably requires for giving the notice.

Division 3 Seizure by authorised persons and forfeiture

Subdivision 1 Power to seize

Seizing evidence at a place that may be entered without consent or warrant

Clause 197 gives an authorised person, who enters a place that they are authorised to enter under this Act without the consent of an occupier of the place and without a warrant; the power to seize a thing that the authorised person reasonably believes is evidence of an offence against this Act.

Seizing evidence at a place that may be entered only with consent or warrant

Clause 198 applies where an authorised person, is only authorised to enter a place only with the consent of the occupier of the place or with a warrant and enters the place.

If entry is by consent, then, the clause provides that the authorised person may seize anything the authorised person reasonably believes is evidence

of an offence against this Act and seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent. If however, entry is by warrant then the authorised person may seize the evidence for which the warrant was issued.

The clause further provides that the authorised person may also seize any other thing at the place, if the authorised person reasonably believes it is evidence of an offence and seizure is necessary to prevent the thing being hidden, lost or destroyed or the authorised person reasonably believes it has just been used in committing an offence against this Act.

Seizing thing or sample taken for examination

Clause 199 provides the relevant power for when an authorised person may seize a thing or sample they believe is evidence of an offence against this Act after taking the thing or sample for examination and after examining it.

The clause applies as if, the authorised person had the reasonable belief when the thing or sample was taken and at the time they could have seized it.

Seizure of property subject to security

Clause 200 provides that an authorised person may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.

However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised person or a person acting for the authorised person.

Subdivision 2 Powers to support seizure

Power to secure seized thing

Clause 201 provides that after an authorised officer seizes a thing, they may leave it at the place of seizure and take reasonable action to restrict access to it by sealing the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or for equipment, by making it inoperable; or require a person the authorised

person reasonably believes is in control of the place or thing to do these acts.

The Authorised officer may also move the thing seized from the place of seizure.

Offence to contravene other seizure requirement

Clause 202 makes it an offence with a maximum penalty of 100 penalty units for a person not to comply with a requirement made of the person to do an act under section 200, unless the person has a reasonable excuse.

Offence to interfere

Clause 203 makes it an offence to tamper with a seized thing to which access is restricted, without an authorised person's approval or a reasonable excuse. It is also an offence under this clause to enter the place or tamper with anything used to restrict access to the place without an authorised person's approval or a reasonable excuse. The penalty is a maximum of 100 penalty units.

Subdivision 3 Safeguards for seized things

Receipt and information notice for seized thing

Clause 204 requires a receipt (describing the thing and its condition) and an information notice about the decision to seize the thing under this division, be given to a person as soon as practicable after the thing has been seized.

If the person is not present when the thing is seized, the receipt and information notice may be left in a conspicuous position and in a reasonably secure way at the place at which the thing is seized. The receipt and information notice may be given in the same document and relate to more than one seized thing.

The authorised person may delay giving the receipt and information notice if the authorised person reasonably suspects giving them may frustrate or otherwise hinder an investigation by the authorised person under this Act.

However, the delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

A receipt and information notice do not need to be given if the authorised person reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned; or because of the condition, nature and value of the seized thing it would be unreasonable to require the authorised person to comply with this section; or if the thing was seized under clause 199 and this clause has, under clause 193(3) already been complied with.

Access to seized thing

Clause 205 requires that until a seized thing is forfeited or returned, the authorised person who seized the thing must allow an owner of the thing, to inspect it at any reasonable time, and from time to time, and if it is a document copy it unless it is impracticable or would be unreasonable.

The inspection or copying must be allowed free of charge. This provision is important to ensure that rights of a person to access their property are not taken away unless it is impracticable or unreasonable to uphold them.

Return of seized thing

Clause 206 requires the authorised person to return the seized thing to an owner at the end of 6 months after the seizure or, if a proceeding for an offence involving the thing is started within the 6 months — at the end of the proceeding and any appeal from the proceeding.

This clause only applies to a seized thing that has some intrinsic value and that is not forfeited or transferred under subdivision 4 or 5 and not subject to a disposal order under Division 5. However, if the thing was seized as evidence, the authorised person must return the thing to an owner as soon as it is no longer required to be retained as evidence and it is lawful for the owner to possess it.

Nothing in this section affects a lien or other security over the seized thing.

