Environmental Protection and Other Legislation Amendment Bill 2014

Explanatory Notes

Short title

The short title is the *Environmental Protection and Other Legislation Amendment Bill 2014*.

Policy objectives and the reasons for them

The Bill:

- delivers Greentape Reduction reforms to reduce costs to business and government while maintaining environmental standards
- supports firm but fair environmental regulation
- promotes the recovery and use of waste within the economy

The Bill progresses a second round of Greentape Reduction reforms to deliver on the government's regulatory reform and public service renewal agendas while maintaining environmental standards.

The first round of Greentape Reduction reforms were introduced by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Greentape Reduction Act) in March 2013. The legislative changes were proposed in response to business and government concerns that the regulatory terrain for environmental licensing had become unnecessarily complex and difficult to navigate.

This Bill continues the reform process by making amendments to a number of Acts administered by the Department of Environment and Heritage Protection for the purpose of streamlining legislative processes, providing regulatory simplification, and improving penalties and enforcement tools, whilst maintaining environmental outcomes.

In particular, the Bill proposes amendments to the contaminated land provisions in the *Environmental Protection Act 1994* to clarify and simplify the requirements for the management of contaminated land and to require the mandatory certification of contaminated land investigation documents by an approved auditor.

The Bill supports firm but fair environmental regulation by amending the *Environmental Protection Act 1994* to increase the maximum penalties for the most serious offences to the same maximum penalties stated in the *Regional Planning Interests Act 2014*. This allows for an improved correlation between similar offences within Queensland legislation and other jurisdictions. The maximum penalties for other offences are also being increased to maintain relativities between offences.

Additionally, the Bill introduces enforceable undertakings as a flexible and cost effective enforcement alternative where this may enable a better overall regulatory outcome. Enforceable undertakings are binding agreements between the administering authority and an alleged offender, which require the person to take specified actions to "make good" on identified non-compliance. They provide for flexible, responsive, cost effective and tailored ways of achieving compliance.

The Bill amends the beneficial use approval (BUA) framework in the *Waste Reduction and Recycling Act 2011* to promote the recovery of useful waste materials and make them more readily available for circulation back into the economy. The Bill also streamlines current application and assessment processes in the *Waste Reduction and Recycling Act 2011* to reduce regulatory burden to industry and government.

The Bill also amends the *Environmental Offsets Act 2014* to make minor amendments to improve the operation of the Act and to clarify provisions to ensure that the intent of particular clauses are clearly understood. These amendments are in response to issues raised by industry bodies including the Property Council of Australia and the Urban Development Institute of Australia since the commencement of the Act on 1 July 2014.

Achievement of the policy objectives

The policy objectives will be achieved by amending the relevant Acts as follows:

Biological Control Act 1987

The Bill streamlines the process for declaring organisms as agents for biological control by amending the *Biological Control Act 1987* to broaden the definition of the entity responsible for this process. This amendment will remove the need for future Act amendments where the title of the responsible entity changes. It will also allow for the declaration process for the release of an agent to control the mother-of-millions weed to be completed.

Environmental Offsets Act 2014

The Bill proposes amendments to the *Environmental Offsets Act 2014* to clarify and strengthen legislative clauses to reinforce the intent of nil duplication of offsets across and within jurisdictions. The amendments also rectify minor drafting errors and omissions.

Environmental Protection Act 1994

The Bill completely restructures the contaminated land provisions contained in chapter 7, part 8 of the *Environmental Protection Act 1994*. This enables a modernisation of legislative provisions and better integration of contaminated land requirements with the rest of the *Environmental Protection Act 1994* to assist the Department of Environment and Heritage Protection and the regulated community to better understand what is required for the proper management of contaminated land.

This restructure was necessary in order to require the mandatory certification of contaminated land investigation documents by an approved auditor. The current legislation is unclear about

the purpose and content of contaminated land investigation documents, which makes transparent certification by third party auditors difficult to achieve.

The Bill also removes the soil disposal permit requirement for transportation of contaminated soil to a waste facility. The existing waste tracking arrangements in subordinate legislation will replace this requirement, thereby removing duplication in requirements.

In relation to buying or selling contaminated land, the Bill clarifies the duty of the seller to notify a buyer that the land is recorded on the environmental management register (EMR) or contaminated land register (CLR). The period within which the buyer has the right to rescind the purchase contract is also being limited to better balance the rights of the buyer and seller.

The Bill increases the maximum penalties for the most serious offences in the *Environmental Protection Act 1994* to the same maximum penalties as the *Regional Planning Interests Act 2014*. This amendment increases penalties for the most serious offences to a maximum monetary penalty of 6250 penalty units (currently $711,562.50 as the value of a penalty unit is $113.85) to provide for an improved correlation between similar offences within other Queensland legislation and other state jurisdictions.

As part of the increases to maximum penalties, the term of imprisonment for the most serious offences is being increased from two to five years for the wilful component of the offence.

The Bill also introduces enforceable undertakings as a flexible and cost effective enforcement alternative where this may enable a better overall regulatory outcome. Enforceable undertakings are binding agreements between the administering authority and an alleged offender, which require the person to take specified actions to "make good" on identified non-compliance. They provide for flexible, responsive, cost effective and tailored ways of achieving compliance.

To reflect changes to chapter 8 of the *Waste Reduction and Recycling Act 2011,* the Bill also includes a consequential amendment to the definition of waste under the *Environmental Protection Act 1994.*

A number of minor and technical amendments to the *Environmental Protection Act 1994* are also being made to simplify, streamline and remove duplicate processes to rectify administrative anomalies, correct omissions, and clarify and improve processes and enforcement tools.

Nature Conservation Act 1992

The Bill amends the *Nature Conservation Act 1992* to deliver on the final component of the wider revised flying-fox roost management framework that was introduced in November 2013. A key element of the framework is an as-of-right authority for councils to manage urban roosts, by non-lethal means. Under the framework, councils no longer require a permit for the management of these roosts, provided this is done so in a manner consistent with standards established in a statutory code of practice.

The Bill provides Ministerial authority to require councils to prepare a Statement of Management Intent for as-of-right activities involving protected wildlife to ensure councils

remain accountable for their management actions. As publically available documents, these statements also support community engagement and education about the management of problematic wildlife. They are already being used by councils as a valuable tool in managing community expectations about urban flying-fox roost management.

Waste Reduction and Recycling Act 2011

The Bill amends the *Waste Reduction and Recycling Act 2011* to better recognise the value of waste through the development of new markets for recovered waste materials in Queensland and align with the objectives of the industry-led 'Waste Avoidance and Resource Productivity Strategy' (due for release in 2014).

The amendments are designed to increase business opportunities for waste generators, waste processors and businesses receiving recovered materials from within Queensland. To achieve this the Bill removes market impediments associated with the management of waste. The amendments ensure that more certainty is provided about when, and under what circumstances, a waste ceases to be a waste, and therefore no longer needs to be managed as a waste.

In particular, the Bill replaces general and specific beneficial use approvals with clearly defined 'end of waste codes' and 'end of waste approvals'. The Bill will allow for the input of industry expertise into the process of creating new markets for waste by allowing for the joint development of end of waste codes, and by introducing technical advisory panels to assist in the process.

The Bill will also further encourage research and development by better enabling trials and proof of concept under the end of waste approval process. This will be acheived by requiring the application to include a report from a person with suitable industry expertise as part of the application. This enables streamlining of the application and assessment processes.

The restructuring of chapter 8 of the *Waste Reduction and Recycling Act 2011*, including the application and assessment processes will reduce regulatory burden to industry and government. Overly technical detail will be removed from the Act by placing relevant detail into regulation or guidance material where necessary.

The Bill also improves the process for identifying waste management priorities for Queensland. Priorities are identified by publishing a priority product statement, which lists products that are of concern to Queensland in the waste stream, for example, e-waste. The amendments make it clear that broader waste categories, that may not be identifiable products, can also be the subject of a priority product or waste statement. This could include, for example, organic wastes or hazardous wastes.

Other amendments

The Bill amends the *Coastal Protection and Management Act 1995*, the *Environmental Protection Act 1994*, the *Waste Reduction and Recycling Act 2011*, and the *Wet Tropics World Heritage Protection and Management Act 1993* to remove duplication in civil liability

provisions for state employees following the commencement of the *Public Service and Other Legislation (Civil Liability) Amendment Act 2014* on 31 March 2014.

The *Public Service and Other Legislation (Civil Liability) Amendment Act 2014* provides legislative protection for state employees when they are acting in an official capacity.

Alternatives ways of achieving the policy objectives

The Department of Environment and Heritage Protection has implemented significant reform in the administration of the contaminated land and beneficial use approval frameworks. However, further reform requires amendments to the frameworks themselves. Accordingly, there are no other viable alternatives that would achieve the policy objectives other than amendments to the legislation.

Estimated cost for government implementation

The amendments are to be implemented within current budget allocations.

Consistency with fundamental legislative principles

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

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

Consultation

Key industry, community and government stakeholders have been consulted on the Bill.

Results of consultation

Contaminated land amendments

A Consultation Regulatory Impact Statement (RIS) on contaminated land assessment was publically released and provided to key stakeholders for consultation from 9 April to 16 May 2014.

Of the 16 submissions received on the Consultation RIS, the majority expressed general support for private sector contaminated land assessment through mandatory auditor certified reports.

The Decision RIS, which is published on the Department of Environment and Heritage Protection's website, contains a summary of the submissions received and department's response to those submissions.

Beneficial use approval framework

In April 2014, a discussion paper on the proposed changes to the beneficial use approval framework (which will now be called the "end of waste" framework due to changes made by this Bill) was circulated to targeted stakeholders, including the Australian Council of Recyclers, Arrow Energy, the Queensland Resources Council (QRC), AgForce and the Queensland Environmental Defender's Office (EDO).

Seven industry submissions were received on the beneficial use approval discussion paper, all of which generally supported the intent of the reforms to reduce regulatory burden on industry and to ensure that the regulatory framework is risk based and outcomes focused.

General consultation on the Bill

In May 2014, a separate discussion paper summarising the key items to be outlined in the Bill was circulated separately to industry and community stakeholders for comment. One formal response was received from the QRC.

On request, officers from the Department of Environment and Heritage Protection also met with the QRC and the EDO and the Queensland Conservation Council, to discuss the proposals further.

Consultation drafts of the Bill were released for comment in July 2014 to key targeted stakeholders, including the Local Government Association of Queensland (LGAQ), the EDO, the Queensland Conservation Council, the Queensland Law Society, the QRC, the Australian Petroleum Production & Exploration Association, Chamber of Commerce & Industry Queensland, Cement Concrete and Aggregates Australia, AgForce, Queensland Farmers Federation, the Australian Council of Recyclers, the Australian Contaminated Land Consultants Association Inc, the Planning Institute of Australia, and the Urban Development Institute of Australia. Officers from the Department of Environment and Heritage Protection also met with and further discussed the Bill amendments with these stakeholders, upon request.

In total, 12 formal submissions were received. The majority of the issues raised were not significant policy issues and were addressed in drafting of the legislation and further clarification provided for in explanatory notes. A number of the submissions raised issues that were outside of the scope of the Bill.

Nature Conservation Act amendments

Consultation on the *Nature Conservation Act 1992* amendments occurred as part of the development of the new flying-fox roost management framework in November 2013 and resulted in 99 submissions received, the majority of which supported the new framework. Generally, councils and the LGAQ supported the use of Statements of Management Intent and have subsequently provided positive feedback on their value as community education and engagement tools.

Biological Control Act 1987

No consultation was undertaken on the proposed amendments, however the Department of Agriculture, Fisheries and Forestry undertook consultation with representatives of the Nursery and Garden Industry of Queensland on the proposed declaration of an agent for the biological control of the mother-of-millions weed with no objections raised to the declaration being progressed at that time.

Environmental Offsets Act 2014

No consultation was undertaken on the proposed amendments. However, the amendments respond to issues raised by industry bodies including the Property Council of Australia and the Urban Development Institute of Australia since the commencement of the Act on 1 July 2014. The amendments strengthen Queensland's commitment to reduce duplication of offset conditions, correct errors and omissions, or clarify the operation of existing provisions. The amendments do not adversely impact industry, community or government.

Consistency with legislation of other jurisdictions

The *Biological Control Act 1987* as it stands already aligns with other biological control legislation which is consistent across all jurisdictions. The amendments in this Bill are consistent with other jurisdictions in that it adopts a very similar flexible approach to defining the Council, which can accommodate changes as they occur over time and be amended in a timelier manner.

This Bill is otherwise consistent with the legislation of other jurisdictions.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 states that the Act should be cited as the *Environmental Protection and Other Legislation Amendment Act 2014*.

Commencement

Clause 2 provides which sections of the Bill will commence by proclamation. The remaining sections of the Bill commence on assent.

The parts that commence by proclamation are:

- Part 5, division 3 which primarily contains the amendments to the *Environmental Protection Act 1994* for contaminated land management. These amendments are commencing by proclamation to allow for subsequent amendments to subordinate legislation to implement the waste tracking arrangements for contaminated soil to become a trackable waste, and ensure the smooth roll out of the new auditor certification requirement in consultation with business.
- Part 6 which amends the *Nature Conservation Act 1992* is commencing by proclamation to allow for subsequent amendments to subordinate legislation.
- Part 7, division 3 which primarily contains the amendments to the *Waste Reduction and Recycling Act 2011* to revamp the beneficial use approval framework. These amendments are commencing by proclamation to allow for subsequent amendments to subordinate legislation.
- Schedule 1 to the extent it amends:
    - The *Environmental Protection Act 1994* because these are consequential amendments to the *Environmental Protection Act 1994* changes in part 5, division 3 of this Bill; and
    - The *Vegetation Management Act 1999* because it is a consequential amendment to the *Waste Reduction and Recycling Act 2011* amendments.

Part 2 Amendment of Biological Control Act 1987

Act amended

Clause 3 states that this part amends the *Biological Control Act 1987*.

Amendment of s 3 (Definitions)

Clause 4 amends section 3 of the *Biological Control Act 1987* to omit the definition of Council and insert an expanded definition of Council to capture Standing Ministerial Councils of which the Minister is a member. The Council is established under the Council of Australian Governments (COAG) generally and the members include Commonwealth and State Ministers with specific portfolio responsibility for primary industries.

This clause further provides for a regulation to prescribe another body as the Council where such other body is not a Standing Ministerial Council of which the Minister is a member. This will provide flexibility whereby the definition of Council is not limited to a Standing Ministerial Council if in the future the Council is not constituted as such.

This amendment raises the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament in that a Bill should only authorise the amendment of an Act by another Act.

Since enactment of the *Biological Control Act 1987*, bodies which have performed the role of Council have changed title, structure and membership several times. More recently this occurred under COAG reforms of the Ministerial Council system. The newly formed Agriculture Ministers' Forum which replaces the Standing Council on Primary Industries, the last body to fulfil the function of the Council, is not a Ministerial Council under COAG. With such a narrow definition of Council it is impractical to make amendments to the *Biological Control Act 1987* each time Council changes.

The biological control of pests is a necessary element in the protection of the economy and the environment and a framework to declare agent and target organisms is essential to achieve this. If the provisions of the *Biological Control Act 1987* are intended to be relied upon in the future to progress such declarations, it is imperative that any actions taken are not constrained by limited definitions. With regard to the Council, the *Biological Control Act 1987* should be constructed in a way to maintain currency and broadly accommodate future Councils of which the Minister has membership, regardless of title. Alternatively, where Council changes are made, the *Biological Control Act 1987* should provide the ability to quickly and efficiently effect this change.

This amendment therefore makes a machinery change to the *Biological Control Act 1987* to deal with this issue and facilitates amendment in a more timely way via regulation rather than Act amendment. It does not actually amend the *Biological Control Act 1987* by the regulation, rather, it allows for a more flexible definition in the Act, which includes a body prescribed by regulation.

Amendment of s 8 (Queensland Biological Control Authority)

Clause 5 amends section 8 of the *Biological Control Act 1987* which establishes the Queensland Biological Control Authority (the Authority) and inserts a provision which prescribes who, in certain circumstances, fulfils the role of the Authority. It provides that where a Council exists and only one Minister is a member of the Council, the Authority is that Minister. Where one or more Ministers are members of the Council, all Ministers who are members are the Authority and if no Council exists, the Authority is the Minister who administers the *Biological Control Act 1987*.

Section 8 currently provides that when there is a Council of which the Minister is a member, that Minister is the Authority. The Minister for Agriculture, Fisheries and Forestry who currently administers the *Biological Control Act 1987* has previously been a member of the Council when it existed as a Ministerial Standing Council under COAG. However, if the

Minister is not a member of the Council, or the Council doesn't exist, the Minister cannot currently be the Authority for the purposes of the Act. The amendment is therefore necessary to provide for continuity of the Authority's functions in these circumstances

Insertion of new pt 9

Clause 6 inserts a validation provision for the amendments to the *Biological Control Act 1987* that are contained in this Bill.

Part 9 Validation provision

Section 57 Validation provision relating to changes to name of Council

This section states the former bodies, which fulfilled the role of the Council, for the purposes of the *Biological Control Act 1987*. This provision recognises the changes to Council's name since its constitution as the Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) and indicates the periods each respective Council was in operation. The provision makes a declaration which explicitly states that any decision or recommendation made or approval given under the *Biological Control Act 1987* is taken to have been validly made by any of the entities which were the Council during these periods. This provision will specifically validate the former recommendation of Council in 2011 to declare an agent for the biological control of the mother-of-millions weed.

This section raises the fundamental legislative principle that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. On its face this is a retrospective provision, however, its existence does not adversely affect any individual's rights or liberties nor does it impose any obligations, so it does not breach the fundamental legislative principle.

In April 2011, the Primary Industries Ministerial Council, which was the Ministerial Council in existence at that time, recommended that specific agent organisms be declared for the target organism, mother-of-millions. The *Biological Control Act 1987* does not define Council as the Primary Industries Ministerial Council, instead defining it as the former ARMCANZ, which was the predecessor to the Primary Industries Ministerial Council.

Since the time of Council's recommendation in 2011, no action has been taken to progress these declarations. It is important to note that no action has been taken by the Queensland Biological Control Authority as yet on the basis of Council's recommendation, no notifications of intended declaration have formally been distributed and most importantly, no agent organisms have been released under the proposed declarations. Consequently no person has been impacted by Council's recommendation.

The only action which the Bill seeks to validate retrospectively is Council's recommendation and it does this by way of attributing it to the correct body which made the recommendation at the time.

Part 3 Amendment of Coastal Protection and Management Act 1995

Act amended

Clause 7 states that this part amends the *Coastal Protection and Management Act 1995*.

Amendment of s 133 (Protection from liability)

Clause 8 amends section 133 of the *Coastal Protection and Management Act 1995* so that this section does not apply to an official that is a State employee within the meaning of the *Public Service Act 2008*. On 31 March 2014, the *Public Service and Other Legislation (Civil Liability) Amendment Act 2014* amended the *Public Service Act 2008* to provide state employees with broad legislative immunities from civil liability, instead transferring liability to the State. The legislative protection ensures that civil liability does not attach to state employees when they are acting in an official capacity. However, the immunity provisions in this section apply to a broader range of people than state employees. Consequently, this provision is not omitted, but is amended to remove duplication for state employees.

Part 4 Amendment of Environmental Offsets Act 2014

Act amended

Clause 9 states that this part amends the *Environmental Offsets Act 2014*.

Insertion of new s 13A

Clause 10 inserts a new section 13A into part 5 of the *Environmental Offsets Act 2014* to apply definitions to part 5.

Section 13A Definition for pt 5

This section applies, without change, the definition for "existing" currently within section 15 of the *Environmental Offsets Act 2014*, to part 5 of the Act. This is now necessary because section 15 is being split into two sections within the Bill so the definition now applies to more than one section.

Amendment of s 14 (Imposing offset condition)

Clause 11 amends section 14 of the *Environmental Offsets Act 2014* to replace the word "may" with "must" in subsection (3). This amendment makes it mandatory for administering agencies to have regard to existing offset conditions for an area that relates to the same, or substantially the same prescribed activity and prescribed environmental matter. This will

strengthen the State's commitment to remove unnecessary duplication between Commonwealth, State and local government environmental offset conditions.