Subdivision 4 Forfeiture

Forfeiture by chief executive decision

Clause 207 gives the chief executive the power to decide a seized thing is forfeited to the State if after making reasonable inquiries cannot find an owner or after making reasonable efforts, cannot return it to an owner.

The authorised person is not required to make inquiries if it would be unreasonable to make inquiries to find an owner or if it would be unreasonable to make efforts to return the thing to an owner. Regard must be had to the things condition, nature and value in deciding whether it is reasonable to make inquiries or efforts; and if inquiries or efforts are made, what inquiries or efforts, including the period over which they are made, are reasonable.

Information notice about forfeiture decision

Clause 208 applies if the chief executive decides to forfeit a thing, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice for the decision.

The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way. The information notice must state that the former owner may apply for a stay of the decision if he or she appeals against the decision.

However, this does not apply if the place where the thing was seized is a public place or a place where the notice is unlikely to be read by the former owner.

Subdivision 5 Dealing with property forfeited or transferred to State

When thing becomes property of the State

Clause 209 provides that a thing becomes the property of the State if the thing is forfeited to the State or the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

How property may be dealt with

Clause 210 allows the chief executive to deal with the thing, if it becomes property of the state, as the chief executive considers appropriate. The chief executive must not deal with the thing in a way that could prejudice the outcome of any appeal relating to the forfeiture under this Act. If the chief executive sells the thing, the chief executive may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing. This clause is subject to any disposal order made for the thing.

Division 4 Disposal orders

Disposal order

Clause 211 allows the Magistrate's court to make a disposal order if a person is convicted of an offence against this Act for the disposal of anything that was the used to commit the offence or another thing the court considers is likely to be used in committing a further offence against this Act. The clause provides for a notice to be given to a person who may have any property in the thing to make a claim. The court may make any order to enforce the disposal order that it considers appropriate.

Division 5 Other information-obtaining powers of authorised persons

Power to require name and address

Clause 212 gives an authorised officer the power to require name and address from a person committing or suspected of committing an offence against the Act. The authorised person may require the person to state the person's name and address. The authorised person may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable. When making a personal details requirement, the authorised person must give the person an offence warning for the requirement.

Offence to contravene personal details requirement

Clause 213 creates an offence with a maximum penalty of 100 penalty units for contravening a personal details requirement unless the person has a reasonable excuse. A person may not be convicted of this offence unless the person is found guilty of the offence in relation to which the personal details requirement was made.

Power to require production of documents

Clause 214 allows an authorised person to require a person to, make available for inspection, or to produce a document (or a clear reproduction of that document) that is required to be kept by the person for inspection under the Environmental Protection Act, a resource Act or a source authority.

The authorised person can keep the document to copy it but must return it as soon as practicable. The authorised person may require the person responsible for keeping the document to certify the copy and may keep the document until the person complies with this requirement.

Offence to contravene document production requirement

Clause 215 specifies the offence and a maximum penalty of 100 penalty units for failing to comply with a document production requirement without a reasonable excuse.

It is not a reasonable excuse not to comply because complying might incriminate the person or expose the person to a penalty.

The authorised person is required to inform the person that they must comply with the document production even though complying might tend to incriminate the person or expose the person to a penalty and that there is limited immunity against the future use of the information or document given in compliance with the requirement.

The court cannot convict a person of this offence if the authorised person has not informed the person as required.

If a court convicts a person of an offence against this section, the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

Offence to contravene document certification requirement

Clause 216 specifies the offence and maximum penalty of 100 penalty units for contravening a document certification requirement without a reasonable excuse. It is not a reasonable excuse not to comply with this section because it might tend to incriminate the person or expose the individual to a penalty.

The authorised person is required to inform the person that they must comply with the document certification requirement even though complying might tend to incriminate the person or expose the person to a penalty and that there is limited immunity against the future use of the information or document given in compliance with the requirement. The court cannot convict a person of this offence if the authorised person has not informed the person as required.

Power to require information

Clause 217 provides that an authorised person, who reasonably believes an offence, has been committed and that a person may be able to give information about the offence, may give a written notice to the person requiring them to provide information relevant to the offence at a stated time and place.

Where the information is in an electronic document, compliance requires the giving of a clear written version of the electronic document.

Offence to contravene information requirement

Clause 218 specifies the offence and maximum penalty of 100 penalty units for not complying with an information requirement without a reasonable excuse. It is a reasonable excuse that the information might tend to incriminate the individual or expose the individual to a penalty.