Amendment of s 15 (Restriction on imposition of offset condition)

Clause 12 amends section 15 of the *Environmental Offsets Act 2014* to clarify the existing policy intent for the imposition of environmental offsets. The policy intent is that once the Commonwealth has:

- considered an application that includes the possible impact on an environmental matter;
- issued an approval in relation to that matter; and
- made a decision to impose or not impose an offset condition,

the matter cannot be considered by other levels of Government.

In addition, consistent with the existing situation, the restriction only applies where the Commonwealth decision covers the same area and the same or substantially the same activity managed by the State or local government.

This clause further clarifies what evidence is required to demonstrate the Commonwealth decision when an offset condition has been imposed or not imposed by the Commonwealth,.

This clause also amends section 15 to remove subsections 15(4) and (5) which prevent local governments from imposing offset conditions where the State has imposed the same or substantially the same offset condition. These provisions have been moved to the new section 15A.

Insertion of new s 15A

Clause 13 inserts a new section 15A into part 5 of the *Environmental Offsets Act 2014* to clarify when an offset condition has been imposed or not imposed by the State, and what evidence is required to demonstrate the State's decision – these matters were covered by section 15(4) and (5) of the pre-amendment *Environmental Offsets Act 2014*.

Section 15A Restriction on imposition of offset condition—State condition imposed or decision made not to impose State condition

This section clarifies the existing policy intent – that is, to ensure that once the State has:

- considered an application that includes the possible impact on an environmental matter; and
- issued an approval in relation to that matter and made a decision to impose or not impose an offset condition,

the matter cannot be considered by local government.

In addition, consistent with the existing situation, the restriction only applies where the State has a head of power to impose an offset condition in relation to the matter and the State decision covers the same area and the same, or substantially the same, activity managed by local government.

Insertion of new pt 6A

Clause 14 inserts a new part 6A into the *Environmental Offsets Act 2014* to remove existing conditions imposed by a lower level of government, if a higher level of government later imposes the same or substantially the same condition and provide a dispute resolution process associated with those decisions.

Part 6A When offset conditions stop applying

Section 25A When particular offset conditions stop applying – conditions imposed for the same area by Commonwealth etc.

This section strengthens the State's commitment to remove duplication associated with offset conditions imposed by Commonwealth, State and local governments.

An administering agency must give written notice to a holder of an authority where it is satisfied that an offset condition imposed by a higher level of government covers the same things (i.e. the same area and the same or substantially the same environmental matter and activity) as the offset condition imposed by the administering agency. The offset condition imposed by the administering agency stops having effect from the day the condition imposed by the higher level of government starts or started applying.

This section also requires the administering agency to give an authority holder notice of its decision if it does not agree that a condition imposed by a higher level of government covers the same things as the offset condition imposed by the administering agency. The section allows a regulation to provide for a review of such decisions. A regulation-making power is necessary to allow the same court that may review a decision to impose an offset condition to also review decisions made under this section.

Amendment of s 93 (Regulation-making power)

Clause 15 amends section 93 of the *Environmental Offsets Act 2014* to correct an error to subsection (2)(b) by replacing "by an owner" with "by an administering agency". The amendment confirms that regulations made under the Act may provide for registration of advanced offset areas by administering agencies to improve the operation of the Act.

Amendment of sch 2 (Dictionary)

Clause 16 amends the Dictionary in schedule 2 of the *Environmental Offsets Act 2014* to amend the definition for "administering agency" and delete an obsolete definition for "matter of local environmental significance" to improve the operation of the Act.

The definition of "administering agency" is amended to reflect current administrative arrangements. The existing definition of "administering agency" is limited to the agency that

imposes or may impose the environmental offset condition. However, the agency imposing an environmental offset condition is not always the agency that administers and enforces compliance with the condition. In addition, local government and the chief executive deliver environmental offsets using financial settlement offset payments given to them by various agencies.

This clause also inserts new definitions for the *Environmental Offsets Act 2014*. The definition provided in new section 13A of the Act for "Commonwealth condition", "relevant Commonwealth Act" and "State condition" will apply to all references to those terms elsewhere in the Act. This will ensure the definitions apply to section 15 and new sections 15A and 25A inserted into the Act.

Part 5 Amendment of Environmental Protection Act 1994

Division 1 Preliminary

Act amended

Clause 17 states that this part amends the *Environmental Protection Act 1994*.

Division 2 Amendments commencing on assent

Replacement of s 18 (Meaning of environmentally relevant activity)

Clause 18 amends section 18 of the *Environmental Protection Act 1994* to clarify that an environmentally relevant activity which is prescribed by the *Environmental Protection Regulation 2008* (a prescribed ERA) may be undertaken as part of a resource activity, and as such conditioned by the environmental authority for the resource activity.

Section 18 defines the term 'environmentally relevant activity' (ERA). These activities are generally split between:

(a) agricultural ERAs (which do not require an environmental authority);
(b) resource activities (i.e. geothermal activities, greenhouse gas storage activities, mining activities, and petroleum activities); and
(c) activities prescribed by a regulation (prescribed ERAs).

Prescribed ERAs are listed in schedule 2 of the *Environmental Protection Regulation 2008* and include activities which are carried out as part of a resource activity (e.g. chemical storage).

This amendment is consequential to the insertion of the new section 19A by this Bill.

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

Clause 19 amends section 19 of the *Environmental Protection Act 1994* as a consequence of the amendment of section 18 and the insertion of section 19A into the *Environmental Protection Act 1994* by this Bill. This amendment clarifies the matters which may be prescribed in the

Environmental Protection Regulation 2008 but ensures that the regulation may not amend the definitions of environmentally relevant activities in the *Environmental Protection Act 1994*.

Insertion of new s 19A

Clause 20 inserts a new section 19A into the *Environmental Protection Act 1994* which clarifies the interaction between prescribed ERAs and resource activities.

Section 19A Interaction between prescribed ERAs and resource activities

This section removes any doubt that an activity which is listed in schedule 2 of the *Environmental Protection Regulation 2008* (a prescribed ERA) can be carried out and licensed as part of a resource activity.

For a number of years, the *Environmental Protection Act 1994* has been administered so that a prescribed ERA can be licenced as part of a resource activity (i.e. as an ancillary activity to the primary activity of mining, petroleum extraction etc.). However, the inclusion of 'or' between paragraphs (b) and (c) of section 18 has created confusion. Consequently, this amendment is intended to recognise that, in practice, there is no arbitrary distinction between an ancillary activity such as chemical storage which is carried out off-tenure (i.e. as a prescribed ERA) and the same activity being carried out on-tenure (i.e. as part of a resource activity).

This also assists with the administrative practice of identifying the prescribed ERAs which are carried out as part of a resource activity. Where multiple activities are undertaken under one environmental authority, the relevant ERA number from schedule 2 of the *Environmental Protection Regulation 2008* is used as a shorthand reference to describe which activities are authorised. This makes it clear as to what is authorised and in the event of a change in the operation, when an amendment application needs to be made. The environmental authority would include any conditions for the prescribed ERA. This would occur regardless of whether the activity is being undertaken as part of a resource activity or not.

Amendment of s 47 (When EIS may be submitted)

Clause 21 amends section 47 of the *Environmental Protection Act 1994* to require that an applicant requests an extension of the EIS submission period before the two-year submission period ends. Section 47 gives the proponent the ability to extend the timeframe for submitting an EIS, for example, where the proponent is still conducting on-the-ground tests or preparing reports for the EIS. Under the pre-amendment *Environmental Protection Act 1994*, the proponent may request this extension *after* the 2 year timeframe has ended. This can lead to uncertainty since an EIS, which has not yet been submitted, can be enlivened at any point through the request for an extension. This uncertainty impacts on developers interested in investment opportunities, the community as to status of the EIS project, and the Queensland government for allocation of resources for the processing of an EIS application.

The transitional provisions for this part of the Bill (part 23 of chapter 13, as inserted by this Bill) ensure that, where the chief executive has provided the final terms of reference to the proponent and the proponent hasn't yet submitted the EIS prior to commencement, the former ability to request an extension after the 2 year submission period has ended will still apply. This will ensure that proponents with an EIS on-foot are not disadvantaged by removing the ability to apply for an extension for the submission of the EIS after the two year submission period has ended.

Note: EIS is defined in the Dictionary to the *Environmental Protection Act 1994* to be an environmental impact statement.

Amendment of s 49 (Decision on whether EIS may proceed)

Clause 22 amends section 49 of the *Environmental Protection Act 1994* to be consistent with the rest of the *Environmental Protection Act 1994* where the timeframes for decisions are contained in the Act. The timeframe for this section is currently prescribed by section 13 of the *Environmental Protection Regulation 2008* to be 20 business days with the possibility of extension. The decision made under this section is about whether the EIS addresses the final terms of reference in an acceptable form and can proceed. The decision timeframe is amended to be consistent with the decision timeframe for environmental authorities (see section 168). Since this timeframe is now prescribed in the Act, section 13 of the *Environmental Protection Regulation 2008* is obsolete and will be deleted.

This clause also inserts a new subsection (9)(d) as a consequence of the insertion of the new section 49A by this Bill. The new section 49A allows for the resubmission of an EIS.

The transitional provisions for this part of the Bill (part 23 of chapter 13, as inserted by this Bill) ensure that where the EIS has been submitted, and a decision has not been made prior to commencement as to whether the EIS can proceed, the amended decision timeframe for the chief executive to make a decision on the adequacy of the EIS applies. This ensures a smooth transition to the new timeframe for proponents with an EIS on foot.

Insertion of new s 49A

Clause 23 inserts a new section 49A into the *Environmental Protection Act 1994* to allow the proponent to resubmit an EIS.

Section 49A Proponent may resubmit EIS

This section allows for the resubmission of an EIS where it is refused from proceeding because it does not address the final terms of reference in an acceptable form. The proponent has the ability to resubmit once within three months of being issued a notice under section 49. This timeframe can be extended with the agreement of the chief executive. Sections 48, 49 and 50 apply to the resubmitted EIS as they would apply to a submitted EIS.

This provision allows the proponent to address any issues that would otherwise mean refusal of the EIS. Previously, where the EIS was refused, the proponent would have

been required to re-start the EIS process, including the terms of reference stage. Resubmission can only occur once so that there is not an endless resubmission and assessment loop.

The transitional provisions for this part of the Bill (part 23 of chapter 13, as inserted by this Bill) ensure that, where the EIS has been submitted but the next stage of the EIS process hasn't been finalised, the proponent has the ability to resubmit the EIS under section 49A for re-assessment. This means that proponents with an EISs on-foot will have the benefit of this new process.

Amendment of s 50 (Ministerial review of refusal to allow to proceed)

Clause 24 amends section 50 of the *Environmental Protection Act 1994* to correct a cross-reference, which is required as a consequence of the amendment to section 49 by this Bill.

Amendment of s 51 (Public notification)

Clause 25 amends section 51 of the *Environmental Protection Act 1994* to correct a cross-reference, which is required as a consequence of the amendment to section 49 by this Bill.

Amendment of s 52 (Required content of EIS notice)

Clause 26 amends section 52 of the *Environmental Protection Act 1994* to correct a cross-reference, which is required as a consequence of the amendment to section 49 by this Bill.

Amendment of s 56A (Assessment of adequacy of response to submission and submitted EIS)

Clause 27 amends section 56A of the *Environmental Protection Act 1994* to be consistent with the decision timeframe for section 49, which is amended by this Bill.

The decision made under section 56A applies after the EIS has been publically notified and the chief executive has accepted submissions. Previously the section 56A decision had to be made within 20 business days after the chief executive received the proponent's summary of the submissions, response to the submissions and an amended EIS because of the submissions. Previously there was no ability to extend this decision-making period. Extending the decision-making period allows for departmental staff to work with the proponent in ensuring that the EIS addresses all of the matters it is required to address, without requiring a formal resubmission of the EIS.

The transitional provisions for this part of the Bill (part 23 of chapter 13, as inserted by this Bill) ensure that, where a submission has been made on the EIS prior to commencement, the amended section 56A timeframe applies. This ensures a smooth transition to the new timeframe for proponents with an EIS on foot.

This clause also inserts a new subsection as a consequence of the insertion of the new section 56AA by this Bill. The new section 56AA allows for the resubmission of an EIS.

Insertion of new s 56AA

Clause 28 inserts a new section 56AA into the *Environmental Protection Act 1994* to allow the proponent to resubmit the proponent's response to submissions and the EIS where a decision is made by the chief executive under section 56A to refuse it from proceeding.

Section 56AA Proponent may resubmit EIS

This section specifies when the proponent may resubmit the EIS, rather than starting the whole EIS process from the beginning. The decision made under section 56A applies after the EIS has been publically notified and the chief executive has accepted submissions. The chief executive can refuse the EIS from proceeding where the proponent's response to submissions and any amendments made to the EIS because of these submissions is not adequate.

The proponent has the ability to resubmit once within 20 business days of being issued a notice under section 56A or within a different agreed to period within this timeframe. Sections 56A and section 56B apply to the resubmitted EIS as they would apply to a submitted EIS.

This provision allows the proponent to address any issues that could not be resolved, despite the amended decision timeframe under section 56A, rather than the proponent previously being required to re-start the application process. Resubmission can only occur once so that there is not an endless resubmission and assessment loop.

The transitional provisions for this part of the Bill (part 23 of chapter 13, as inserted by this Bill) ensure that, where a submission has been made on the EIS prior to commencement and the decision is to refuse the EIS from proceeding, the proponent has the ability to resubmit the EIS under section 56AA for re-assessment. This means that proponents with an EIS on-foot will have the benefit of this new process.

Amendment of s 56B (Ministerial review of refusal to allow submitted EIS to proceed)

Clause 29 amends section 56B of the *Environmental Protection Act 1994* to correct cross-references which are needed as a consequence of the amendment of section 49 and the insertion of the new section 56AA by this Bill.

Amendment of s 57 (EIS assessment report)

Clause 30 amends section 57 of the *Environmental Protection Act 1994* to correct a cross-reference which is needed as a consequence of the amendment of section 56A by this Bill.

Amendment of s 63 (Disclosure of relevant documents or information)

Clause 31 amends section 63 of the *Environmental Protection Act 1994* to remove an obsolete reference to a disclosure exemption which was a process that existed in the *Environmental Protection Act 1994* prior to amendments made by the *Environmental Protection and Other*

Legislation Amendment Act 2011. Disclosure exemptions which were granted prior to this time continue to apply through section 675, which is a transitional provision inserted by that amendment Act. The disclosure exemption process was removed from the *Environmental Protection Act 1994* because of the operation of the *Right to Information Act 2009*. The rest of the provision is unchanged from the pre-amendment section, but it has been separated into subsections to meet modern drafting styles.

Amendment of s 64 (Making of inquiry does not of itself alter EIS process)

Clause 32 amends section 64 of the *Environmental Protection Act 1994* to remove the section 64 note. Section 62 of the *Environmental Protection Act 1994* allows the chief executive to seek advice, comment or information at any time from the proponent or another person during the EIS process. Section 64 states that the asking for and receiving of advice does not extend or reduce the period required to take a step or make a decision under the EIS process in divisions 2 to 6 of chapter 3. The note at the bottom of section 64 makes reference to section 67 for the consequences of not giving advice required under section 62. Section 67 states that the consequence of not complying with a requirement under the EIS process is that the EIS process is suspended. It could be interpreted that not complying with a request for advice or information under section 62 results in the process being extended for the period of the suspension under section 67. This interpretation of the note conflicts with section 64. The note at the bottom of section 64 creates confusion because it is not clear whether or not providing requested advice, comment or information under section 62 is a 'requirement' referred to in section 67 that, in not being met, would suspend the EIS process under this section.

Amendment of s 112 (Other key definitions for ch 5)

Clause 33 amends section 112 of the *Environmental Protection Act 1994* as a consequence of the replacement of chapter 5A, parts 1 and 2 by this Bill. This section amends the definition of 'eligibility criteria' so that it now refers to an ERA standard, which is the document which contains the published eligibility criteria and standard conditions for an application for an environmental authority.

Amendment of s 136 (When does application stage end)

Clause 34 amends section 136 of the *Environmental Protection Act 1994* to remove any doubt that the administering authority can end the application stage early. The administering authority may end the application stage on the day the administering authority decides it is satisfied that the proponent has complied with the requirements of the application stage. This amendment means that there is no doubt that the administering authority does not have to wait until the end of the 10 business day timeframe in order to move onto the next stage. This was always the intent of the provisions, but the drafting style had caused some confusion.

Amendment of s 148 (When does information stage end)

Clause 35 amends section 148 of the *Environmental Protection Act 1994* to remove any doubt that the administering authority can end the information stage early. Where an information request is not made, the administering authority may end the information stage on the day the

administering authority decides an information request will not be made. This amendment means that there is no doubt that the administering authority does not have to wait until the end of the 10 business day timeframe in order to move onto the next stage. This was always the intent of the provisions, but the drafting style had caused some confusion.

Amendment of s 165 (When does decision stage start—general)

Clause 36 amends section 165 of the *Environmental Protection Act 1994* so that the decision stage for an application can start on the day that all other stages applying to the application have ended, rather than the day after all the other stages have ended. This enables quicker decisions to be made, particularly on standard applications.

Amendment of s 207 (Conditions that may be imposed for site-specific applications)

Clause 37 amends section 207 of the *Environmental Protection Act 1994* to remove any doubt that the administering authority can restrict, limit or prohibit certain activities through the conditioning of an environmental authority. This was always the intent of the provisions, but the drafting style had caused some confusion.

Amendment of s 213 (Amendment of environmental authorities to reflect new standard conditions)

Clause 38 amends section 213 of the *Environmental Protection Act 1994* to change terminology to refer to an ERA standard as a consequence of the replacement of chapter 5A, parts 1 and 2 by this Bill.

Amendment of s 223 (Definitions for pt 7)

Clause 39 amends section 223 of the *Environmental Protection Act 1994* to allow for a new type of streamlined minor amendment. Where the holder of an eligible environmental authority wishes to convert *all* of their conditions to new contemporary standard conditions, they can apply for a 'condition conversion'.

The *Environmental Protection Act 1994* already contains transitional provisions which allow the holder of a transitional authority to apply to convert the conditions of the authority to the relevant standard conditions (sections 694 to 698). Transitional authorities are authorities approved prior to the commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (the Greentape Reduction Act) and transitioned to environmental authorities under that amendment Act.

However, these provisions only apply to a transitional authority. Consequently, for authorities approved after the commencement of the Greentape Reduction Act, where a holder wants to move to all new standard conditions, this must currently be done through the existing minor amendment application process, which includes an assessment of whether the amendment is a minor amendment or a major amendment. Allowing for a more streamlined minor amendment process is consistent with the current transitional provision for conversions,

reducing unnecessary regulatory and administrative processes for both business and government.

This clause also amends section 223 so that where the holder of an environmental authority wishes to replace a standard condition with a new standard condition this is not automatically captured as a major amendment.

Section 223 is also amended by this clause to allow for minor amendments to be distinguished as a condition conversion or a minor amendment (threshold) to reduce the possibly for confusion on the different types of minor amendments.

Amendment of s 226 (Requirements for amendment application generally)

Clause 40 amends section 226 of the *Environmental Protection Act 1994* to limit the requirements for an application for a condition conversion to remove the need for detailed application requirements which do not affect the outcome of the decision (i.e. to impose the new standard conditions). This allows for a more streamlined process.

Insertion of new ch 5, pt 7, div 2A

Clause 41 inserts a new division 2A into chapter 5, part 7 into the *Environmental Protection Act 1994* to allow for the refusal of particular amendment applications without an assessment level decision. The assessment level decision is a process to decide whether an amendment application is for a minor or a major amendment.

Division 2A Provisions for particular amendment applications

Section 227A Early refusal of particular amendment applications and requirement to replace environmental authority

This section allows for the refusal of an amendment application without an assessment level decision. This section applies in the circumstance where an environmental authority has been issued for a standard or variation application and an application is made to amend the condition that requires the relevant activity to comply with the relevant eligibility criteria. This condition is required to be imposed on the environmental authority under section 204 to ensure these activities meet the eligibility criteria over the term of the authority. This section provides that the administering authority may refuse the amendment application and require a site-specific application be made under section 314(2)(a) so that the environmental authority can be assessed and conditioned as a site-specific application would be.

If the amendment application is about a proposed change to the eligibility criteria, and the holder can continue to comply with the eligibility criteria if the amendment is not made, then the amendment application can be refused without a requirement for the holder to make a site-specific application for a new environmental authority.

The power to require a new site-specific application would only be able to be used where requiring a site-specific application is reasonable. For example, requiring a site-specific application might not be reasonable when the eligibility criteria require that the activity does not cause environmental nuisance at the nearest sensitive receptor and an existing activity is encroached upon by a residential development. In this example, there may be little that an existing operator can do to prevent environmental nuisance experienced by the encroaching residential development. Where requiring a site-specific application is not reasonable, the amendment application may proceeds as a major amendment subject to the requirements of chapter 5, part 7, division 4.

This provision ensures the intent of the *Environmental Protection Act 1994* is maintained concerning the assessment and conditioning of activities as proportionate to the level of risk of an activity to the receiving environment. If an application for an environmental authority for a proposed activity cannot meet the eligibility criteria for the activity, or no eligibility criteria are in effect for the activity, then the application must be assessed through the highest level of assessment, as a site-specific application. Similarly, minor and major amendments are differentiated so that simple minor amendments do not go through the more thorough processes that major amendments must undergo.

Insertion of new s 227B

Clause 42 inserts a new section 227B into the *Environmental Protection Act 1994* to streamline the amendment application process for a condition conversion.

Section 227B Amendment applications to which div 3 does not apply

This section excludes the requirement for the administering authority to make an assessment level decision for an amendment application for a condition conversion. This is because a condition conversion is (by definition) a minor amendment application; therefore an assessment level decision is not required.

Amendment of s 240 (Deciding amendment application)

Clause 43 amends section 240 of the *Environmental Protection Act 1994* to streamline the amendment application process for a condition conversion by requiring the administering authority to make a decision on the application within 10 business days of receiving the application. This is a consequence of the insertion of new section 227B, since there is no assessment level decision, the decision to approve or refuse the amendment application must be made within 10 business days of the application being received instead of 10 business days from the assessment level decision.

Amendment of s 241 (Criteria for deciding amendment application)

Clause 44 amends section 241 of the *Environmental Protection Act 1994* to remove decision criteria which are irrelevant for a condition conversion application (a type of minor amendment). This means the administering authority, in deciding the application need only be

satisfied that the amendments are necessary and desirable in the context of the environmental authority and amendment application. This level of assessment is in proportion to the level of risk associated with a condition conversion application and reduces regulatory burden.

Amendment of s 242 (Steps after deciding amendment application)

Clause 45 amends section 242 of the *Environmental Protection Act 1994* to remove an inconsistency in process timeframes. Currently, once a decision is made on an amendment application, the post-decision steps must be completed within 5 business days for an approved amendment application and within 10 business days if an amendment application is refused or further amendments are made by the administering authority.

The change in this clause of the Bill will ensure that all post-decision steps are completed within 5 business days, regardless of the outcome of the decision.

Amendment of ch 5, pt 8, hdg (Amalgamating environmental authorities)

Clause 46 amends the heading of part 8 of chapter 5 of the *Environmental Protection Act 1994* as a consequence of the new insertion of division 4 into chapter 5, part 8 which provides a simple process for the de-amalgamation of an environmental authority.

Amendment of s 243 (Definitions for pt 8)

Clause 47 amends section 243 of the *Environmental Protection Act 1994* to insert definitions as a consequence of the insertion of the new division 4 into chapter 5, part 8 which provides a simple process for the de-amalgamation of an environmental authority.

Insertion of new ch 5, pt 8, div 1A hdg

Clause 48 inserts a new division 1 heading "Amalgamating environmental authorities" after section 244 of the *Environmental Protection Act 1994* to distinguish the preliminary section (i.e. the definitions) from the process for amalgamating environmental authorities. This amendment is a consequence of the insertions of the new division 4 for de-amalgamating environmental authorities.

Amendment of ch 5, pt 8, div 3, hdg (Miscellaneous provisions)

Clause 49 amends the heading for division 3, chapter 5, part 8 of the *Environmental Protection Act 1994* as a consequence of the insertion of the new division 4 into chapter 5, part 8 which provides a simple process for the de-amalgamation of an environmental authority.

Insertion of new ch 5, pt 8, div 4

Clause 50 inserts a new division 4 into chapter 5, part 8 of the *Environmental Protection Act 1994* to provide a simple process for the de-amalgamation of an environmental authority. This applies where a single environmental authority covers multiple activities, such as where one ERA project environmental authority is approved for a single integrated operation or

where multiple environmental authorities are amalgamated post-approval. In either of these cases, the single environmental authority may cover multiple activities and may include multiple resource tenures.

The de-amalgamation of an environmental authority supports commercial business decisions. For example, the dividing up of assets for sale, so that the existing environmental authority can be split so that it still applies to the remaining and transferred components of a project.

Prior to the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Greentape Reduction Act) there was a requirement that the holder of a resource tenure must be the same as the holder of the environmental authority. The holder was required to apply to the Department of Natural Resources and Mines to transfer the tenure and apply to the Department of Environment and Heritage Protection to transfer the environmental authority. As part of the changes made through the Greentape Reduction Act, the requirement to transfer the environmental authority was removed and instead the holder of the environmental authority was defined to be the holder of the tenure. The intent was that when an environmental authority applied to multiple tenures, and only one of those tenures was transferred, then the environmental authority would automatically be duplicated with the same conditions applying to both the transferred tenure and the non-transferred tenure when the tenure was transferred. Despite this, a more onerous application process has been used which involves amending the environmental authority first to split it between the tenures, and then transfer the tenure under the resources legislation. This amendment implements the intent of the legislation by ensuring that the simplified process is used.

In addition, this amendment allows for the de-amalgamation of the environmental authority if the holder of the environmental authority is no longer operating the authorised activities as a single integrated operation.

The process for de-amalgamation of environmental authorities for transfer of a prescribed ERA is not required, since the transfer provisions in the *Environmental Protection Act 1994* already allow for the transfer of all or part of the environmental authority.

Division 4 De-amalgamating environmental authorities

Section 250A Who may apply for de-amalgamation

This section allows a holder of an environmental authority to apply to de-amalgamate a relevant authority. This application can be made by any holder of an environmental authority for a prescribed ERA project (i.e. not for a resource project). However, for a resource project, an application can only be made in certain circumstances. This is to ensure that a resource project continues to be authorised under a single environmental authority. This maintains the current arrangement for resource projects to ensure that the project and its cumulative impacts are managed as a whole.

This section also defines the types of environmental authorities, defined as ‘a relevant authority’ that can be de-amalgamated under division 4. Relevant authorities are authorities where a single environmental authority covers multiple activities, such as where one ERA project environmental authority is approved for a single integrated

operation or where multiple environmental authorities are amalgamated post-approval. In either of these cases, the single environmental authority may cover multiple activities and may include multiple resource tenures.

Section 250B Requirements for de-amalgamation application

This section specifies the requirements for a de-amalgamation application. The application must be made in the approved form. Additionally, for a resource project, a declaration must be given stating that the applicant has complied with the requirements for a de-amalgamation application. While the de-amalgamation of the environmental authority reflects business decisions such as the selling of project components, the administering authority still needs to be satisfied that a resource project will continue to be authorised under a single environmental authority. The provision of false or misleading information is an offence under the *Environmental Protection Act 1994*.

Section 250C De-amalgamation

This section sets out the timeframe for approving a de-amalgamation application and specifies the steps the administering authority is required to take to put into effect an approved application. The administering authority must split the environmental authority and essentially issue duplicate environmental authorities for each side of the split. The duplicate environmental authority will include all relevant existing environmental conditions so that the resulting de-amalgamated environmental authorities issued to the applicant place the same requirements on the holder as the amalgamated authority. The holder may then apply to the administering authority to remove any obsolete conditions. For example, where one tenure is sold and another retained, it may be that only one of those tenures contains a hazardous dam. Therefore, the environmental conditions relating to the hazardous dam could be removed from the tenure which does not have a dam. A copy of the environmental authorities must be inserted in the relevant register.

Section 250D When de-amalgamation takes effect

This section specifies when de-amalgamation applications take effect. Where the de-amalgamation grounds are the proposed transfer of tenure, the de-amalgamation of the authority doesn't occur until the transfer of the relevant tenure. This ensures that the de-amalgamation aligns with the transfer of the tenure under the relevant resource legislation, since the environmental authority automatically travels with the tenure. Note: the transfer of all or part of a prescribed ERA occurs under the relevant transfer provisions of the *Environmental Protection Act 1994* therefore a de-amalgamation process is not needed for these types of ERAs.

Where the de-amalgamation is on the grounds that the activity is no longer being carried out as a single integrated operation, the de-amalgamation takes effect immediately. However, where the de-amalgamation is on the grounds that the holder proposes to cease carrying out the operation as a single integrated operation, the de-amalgamation takes effect on the date the operator proposes to cease carrying it out as

a single integrated operation. This ensures that the environmental authority meets the conditions on the ground for the operation.

Amendment of s 278 (Cancellation or suspension by administering authority)

Clause 51 amends section 278 of the *Environmental Protection Act 1994* to include the circumstance where an application to increase the financial assurance has been approved and the increase in the financial assurance has not been given by the environmental authority holder. Section 278 allows the administering authority to cancel or suspend an environmental authority in certain circumstances, including where the financial assurance has not been paid. This amendment ensures all circumstances where the financial assurance has not been given are provided for under section 278.

Amendment of s 284B (Requirements for suspension application)

Clause 52 amends section 284B of the *Environmental Protection Act 1994* to provide improved clarify and certainty about the length of time a suspension can be applied for. An application for suspension of the environmental authority is applied for by a holder where the holder is not intending to carry out the authorised activity for an extended length of time. Currently, the nominated period for suspension is between one and three years from the next anniversary date of the environmental authority. The intention was that this nominated period would always be in yearly increments from the anniversary date. However, this was not clearly articulated in the legislation. Consequently, this amendment makes it clear that the nominated period must be for one year, two years, or three years from the anniversary date of the environmental authority.

Under the *Environmental Protection Regulation 2008*, if the holder wishes to recommence carrying out the activity in between the yearly increments (e.g. 18 months after suspension), then the holder may do so by giving the administering authority notice of the intention to recommence carrying out the activity and paying a pro rata annual fee.

The transitional provisions for this part of the Bill (part 23 of chapter 13, as inserted by this Bill) states that if a suspension application is made by the holder of an environmental authority, but not decided, before the commencement, for a period which is not 1, 2 or 3 years, the nominated period is deemed to be the next anniversary date after the period nominated in the application. For example, if the application nominated 18 months, the nominated period would be deemed to be 2 years. Note that this provision doesn't stop the existing ability for the environmental authority holder to terminate the suspension of the environmental authority at any time upon payment of the pro rata annual fee. This ensures existing environmental authority holders are not disadvantaged by the amended provision.

Amendment of s 293 (New holder must give financial assurance before acting under environmental authority or small scale mining tenure)

Clause 53 amends section 293 of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section from 1665 penalty units to 4500 penalty units. Currently, the maximum penalty is consistent with the maximum penalty for a non-wilful breach of the conditions of an environmental authority. As the penalty for

breaching the conditions of an environmental authority has increased to be consistent with penalties in the *Regional Planning Interests Act 2014* and with interstate jurisdictions, the penalty for this offence has also increased to maintain consistency.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 295 (Deciding amount and form of financial assurance)

Clause 54 amends section 295 of the *Environmental Protection Act 1994* to make it clear that, in making the decision about the amount and form of financial assurance, the administering authority only needs to consider any relevant regulatory requirements, and does not need to consider every regulatory requirement in the *Environmental Protection Regulation 2008*.

Currently, the regulatory requirements which are prescribed in the *Environmental Protection Regulation 2008* are for decisions about managing the impacts of carrying out the activity. These requirements are not relevant to the decision about the amount and form of financial assurance. However, the Queensland government has been working with industry to develop a financial assurance calculator to streamline and clarify the amount of financial assurance to be given. If this calculator becomes operational, the intent is to prescribe the use of the calculator as the regulatory requirement for this section. Consequently, it is still necessary to include consideration of the regulatory requirements in this section.

Amendment of s 302 (Who may apply)

Clause 55 amends section 302 of the *Environmental Protection Act 1994* to remove unintended limitations on who may apply to amend or discharge the financial assurance. Currently, section 302 provides that a person may apply to amend the amount or form of the financial assurance only where a notice has been given under section 296. The amount and form of financial assurance may be determined in a number of ways, including by a notice under section 296, under a plan of operations, and where the administering authority has required a change to the amount. Consequently, the circumstances where a holder may apply to amend or discharge the financial assurance needs to be broad enough to cover all of these types of decisions.

Amendment of s 303 (Requirements for application)

Clause 56 amends section 303 of the *Environmental Protection Act 1994* to remove the restriction on the types of financial assurance decision the requirements apply to. This amendment is required as a consequence of the amendment to section 302 by this Bill.

Amendment of s 307 (Replenishment of financial assurance)

Clause 57 amends section 307 of the *Environmental Protection Act 1994* to make the process for replenishing financial assurance consistent regardless of the type of activity the financial assurance applies to or how the amount of financial assurance was calculated. When the financial assurance provisions were combined as part of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (the Greentape Reduction Act), different processes for replenishing the financial assurance were unintentionally introduced. Replenishment of the financial assurance is required where the amount, or part of the amount, of financial assurance held has been claimed or realised under section 299 of the Act. The administering authority has always required that the financial assurance be replenished in these circumstances, but the processes used were different for different types of activities. This amendment makes it clear that the replenishment process is the process to be used for all types of activity (i.e. as opposed to requiring a change to the financial assurance under section 306 of the Act).

Amendment of s 309 (Particular requirement for annual return for CSG environmental authority)

Clause 58 amends section 309 of the *Environmental Protection Act 1994* so that only those holders of a CSG environmental authority for an ineligible ERA need to provide the additional information required by this section.

The requirement itself has not been changed. Section 309 requires the annual return to include an evaluation of the effectiveness of the management of CSG water under the section 126 criteria. However, the criteria in section 126 only apply to ineligible ERAs (i.e. site-specific applications). Consequently, this drafting error has created confusion for eligible ERAs who are arguably required to report on information which they were not required to provide as part of the application process.

Restricting this requirement to ineligible ERAs was the original intent of the section when it was inserted prior to the amendments made in the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Greentape Reduction Act). At that time, this requirement only applied to level 1 CSG activities. However, when this requirement was translated across to the new chapter 5 as part of the Greentape Reduction Act, this restriction to the level 1 or ineligible ERAs was lost. Therefore, this amendment returns the legislation to the original intent of the section.

Note: CSG is the acronym used in the *Environmental Protection Act 1994* for 'coal seam gas' extraction activities, and ERA is the acronym used in the *Environmental Protection Act 1994* for 'environmentally relevant activities'.

Omission of s 309A (Particular requirement for annual return for existing petroleum tenure under P&G Act)

Clause 59 omits section 309A of the *Environmental Protection Act 1994*. This section requires holders of petroleum tenures to notify the administering authority about incidental activities through an annual return. This section was inserted in response to amendments in early 2013 to the *Petroleum and Gas (Production and Safety) Act 2004* for an expansion of the definition of incidental activity to enable a tenure holder to undertake activities on the

tenure that were incidental to the tenure. The amendment to the *Petroleum and Gas (Production and Safety) Act 2004* was for limited circumstances where tenure holders could be sharing infrastructure. The intent of the amendment was to provide a mechanism for information to be provided to the administering authority on the types of activities being undertaken which would support the administering authority in undertaking compliance activities.

On further consideration, section 309A was found not to be required because the *Environmental Protection Act 1994* requires tenure holders to gain authorisation from the administering authority for activities that are not authorised or would result in unlawful harm. Reporting on these activities can also be required through the Plan of Operations or the annual return under existing mechanisms. Therefore, a provision requiring tenure holders to provide details of incidental activities in the annual return is unnecessary.

Amendment of s 314 (Requirement to replace environmental authority if non-compliance with eligibility criteria)

Clause 60 amends section 314 of the *Environmental Protection Act 1994* to increase the maximum penalty for this offence from 1665 penalty units to 4500 penalty units. Currently, the maximum penalty is consistent with carrying out an activity without an appropriate approval. As this offence is similar to operating without an appropriate approval (and the penalty for operating without an appropriate approval has increased to be consistent with penalties in the *Regional Planning Interests Act 2014* and with interstate jurisdictions), the penalty for this offence is increased to maintain consistency.

This section is also amended as a consequence of the insertion of the new section 227A by this Bill. This amendment completes what the requirement is really about, i.e. it's a requirement for the holder to replace their environmental authority and not to just make a site-specific application for additional environmental authority. This clarified that the offence in section 314(7) is ultimately about the holder not replacing their environmental authority rather than just whether or not they made the site-specific application.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Replacement of ch 5A, pts 1 and 2

Clause 61 replaces chapter 5A, parts 1 and 2 of the *Environmental Protection Act 1994* with a new chapter 5A, part 1, which combines the processes for making eligibility criteria and standard conditions since these documents are developed and published together. There are no substantive changes to the process. Combining the processes is mostly administrative, providing for one document to contain the eligibility criteria and standard conditions (called an "ERA standard") which removes duplication, makes it easier to identify the document which contains the eligibility criteria and standard conditions, and ensures that the eligibility criteria and standard conditions for an activity are consulted on and commence together.

However, a new provision has been added to allow for a minor amendment of an ERA standard.

The transitional provisions for this part of the Bill (part 23 of chapter 13, as inserted by this Bill) allow existing eligibility criteria and standard conditions to be deemed as an ERA standard. This means the new terminology can apply to both existing eligibility criteria and standard conditions and new documents. This benefits government, industry and the community by ensuring there is consistency across the processes.

Part 1 ERA standards

Section 317 Definitions for pt 1

This section inserts a new definition for 'ERA standard' and amends the definition for 'relevant existing authority' as a consequence of the new definition for an ERA standard and the combined process for making eligibility criteria and standard conditions. Otherwise, this section is consistent with section 318A of the pre-amendment *Environmental Protection Act 1994*.

Section 318 Chief executive may make ERA standard

This section states that the chief executive may make an ERA standard and that this standard may apply to relevant existing authorities. Currently, the ability for the chief executive to make eligibility criteria and standard conditions was implied and not explicitly stated. The ability for an ERA standard to apply to existing environmental authorities was in section 318C of the pre-amendment *Environmental Protection Act 1994*.

Section 318A Notice of proposed ERA standards

This section combines the processes for making eligibility criteria and standard conditions into a single process for publishing and consulting on a proposed ERA standard. The only change to the publishing and consulting provisions is the requirement that the information the chief executive publishes on the department's website must also state how to make a submission. Otherwise, this section is consistent with sections 317 and 318C of the pre-amendment *Environmental Protection Act 1994*.

Section 318B Consideration of submissions

This section maintains the requirement to consider submissions before the chief executive makes eligibility criteria and standard conditions (an ERA standard). This section is consistent with sections 318(1) and 318D(1) of the pre-amendment *Environmental Protection Act 1994*.

Note that, where submissions have been made, the chief executive is not required to personally consider each submission. As a matter of administrative necessity, it is recognised that the chief executive has many functions and powers in modern

government and necessity dictates that a more junior officer may need to undertake the duty on the chief executive's behalf. This is consistent with the Carltona principle[1] that applies so that a departmental official can exercise the power.

Section 318C Publication of ERA standard

This section maintains the requirement to publish the eligibility criteria or standard conditions (the ERA standard) on the department's website. This is consistent with sections 318(2) and 318D(4) of the pre-amendment *Environmental Protection Act 1994*.