Part 4 Other provisions relating to authorised persons

Division 1 Damage

Duty to avoid inconvenience and minimise damage

Clause 219 requires an authorised person must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Notice of damage

Clause 220 provides for the accountability of authorised officers causing damage. This section applies if an authorised person exercising a power under the Act or a person acting under the direction of an authorised person damages something.

This clause does not apply if the authorised officer reasonably considers that the damage is trivial, no-one is in apparently in possession of the thing, or it has been abandoned.

Otherwise, the authorised person must give notice of the damage to the person who appears to be the owner or person in control of the thing. If the authorised person cannot give the notice in this way, they must leave the notice at the place where the damage happened and ensure it is left in a conspicuous position and in a reasonable way.

The authorised person may delay complying with the notice requirements if they reasonably suspects that complying may frustrate or otherwise hinder the performance of the authorised person's functions. The delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place.

If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised person or the assistant, the authorised person may state the belief in the notice. The notice must also state the particulars of the damage; and that the person who suffered the damage may claim compensation under section 221.

Division 2 Compensation

Compensation

Clause 221 provides that a person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by, or for, an authorised person including a loss arising from compliance with a requirement made of the person under this division.

However, this does not include loss arising from a lawful seizure or a lawful forfeiture.

The compensation may be claimed and ordered in a proceeding:

- brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.

A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case. In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.

The clause also provides that a regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

A statutory right of compensation is not provided by this section.

Division 3 Other offences relating to authorised persons

Giving authorised person false or misleading information

Clause 222 provides that it is an offence with a maximum penalty of 1,665 penalty units to knowingly give an authorised officer false or misleading information whether or not the information or document was given in response to a specific power under this Act.

The purpose of this clause is to act as a deterrent and to ensure that authorised officers are able to obtain accurate and reliable information.

Obstructing authorised person

Clause 223 provides that it is an offence with a maximum penalty of 100 penalty units to obstruct an authorised person or someone helping an authorised person exercising a power without reasonable excuse.

If a person has obstructed and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that:

- it is an offence to cause an obstruction unless the person has a reasonable excuse; and
- the authorised person considers the person's conduct an obstruction.

Impersonating authorised person

Clause 224 provides that it is an offence with a maximum penalty of 100 penalty units to impersonate an authorised person.

Division 4 Miscellaneous provision

Evidential immunity for individuals complying with particular requirements

Clause 225 provides limited immunity to individuals who have produced documents or given information required by an authorised officer that may tend to incriminate them.

The clause provides that if an individual gives or produces information or a document to an authorised person under section 194, 214 or 217 or a document mentioned in section 214(1)(a), evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.

However, this does not apply for proceeding about the false or misleading nature of the information or anything in the document or a proceeding in which the false or misleading nature of the information or document is relevant evidence.

Part 6 Appeals against decisions under chapter

Appeal to Magistrates Court

Clause 226 provides that the recipient of an information notice about a decision under this chapter has a right of appeal against the decision to a Magistrates Court.

Chapter 8 Miscellaneous provisions

Part 1 Science and Technical Implementation Committee

Establishment

Clause 227 provides that the Minister may establish a Science and Technical Implementation Committee.

Membership

Clause 228 provides for the Minister to appoint a chair person and at least 3 other committee members.

The Minister can only appoint a person as a committee member if satisfied that the person has expertise or experience in soil attributes and processes, or another area of knowledge prescribed under a regulation. Committee members are entitled to be paid the fees and allowances decided by the Minister.

Functions

Clause 229 provides for the committee to give the Minister independent scientific and technical advice about the administration of the Act in relation to soil and land resources and other matters decided by the

Minister. The Minister may also require the committee to prepare a report about the administration of the Act in relation to soil and land resources.

Committee's business and operation

Clause 230 provides for the Minister to make terms of reference for how the committee is to conduct its business or perform its functions.

Confidentiality relating to committee's functions

Clause 231 applies to a person who is or has been a committee member and in that capacity acquired protected information, or access to / custody of a document containing protected information.

Protected information is information that is not publicly available and which was obtained for the performance of any of the committee's functions. The clause establishes a penalty for a breach of confidentiality with a maximum of 200 penalty units or 1 year's imprisonment. However a committee member will not have breached confidentiality where the information is used:

- to the extent necessary for the committee member to perform the person's functions as a committee member;
- with the consent of the entity that the information relates to;
- with the consent of the Minister; or
- as required or permitted by law.