Section 318D Approval of ERA standard by regulation

This section maintains the requirement for the eligibility criteria and standard conditions (the ERA standard) to take effect when approved by the *Environmental Protection Regulation 2008*. The option for the chief executive to make the eligibility criteria and standard conditions (the ERA standard) by gazette notice prior to them being made by the *Environmental Protection Regulation 2008* has been removed as this is an unnecessary administrative provision. Otherwise, this section is consistent with sections 318(3) and 318D(5) of the pre-amendment *Environmental Protection Act 1994*.

Section 318DA Minor amendment of ERA standard

This section introduces a streamlined process for amending an ERA standard for minor amendments that allows these amendments to be made without the need to meet the publication and consultation requirements for the making of an ERA standard. Minor amendments are amendments to the ERA standard that do not have an effect on the operation of the standard, such as correcting a spelling or grammatical error. The new version of the ERA standard must still be published on the department's website and made by the *Environmental Protection Regulation 2008*.

Amendment of s 323 (Administering authority may require environmental audit about other matters)

Clause 62 amends section 323 to expand the grounds for requiring an environmental audit to include where a person is contravening an enforceable undertaking. An enforceable undertaking can be entered into under the new chapter 10, part 5 (Enforceable undertakings) inserted by this Bill. In order to ensure that enforceable undertakings are complied with and are not merely entered into as way of circumventing the enforcement process, it is essential that effective monitoring is undertaken about the degree of compliance with the undertaking. In order to ensure that this not be an added impost on the regulator, an environmental audit can be required so that an independent third party auditor can report on the degree of compliance with the undertaking.

[1] *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560

This clause also amends section 323 to correct a cross-reference as a consequence of the omission of part 3D of the *Environmental Protection Act 1994* by this Bill.

Amendment of s 330 (What is a transitional environmental program)

Clause 63 amends section 330 to clarify that a transitional environmental program should not be used to achieve compliance with an enforceable undertaking. If the requirements of the enforceable undertaking cannot be met, then the enforceable undertaking should be either withdrawn (in which case, a prosecution may commence for the contravention) or varied. Since a transitional environmental program is a method of moving towards compliance with an environmental standard, it would be inappropriate to enter into a transitional environmental program in order to achieve compliance with an enforceable undertaking.

Amendment of s 331 (Content of program)

Clause 64 amends section 331 of the *Environmental Protection Act 1994* to require the use of an 'approved form' for transitional environmental program applications. The use of approved forms improves application processes by making it clear upfront what the department's requirements for an application are. This therefore reduces the need for additional information requests.

Amendment of s 357 (Power of Court to make order pending decision on application)

Clause 65 amends section 357 of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section. Currently, the maximum penalty is 3000 penalty units or 2 years imprisonment. The maximum penalty is being increased to:

- for a wilful offence – 6250 penalty units or 5 years imprisonment; or
- otherwise – 4500 penalty units

Currently, this offence is greater in penalty units than the wilful breach of the conditions of an environmental authority but has the same imprisonment term. Contravention of a court order is regarded as a very serious offence. As this offence is similar to breaching the conditions of an environmental authority (and the penalty for breaching the conditions of an environmental authority has increased to be consistent with penalties in the *Regional Planning Interests Act 2014* and with interstate jurisdictions), the penalty for this offence has also increased to maintain consistency.

The offence is also split into a wilful breach and a non-wilful breach for consistency with the breach for other orders (such as an environmental protection order). The elements of wilfulness that would have to be proved by the prosecution are similar to these other offences.

This amendment also increases the maximum custodial sentence from 2 years imprisonment to 5 years imprisonment. Under section 494 of the *Environmental Protection Act 1994*, this is already an indictable offence, but the increase elevates this offence from a misdemeanour to a crime.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that penalties accurately reflect the seriousness of the offence and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Insertion of new s 357AA

Clause 66 inserts a new section 357AA which cross-references the definition of "applicable event".

Section 357AA Definition for pt 4A

This section cross-references the definition of 'applicable event' which is in section 357A of the *Environmental Protection Act 1994*. This section is required as it is a signpost definition for a term used throughout part 4A.

Amendment of s 357A (What is an *applicable event*)

Clause 67 amends section 357A of the *Environmental Protection Act 1994* to clarify the definition of an 'applicable event'. An 'applicable event' may be natural, such as a flood or bushfire, or caused by sabotage. The current definition of an applicable event is limited to an event or a series of events that was not foreseen when particular conditions were imposed on an environmental authority. The temporary emissions licence was introduced into the Act by the *Economic Development Act 2012*. The intent of a temporary emissions license is to be used in those circumstances where the conditions of an environmental authority need to be temporarily relaxed or modified to respond to emergency circumstances.

It was intended that the reference to 'not foreseen' in the current definition of 'applicable event' would be to those circumstances that were beyond those that the decision maker considered being necessary to be conditioned by the environmental authority. The standard criteria, which are used when making decisions under the *Environmental Protection Act 1994* about actions or activities, require that a decision maker consider the financial implications on the operator of the conditions imposed on the approval. The practical effect of this is that it is unlikely that the decision maker will consider it desirable to impose conditions for events that have a very low probability unless the impacts would be extreme. Consequently, this section is amended to include an event or series of events that was foreseeable, but where the probability of the event occurring is so low that the chief executive was unlikely to have conditioned for it when deciding an application.

This section is also amended to clarify that a temporary emissions licence may override a condition or a requirement of a transitional environmental program.

Amendment of s 357B (Who may apply for temporary emissions licence)

Clause 68 amends section 357B of the *Environmental Protection Act 1994* to address an inconsistency so that as well as the holder of an environmental authority, the holder of a transitional environmental program (TEP) can also apply for a temporary emissions licence

(TEL). The existing provisions allow for a TEL to override a TEP, but do not allow for the holder of a TEP to apply for the TEL.

The application may be to override requirements of the TEP and/or conditions of the TEP. Under chapter 7, part 3 of the *Environmental Protection Act 1994*, a TEP contains requirements which must be complied with and can also be approved with conditions, which also must be complied with. Consequently, the ability for a temporary emissions licence to override a TEP needs to apply to both the requirements of the TEP and the conditions of the TEP.

Amendment of s 357G (Temporary emissions licence)

Clause 69 amends section 357G of the *Environmental Protection Act 1994* to address an inconsistency in that the temporary emissions licence (TEL) can override the conditions of transitional environmental program (TEP), but the *Environmental Protection Act 1994* does not currently specify that the TEL must state the conditions and/or requirements of the TEP that are overridden. This is a drafting error which is rectified by this amendment.

Additionally, section 357G is amended to clarify that a temporary emissions licence only applies to specific actions or omissions and not to the entire environmental authority.

Amendment of s 357I (Failure to comply with conditions of licence)

Clause 70 amends section 357I of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section. Currently, the maximum penalty is 1665 penalty units. The maximum penalty is increased to:

- for a wilful offence – 6250 penalty units or 5 years imprisonment; or
- otherwise – 4500 penalty units

Currently, the maximum offence is consistent with a non-wilful breach of the conditions of an environmental authority. As this offence is similar to breaching the conditions of an environmental authority (and the penalty for breaching the conditions of an environmental authority has increased to be consistent with penalties in the *Regional Planning Interests Act 2014* and with interstate jurisdictions), the penalty for this offence has also increased to maintain consistency.

The offence is also split to provide for both a wilful breach and a non-wilful breach. This ensures consistency with offence provisions for the breach of other approvals (such as an environmental authority condition). The elements of wilfulness that need to be proved by the prosecution would be similar to these comparable offences.

This amendment also introduces a custodial sentence of 5 years imprisonment. Under section 494 of the *Environmental Protection Act 1994*, this makes the wilful component of this offence an indictable offence, and the 5 year maximum penalty makes this offence a crime.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that penalties accurately reflect the seriousness of the offence and are comparable to similar offences. High penalties

are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 358 (When order may be issued)

Clause 71 amends section 358 of the *Environmental Protection Act 1994* to expand the grounds for when an environmental protection order may be issued so that an environmental protection order may be issued to secure compliance with an enforceable undertaking. This will ensure that the administering authority is not required to bring court action for any minor non-compliance issues that can be easily rectified. This is a consequential amendment required as a result of the new chapter 5, part 10 (Enforceable undertakings) inserted by this Bill.

This clause also amends section 358 to correct a cross-reference which is a consequence of the omission of chapter 8, part 3D of the *Environmental Protection Act 1994* by this Bill.

Amendment of s 361 (Offence not to comply with order)

Clause 72 amends section 361 of the *Environmental Protection Act 1994* to increase the maximum penalties for the offence prescribed in this section. Currently, the maximum penalties are:

- for a wilful offence – 2000 penalty units or 2 years imprisonment; or
- otherwise – 1665 penalty units for a non-wilful offence.

The maximum penalties have increased to:

- for a wilful offence – 6250 penalty units or 5 years imprisonment; or
- otherwise – 4500 penalty units.

Currently, the maximum penalty is consistent with the penalty for breaching the conditions of an environmental authority. As this offence is similar to breaching the conditions of an environmental authority (and the penalty for breaching the conditions of an environmental authority has increased to be consistent with penalties in the *Regional Planning Interests Act 2014* and with interstate jurisdictions), the penalty for this offence has also increased to maintain consistency.

This amendment increases the maximum custodial sentence from 2 years imprisonment to 5 years imprisonment. Under section 494 of the *Environmental Protection Act 1994*, this is already an indictable offence, but the increase elevates this offence from a misdemeanour to a crime.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 363A (Prescribed provisions)

Clause 73 amends section 363A of the *Environmental Protection Act 1994* to allow a direction notice to be issued on the grounds that a person has not obtained an environmental authority. A direction notice can be issued on a number of grounds, including the offence of causing environmental nuisance, the offence of contravening a noise standard, and the offence of causing minor water pollution.

Currently, where a person has not obtained an environmental authority, the administering authority must issue the person with an on-the-spot fine or prosecute the person before a Court. Prosecutions can be an excessive response if the person is unlicensed due to an oversight and is complying with the general environmental duty and any conditions which would be imposed by the environmental authority. Consequently, this amendment improves the administering authority's suite of possible enforcement options for an unlicensed operator.

Amendment of s 363E (Offence not to comply with a direction notice)

Clause 74 amends section 363E of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section. Currently, the maximum penalty is 300 penalty units. The maximum penalties have increased to:

- for a wilful offence – 1665 penalty units
- otherwise – 600 penalty units

Currently, the maximum penalty is consistent with the maximum penalty for a non-wilful environmental nuisance breach. The types of offences for which a direction notice is used are generally similar to the environmental nuisance offences. As the penalty for environmental nuisance has increased to maintain internal proportionality of penalties within the *Environmental Protection Act 1994*, the penalty for this offence has also increased to maintain consistency.

The offence is also split to provide for both a wilful breach and a non-wilful breach. This is consistent with the offence provisions for the breach of other orders (such as an environmental protection order). The elements of wilfulness that would have to be proved by the prosecution would be similar to these comparable offences.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 363I (Offence not to comply with clean-up notice)

Clause 75 amends section 363I of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section. Currently, the maximum penalty is 2000 penalty units. The maximum penalties have increased to:

- for a wilful offence – 6250 penalty units or 5 years imprisonment
- otherwise – 4500 penalty units

Clean-up notices are only issued for material or serious environmental harm. Currently the maximum penalty is consistent with the maximum penalty for a wilful breach of the conditions of an environmental authority. As the penalty for breaching the conditions of an environmental authority has increased to be consistent with penalties in the *Regional Planning Interests Act 2014* and with interstate jurisdictions, the penalty for this offence has also increased to maintain consistency.

The offence is also split to provide for both a wilful breach and a non-wilful breach. This is consistent with the offence provisions for the breach of other orders (such as an environmental protection order). The elements of wilfulness that would have to be proved by the prosecution would be similar to these comparable offences.

This amendment also introduces a custodial sentence of 5 years imprisonment. Under section 494 of the *Environmental Protection Act 1994*, this makes the wilful component of this offence an indictable offence, and the 5 year maximum penalty makes this offence a crime.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 426 (Environmental authority required for particular environmentally relevant activities)

Clause 76 amends section 426 of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section from 1665 penalty units to 4500 penalty units.

This offence is similar in nature to the offence in the *Regional Planning Interests Act 2014* of carrying out activities without a permit. The offence for carrying out activities without a permit in the *Regional Planning Interests Act 2014* has both a wilful element and a non-wilful element. As the *Regional Planning Interests Act 2014* does not have environmental harm offences the penalty for the non-wilful element was chosen as the appropriate benchmark for this offence. Therefore, the maximum penalty for the offence prescribed in section 426 has been increased to be consistent with the maximum penalty for this offence in the *Regional Planning Interests Act 2014*.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalty accurately reflects the seriousness of the offence and is comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

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

Clause 77 amends section 430 of the *Environmental Protection Act 1994* to increase the maximum penalties for the offence prescribed in this section. Currently, the maximum penalty is:

- for a wilful offence – 2000 penalty units or 2 years imprisonment; or
- for a non-wilful offence –1665 penalty units.

The maximum penalties have increased to:

- for a wilful offence – 6250 penalty units or 5 years imprisonment
- otherwise – 4500 penalty units

This offence is similar in nature to the offence in the *Regional Planning Interests Act 2014* of carrying out activities without a permit. Therefore, the maximum penalty for the offence prescribed in section 430 has been increased to be consistent with the maximum penalty for the offence in the *Regional Planning Interests Act 2014*.

The penalty increase for breaching the conditions of an environmental authority is also consistent with the penalty increase for carrying out particular environmentally relevant activities without an environmental authority, as these offences are considered to be similar.

This amendment increases the maximum custodial sentence from 2 years imprisonment to 5 years imprisonment. Under section 494 of the *Environmental Protection Act 1994*, this is already an indictable offence, but the increase elevates this offence from a misdemeanour to a crime.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 432 (Contravention of requirement of program)

Clause 78 amends section 432 of the *Environmental Protection Act 1994* to increase the maximum penalties for the offence prescribed in this section. Currently, the maximum penalties are:

- for a wilful offence – 1665 penalty units or 2 years imprisonment for a wilful offence; or
- for a non-wilful offence – 835 penalty units for a non-wilful offence.

The maximum penalties for this offence have increased to:

- for a wilful offence – 6250 penalty units or 5 years imprisonment
- otherwise – 4500 penalty units

Currently, the maximum penalties for this offence are consistent with the maximum penalties for the offences of causing material environmental harm. As the offence prescribed in section 432 is similar to breaching the conditions of an environmental authority (and as the penalty for breaching the conditions of an environmental authority has increased to be consistent with

penalties in the *Regional Planning Interests Act 2014* and with interstate jurisdictions), the penalty for this offence has also increased to maintain consistency.

This amendment increases the maximum custodial sentence from 2 years imprisonment to 5 years imprisonment. Under section 494 of the *Environmental Protection Act 1994*, this is already an indictable offence, but the increase elevates this offence from a misdemeanour to a crime.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 432A (Contravention of condition of approval)

Clause 79 amends section 432A of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section from 835 penalty units to:

- for a wilful offence – 6250 penalty units or 5 years imprisonment
- otherwise – 4500 penalty units

Currently, the maximum penalty for this offence is consistent with the maximum penalty for the offence of unlawfully causing material environmental harm. However, contravening the conditions of a transitional environmental program is more equivalent to contravening the conditions of an environmental authority. As the penalty for breaching the conditions of an environmental authority has increased to be consistent with penalties in the *Regional Planning Interests Act 2014* and with interstate jurisdictions, the penalty for this offence has also increased to maintain consistency.

The offence is also split to provide for both a wilful breach and a non-wilful breach. This is consistent with the offence provisions for the breach of other approvals (such as environmental authority conditions). The elements of wilfulness that would have to be proved by the prosecution would be similar to these comparable offences.

This amendment also introduces a custodial sentence of 5 years imprisonment. Under section 494 of the *Environmental Protection Act 1994*, this makes the wilful component of this offence an indictable offence, and the 5 year maximum penalty makes this offence a crime.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 434 (Contravention of plan)

Clause 80 amends section 434 of the *Environmental Protection Act 1994* to increase the maximum penalties for the offences prescribed in this section. Currently, the maximum penalties are:

- for a wilful offence – 1665 penalty units or 2 years imprisonment
- otherwise – 835 penalty units

The maximum penalties have increased to:

- for a wilful offence – 6250 penalty units or 5 years imprisonment
- otherwise – 4500 penalty units

As this offence is similar to breaching the conditions of an environmental authority (and as the penalty for breaching the conditions of an environmental authority has increased to be consistent with penalties in the *Regional Planning Interests Act 2014* and with interstate jurisdictions), the penalty for this offence has also increased to maintain consistency.

This amendment increases the maximum custodial sentence from 2 years to 5 years imprisonment. Under section 494 of the *Environmental Protection Act 1994*, this is already an indictable offence, but the increase elevates this offence from a misdemeanour to a crime.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 435A (Offence to contravene prescribed conditions for particular activities)

Clause 81 amends section 435A of the *Environmental Protection Act 1994* to increase the maximum penalties for the offence prescribed in this section. Currently, the maximum penalties are:

- for a wilful offence – 300 penalty units
- otherwise – 250 penalty units

The maximum penalties have increased to:

- for a wilful offence – 6250 penalty units or 5 years imprisonment
- otherwise – 4500 penalty units

As this offence is similar to breaching the conditions of an environmental authority (and as the penalty for breaching the conditions of an environmental authority has increased to be consistent with penalties in the *Regional Planning Interests Act 2014* and with interstate jurisdictions), the penalty for this offence has also increased to maintain consistency.

This amendment also introduces a custodial sentence of 5 years imprisonment. Under section 494 of the *Environmental Protection Act 1994*, this makes the wilful component of this offence an indictable offence, and the 5 year maximum penalty makes this offence a crime.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 437 (Offences of causing serious environmental harm)

Clause 82 section 437 of the *Environmental Protection Act 1994* to increase the maximum penalties for the offence prescribed in this section. Currently, the maximum penalties are:

- for a wilful offence – 4165 penalty units or 5 years imprisonment
- otherwise – 1665 penalty units

The maximum penalties have increased to:

- for a wilful offence – 6250 penalty units or 5 years imprisonment
- otherwise – 4500 penalty units

The definition of serious environmental harm means that any offence against section 437 involves a situation where significant or irreparable damage has occurred or is likely to occur to the environment. Such damage has the potential to impact on the State's economic, social and environmental prosperity. As such, the offence in section 437 is similar to the offences of failing to obtain an environmental authority or contravening conditions of an environmental authority. Consequently, having regard to the penalties in the *Regional Planning Interests Act 2014*, the penalty for the offence of causing serious environmental harm has been increased so that it does not have a lower penalty than the penalty for failing to obtain an environmental authority or contravening a condition of an environmental authority.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 438 (Offences of causing material environmental harm)

Clause 83 amends section 438 of the *Environmental Protection Act 1994* to increase the maximum penalties for the offence prescribed in this section. Currently, the maximum penalties are:

- for a wilful offence – 1665 penalty units or 2 years imprisonment
- otherwise – 835 penalty units

The maximum penalties have increased to:

- for a wilful offence – 4500 penalty units or 2 years imprisonment
- otherwise – 1665 penalty units

The current maximum monetary penalty for wilful material environmental harm is the same as the current maximum monetary penalty for non-wilful serious environmental harm. To maintain this consistency in terms of broader penalties increases, the current maximum

penalty for wilful material environmental harm is the new maximum penalty for non-wilful material environmental harm.

As the current custodial penalty for this offence is 2 years imprisonment for a wilful offence , there is no change to the maximum custodial sentence and thus no change to the charge being indictable and not a misdemeanour.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 440 (Offence of causing environmental nuisance)

Clause 84 amends section 440 of the *Environmental Protection Act 1994* to increase the maximum penalties for the offence prescribed in this section. Currently, the maximum penalties are:

- for a wilful offence – 835 penalty units
- otherwise – 300 penalty units

The maximum penalties have increased to:

- for a wilful offence – 1665 penalty units
- otherwise – 600 penalty units

The current maximum penalty for wilful environmental nuisance is the same as the maximum penalty for non-wilful material environmental harm. To maintain this consistency in terms of broader penalties increases, the maximum penalty for non-wilful environmental nuisance has increased by the same percentage as for wilful environmental nuisance to maintain consistency between the different offences.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 440Q (Offence of contravening a noise standard)

Clause 85 amends section 440Q of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section from 300 penalty units to:

- for a wilful offence – 1665 penalty units
- otherwise – 600 penalty units

Currently, the maximum penalty for this offence is consistent with the maximum penalty for non-wilful environmental nuisance. As the noise standards provide a maximum standard for noise which is a type of environmental nuisance, and the penalty for causing environmental

nuisance has increased to be consistent with the increase in penalties for serious and material environmental harm, this penalty has increased to maintain consistency.