Part 2 General provisions about applications

Application of pt 2

Clause 232 specifies that this part applies for any application made under the Act.

Requirements for making application

Clause 233 requires the decision-maker to refuse to receive or process an application that has not been made in accordance with the requirements of the Act. However this provision also provides for the decision-maker to allow the application to proceed and be decided as though it is a properly made submission where the decision-maker is satisfied that the application substantially complies with the requirements of the relevant sections .

Requisition to applicant

Clause 234 provides for the decision-maker to require the applicant to complete or correct an application, provide additional information or provide a report accompanied by a statutory declaration verifying the contents of the report. The decision-maker may extend the period for complying with the requirement.

Consequence of failure to comply with application requisition

Clause 235 provides that where an application requisition is not complied with, the application will lapse unless the decision maker is satisfied there is sufficient information for the application to be decided.

For an exceptional circumstances application, the decision maker may refuse the application if insufficient information has been provided.

Particular criteria generally not exhaustive

Clause 236 provides for the decision-maker to consider other criteria the decision-maker considers relevant to the application.

Particular grounds for refusal generally not exhaustive

Clause 237 provides for the decision maker to consider other matters and information relevant to the application and decide, based on that information, to refuse the application. However this provision does not apply where the decision making provision provides exclusive criteria, such us for exceptional circumstances decisions under Chapter 4.

General power to impose conditions

Clause 238 provides that a power to decide an application includes the power to grant the application subject to conditions that must be complied with before the application is granted.

Withdrawal of application

Clause 239 provides that an applicant may withdraw the application at any time before it is decided and that the withdrawal takes effect when the notice is given to the decision maker.

Power to refund application fee

Clause 240 provides, at the discretion of the decision maker, to refund all or part of a prescribed fee that accompanied an application where the application is withdrawn or where the decision maker considers it appropriate.

Part 3 The decision register

Register

Clause 241 requires the chief executive to keep a register showing the outcome of decision made under this Act and any other information the chief executive considers appropriate.

Access to register

Clause 242 requires the chief executive to make the decision register available for inspection and purchase, with the option of keeping the decision register published on the department's website.

Part 4 Executive officers

Executive officers must ensure corporation does not commit SCL offences

Clause 243 requires that the executive officers of a corporation ensure the corporation complies with the offence provisions of the Act. This provision specifies that if a corporation commits an offence, each of the corporation's executive officers also commit an offence. The maximum penalty for the offence is the penalty applicable where a person (not a corporation) commits the offence.

However executive officer has a defence where:

- the officer exercised reasonable diligence to ensure the corporation complied with the provision
- the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Part 5 Evidentiary provisions

Application of pt 5

Clause 244 provides that this part applies to a proceeding under, or in relation to, this Act.

Authority

Clause 245 provides that during a proceeding the powers of the Minister, Co-ordinator General, chief executive or an authorised person under the Act are presumed unless a party to the proceeding, by reasonable notice, requires proof of it.

Signatures

Clause 246 provides that a signature purporting to be the signature of the Minister, Co-ordinator General or the chief executive is evidence of that signature.

Evidentiary certificates

Clause 247 provides for a certificate signed, or purporting to be signed, by the chief executive or Coordinator-General that states any of the listed matters, is evidence of the matter.

Devices used by authorised person

Clause 248 provides that in the absence of evidence to the contrary, a device used for a purpose for which it was made, by an authorised person to perform the authorised person's functions, is taken to have been working properly and that the person operating the device is appropriately qualified.

Remotely sensed image reports

Clause 249 provides that a statement of matters in a report about a remotely sensed image is evidence of any of the matters listed. A signature in the report purporting to be that of a person appropriately qualified to give reports of that type, is evidence that the report-maker was so qualified.

Notice of challenge required for matters about devices or remotely sensed image

Clause 250 applies if a party to a proceeding intends to challenge a matter mentioned in clause 247 or a statement mentioned in clause 248.

The provision provides that the party intending to make the challenge, must give the other parties to the proceeding at least 28 days notice of the party's intention to present relevant evidence and state the grounds on which the challenge is based.

Part 6 Offence proceedings

Division of offences against Act

Clause 251 provides that an offence against this Act for which the maximum penalty of imprisonment is 2 years or more is an indictable offence, and a crime.

Any other offence against this Act is a summary offence.

Proceeding for indictable offences

Clause 252 provides that a proceeding for an indictable offence against this Act may, at the prosecution's election, be taken summarily or on indictment. The maximum penalty of imprisonment that may be summarily imposed for an indictable offence is 1 year's imprisonment.

The clause also provides that a magistrate must not hear an indictable offence summarily if the defendant asks that the charge be prosecuted on indictment or if the magistrate considers that the charge should be prosecuted on indictment.

Limitation on who may summarily hear indictable offence proceedings

Clause 253 provides for when proceedings must heard by a magistrate.

Proceeding for summary offences

Clause 254 provides that a proceeding for a summary offence against this Act must start within one year after the commission of the offence or within one year after the offence comes to the complainant's knowledge, but within five years after the offence is committed.

Alternative offences

Clause 255 provides that where an alternative lesser offence is provided for in the Act, that the trier of fact hearing the matter, may find the defendant guilty of the lesser offence where the trier is satisfied that the defendant is only guilty of the lesser offence.

Statement of complainant's knowledge

Clause 256 provides that where the complaint makes a statement for a proceeding for an offence against this Act, the statement made is evidence that the matter came to the complainant's knowledge on that day.

Conduct of representatives

Clause 257 provides circumstances that are sufficient in demonstrating a person's state of mind where it is relevant to prove the person's state of mind about particular conduct.

Part 7 General provisions for appeals

Application of pt 7

Clause 258 provides that this part applies for an appeal against a decision under this Act.

Appeal period

Clause 259 requires an appeal to be started within 28 days after the appellant receives notice of the decision. However, the court may at any time extend the time for starting the appeal.

Appeal does not generally affect decision

Clause 260 provides that an appeal does not affect operation or implementation of the decision other than if the decision is stayed under clause 261.

Stays

Clause 261 provides that the court may, on application, make an order to stay a decision. However, this does not apply to a decision to give a stop work notice.

Part 8 Other provisions

When documents are served by post

Clause 262 provides that despite section 39A(1) of the *Acts Interpretation Act 1954*, if this Act requires or permits a document to be served by post service, then it may be effected by properly addressing, prepaying and posting the document as a letter. Where this occurs, the document is taken to have been effected at the time at which the letter is posted.

References to right to enter

Clause 263 provides how the phrase "to enter a place" is to interpreted in the Act.

Guidelines

Clause 264 provides that the chief executive may make guidelines to give advice about applications under this Act. If guidelines are made the chief executive must publish the guidelines on the department's website and make them available for inspection and purchase.

Appropriate fee for purchasing copies

Clause 265 provides that if a provision of this Act requires a document to be available for inspection and purchase, then the appropriate fee for giving a copy of a document is not to be more than the actual cost of making and providing the copy.

No compensation because of Act

Clause 266 provides that no compensation is payable by the State or an officer:

a) for or in connection with the enactment making or operation of the Act or a statutory instrument under it; or

b) because of an amendment of a map under the Act; or

c) because the carrying out of an activity is made unlawful, or is conditioned or restricted, under the Act.

Delegation by Minister, Coordinator-General and chief executive

Clause 267 provides for the Minister, Coordinator-General or chief executive to delegate their functions under the Act to any appropriately qualified public service officer or employee. However, the Minister or Coordinator-General can not delegate the function to decide exceptional circumstances applications.

Protection of officials from liability

Clause 268 provides that an official does not incur civil liability for an act done, or an omission made, honestly and without negligence under this Act and that the liability attaches instead to the State.

Review of Act

Clause 269 requires the Minister to review the Act between 30 January 2014 and 30 January 2016. The review must include a review of provisions about the Science and Technical Committee.

Approved forms

Clause 270 provides that the chief executive may approve forms for use under the Act and such forms can be combined with, or used together with an approved form under another Act.

Regulation-making power

Clause 271 provides that the Governor in Council may make regulations under the Act. A regulation may provide for fees payable under this Act and the matters for which they are payable. Any offences for contravening a regulation must not be greater than 20 penalty units.

Chapter 9 Transitional provisions

This chapter applies to resource development project proposals involving applications for production tenures such as a mining lease or a petroleum lease, which have met certain milestones in the assessment and approval processes.