The offence is also split to provide for both a wilful breach and a non-wilful breach. This is consistent with the offence provisions for the breach of other orders (such as an environmental protection order). The elements of wilfulness that would have to be proved by the prosecution would be similar to these offences.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 440ZG (Depositing prescribed water contaminants in waters and related matters)

Clause 86 amends section 440ZG of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section. Currently, the maximum penalties are:

- for a wilful offence – 835 penalty units
- otherwise – 300 penalty units

The maximum penalties have increased to:

- for a wilful offence – 1665 penalty units
- otherwise – 600 penalty units

Currently, the maximum penalties for this offence are consistent with the maximum penalties for causing an environmental nuisance. As the penalty for causing an environmental nuisance is increased to be consistent with the increase in penalties for serious and material environmental harm, this penalty has also increased to maintain consistency.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Omission of ch 8, pt 3D (Offences relating to releases from boats into non-coastal waters)

Clause 87 omits chapter 8, part 3D of the *Environmental Protection Act 1994*. This part is no longer required because the offences for section 440ZI, section 440ZJ and section 440ZK are not necessary.

The offence for section 440ZI and 440ZJ is addressed through the more recent offences related to releases of prescribed water contaminants in section 440ZG.

The offence for section 440ZK is addressed through the more recent offences relating to littering and dumping in the *Waste Reduction and Recycling Act 2011*.

Omitting these offences would mean that the only remaining section would be the definitions for this part in section 440ZH. Consequently, the entire chapter can be omitted.

Amendment of s 440ZL (Sale of solid fuel-burning equipment for use in residential premises and related matters)

Clause 88 amends section 440ZL of the *Environmental Protection Act 1994* to increase the maximum penalties for the offence prescribed in this section. Currently, the maximum penalties are:

- for a wilful offence – 835 penalty units
- otherwise – 300 penalty units

The maximum penalties have increased to:

- for a wilful offence – 1665 penalty units
- otherwise – 600 penalty units

Currently, the maximum penalties for this offence are consistent with the maximum penalties for causing an environmental nuisance. As the penalty for causing an environmental nuisance is increased to be consistent with the increase in penalties for serious and material environmental harm, this penalty has also increased to maintain consistency.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 440ZM (Permitted concentration of sulfur in liquid fuel for use in stationary fuel-burning equipment)

Clause 89 amends section 440ZM of the *Environmental Protection Act 1994* to increase the maximum penalties for the offence prescribed in this section. For subsection (1), the current maximum penalty of 300 penalty units has increased to 600 penalty units.

Currently, the maximum penalty for the subsection (1) offence is consistent with the maximum penalty for causing non-wilful environmental nuisance. As the penalty for causing environmental nuisance has increased to be consistent with the increase in penalties for serious and material environmental harm, this penalty has also increased to maintain consistency.

For subsection (2), the current penalties are:

- for a wilful offence – 835 penalty units
- otherwise – 300 penalty units

The maximum penalties for subsection (2) have increased to:

- for a wilful offence – 1665 penalty units
- otherwise – 600 penalty units

Currently, the maximum penalties for the subsection (2) offence are consistent with the maximum penalty for causing an environmental nuisance. As the penalty for causing environmental nuisance has increased to be consistent with the increase in penalties for serious and material environmental harm, this penalty has also increased to maintain consistency.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 442 (Offence of releasing prescribed contaminant)

Clause 90 amends section 442 of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section from 165 penalty units to:

- for a wilful offence – 1665 penalty units
- otherwise – 600 penalty units

Currently, the maximum penalties for this offence are inconsistent with the penalties for other similar offences such as the section 440 offence for environmental nuisance and the section 440ZG offence for minor water contamination. As this offence is similar to these offences, and the penalty for causing environmental nuisance is increased to be consistent with the increase in penalties for serious and material environmental harm, this penalty has increased to achieve consistency.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Replacement of s 443 (Offence to place contaminant where environmental harm or nuisance may be caused)

Clause 91 replaces section 443 of the *Environmental Protection Act 1994* which is an offence provision about placing contaminants where they may cause environmental harm or environmental nuisance. This section is being replaced because the current maximum penalty for this offence of 165 penalty units is not proportionate with other offences in the *Environmental Protection Act 1994* because it fails to distinguish between contaminants that may cause material or serious environmental harm and those that may cause environmental nuisance.

To be consistent with the proportionality of offences in the *Environmental Protection Act 1994*, the offence is split into two offences. These are section 443 for contaminants that may

cause serious or material environmental harm and section 443A for those that may cause environmental nuisance.

Section 443 Offence to place contaminant where serious or material environmental harm may be caused

This section provides for an offence for placing a contaminant where serious or material environmental harm may be caused. The offence is consistent with section 443 of the pre-amendment *Environmental Protection Act 1994* but with the added element that the environmental harm caused must be serious or material environmental harm.

The current maximum penalty of 165 penalty units for placing contaminants where they may cause environmental harm has increased to:

- for a wilful offence – 4500 penalty units or 2 years imprisonment
- otherwise – 1665 penalty units

The maximum penalties for contaminants that may cause material or serious environmental harm are consistent with the increased penalty for material environmental harm as benchmarked against penalties in the *Regional Planning Interests Bill 2014*. The maximum penalty for causing material or serious environmental harm is increased to maintain consistency between penalties for offences.

In addition, the offence is split to provide for both a wilful breach and a non-wilful breach. This is consistent with the environmental harm offences. The elements of wilfulness that would have to be proved by the prosecution would be similar to those offences.

This amendment also introduces a custodial sentence of 2 years imprisonment. Under section 494 of the *Environmental Protection Act 1994*, this will make the most serious wilful component of this offence an indictable offence, and the 2 year maximum penalty makes this offence a misdemeanour.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Section 443A Offence to place contaminant where environmental nuisance may be caused

This section provides for an offence for placing a contaminant where environmental nuisance may be caused. The offence is consistent with section 443 of the pre-amendment *Environmental Protection Act 1994* but with the added element that the environmental harm cause is only environmental nuisance.

The current maximum penalty of 165 penalty units for placing contaminants where they may cause environmental harm has increased to:

- for a wilful offence – 1665 penalty units
- otherwise – 600 penalty units

The maximum penalties for contaminants that may cause environmental nuisance are consistent with the penalties for other similar offences (environmental nuisance in section 440 and minor water contamination in section 440ZG). This increase also reflects consistency with the increase in the penalty for causing environmental nuisance as consistent with the increase in penalties for serious and material environmental harm.

In addition, the offence is split to provide for both a wilful breach and a non-wilful breach. This is consistent with the environmental harm offences. The elements of wilfulness that would have to be proved by the prosecution would be similar to those offences.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 450 (Protection from liability)

Clause 92 amends section 450 of the *Environmental Protection Act 1994* so that this section does not apply to an official who is a State employee within the meaning of the *Public Service Act 2008*. On 31 March 2014, the *Public Service and Other Legislation (Civil Liability) Amendment Act 2014* amended the *Public Service Act 2008* to provide State employees with broad legislative immunities from civil liability, instead of transferring liability to the State. The legislative protection ensures that civil liability does not attach to State employees when they are acting in an official capacity. However, the immunity provisions in section 450 apply to a broader range of people than state employees. Consequently, this provision is not omitted, but is amended to remove duplication for State employees.

Amendment of s 452 (Entry of place—general)

Clause 93 amends section 452 of the *Environmental Protection Act 1994* so that an authorised person may enter a place to monitor compliance with an enforceable undertaking. The times when entry can be made are the same as those for environmental authorities, agricultural ERAs and small scale mining activities. This is a consequential amendment required as a result of the new chapter 5, part 10 (Enforceable undertakings) inserted by this Bill.

Any change to the powers of entry for an authorised person raises the fundamental legislative principle that legislation should confer power to enter premises only with a warrant issued by a judge or other judicial officer. However, the powers of entry in the *Environmental Protection Act 1994* are specified and specific in terms of the circumstances in which the powers may be exercised. These powers are justifiable in proportion to the interference in rights and liberties involved. The prevailing public interest for environmental legislation is to protect the community. The expansion of the powers of entry are for similar powers to enter a place to monitor compliance with an enforceable undertaking as the powers of entry to monitor compliance with approvals, such as an environmental authority or a prescribed condition for a small scale mining activity. The entry can only be carried out when the activity is being carried out or the place is open for entry (e.g. because it is open for business). There is no ability to enter a private residence, and the entry must be made at a reasonable time (see existing subsection (3) of section 452). Consequently, this expansion of the powers of entry is justifiable in the circumstances.

Amendment of s 462 (Procedure after seizure of evidence)

Clause 94 amends section 462 of the *Environmental Protection Act 1994* to extend the period of time to extend the time for the return of seized evidence from 6 to 12 months.

This amendment raises the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals in that the power to seize evidence should be fair and reasonable. This amendment does not change the power to seize evidence but merely extends the time for the return of a seized thing from 6 to 12 months.

Ordinarily, a prosecution must commence within 1 year of the commission of the offence or the offence coming to the complainant's knowledge. Consequently, the requirement to commence the prosecution within 6 months halves the time available to properly investigate the matter, review evidence and determine whether prosecution is appropriate, or whether another enforcement action should be taken. The Department of Environment and Heritage Protection's Enforcement Guidelines guide the department to ensure that prosecutions are only commenced for the most serious offences or where the compliance record of the offender suggests that a prosecution is appropriate. The nature of seized evidence is usually documents, emails, reports, sampling data, plans, maps, videos, etc.

When the legislation was introduced in 1994, six months was usually sufficient to review this information. However, due to the increasing use of technology and the ability to store large volumes of information and data electronically, the likelihood of increased volumes of information needing to be reviewed has increased. Departmental policy is that copies of seized information would be made for the owners of this information, where the owner did not already have copies. Therefore, access by the owner to the information while it is seized for review by the department will not be compromised by the proposed amendment. Consequently, 12 months is a reasonable time to hold the seized information to ensure that any enforcement action taken is appropriate and proportional to the offence committed.

Amendment of s 478 (Failure to comply with authorised person's direction in emergency)

Clause 95 amends section 478 of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section from 2000 penalty units to:

- for a wilful offence – 6250 penalty units or 5 years imprisonment
- otherwise – 4500 penalty units

Currently, the maximum penalty is consistent with the penalty for a wilful breach of an environmental authority. The seriousness of this offence is similar to the seriousness of breaching an environmental authority. As the penalty for breaching the conditions of an environmental authority has increased to be consistent with penalties in the *Regional Planning Interests Act 2014* and with interstate jurisdictions, the penalty for this offence has also increased to maintain consistency.

The offence is split to provide for both a wilful breach and a non-wilful breach element. This is consistent with the breach of other orders such as an environmental protection order. The elements of wilfulness that would have to be proved by the prosecution would be similar to that offence.

This amendment also introduces a custodial sentence of 5 years imprisonment. Under section 494 of the *Environmental Protection Act 1994*, this will make the wilful component of this offence an indictable offence, and the 5 year maximum penalty makes this offence a crime.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalties accurately reflect the seriousness of the offences and are comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 480 (False or misleading documents)

Clause 96 amends section 480 of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section from 1665 penalty units or 2 years imprisonment to 4500 penalty units or 2 years imprisonment.

Currently, the maximum penalty for this offence is consistent with the penalty for wilful material environmental harm. As this is a similar offence, and the penalty for causing wilful material environmental harm has increased to be consistent with the increase in penalties for serious environmental harm, this penalty has also increased to maintain consistency.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalty accurately reflects the seriousness of the offences and is comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 480A (Incomplete documents)

Clause 97 amends section 480A of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section from 1665 penalty units or 2 years imprisonment to 4500 penalty units or 2 years imprisonment.

Currently, the maximum penalty for this offence is consistent with the penalty for wilful material environmental harm. As this is a similar offence, and the penalty for causing wilful material environmental harm has increased to be consistent with the increase in penalties for serious environmental harm, this penalty has also increased to maintain consistency.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalty accurately reflects the seriousness of the offences and is comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 481 (False or misleading information)

Clause 98 amends section 481 of the *Environmental Protection Act 1994* to increase the maximum penalties for the offence prescribed in this section from 1665 penalty units or 2 years imprisonment to 4500 penalty units or 2 years imprisonment.

Currently, the maximum penalty for this offence is consistent with the penalties for wilful material environmental harm. As this is a similar offence, and the penalty for causing wilful material environmental harm has increased to be consistent with the increase in penalties for serious environmental harm, this penalty has also increased to maintain consistency.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalty accurately reflects the seriousness of the offences and is comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 493A (When environmental harm or related acts are unlawful)

Clause 99 amends section 493A of the *Environmental Protection Act 1994* to include a note that cross-references the new section 508 inserted by this Bill (effect of enforceable undertaking). Compliance with an enforceable undertaking does not make an unlawful action lawful, but it is a reason why a proceeding on an offence would not be undertaken. This is a consequential amendment required as a result of the new chapter 5, part 10 (Enforceable undertakings) inserted by this Bill.

Amendment of s 497 (Limitation on time for starting summary proceedings)

Clause 100 amends section 497 of the *Environmental Protection Act 1994* so that the limitation of time for starting proceedings is extended where an enforceable undertaking has been entered into. This ensures that the original offence can still be prosecuted if an enforceable undertaking is entered into but not complied with. The timeframe for starting proceedings is 1 year, which is consistent with the timeframe for prosecuting the original

offence. This is a consequential amendment required as a result of the new chapter 5, part 10 (Enforceable undertakings) inserted by this Bill.

This section is based on section 232(1)(c) of the *Work Health and Safety Act 2011* with minor amendments to update the drafting style. These changes are not intended to change the effect or interpretation of the provisions.

Amendment of s 498 (Notice of defence)

Clause 101 amends section 498 of the *Environmental Protection Act 1994* to ensure this section refers to the correct chapter of the Act that contains the relevant defence. Section 498 requires a person to give notice to the prosecutor of a defence they intend to rely upon under chapter 8 of the Act, however, there are no defences provided in chapter 8.

This section originally referred to section 436, which was relocated out of chapter 8 of the *Environmental Protection Act 1994* and into chapter 10 of the Act (as section 493A) as part of the *Environmental Protection and Other Legislation Amendment Act (No. 2) 2008*. When section 436 was relocated, this cross-reference was inadvertently not corrected.

This potentially means that a defendant would not have to notify the prosecution when relying on the defences provided by section 493A. The intention of section 498 is to ensure that court cases are not delayed unreasonably upon the defendant notifying the prosecution of their intention to rely upon the defences in section 493A. This amendment ensures that the original intent is restored.

Insertion of new ch 10, pt 5

Clause 102 inserts a new chapter 10, part 5 into the *Environmental Protection Act 1994*. This part contains the provisions relating to enforceable undertaking. An enforceable undertaking is an agreement between an administering authority and a person which specifies actions that the person agrees to undertake in return for the administering authority agreeing to not prosecute the person for an alleged contravention of the Act. The administering authority agrees to forego enforcement action on the basis that offenders will correct their misconduct, comply in the future and take other actions to enhance the protection of the environment.

Enforceable undertakings are a flexible tool to achieve good environmental outcomes without committing the State or the applicants to the costs of litigation and the associated costs to the court system.

Enforceable undertakings are already used in Queensland law in the *Electrical Safety Act 2002* (Part 3), the *Water Efficiency Labelling and Standards Act 2005* (Part 8, Division 3), the *Work Health and Safety Act 2011* (Part 11), the *Fair Trading Act 1989* (for matters arising other than under Australian Consumer Law – section 62); the *Property Agents and Motor Dealers Act 2000* (Chapter 16, Part 2); the *Tourism Services Act 2003* (Part 7), and the *Introduction Agents Act 2001* (Part 8, Division 1). Enforceable undertakings are also used for environmental matters by the Commonwealth government under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* , the New South Wales government under the

Protection of the Environment Operations Act 1997 (NSW), and the Victorian government under the *Environment Protection Act 1970 (Vic)*.

It is not appropriate to use an enforceable undertaking for the most serious of offences and accordingly their use is limited to contraventions of the Act that would not be an indictable offence.

If the person does not comply with the undertaking, it can be enforced by the court, and the person can be prosecuted for the original offence as well as orders made about the contravention of the undertaking.

Enforceable undertakings are a flexible tool to achieve good environmental outcomes in connection with an alleged contravention of the Act. The tool allows for a range of actions to be agreed to between the person and the administering authority.

Part 5 Enforceable Undertakings

Section 507 Administering authority may accept enforceable undertakings

This section enables the administering authority to accept an enforceable undertaking relating to a breach or alleged breach of the *Environmental Protection Act 1994*. An enforceable undertaking must be in the approved form and accompanied by any fee prescribed in regulation. The use of an approved form ensures that the administering authority obtains the information needed to assess whether an enforceable undertaking should be accepted. The administering authority may only accept an enforceable undertaking for a contravention of the Act where the contravention is not an indictable offence. Indictable offences under the *Environmental Protection Act 1994* are where there is an element of wilfulness in the commission of the offence. In these cases, an enforceable undertaking would not be appropriate.

This section also prescribes the criteria for the decision whether to accept an enforceable undertaking and the steps that the administering authority must take after making its decision. The administering authority must give the applicant written notice of its decision and the reasons for its decision. This is not an information notice as there is no appeal against this decision. This is because the decision to prosecute an offender is not an appellable decision and an enforceable undertaking is an alternative to prosecution. In the interests of transparency, if the administering authority accepts an undertaking, a copy of the accepted enforceable undertaking must be also published on the administering authority's website.

An administering authority may accept an undertaking while related court proceedings are on foot but before they have been finalised. The intention is that before a person has been convicted of an offence against the Act or regulations they may seek to enter an enforceable undertaking (i.e. to avoid a conviction). In such circumstances, the administering authority is required to take all reasonable steps to have the proceedings discontinued as soon as possible.

This section is based on sections 216, 217, 220 and 222 of the *Work Health and Safety Act 2011* with minor changes to update the drafting style. These changes are not intended to change the effect or interpretation of the provisions.

Section 508 Effect of enforceable undertaking

This section specifies the effect of an accepted enforceable undertaking. An undertaking only takes effect once the administering authority has given the person who made the undertaking the notice of the decision to accept the undertaking. This ensures that the undertaking has no effect unless or until it has been accepted. However, once an enforceable undertaking has been accepted, the effect is that compliance with the undertaking prevents a person being prosecuted for a contravention of the Act to which an undertaking relates. A person also cannot be prosecuted if they have fully complied with the undertaking and therefore discharged the undertaking. An undertaking, however, will cease to be in effect if there is non-compliance with the requirements of the undertaking, and a prosecution may be brought.

Subsection (1) of this section is based on section 218 of the *Work Health and Safety Act 2011*. Subsection (5) is based on section 216 of the *Work Health and Safety Act 2011*. The remainder of this section is based on section 222 of the *Work Health and Safety Act 2011*. There have been minor changes to update the drafting style. These changes are not intended to change the effect or interpretation of the provisions.

Section 509 Withdrawal or variation of enforceable undertaking

This section enables the withdrawal or variation of an enforceable undertaking by application from the person who made the undertaking. This may be necessary if circumstances change which mean that the person is no longer able to comply with the requirements of the undertaking, for example, if a natural disaster prevents remedial works being completed. However, the undertaking cannot be varied to apply to a different alleged contravention. Where there has been another contravention of the Act, the person would have to make a new application for another enforceable undertaking to be accepted. Once again, in the interests of transparency and accountability, variations and withdrawals of enforceable undertakings must be published on the administrating authority's website.

This section is based on section 221 of the *Work Health and Safety Act 2011* with minor changes to update the drafting style. These changes are not intended to change the effect or interpretation of the provisions.