Part 1 Preliminary

Definitions for chapter 9

Clause 272 defines the terms used in this chapter.

Part 2 Existing source authorities

Existing source authorities not affected

Clause 273 provides that this Act does not affect a source authority in force before the Act's commencement, or the operation of the Environmental Protection Act, Planning Act or a resource Act for the authority.

Part 3 Environmental and resource authority applications

Division 1 General provision

Act generally applies for all applications whenever made

Clause 274 provides that, subject to divisions 2 and 3 of this Part, the Act will apply to environmental authority or resource authority applications made but not decided before commencement of this Act.

Applications for which the Act does not apply, or only applies in a particular way, are described in Divisions 2 and 3.

Division 2 Exclusion of all of Act for particular applications

Exclusion

Clause 275 excludes developments under clauses 276 and 277 that required an environmental and a resource authority, from the application of the Act.

Resource development projects can take many years to complete all of the relevant assessment requirements to receive their final approvals. In addition to being lengthy, the process involves significant investment by the applicant. Consequently, as the applications that are captured by this Division are considered to be so well advanced in the approvals process, assessment for the purposes of this Act is not considered to be appropriate.

These developments must be dealt with and decided under the *Environmental Protection Act 1994* and the relevant resource Act, as if this Act had not commenced.

EIS stage completed on or before 31 May 2011

Clause 276 excludes applications for mining and petroleum leases from the application of this Act where the proposed development had completed the EIS stage on or before 31 May 2011. Applications for these developments are dealt with under the *Environmental Protection Act 1994* and the relevant resource Act and decided as if this Act had not commenced.

This provision applies to projects that have undergone an EIS process under either the *Environmental Protection Act 1994* or the *State Development and Public Works Administration Act 1971*.

Draft environmental authority on or before 31 May 2011

Clause 277 excludes applications for mining and petroleum leases from the application of this Act where a draft environmental authority was given for the proposed project on or before 31 May 2011. Applications for these developments are dealt with under the *Environmental Protection Act 1994* and the relevant resource Act and decided as if this Act had not commenced.

Division 3 Exclusion of permanent impact restriction for particular applications

Exclusion

Clause 278 provides that the permanent impact restriction in clause 93 does not apply for developments that are excluded under this division.

Excluded projects will still be assessed under Chapter 3 of this Act to ensure the development avoids and minimises its impact on SCL or potential SCL to the greatest extent possible. Where the development permanently impacts SCL, mitigation under Chapter 5 of the Act will be required to address the resulting loss of the land's cropping productivity.

Applications made and finalised EIS TOR on or before 31 May 2011

Clause 279 excludes mining and petroleum lease applications from the permanent impact restriction in clause 93, where on or before 31 May 2011:

- the application for the project had been made; and
- the project had finalised EIS terms of reference; and
- either a certificate of application was issued for the mining lease application or the petroleum lease application complied with the relevant requirements under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*.

The purpose of this clause is to provide transitional arrangements for resource development proposals that have met, as at 31 May 2011, the milestones outlined in this provision. While these projects will be able to proceed even where they have a permanent impact on land, they will still be assessed and conditioned in accordance with Chapter 3 and subject to the mitigation requirements in Chapter 5 where they permanently impact SCL.

Finalised EIS TOR on or before 31 May 2011 for petroleum lease application

Clause 280 excludes a petroleum lease application from the permanent impact restriction in clause 93, where:

- on or before 31 May 2011 the project had finalised EIS terms of reference for an area that included the area of an Authority to Prospect (ATP); and
- the area subject to the petroleum lease application includes the ATP's area.

The provision provides for a petroleum lease application to be made, provided the application satisfies the requirements established in the clause.

The purpose of this clause is to provide transitional arrangements for petroleum lease applications that were made, or will be made, after 31 May 2011 and have met as of that date, the milestones outlined in this provision. While these projects will be able to proceed even where they have a permanent impact on land, they will still be assessed and conditioned in accordance with Chapter 3 and subject to the mitigation requirements in Chapter 5 where they permanently impact SCL.

Existing mining lease and EP or MDL forming a contiguous area

Clause 281 provides for future applications to expand existing mining lease operations to be excluded from the permanent impact restriction in clause 93, where on or before 23 August 2010, the mining lease, exploration permit and mineral development licence were held by the same person or company and the exploration permit or mineral development licence formed a contiguous area with the mining lease.

In addition, the mining lease application for the exploration permit or mineral development licence must be made on or before 23 August 2012 for the project to be exempt from the permanent impact restriction in clause 93.

A mining lease application for an expansion project may be made for an exploration permit, or the mineral development licence, or both before 23 August 2012.

The purpose of this clause is to provide transitional arrangements for environmental authority or resource authority applications associated with the expansion of existing mines under the *Mineral Resources Act 1989* that have met certain criteria and milestones in their assessment as at 31 May 2011 and will meet further requirements on or before 23 August 2012. While these projects will be able to proceed even where they have a

permanent impact on land, they will still be assessed and conditioned in accordance with Chapter 3 and subject to the mitigation requirements in Chapter 5 where they permanently impact SCL.

Future mining lease relating to EPC 891

Clause 282 provides that the environmental authority application and related resource application for a mining lease relating to EPC 891, known as the Springsure Creek Coal Project, is excluded from the permanent impact restriction in clause 93. However, the exclusion only applies to resource activities that are addressed in the EIS resulting from the finalised EIS terms of reference for the project published on 2 June 2011.

Division 4 Provision for future environmental authority or mining lease relating to EPC 891

SCL protection conditions imposed

Clause 283 provides that the environmental authority or mining lease granted for the Springsure Creek Coal Project will be subject to the lease condition that no open cut mining can be carried out under the lease. The project will also be conditioned to use all reasonable endeavours to rehabilitate all of the impacts on the land from the resource activities carried out under the lease.

The conditions are SCL protection conditions imposed on any environmental and resource authority issued for the project. This clause does not limit or otherwise affect the powers of the chief executive, under Chapter 3, to impose other SCL protection conditions on the authorities. Any other conditions imposed on the project must not conflict or be inconsistent with the conditions outlined in this provision.

This clause provides more stringent transitional arrangements for the Springsure Creek Coal Project application than the arrangements provided for under Division 3 of this Chapter. The more rigorous conditions ensure that the purposes of this Act are met while recognising the special circumstances of this project.

Part 4 Miscellaneous provisions

Effect of regulation amendment

Clause 284 provides that the power of the Governor in Council's power to amend or repeal the *Sustainable Planning Regulation 2009* is not affected by the application of this Act.

Provision for prescribing major renewable energy projects as development in exceptional circumstances

Clause 285 provides for major renewable energy projects to become a class of exceptional development upon commencement of the Act, as if they had complied with the requirements of Chapter 4, Part 1.

Chapter 10 Amendment of legislation

Part 1 Amendment of Environmental Protection Act 1994

Act amended

Clause 286 provides that this part amends the *Environmental Protection Act 1994*.

Amendment of s 146 (Purpose of chapter 5)

Clause 287 inserts after section 146, subsection (2) of the *Environmental Protection Act 1994, a note* to inform on the restrictions on the issuing of environmental authorities for SCL or potential SCL under this Act.

Amendment of s 309A (What this chapter is about)

Clause 288 amends the *Environmental Protection Act 1994* by inserting after section 309A, subsection (3) a note about the restrictions on issuing

environmental authorities for developments on SCL or potential SCL under this Act.

Part 2 Amendment of Sustainable Planning Regulation 2009

Regulation amended

Clause 289 provides that this part amends the *Sustainable Planning Regulation 2009*.

Amendment of schedule 7 (Referral agencies and their jurisdictions)

Clause 290 inserts table 3 into Schedule 7 of the Sustainable Planning Regulation, to add referral jurisdictions for development applications that may have impacts on SCL or potential SCL. The amendment establishes a concurrence agency role for the chief executive to decide material change of use and reconfiguration of a lot applications, where the application is over a lot that has SCL or potential SCL. The amendment also establishes concurrence agency roles for the Minister and the Coordinator–General to determine whether a project demonstrates exceptional circumstances.

Insertion of new schedule 13A

Clause 291 inserts a new schedule 13A for excluded matters for SCL or potential SCL concurrence agency jurisdiction.

The excluded matters include types of development and areas for which the referral of applications under the amended Schedule 7, table 3 concurrence agency jurisdiction is not required. The new Schedule provides for development types and prescribed development footprint areas for which an SCL assessment is not required.

Amendment of schedule 26 (Dictionary)

Clause 292 amends the dictionary of the *Sustainable Planning Regulation 2009* by inserting new definitions.