Section 510 Contravention of enforceable undertaking

This section applies if a person contravenes an enforceable undertaking. The administering authority may apply to a Magistrates Court for the undertaking to be enforced. Note that the administering authority may also enforce the undertaking by issuing an environmental protection order to require that certain actions be taken. The Department of Environment and Heritage Protection intends to publish guidelines

which will assist decision-makers to make consistent decisions about whether an environmental protection order is issued, or an application is made to a Magistrates Court under this section.

Note that, in addition to imposing a penalty for the original offence, the court can make orders about complying with the undertaking and costs orders for the administering authority's costs.

This section is based on section 220 of the *Work Health and Safety Act 2011* with minor changes to update the drafting style. These changes are not intended to change the effect or interpretation of the provisions.

Amendment of s 540 (Registers to be kept by administering authority)

Clause *103* amends section 540 of the *Environmental Protection Act 1994* to require that the administering authority keeps a public register of:

- annual returns
- application documents for an environmental authority including information requests and responses to these requests
- documents required by a condition of an approval, including an environmental authority, a temporary emissions licence, or a transitional environmental program or the conditions of a transitional environmental program.

Section 540 is also amended to remove the requirement to keep monitoring programs carried out under a condition of an environmental authority. This removes duplication with the new requirement to provide documents required by a condition of anapproval, which may include monitoring programs.

The inclusion of documents on public registers in the *Environmental Protection Act 1994* provides for public access to information where it is considered that this information should reasonably be available in the public interest. Contemporary standards of assessment mean that a wide range of reports, documents or other information are required that inform the assessment of impacts. As the register requirements have not been updated to reflect these contemporary forms of assessment, members of the public seeking information are not aware of what documents are available and may make overly broad applications under the *Right to Information Act 2009* in order to seek the information they require. The proposed amendments will reduce red tape for the community associated with accessing this information through an application under the *Right to Information Act 2009* and the department in processing those applications.

Section 540 is further amended so that a register must be kept of any accepted enforceable undertakings. This is a consequential amendment required as a result of the new chapter 10, part 5 (Enforceable undertakings) inserted by this Bill.

Amendment of s 548 (Chief executive may make guidelines for administering authorities)

Clause 104 amends section 548 of the *Environmental Protection Act 1994* to provide that the chief executive may also make statutory guidelines about when the administering authority may use enforcement tools, including enforceable undertakings. These guidelines provide guidance about the statutory requirements (i.e. in this case, what it means where the legislation states that the administering authority must not accept the undertaking unless the administering authority reasonably believes that the undertaking will secure compliance with the Act and enhance protection of the environment). This is a consequential amendment required as a result of the new chapter 5, part 10 (Enforceable undertakings) inserted by this Bill.

Note that the amendment to this section is contained in subsections (1)(b) and (2)(b). Subsections (1)(a) and (2)(a) contain the existing provisions about the making of statutory guidelines.

Amendment of s 574M (False or misleading information about reports or certification)

Clause *105* amends section 574M of the *Environmental Protection Act 1994* to increase the maximum penalty for the offence prescribed in this section from 1665 penalty units or 2 years imprisonment to 4500 penalty units or 2 years imprisonment.

Currently, the maximum penalty for this offence is consistent with the penalty for wilful material environmental harm. As this is a similar offence, and the penalty for causing wilful material environmental harm has increased to be consistent with the increase in penalties for serious environmental harm, this penalty has also increased to maintain consistency.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalty accurately reflects the seriousness of the offences and is comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Amendment of s 699 (Existing financial assurance requirement)

Clause 106 amends section 699 of the *Environmental Protection Act 1994* to provide the administering authority with the power to amend the environmental authority to impose a condition for the financial assurance, where a financial assurance requirement has been imposed.

Prior to the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (the Greentape Reduction Act), financial assurances for petroleum activities were required by way of a notice, and not as a condition of an environmental authority. As this was different to how financial assurance was required for all other types of environmentally relevant activities, the Greentape Reduction Act changed this requirement for consistency across all types of environmentally relevant activities.

Consequently, section 699 of the *Environmental Protection Act 1994* was inserted as a transitional provision to ensure that a requirement for a financial assurance made before the

Greentape Reduction Act would continue in force. However, this requirement is not a condition of the environmental authority, so the provisions to amend or discharge a financial assurance cannot apply.

This amendment ensures that, where the section 699 provision applies, the administering authority can amend the conditions of an environmental authority to include the financial assurance requirement. This only applies where a financial assurance has already been required before the Greentape Reduction Act. Placing the conditions on the environmental authority allows all future dealings to be done in the same way and avoid ongoing confusion.

In addition, this section increases the maximum penalty for failing to comply with the requirement to give financial assurance. As this offence is similar to breaching the conditions of an environmental authority (and the penalty for breaching the conditions of the environmental authority has increased to be consistent with penalties in the *Regional Planning Interests Act 2014* and with interstate jurisdictions), the penalty for this offence is has also increased to maintain consistency.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase ensures that the penalty accurately reflects the seriousness of the offence and is comparable to similar offences. High penalties are necessary to deter operators from causing significant and potentially irreparable damage to the State's economic, social and environmental prosperity.

Insertion of new ch 13, pt 23

Clause 107 inserts a new part 23 into chapter 13 of the *Environmental Protection Act 1994* to carry transitional provisions for this Bill.

Part 23 Transitional provisions for Environmental Protection and Other Legislation Amendment Act 2014

Division 1 Preliminary

Section 720 Definitions for pt 23

This section provides definitions for these transitional provisions. These definitions only apply to the transitional provisions in this part.

Division 2 Transitional provisions for amendments commencing by assent

Section 721 Submission of EIS

This section states that where the chief executive has provided the final terms of reference to the proponent before commencement, the previous ability to request an extension after the two year submission period has ended will still apply for the

submission of an EIS by the proponent. This will ensure that proponents with an EIS on-foot are not disadvantaged by removing the ability to apply for an extension for the submission of the EIS after the two year submission period has ended.

Section 722 Decision on whether EIS may proceed

This section states that where the EIS has been submitted, and a decision has not been made prior to commencement as to whether the EIS can proceed, the amended section 49 decision timeframe applies for the chief executive to make a decision on the adequacy of the EIS. This ensures a smooth transition to the new timeframe for proponents with an EIS on foot.

Section 723 Proponent may resubmit EIS

This section states that where the EIS has been submitted, and a decision has not been made prior to commencement as to whether the EIS can proceed, and the decision is to refuse the EIS from proceeding following commencement, the proponent has the ability to resubmit the EIS under section 49A for re-assessment. This means that proponents with an EIS on-foot will have the benefit of this new process.

Section 724 Assessment of adequacy of response to submission and submitted EIS

This section states that where a submission has been made on the EIS prior to commencement and after commencement the chief executive accepts the submission, the amended section 56A timeframe to make a decision on the adequacy of the proponent's response to submissions and EIS applies. This ensures a smooth transition to the new timeframe for proponents with an EIS on foot.

This section also states that that where a submission has been made on the EIS prior to commencement and after commencement the chief executive accepts the submission, and the decision is to refuse the EIS from proceeding the proponent has the ability to resubmit the proponent's response to submissions and/or the EIS under section 56AA for re-assessment. This means that proponents with an EIS on-foot will have the benefit of this new process.

Section 725 Suspension application

This section states that if a suspension application is made by the holder of an environmental authority, but not decided, before the commencement, for a period which is not 1, 2 or 3 years, the nominated period is deemed to be the next anniversary date after the period nominated in the application. For example, if the application nominated 18 months, the nominated period would be deemed to be 2 years. Note that this provision doesn't stop the existing ability for the environmental authority holder to terminate the suspension of the environmental authority at any time upon payment of the pro rata annual fee. This ensures existing environmental authority holders are not disadvantaged by the amended provision.

Section 726 ERA standards

This section allows existing eligibility criteria and standard conditions to be deemed as an ERA standard. This means the new terminology can apply to both existing eligibility criteria and standard conditions and new documents. This benefits government, industry and the community by ensuring there is consistency across the processes.

Amendment of sch 4 (Dictionary)

Clause 108 amends the Dictionary in schedule 4 of the *Environmental Protection Act 1994* to:

- delete definitions of 'coastal waters', 'harmful substance', 'MARPOL', 'non-coastal waters', noxious liquid substance' and 'oil' as a consequence of the deletion of chapter 8, part 3D by this Bill;
- insert definitions of 'amalgamated environmental authority', 'de-amalgamation application' and 'transfer tenure', which are new terms used in chapter 5, part 8 as a result of amendments made by this Bill;
- insert a definition of 'condition conversion', which is a new term used in chapter 5, part 7 as a result of amendments made by this Bill;
- insert definition of 'ERA standard' which is a new term in the replacement chapter 5A, part 1 in this Bill;
- insert a definition of 'enforceable undertaking', which is a new term in chapter 10, part 5 of this Bill;
- replace definitions of 'amalgamated environmental authority', 'consultation period', 'relevant existing authority', and 'standard conditions' to update cross-references;
- amend the definition of 'properly made submission' to update a cross-reference;
- amends the definition of 'EIS process' to clarify when an EIS is completed.

Under section 60 of the *Environmental Protection Act 1994*, the EIS process is completed for chapter 3, part 1 when the proponent is given an EIS assessment report for the EIS. Some references to a completed EIS process refer back to section 60 while others do not. This anomaly is also corrected by this clause.

Division 3 Amendments commencing by proclamation

Amendment of s 13 (Waste)

Clause 109 amends section 13 of the *Environmental Protection Act 1994* to change the terminology as a consequence of the amendments to the *Waste Reduction and Recycling Act 2011*.

To remove ambiguity this clause also deletes a redundant subsection (4).

Amendment of s 112 (Other key definitions for ch 5)

Clause 110 amends section 112 of the *Environmental Protection Act 1994* to change the definition of an eligible ERA and an ineligible ERA so that eligible activities undertaken as

part of a coordinated project have access to the standard and variation application process for an environmental authority for these activities. Currently, a site-specific application is required for these activities, even though they may otherwise comply with the published eligibility criteria and standard conditions. Allowing these activities to be assessed as eligible ERAs allows these developments to access the streamlined process for approval.

Amendment of s 122 (What is a *standard application*)

Clause 111 amends section 122 of the *Environmental Protection Act 1994* to allow an eligible activity undertaken as part of a coordinated project to access the standard application and assessment process for an environmental authority.

Under the *State Development and Public Works Organisational Act 1971*, a Coordinator-General's report is completed for coordinated projects where an EIS is required for the project. Under the *Environmental Protection Act 1994*, any conditions stated in the Coordinator-General's report for an activity must be imposed on the environmental authority. This amendment allows for a standard application to be made where the Coordinator-General's conditions do not vary the standard conditions relevant to the eligible activity.

Where the Coordinator-General's conditions would vary the standard conditions, a variation application must be made to enable the administering authority to determine whether other related standard conditions also need to be changed to be consistent with the Coordinator-General's conditions.

If the eligibility criteria cannot be met, then the proponent must still apply for the environmental authority via a site-specific application.

This amendment streamlines the application and assessment process for coordinated projects that have completed the EIS process under the *State Development and Public Works Organisational Act 1971*.

The transitional provisions for this part of the Bill (part 23 of chapter 13), as inserted by this Bill) allows the applicant to elect to have their application treated as a standard application if the application was made, but not decided before commencement. This ensures that proponents of projects which have already commenced the application process can obtain the benefit of this streamlined process.

Amendment of s 123 (What is a *variation application*)

Clause 112 amends section 123 of the *Environmental Protection Act 1994* to allow an eligible activity undertaken as part of a coordinated project access to the variation application and assessment process for an environmental authority.

Under the *State Development and Public Works Organisational Act 1971*, a Coordinator-General's report is completed for coordinated projects where an EIS is required for the project. Under the *Environmental Protection Act 1994*, any conditions stated in the Coordinator-General's report for an activity must be imposed on the environmental authority. This

amendment allows for a variation application to be made where the Coordinator-General's conditions would vary the standard conditions relevant to the eligible activity.

Note that the applicant can also seek to vary the standard conditions through this process (i.e. the variation application can vary the standard conditions for two reasons: due to the Coordinator-General's stated conditions being different; and because the applicant wishes to vary one or more standard conditions). However, the applicant cannot seek to vary the Coordinator-General's conditions.

Where the Coordinator-General's conditions mean that the eligibility criteria would not be met, a site-specific application would be required.

This amendment streamlines the application and assessment process for coordinated projects that have completed the EIS process under the *State Development and Public Works Organisational Act 1971*.

The transitional provisions for this part of the Bill (part 23 of chapter 13), as inserted by this Bill) allows the applicant to elect to have their application treated as a variation application if the application was made, but not decided before commencement. This ensures that proponents of projects which have already commenced the application process can obtain the benefit of this streamlined process.

Amendment of s 125 (Requirements for applications generally)

Clause 113 amends section 125 of the *Environmental Protection Act 1994* to require a variation application that is for an eligible activity being undertaken as part of a coordinated project to identify the standard conditions that are different from the Coordinator-General's conditions. This is required so that the administering authority can identify the relevant conditions to be included on the authority for the activity.

Note that the applicant can also seek to vary the standard conditions through this process (i.e. the variation application can vary the standard conditions for two reasons: due to the Coordinator-General's stated conditions being different; and because the applicant wishes to vary one or more standard conditions). In this case, the application must both state the standard conditions that the applicant wishes to change, and state the standard conditions that are varied by the Coordinator-General's conditions.

This clause also amends section 125 so that the general application requirements under subsection (1)(l) do not apply where the only variation is to include the Co-ordinator General's conditions.

This clause also amends section 125 so that the general application requirements do not apply to the extent that the application relates to conditions that have been imposed through the Coordinator-General's report through the evaluation of an EIS under the *State Development and Public Works Organisation Act 1971*. Currently, this section applies if the EIS process under the *Environmental Protection Act 1994* has been completed. This exemption is being extended to an EIS under the *State Development and Public Works Organisation Act 1971*, but only to the extent that the application relates to conditions that were imposed through the Coordinator-

General's report. This is because the Coordinator-General's report may not have assessed some aspects of the project, and information may be required for the administering authority to assess those aspects.

Amendment to s 126 (Requirements for site-specific applications—CSG activities)

Clause 114 amends section 126 of the *Environmental Protection Act 1994* so that application requirements do not apply to the extent that the application relates to conditions that have been imposed through the Coordinator-General's report through the evaluation of an EIS under the *State Development and Public Works Organisation Act 1971*. Section 126 applies to require information about CSG water management in certain circumstances. Where the Coordinator-General's report has already assessed this information and imposed appropriate conditions, there is no need for this information to be provided again.

Amendment of s 150 (Notification stage does not apply if EIS process complete)

Clause 115 amends section 150 of the *Environmental Protection Act 1994* changing the exemption provision for the notification of an environmental authority application where an EIS has been undertaken. Currently, section 150 exempts notification where the environmental risks of the activity have not changed since the EIS was completed and the administering authority is satisfied that the change would be unlikely to attract a submission objecting to the proposal if notified.

Under the EIS processes, submissions may be made to the administering authority or the Coordinator-General on the submitted EIS. The EIS that is subject to notification is the EIS that has been determined by the administering authority or Coordinator-General to address the final terms of reference in an acceptable form. The EIS may be amended by the proponent to address public submissions or can also be amended by the proponent up until the EIS assessment report is provided to the proponent. Consequently, any resulting changes to the environmental risks of the activity identified in an amended EIS during this period may not have been available for comment through public notification and are not currently required to be notified by section 150. This is because the completed EIS would have incorporated these changes and it is only where the environmental risks of the activity have changed since the EIS was completed that are currently captured by section 150.

Exempting a different EIS from notification rather than a duplicated EIS is not the intent of section 150. This amendment also aligns with other public notification provisions for adequate public input on matters that impact on affected parties.

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

This clause also amends the heading for section 150 so as to not to create any confusion concerning the application of this section.

Note: the Mineral and Energy Resources (Common Provisions) Bill 2014 is amending this section so that this exemption also applies to an EIS under the *State Development and Public Works Organisation Act 1971*. Consequently, this section has been drafted as if that amendment has been made.

Amendment of s 153 (Required content of application notice)

Clause 116 amends section 153 of the *Environmental Protection Act 1994* to limit the notification of an environmental authority application to the environmental risks of the activity that have changed since the EIS was publically notified. This notification is limited to ensure that any public notification and submitter rights are limited to this change. Under the EIS process, submissions may be made to the administering authority or the Coordinator-General on the submitted EIS. These submissions must be considered by the administering authority or the Coordinator-General in the development of an EIS assessment report.

Note that, where submissions have been made, the chief executive is not required to personally consider each submission. As a matter of administrative necessity, it is recognised that the chief executive has many functions and powers in modern government and necessity dictates that a more junior officer may need to undertake the duty on the chief executive's behalf. This is consistent with the Carltona principle[2] that applies so that a departmental official can exercise the power.

The assessment report provides an overall assessment of the project including the recommendation of conditions for the environmental authority. Without amendment, the current provisions would create duplication by allowing for new submissions on matters which were already notified and for which an opportunity was given for submissions through the EIS processes.

This section only applies if the notification stage applies (i.e. where section 150 of the *Environmental Protection Act 1994* does not exempt the application from being required to complete the notification stage). Therefore, the amendments to this section only apply to an application that has completed an EIS, but does not satisfy the criteria of section 150.

Amendment of s 160 (Right to make a submission)

Clause 117 amends section 160 of the *Environmental Protection Act 1994* as a consequence of the amendment to section 153, so that a submission on an environmental authority application is limited to the environmental risks of the activity that have changed since the EIS was publically notified.

Amendment of s 161 (Acceptance of submission)

Clause 118 amends section 161 of the *Environmental Protection Act 1994* as a consequence of the amendment to section 153, so that the administering authority need not accept any part of a submission on an environmental authority application that is not related to the environmental risks of the activity that have changed since the EIS was publically notified.

[2] *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560

This section only applies if the notification stage applies (i.e. where section 150 of the *Environmental Protection Act 1994* does not exempt the application from being required to complete the notification stage). Therefore, the amendments to this section only apply to an application that has completed an EIS, but does not satisfy the criteria of section 150.

Amendment of s 205 (Conditions that must be imposed for site-specific applications)

Clause 119 amends section 205 of the *Environmental Protection Act 1994* to change the heading and subsection (1) so that standard and variation applications are not excluded. This amendment is consequential to the amendments to section 125 in this Bill which allow a coordinated project to make a standard or variation application. Consequently, any Coordinator-General's conditions must be imposed on any type of environmental authority, including one applied for via a standard or variation application.

Under the *State Development and Public Works Organisational Act 1971*, a Coordinator-General's report is completed for coordinated projects where an EIS is required for the project. Under the *Environmental Protection Act 1994*, any conditions stated in the Coordinator-General's report for an activity must be imposed on the environmental authority.

Amendment of s 228 (Assessment level decision for amendment application)

Clause 120 amends section 228 of the *Environmental Protection Act 1994* to provide that, if the amendment is a major amendment, the application must pay the assessment fee prescribed by regulation.

As of 1 July 2014, the fee for a major amendment is different than the fee for a minor amendment. Previously, there was one fee for an amendment application, which applied regardless of whether the amendment was a minor or major amendment. However, this has caused confusion since the application fee must be paid before the assessment level decision is made which determines whether the amendment is a minor or a major amendment. Consequently, this change means that the application fee will always be the minor amendment fee. However, if the amendment is determined to be a major amendment, then the applicant must also pay an assessment fee. This fee will be the difference between the current minor amendment fee and the current major amendment fee.

Amendment of s 229 (Notice of assessment level decision)

Clause 121 amends section 229 of the *Environmental Protection Act 1994* so that the notice of the assessment level decision provided to the applicant states that, where the decision is that the amendment is a major amendment, an assessment fee is required. To ensure that the fee is paid, the notice must also state that the assessment of the application may not proceed until the assessment fee is paid. This amendment is a consequence of the amendment to section 228 by this Bill.

Amendment of s 232 (Relevant application process applies)

Clause 122 amends section 232 of the *Environmental Protection Act 1994* so that, if the amendment is a major amendment, the assessment does not proceed until the assessment fee is paid. This is a consequence of the amendment made to section 228 by this Bill.

Amendment of s 320A (Application of div 2)

Clause 123 amends section 320A of the *Environmental Protection Act 1994* to include a local government's duty to notify for contaminated land. This duty is in section 372 of the pre-amendment *Environmental Protection Act 1994*, but is being combined with the other duties to notify as part of the restructure of the contaminated land provisions and to keep the duties to notify under the Act in one place.

Section 320A is also amended to include a duty to notify requirement for the owner or occupier of land and an auditor. This duty extends the existing requirement beyond notification of harm related to the carrying out of a primary activity to include notification related to the happening of an event related to the land and or a change in the condition of the land contaminated by a hazardous contaminant. This duty to notify is consistent with the existing duty to notify for contaminated land, which is being removed through the amendments to chapter 7, part 8 in this Bill.

Note: the duty on an owner, occupier or auditor for contaminated land is contained in amendments under division 2 of this Bill.

Amendment of s 320B (Duty of employee to notify employer)

Clause 124 amends section 320B of the *Environmental Protection Act 1994* to exclude approved auditors from being an employee under this section. Approved auditors will have an obligation to directly notify the administering authority, so they are not treated as employees in this respect.

However, this does not prevent the auditor from notifying the owner or the person who engaged them that contamination or an event or change in the condition of the land has occurred. This would be good practice for auditors and would also be likely to form part of their contract with the person who engaged them.

Insertion of new ch 7, pt 1, div 2, sdivs 3A and 3B

Clause 125 inserts a new subdivision into the duty to notify provisions of the *Environmental Protection Act 1994* to include the duty of a local government to notify of a notifiable activity or serious or material environmental harm on contaminated land.

Subdivision 3A Duty of owner, occupier or auditor

Section 320DA Duty of owner, occupier or auditor to notify administering authority

This section prescribes the duty to notify and the timeframe for discharging that duty. The timeframe is 24 hours to be consistent with the duty to notify serious or material

environmental harm in section 320C and 320D of the *Environmental Protection Act 1994*. The duty to notify is being extended to auditors in response to a gap in the current notification requirements where an auditor identifies an event or change in the condition of the land contaminated by a hazardous contaminant and where the land is owned and occupied by a person other than the person that has employed the auditor. This circumstance is most likely to occur where the contamination has originated from or moved onto a block of land adjacent to the land being investigated by the auditor.

In this circumstance, there is currently no requirement in the *Environmental Protection Act 1994* for the auditor to either advise the owner of the land or the administering authority. As a result there may be a known risk of environmental harm from hazardous contaminants on the land that is not reported to the administering authority. Otherwise, this section is consistent with the duty to notify for contaminated land in section 371 of the pre-amendment *Environmental Protection Act 1994*.

It is an offence to fail to comply with the duty to notify. The maximum penalty is 500 penalty units, which is consistent with the maximum penalties for failure to notify in sections 320C and 320D of the *Environmental Protection Act 1994*. The defences and excuses in section 320F will also apply.

Subdivision 3B Duty of local government

Section 320DB Duty of local government to notify administering authority

This section moves the duty of a local government to notify the administering authority of a notifiable activity or of serious or material environmental harm on contaminated land so that it sits with the other duties to notify under the *Environmental Protection Act 1994*. This duty is currently in section 372 of the pre-amendment *Environmental Protection Act 1994.*

The timeframe for the duty to notify of serious or material environmental harm is 24 hours from the time it comes to the person's attention. This meant that there was inconsistency between the duty to notify in this division and the duty to notify in section 372 of the pre-amendment *Environmental Protection Act 1994* (which was 22 business days). To be clear and consistent, the duty to notify will always be 24 hours where there is a risk of serious or material environmental harm.

However, the duty to notify that a notifiable activity is being carried out is an administrative procedure, so the timeframe for the duty to notify is similar to the existing timeframe of 22 business days. It has been shortened slightly from 22 business days to 20 business days as this is a more rounded figure (i.e. 20 business days is usually 4 weeks). Timeframes of this nature are usually 20 business days in the rest of the *Environmental Protection Act 1994*.

Replacement of s 321 (What is an environmental evaluation)

Clause 126 replaces section 321 of the *Environmental Protection Act 1994* with a new section 321. The existing provisions of section 321 are retained in subsection (a) and a new subsection (b) is inserted to require an environmental evaluation for contaminated land. This is because the notice to require a site investigation (which is in sections 376 to 380 of the pre-amendment *Environmental Protection Act 1994*) is being replaced with the requirement for an environmental evaluation. A site investigation is essentially the same thing as an environmental evaluation. The only difference is that, for a contaminated land investigation, the report required at the end of the evaluation is a site investigation report.

Consequently, this amendment clarifies and simplifies the enforcement tools in the *Environmental Protection Act 1994* if only one tool is used for both purposes.

This section also changes the purpose of an environmental evaluation. Currently, the purpose of an environmental evaluation is to evaluate the need for a transitional environmental program. Since the site management plan is the tool for managing contaminated land issues, the environmental evaluation for contaminated land evaluates the need for a site management plan, instead of the need for a transitional environmental program.

Amendment of s 326B (When environmental investigation required)

Clause 127 amends section 326B of the *Environmental Protection Act 1994* as a consequence of the insertion of the new section 326BA into this part. Section 326BA provides for when an environmental investigation is required for contaminated land issues, so the heading of this section is amended to clarify that it only applies where an environmental investigation is required about environmental harm.

Insertion of new s 326BA

Clause 128 inserts a new section 326BA into the *Environmental Protection Act 1994* about environmental investigations for contaminated land.

Section 326BA When environmental investigation required—contamination of land

This section specifies that an environmental investigation may be required for contaminated land.

This is because the notice to require a site investigation (which is in sections 376 to 380 of the pre-amendment *Environmental Protection Act 1994*) is being replaced with the requirement for an environmental investigation. A site investigation is essentially the same thing as an environmental investigation. The only difference is that, for a contaminated land investigation, the report required at the end of the evaluation is a site investigation report.

The grounds for when an environmental investigation may be required have been retained from section 376(1) of the pre-amendment *Environmental Protection Act 1994*. The existing limitations on who may be required to prepare a site investigation report (in section 376(2) of the pre-amendment Act) are retained in the definition of

"prescribed responsible person" which is defined in the Dictionary to the *Environmental Protection Act 1994* under amendments made by this Bill.

The recipient of the notice must give the administering authority a site investigation report that complies with the content requirements in sections 388 to 390 (inserted by this Bill).

Amendment of s 326C (Content of investigation notice)

Clause 129 amends section 326C of the *Environmental Protection Act 1994* as a consequence of the insertion of section 326BA by this Bill. Note that a site investigation report must be completed by a suitably qualified person and comply with the content requirements in sections 388 to 390 (inserted by this Bill).

Insertion of new s 326DA

Clause 130 inserts a new section 326DA to include the procedure to be following in complying with a notice to conduct or commission an environmental evaluation is the recipient is not the owner of the land.

Section 326DA Procedure to be followed if recipient is not owner

This section gives the recipient of an environmental evaluation notice (or their consultant) a process to enter the land to comply with the notice. This process is only required if the recipient is not the owner of the land. This process is required to ensure that the recipient can comply with the notice but the owner's rights are not adversely impacted.

Note that, if a person incurs loss or damage because of the entry, then the person can claim compensation. The amount and types of compensation, and the respective liability between the recipient of the notice and the consultant is a matter to be determined by the courts or by private contractual agreement between the client and the consultant.

This procedure is unchanged from the procedure for site investigations in section 376 of the pre-amendment *Environmental Protection Act 1994*. There have been minor changes to update the drafting style. These changes are not intended to change the effect or interpretation of the provision.

Amendment of s 358 (When order may be issued)

Clause 131 amends section 358 of the *Environmental Protection Act 1994* as a consequence of the amendments to section 321 and the insertion of section 326BA by this Bill. Since an environmental evaluation can be required for contaminated land matters, this section required amendment to remove the references to environmental harm being caused by an activity or by a person. This then means that an environmental protection order can be issued if any type of environmental evaluation shows that environmental harm is being, or is likely to be caused.

Amendment of s 363F (Definitions for pt 5B)

Clause 132 amends section 363F of the *Environmental Protection Act 1994* to change the definition of 'contamination incident' to include specific reference to the grounds for contaminated land. This is needed as cleaning up contaminated land may be required, even if the existing grounds for a 'contamination incident' do not apply.

Issuing a clean-up notice for contaminated land replaces the requirement for remediation of land in section 391 of the pre-amendment *Environmental Protection Act 1994*. A clean-up notice is essentially the same thing as a requirement to remediate contaminated land, with the only difference being that the grounds are linked to the listing of the site on the environmental management register (EMR) or contaminated land register (CLR), and the specific report required at the end of the remediation which is the validation report. These differences have been carried through with these amendments.

Note that a validation report could also be required if, after an environmental evaluation has been completed, there are grounds for requiring remediation under an environmental protection order. The environmental protection order could then require the preparation of a validation report as evidence that the remediation has been properly completed, and to update the EMR or CLR.

Amendment of s 363G (Who are the prescribed persons for a contamination incident)

Clause 133 amends a section 363G of the *Environmental Protection Act 1994* to prescribe the persons to whom a clean-up notice may be given for contaminated land. These persons are the 'prescribed responsible persons' which are defined in the Dictionary to the *Environmental Protection Act 1994* under amendments made in this Bill.

This ensures that a person who caused the contamination, the relevant local government, or the owner of land may be issued a clean-up notice for contaminated land.

Issuing a clean-up notice for contaminated land replaces the requirement for remediation of land in section 391 of the pre-amendment *Environmental Protection Act 1994*. A clean-up notice is essentially the same thing as a requirement to remediate contaminated land, with the only difference being that the grounds are linked to the listing of the site on the EMR or CLR, and the specific report required at the end of the remediation which is the validation report These differences have been carried through with these amendments.

The grounds for when a clean-up notice may be required have been retained from section 391 of the pre-amendment *Environmental Protection Act 1994*. The existing limitations on who may be required to prepare a site investigation report (also in section 391 of the pre-amendment Act) are retained in the definition of "prescribed responsible person".

The recipient of the notice must give the administering authority a validation report that complies with the content requirements in sections 388 to 390 (inserted by this Bill).

Amendment of s 363M (Who are the prescribed persons for a contamination incident)

Clause 134 amends section 363M of the *Environmental Protection Act 1994* which prescribes the persons to whom a cost recovery notice may be given, to add the 'prescribed responsible persons' for contaminated land.

This ensures that a person who caused the contamination, the relevant local government, or the owner of land may be issued a cost recovery notice for contaminated land.

A cost recovery notice is issued if a prescribed responsible person fails to comply with a clean-up notice, which means that the administering authority must take the action specified. Consequently, the 'prescribed persons' are the same for a cost recovery notice as they are for a clean-up notice.

Issuing a clean-up notice for contaminated land replaces the requirement for remediation of land in section 391 of the pre-amendment *Environmental Protection Act 1994*. A clean-up notice is essentially the same thing as a requirement to remediate contaminated land, with the only difference being that the grounds are linked to the listing of the site on the EMR or CLR, and the specific report required at the end of the remediation which is the validation report These differences have been carried through with these amendments.

Replacement of ch 7, pt 8 (Contaminated land)

Clause 135 replaces chapter 7, part 8 of the *Environmental Protection Act 1994*. This chapter contains the contaminated land provisions.

In 2001, the former Environmental Protection Agency introduced a voluntary third party reviewer (TPR) process for reports on contaminated land assessment, management and remediation. The TPR requirement was an administrative measure and had no statutory basis in the *Environmental Protection Act 1994*. However, the department did require the use of TPRs for reports assessed and conditioned via development approvals under the *Sustainable Planning Act 2009*.

On 31 March 2013, the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (Greentape Reduction Act) commenced and established a statutory framework for the approval and regulation of "auditors" under section 567 of the *Environmental Protection Act 1994*. Amongst other things, the auditors provisions were set up to provide a statutory framework for the role previously fulfilled by TPRs (see the Explanatory Notes to the Greentape Reduction Act).

As a result of these changes, under chapter 12, part 3A, division 2 of the Act, individuals who meet certain criteria may apply to the chief executive for approval as an auditor. The auditor function under section 568(b) of the Act is to evaluate various submissions including site investigation reports, validation reports, draft site management plans and draft amendments of site management plans prepared under chapter 7, part 8 of the *Environmental Protection Act 1994* (contaminated land investigation documents).

However, the contaminated land provisions of the *Environmental Protection Act 1994* (chapter 7, part 8) do not specifically require that a contaminated land investigation document must be certified by an auditor prior to submission to the department.

To streamline the assessment of contaminated land, this Bill requires that a contaminated land investigation document be certified by an auditor prior to submission to the department for approval. This has multiple benefits. The requirement:

- supports the development of a more agile service delivery model for providing contaminated land technical assessment services to the construction industry
- allows for further efficiencies to be achieved by facilitating involvement of the auditor at all stages of the project to fine tune the remediation and validation activities
- internalises the costs of the technical assessment of contaminated land investigation documents in the development project (the user-pays principle) rather than those costs being born by the community at large
- allows for market flexibility in providing appropriately qualified and experienced technical staff in response to demand for the technical assessment of contaminated land investigation documents
- supports significant streamlining of application processes and a fundamental cultural shift from service provider to service facilitator/ regulator in alignment with the Government's public sector renewal charter.

The Bill also allows the department to recover its costs in circumstances where the department is required to carry out those functions (for example in circumstances where an appropriately approved auditor is unavailable).

In addition, the Bill removes the requirement to obtain a soil disposal permit specific to each site to transport contaminated soil to a waste facility, to be replaced with a general requirement for the waste to be tracked and taken to either an approved treatment or disposal site. This will reduce the administrative burden in relation to contaminated land remediation.

The consolidated requirements for contaminated soil disposal will be effected by changes to subordinate legislation. Consequently, the Bill simply removes the requirement, but this amendment will commence by proclamation to align with the subordinate legislation changes. These changes will result in:

- a single administrative system to track waste
- the removal of overlaps between soil disposal approvals and environmental authorities
- the removal of the requirement for the applicant to prepare an application for a soil disposal permit
- the removal of the requirement for the government to assess the application and make a decision
- a reduction in delays from the decision making period for the soil disposal application.

Part 8 Contaminated land

Division 1 Interpretation

Section 370 Definitions for pt 8

This section defines the terms 'compliance permit', 'relevant land', 'relevant land register', 'site investigation report', 'site management plan', 'site suitability statement' and 'validation report' for the purposes of the contaminated land provisions.

A 'compliance permit' is the planning document under the *Sustainable Planning Act 2009* framework which is used to approve a material change of use for contaminated land matters. Under the *Sustainable Planning Regulation 2009*, this document must be in the approved form.

The term 'relevant land' is also defined because, in this part, it means only land listed on the environmental management register (EMR) or the contaminated land register (CLR).

A 'relevant land register' is either the environmental management register (EMR) or the contaminated land register (CLR). These terms are defined in the Dictionary to the *Environmental Protection Act 1994*. The term 'relevant land register' has been used to refer to either register since the processes are generally the same.

The term 'site suitability statement' is defined in section 389(2)(a) of these amended provisions. It is defined in this section as the term is used throughout this part of the *Environmental Protection Act 1994*.

The definition of the contaminated land investigation documents are also defined in this section as these terms are used throughout this part:
- the definition of "site investigation report" is taken from section 375 of the pre-amendment *Environmental Protection Act 1994*
- the definition of "site management plan" is taken from section 401 of the pre-amendment *Environmental Protection Act 1994* (Note that "draft site management plan" is not defined as it is clear from the context that it is a draft form of the "site management plan" as defined)
- the definition of "validation report" is taken from section 390 of the pre-amendment *Environmental Protection Act 1994*.

Division 2 Including land in relevant land register

Subdivision 1 Preliminary

Section 371 Grounds for including land in environmental management register

This section provides the grounds for listing land in the environmental management register. These grounds have been extracted from section 373 of the pre-amendment *Environmental Protection Act 1994*. The grounds have been restructured into a stand-alone section to improve the transparency of the grounds for listing the land.

Section 372 Grounds for including land in contaminated land register

This section provides the grounds for listing land in the contaminated land register. These grounds have been extracted from section 384(2)(c) of the pre-amendment *Environmental Protection Act 1994*. The grounds have been restructured into a stand-alone section to improve the transparency of the grounds for listing the land.

Subdivision 2 Process for including land in relevant land register

Section 373 Application of sdiv 2

This section states that the process outlined in this subdivision applies if it is proposed to list land in a relevant land register. The process includes issuing a show cause notice to the owner of the land, considering representations from the owner, and issuing a notice with appeal and review details. This process is necessary to ensure natural justice for owners whose rights could be affected by the listing of the land on the relevant land register.

Note: a relevant land register is the environmental management register (EMR) or the contaminated land register (CLR).

Section 374 Process for including land in relevant land register

This section specifies that land can only be listed in a relevant land register if the process is followed. The process includes issuing a show cause notice to the owner of the land, considering representations from the owner, and issuing a notice with appeal and review details. This process is necessary to ensure natural justice for owners whose rights could be affected by the listing of the land on the relevant land register.

Note: a relevant land register is the environmental management register (EMR) or the contaminated land register (CLR).

Section 375 Show cause notice to be given to owner of land

This section requires that a show cause notice be issued to the owner of land prior to listing the land in the environmental management register (EMR) or the contaminated land register (CLR). This process is similar to the waiver process in the pre-amendment *Environmental Protection Act 1994* (see sections 373 and 374), but provides for greater natural justice in that the representations are considered prior to the action being taken.

Section 376 Making and considering submission

This section sets out how an owner can make a submission about a show cause notice issued under section 375 and that the administering authority must consider that submission. The owner must make the submission within the timeframe and include a declaration about the information provided, and provide a copy of any report about an investigation of the land. This ensures that the submission addresses the issues and

that the administering authority is provided with all of the relevant information needed to decide whether to list the land on the relevant land register. This is similar to section 374 of the pre-amendment *Environmental Protection Act 1994*.

Note: a relevant land register is the environmental management register (EMR) or the contaminated land register (CLR).

Section 377 Decision about including land in relevant land register etc.

This section provides for the decision about listing the land in the relevant land register. The decision can only be made if the process (including consideration of any submissions) has been followed. This provides for natural justice in the process. This section is similar to section 374(4) of the pre-amendment *Environmental Protection Act 1994*.

This section also makes it clear that, if land is listed in the contaminated land register, it must be removed from the environmental management register. This is consistent with current practice for managing the registers.

Note: a relevant land register is the environmental management register (EMR) or the contaminated land register (CLR).

Section 378 Notice of decision about including land in relevant land register

This section requires that an information notice about the decision to include land in a relevant land register be given to certain people. These are the same people who currently receive a notice about the decision under section 374 and 384 of the pre-amendment *Environmental Protection Act 1994*.

An "information notice" is defined in the Dictionary to the *Environmental Protection Act 1994*. It includes the reasons for the decision and the review and appeal rights.

The notice is necessary to ensure that a person who may be affected by the decision (a "dissatisfied person") has the right to have that decision reviewed via internal review, and appealed to a court if they are dissatisfied with the review decision. This ensures natural justice for the affected person.

Note: a relevant land register is the environmental management register (EMR) or the contaminated land register (CLR).

Section 379 Notice to registrar of titles about including land in contaminated land register

This section requires that notice be given to the registrar of titles under the *Land Title Act 1994* so that the title can be updated to provide notice to prospective purchasers and other people who search the title that the land is listed on the contaminated land

register. This requirement is in section 422 of the pre-amendment *Environmental Protection Act 1994*, but the notice is included in this section to keep all of the procedural notice requirements in one place for the decision.

The requirement for the registrar of titles to then update the title is contained in section 405 of this part (as inserted by this Bill).

Subdivision 3 Amending or removing particulars in relevant land register

Section 380 Amending or removing particulars of land

This section specifies when the administering authority may update a relevant land register or remove land from the registers. The registers may only be updated under this part. This means that the registers can only be updated if the administering authority:

- receives a properly submitted contaminated land report (i.e. a site investigation report or a validation report that complies with the content requirements in sections 388 to 390); or
- approves a site management plan; or
- is given a copy of a compliance permit by an approved auditor.