Schedule 1 Zonal criteria for original zones

Schedule 1 provides the definitions and thresholds for each of the eight zonal criteria. The Schedule relates to clause 27.

Part 1 Preliminary

Division 1 Application

What schedule 1 is about

Clause 1 identifies that the schedule provides for the zonal criteria for land in the five original zones. To make an application for SCL validation, sections 43, 48 and 51 require that the criteria must be addressed, in the way provided for under the criteria guidelines prescribed in the regulation.

The Minister may create a new zone and provide zonal criteria for that zone under a regulation in accordance with clause 35 – Power to amend by regulation.

References to land or soil are to sites

Clause 2 clarifies that a reference to land or soil in this schedule is not a reference to all of the land that is the subject of the application. A reference to land or soil is a reference to the land or soil that is being assessed at each site against the zonal criteria.

Division 2 Publication definitions

Application of division 2

Clause 3 defines the publications referred to in this schedule.

This clause also clarifies that for the purpose of this schedule, defined publications can be updated to prescribe subsequent or revised editions of the identified publications by means of regulation. The effect of this is that a defined publication in the regulation would then supersede those defined in this clause.

Defined publications

Clause 4 specifies the defined publications which are referred to in some zonal criteria definitions.

Division 3 Drainage

Favourable drainage

Clause 5 defines favourable drainage.

Satisfactory drainage

Clause 6 defines satisfactory drainage.

Waterlogged layer

Clause 7(1) defines a waterlogged layer.

Clause 7(3) provides a detailed description of each of the specific soil colours and colour compositions that define a waterlogged layer.

Division 4 Rockiness

Rockiness

Clause 8 defines rockiness based on the density of rock fragments and rock outcrops on the surface.

Bedrock

Clause 9 defines bedrock which is a component of several criteria.

Weathered rock

Clause 10 defines weathered rock which is a component of several criteria.

Division 5 Other definitions

Chloride content

Clause 11 defines chloride content with respect to soil, in accordance with a defined publication.

Electrical conductivity

Clause 12 defines electrical conductivity as a measure of soil salinity, in accordance with a defined publication.

Gilgai microrelief

Clause 13 defines gilgai microrelief in accordance with a defined publication.

Soil pH

Clause 14 defines soil pH as a measure of soil acidity or alkalinity in accordance with a defined publication. It allows pH to be measured using an appropriate field or laboratory test.

Rigid soils and non-rigid soils

Clause 15 defines rigid soils and non-rigid soils.

Slope

Clause 16 defines slope and the minimum length over which it must be measured.

Soil depth

Clause 17 defines soil depth as a measurement of the soils depth from the surface down to a physical root barrier.

Soil physico-chemical limitation

Clause 18 defines soil physico-chemical limitation. The soil physico-chemical limitation to root growth comprises specific factors based on chloride content, electrical conductivity, pH and soil sodicity. For the purpose of clarification, the requirements of (1)(a), (b) and (c) apply to non-rigid soils, whereas (1)(a), (b), (c) and (d) apply to rigid soils.

Soil water storage

Clause 19 defines soil water storage which is a measure of the amount of water contained within the soil profile which can be accessed by plant roots. Clause 19(2)(a) sets out the two acceptable measures for determining soil water storage.

Surface

Clause 20 defines surface when used throughout schedule 1 as referring to the ground surface of land.

Part 2 Criteria

Division 1 Western cropping zone

Division 1 lists the SCL zonal criteria applicable to the Western cropping zone (refer ss 27, 60, 66 & 68 of the Act).

Division 2 Eastern Darling Downs zone

Division 2 lists the SCL zonal criteria applicable to the Eastern Darling Downs zone (refer ss 27, 60, 66 & 68 of the Act).

Division 3 Coastal Queensland zone

Division 3 lists the SCL zonal criteria applicable to the Coastal Queensland zone (refer ss 27, 60, 66 & 68 of the Act).

Division 4 Wet Tropics zone

Division 4 lists the SCL zonal criteria applicable to the Wet Tropics zone (refer ss 27, 60, 66 & 68 of the Act).

Division 5 Granite Belt zone

Division 5 lists the SCL zonal criteria applicable to the Granite Belt zone (refer ss 27, 60, 66 & 68 of the Act).

Schedule 2 Dictionary

Schedule 2 defines terms used in the Act.