This applies whether the site investigation report or validation report was required by a notice or order (e.g. as part of an environmental evaluation, or as required by a clean-up notice), or whether it was submitted voluntarily.

This is consistent with the existing grounds for amending the registers under section 384, 396 and 413 in the pre-amendment *Environmental Protection Act 1994*.

In addition, grounds have been added to allow for minor administrative changes to the registers. These grounds are purposefully limited to ensure that it is only technical corrections which can be made without a properly submitted report, approved plan or compliance permit.

It is important that the registers can otherwise only be updated upon receipt of the correct documentation. Otherwise, a loophole could be created whereby proponents would seek to have the details for their land updated without following the due process.

Note: a relevant land register is the environmental management register (EMR) or the contaminated land register (CLR).

Section 381 Site investigation report or validation report

This section specifies the actions that must be taken in updating a relevant land register on receipt of a properly submitted site investigation report or validation report (i.e. a site investigation report or validation report that complies with the content

requirements in sections 388 to 390). This is consistent with sections 384 and 396 of the pre-amendment *Environmental Protection Act 1994*.

If the land is not contaminated and has been certified as suitable for any use, it must be removed from the relevant land register since the register is only for contaminated and potentially contaminated land. Once it is proved to be clean, there is no need for it to be registered.

In any other instance, the relevant land register must be updated to reflect the site suitability statement which has been certified by an approved auditor. This ensures that the land registration details are up-to-date with most recent site suitability statement.

Note: a relevant land register is the environmental management register (EMR) or the contaminated land register (CLR).

Section 382 Compliance permit

This section specifies the actions that must be taken in updating the relevant land register upon receipt of a compliance permit under the *Sustainable Planning Act 2009*. This is a new requirement, which was effected through amendments to the *Sustainable Planning Regulation 2009* in July 2014. The actions are effectively the same as for a site investigation report or a validation report since these reports must be attached to the compliance permit. The approved form for the compliance permit means that it is a site suitability statement.

Therefore, if the land is not contaminated and has been certified as suitable for any use, it must be removed from the relevant land register since the register is only for contaminated and potentially contaminated land. Once it is proved to be clean, there is no need for it to be registered.

In any other instance, the relevant land register must be updated to reflect the site suitability statement which has been certified by an approved auditor. This ensures that the land registration details are up-to-date with most recent site suitability statement

Note: a relevant land register is the environmental management register (EMR) or the contaminated land register (CLR).

Section 383 Site management plan

This section specifies the actions that must be taken in updating the relevant land register upon approval of a site management plan by the administering authority. The details of the approved site management plan must be included in the relevant land register. This ensures that a prospective purchaser or other person who searches the register is aware of the management requirements for the land. This is consistent with section 413 of the pre-amendment *Environmental Protection Act 1994*.

Note: a relevant land register is the environmental management register (EMR) or the contaminated land register (CLR).

Section 384 Minor amendment

This section specifies that, in addition to the usual updates upon receipt of a properly made report, the relevant land register may be updated to make minor administrative changes to the registers. These grounds are purposefully limited to ensure that it is only technical corrections which can be made without a properly submitted report, approved plan or compliance permit.

Note: a relevant land register is the environmental management register (EMR) or the contaminated land register (CLR).

Section 385 Notice to be given if particulars of land amended in or removed from register

This section requires that an information notice about the decision to amend particulars about the land or remove the land from a relevant land register be given to certain people. These are the same people who currently receive a notice about the decision under section 384 and 397 of the pre-amendment *Environmental Protection Act 1994*.

An "information notice" is defined in the Dictionary to the *Environmental Protection Act 1994*. It includes the reasons for the decision and the review and appeal rights.

The notice is necessary to ensure that a person who may be affected by the decision (a "dissatisfied person") has the right to have that decision reviewed via internal review, and appealed to a court if they are dissatisfied with the review decision. This ensures natural justice for the affected person.

Note: a relevant land register is the environmental management register (EMR) or the contaminated land register (CLR).

Section 386 Notice to registrar of titles if particulars of land amended in or removed from contaminated land register

This section requires that notice be given to the registrar of titles under the *Land Title Act 1994* so that the title to the land can be updated with the up-to-date information. This requirement is in section 422 of the pre-amendment *Environmental Protection Act 1994*, but the notice is included in this section to keep all of the procedural notice requirements in one place for the decision.

The requirement for the registrar of titles to then update the title is contained in section 405 of this part (as inserted by this Bill).

Division 3 Contaminated land investigation documents

Subdivision 1 Preliminary

Section 387 Definition for div 3

This section contains the definition of "contaminated land investigation documents". This is a collective term used for the three relevant documents for contaminated land: site investigation reports, validation reports, and draft site management plans. These terms are then themselves defined in section 370 (as inserted by this Bill).

Subdivision 2 Content and submission of contaminated land investigation documents

Section 388 Application of sdiv 2

This section ensures that the process for submitting or considering a contaminated land investigation document must be followed, regardless of whether it is required to be prepared for a compliance permit or under a notice, or is submitted voluntarily. This ensures that all contaminated land investigation documents follow the due process and natural justice is provided.

Note that these content requirements must be met regardless of the type of notice or order that has required its preparation. For example, if a validation report is required to be submitted as a result of remediation required under an environmental protection order, then the validation report must still comply with these content requirements.

An investigation notice can require the submission of a site investigation report under section 326BA as inserted by this Bill. A clean-up notice can require the submission of a validation report under section 363H as amended by this Bill.

Voluntary submission of these documents is currently provided for in sections 375(1), 390 and 403 of the pre-amended *Environmental Protection Act 1994*.

Section 389 Content of contaminated land investigation document

This section provides the content requirements for a contaminated land investigation document. These content requirements are taken from section 402 and 404 of the pre-amendment *Environmental Protection Act 1994* for draft site management plans, and from the prescribed criteria for contaminated land certification by an auditor in section 115C of the *Environmental Protection Regulation 2008*. The prescribed criteria in section 115C will be removed from the *Environmental Protection Regulation 2008* prior to commencement of these provisions.

These content requirements include the need to identify the reasons the land is recorded on the relevant land register, and the uses of surrounding land which may affect the safety of the relevant land or cause environmental harm. This will require the impact to sensitive receptors (e.g. environmentally sensitive areas) to be

considered as part of the contaminated land investigation document's content requirements.

Note: environmentally sensitive areas are already defined in schedule 12, part 1 of the *Environmental Protection Regulation 2008* as 'category A environmental sensitive areas' (which include national parks and the Great Barrier Reef) and 'category B environmentally sensitive areas' (which include other conservation areas, coastal land, marine parks and endangered regional ecosystems).

These content requirements also make it clear that a key requirement to certify a site suitability statement as part of contaminated land investigation document inherently requires the auditor to carry out a risk assessment. The department's expectations when it comes to risk assessment in order to develop and certify a site suitability statement are detailed in guidance material such as the Contaminated Land Professionals Guideline.

In addition, the content requirements have been changed to require mandatory certification by an approved auditor prior to submission of the document to the administering authority. This requirement:

- supports the development of a more agile service delivery model for providing contaminated land technical assessment services to the construction industry
- allows for further efficiencies to be achieved by facilitating involvement of the auditor at all stages of the project to fine tune the remediation and validation activities
- internalises the costs of the technical assessment of contaminated land investigation documents in the development project (the user-pays principle) rather than those costs being born by the community at large
- allows for market flexibility in providing appropriately qualified and experienced technical staff in response to demand for the technical assessment of contaminated land investigation documents
- supports significant streamlining of application processes and a fundamental cultural shift from service provider to service facilitator/ regulator in alignment with the Government's public sector renewal charter.

The content requirements have also been changed to specifically require assessment against the *National Environment Protection (Assessment of Site Contamination) Measure* (the contaminated land NEPM), which is made under the *National Environment Protection Council Act 1994* (Cwlth). The contaminated land NEPM provides a nationally consistent approach for managing and assessing contaminated sites which ensures sound environmental management practices by regulators, site assessors, environmental auditors, landowners, developers and industry.

Section 390 Requirements for submission of contaminated land investigation document

This section ensures that a contaminated land investigation document includes the required declarations from the client (the 'relevant person') as well as the payment of any fee prescribed by regulation.

It should be noted that there is no intention to prescribe a fee at this stage. However, the requirement has been included in the Act provisions to provide the facility for a fee if one is required for recovery of the cost of departmental resources in the future. This is consistent with the existing requirement for a fee if prescribed in sections 382, 395 and 404(d) of the pre-amendment *Environmental Protection Act 1994*.

The requirement for declarations from the client ensures that the auditor and the administering authority are provided with all of the relevant information needed to decide whether certify the document and whether to update the register. This is similar to sections 383, 386 and 404 of the pre-amendment *Environmental Protection Act 1994*.

The requirement for a statement that the owner agrees to a draft site management plan is consistent with section 404D of the pre-amendment *Environmental Protection Act 1994*.

Subdivision 3 Preparation of draft site management plan

This subdivision provides the process for requiring a person to prepare or commission a site management plan (SMP). This is generally referred to as an SMP notice.

Section 391 Show cause notice

This section specifies the grounds for the issue of a SMP notice and that a SMP notice cannot be issued unless a show cause notice has first been issued which invites the person to show cause why the SMP notice should not be issued. This is similar to the grounds and waiver requirements of section 405 and 407 of the pre-amendment *Environmental Protection Act 1994*, except that this process requires the process to be followed before the SMP notice is issued. This ensures that natural justice is provided to a person that can be required to dedicate significant resources to complying with the notice.

Note that the draft site management plan must be prepared by a suitably qualified person (see sections 564 and 565 of the existing *Environmental Protection Act 1994*). However, there is no requirement for the suitably qualified person to be independent of the recipient of the notice; therefore, the notice requires the preparation or commission of a draft site management plan. The draft site management plan must still be certified by an independent approved auditor.

Section 392 Making and consideration of submission

This section sets out how an owner can make a submission and that the administering authority must consider that submission. The owner must make the submission within the timeframe and specify why the action should not be taken. This ensures that the administering authority is provided with all of the relevant information needed to decide whether to take the action. This is similar to section 407 of the pre-amendment *Environmental Protection Act 1994*.

Section 393 Decision about taking action

This section provides for the decision about issuing the SMP notice. The decision can only be made if the process (including consideration of any submissions) has been followed. This provides for natural justice in the process. This section is similar to sections 405 and 407 of the pre-amendment *Environmental Protection Act 1994*.

Section 394 Notice of decision

This section sets out the content requirements for the SMP notice. This includes the grounds for the decision and the review and appeal details. This ensures that the recipient of the notice is fully informed and can seek a review or appeal to a court about the issue of a notice if dissatisfied with the decision. This is similar to section 406 of the pre-amendment *Environmental Protection Act 1994*.

Note that the draft site management plan must be prepared by a suitably qualified person (see sections 564 and 565 of the existing *Environmental Protection Act 1994*). However, there is no requirement for the suitably qualified person to be independent of the recipient of the notice; therefore, the notice requires the preparation or commission of a draft site management plan. The draft site management plan must still be certified by an independent approved auditor.

This section also contains the offence for failure to comply with the SMP notice. The maximum penalty is 300 penalty units. This penalty is justified as it is consistent with the penalty for failure to comply with a requirement for an environmental investigation (for a site investigation report). The offence is consistent with section 405(6) of the pre-amendment *Environmental Protection Act 1994*.

Section 395 Procedure to be followed if recipient is not owner

This section gives the recipient of an SMP notice (or their consultant) a process to enter the land to comply with the notice. This process is only required if the recipient is not the owner of the land. This process is required to ensure that the recipient can comply with the notice but the owner's rights are not adversely impacted.

Note that, if a person incurs loss or damage because of the entry, then the person can claim compensation. The amount and types of compensation, and the respective liability between the recipient of the notice and the consultant where the consultant effected the entry, is a matter to be determined by the courts or by private contractual agreement between the client and the consultant.

This procedure is unchanged from section 409 of the pre-amendment *Environmental Protection Act 1994*.

Subdivision 4 Consideration of draft site management plans

Section 396 Application of sdiv 4

This section specifies that this subdivision provides the process for consideration of a site management plan.

Section 397 Requiring another site management plan or additional information

This section gives the administering authority the ability to require another draft site management plan or additional information about the site management plan that has been submitted if the content requirements have not been fully addressed. This is because the administering authority must make a decision whether to approve the site management plan, so the administering authority must be satisfied that it has all of the necessary information. This section is similar to section 411 of the pre-amendment *Environmental Protection Act 1994*.

Section 398 Deciding whether to approve draft site management plan

This section specifies the timeframe for the decision whether to approve the draft site management plan, including a process to extend the timeframe. This is needed in case the administering authority is still negotiating with the proponent for additional information or to ensure the conditions of the approval are both manageable and enforceable. This section is consistent with section 412 of the pre-amendment *Environmental Protection Act 1994*.

Section 399 Approval of draft site management plan

This section sets out the post-decision process if the site management plan is approved. This ensures that the site management plan is recorded on the register and that the relevant people are notified of the decision. This section is consistent with section 413 of the pre-amendment *Environmental Protection Act 1994*.

Section 400 Refusal to approve draft site management plan

This section sets out the post-decision process if the site management plan is refused. This ensures that the relevant people are provided with an information notice about the decision. This section is consistent with section 414 of the pre-amendment *Environmental Protection Act 1994*.

An "information notice" is defined in the Dictionary to the *Environmental Protection Act 1994*. It includes the reasons for the decision and the review and appeal rights.

The notice is necessary to ensure that a person who may be affected by the decision (a "dissatisfied person") has the right to have that decision reviewed via internal review, and appealed to a court if they are dissatisfied with the review decision. This ensures natural justice for the affected person.

Subdivision 5 Preparation of site management plan by administering authority

Section 401 Procedure if administering authority prepares site management plan

This section sets out the post-decision process if the site management plan is prepared by the administering authority. This ensures that the site management plan is recorded on the register and that the relevant people are notified of the decision. This section is consistent with section 413 of the pre-amendment *Environmental Protection Act 1994*.

The notice must include the reasons for the decision and the review and appeal rights. A copy of the site management plan must also be attached. This ensures that the recipient is fully informed and can have the decision reviewed via internal review, or appeal the decision to a court if they are dissatisfied. This ensures natural justice for the affected persons.

Subdivision 6 Amendment of site management plan

Section 402 Voluntary amendment of site management plans

This section ensures that a site management plan can be amended by application. This is consistent with section 418 of the pre-amendment *Environmental Protection Act 1994*.

The amended draft site management plan must still comply with the content requirements in subdivision 2 and the administering authority must consider the amended site management plan as they would a site management plan under subdivision 4. This ensures that the same process is followed and ensures natural justice.

Section 403 Amendment of site management plan with written agreement

This section provides for the amendment or review of a site management plan by agreement. This is consistent with section 419 of the pre-amendment *Environmental Protection Act 1994*.

Section 404 Amending or requiring amendment of site management plan

This section provides for the amendment or review of a site management plan by the administering authority. The administering authority can also require a person to amend the site management plan.

This is consistent with section 419 of the pre-amendment *Environmental Protection Act 1994*.

This section also ensures that the same process applies to the amendment of a site management plan as apply to the original requirement for, and submission of, a site management plan.

This requirement is similar to a SMP notice and the procedural requirements in subdivision 3 are the same. The content requirements in subdivision 2, the consideration of a site management plan for approval in subdivision 4 and the post-decision requirements for a site management plan prepared by the administering authority in subdivision 5 also apply.

This is consistent with section 419 of the pre-amendment *Environmental Protection Act 1994*.

Division 4 Miscellaneous provisions

Section 405 Registrar of titles to maintain records about contaminated land

This section ensures that land registered on the contaminated land register is noted on the title. Listing the contaminated land register sites on the title gives notice to prospective purchasers and other people who search the title that the land is listed on the contaminated land register. This is consistent with section 422 of the pre-amendment *Environmental Protection Act 1994*.

Sections 379 and 386 require the administering authority to give the registrar of titles notice of the listing of the land on the contaminated land register and of changes to that listing.

Section 406 Local government must not allow contravention of site management plan

This section requires local governments to ensure that their decisions are not contrary to any approved site management plan. This ensures that the public are not confused by inconsistent decisions at different levels of government and that land is not used for a purpose which would cause contamination to be mismanaged and thereby affect the health and wellbeing of the local community. Local governments are informed about the approval or preparation of a site management plan and when the registers are updated.

This requirement is consistent with section 417 of the pre-amendment *Environmental Protection Act 1994*. It has been relocated to the miscellaneous provisions since this subdivision contains the obligations on people other than the proponent or administering authority.

Section 407 Owner to give notice to occupant or proposed occupant

This section requires an owner to give an occupant notice of the listing of the land on the contaminated land register. This is required because that level of contamination could affect the health and wellbeing of the occupants. This requirement is consistent with section 420 of the pre-amendment *Environmental Protection Act 1994*. Both the offence and the maximum penalty for contravention of the requirement are unchanged from the pre-amendment section.

Minor changes have been made to update the drafting. It is not intended for these changes to modify or affect the interpretation of this section.

Note: "lease" is defined in subsection (6) to include any type of agreement between the owner and an occupant. This definition overrides the definition of "lease" in the *Acts Interpretation Act 1954* and consequently the term "lessee" is changed by virtue of section 32 of the *Acts Interpretation Act 1954* which says that if an Act defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

Section 408 Owner to give notice to proposed purchaser

This section requires an owner to give a proposed purchaser notice of the listing of the land on either the environmental management register (EMR) or the contaminated land register (CLR). This requirement also applies if a notice about contaminated land is given or the land is subject to an order to enter the land to conduct an investigation or conduct work. This is because the listing or the notice or order could impact on a person's decision to purchase the land as the person would become a "prescribed responsible person" upon settlement.

"Prescribed responsible person" is defined in the Dictionary to the Act as amended by this Bill.

This requirement is consistent with section 421 of the pre-amendment *Environmental Protection Act 1994* with amendments to:

- Provide for the circumstance where the notice that the site is inadvertently given after signing the contract of sale;
- Ensure that where the notice is given afterwards, the notice must spell out the Purchaser's right to rescind the contract;
- Better balance the rights of the Seller and Purchaser by providing a limited period during which the right to rescind the contract can be exercised.

Both the offence and the maximum penalty for contravention of the requirement are unchanged from the pre-amendment section.

Note that a notice under section 394 is an SMP notice to require a person to prepare a draft site management plan. A notice under section 401 is a notice that the administering authority has prepared a site management plan.

Amendment of s 520 (Dissatisfied person)

Clause 136 amends section 520 of the *Environmental Protection Act 1994* to delete reference to obsolete decisions which have been removed as a result of the changes to chapter 7, part 8 of this Bill and update cross-references to sections that have been changed by this Bill.

Amendment of s 564 (Definitions for pt 3)

Clause 137 amends section 564 of the *Environmental Protection Act 1994* to correct cross-references to the contaminated land investigation documents. This amendment is a consequence of the changes to chapter 7, part 8 by this Bill.

Amendment of s 568 (Auditor's functions)

Clause 138 amends section 568 of the *Environmental Protection Act 1994* as a consequence of the amendments to chapter 7, part 8 of the *Environmental Protection Act 1994* in this Bill. The auditor's functions are being changed since auditor's certification will now be mandatory as part of a contaminated land investigation document.

Insertion of new s 574BA

Clause 139 inserts a new section 574BA into the *Environmental Protection Act 1994* to make it clear that an administering authority that performs an auditor's duties is operating in a competitive market and may charge accordingly.

Section 574BA Administering authority may recover costs or expenses

This section states that, if an administering authority performs an auditor's function, it may recover its reasonable costs and expenses of performing the function.

Auditor's functions should generally be carried out by an approved auditor who is employed by the proponent. The only time that an administering authority should be asked to perform the function is if an approved auditor is not available (for example, because no auditors have been approved for that specific function, or type of contamination).

However, if the administering authority is to carry out this function, then it would need to engage the technical expertise to perform its role. This cost should not be carried by the community in a user-pays model such as the auditor framework. Consequently, these costs, and any associated administrative costs, should be paid by the proponent.

Insertion of new ch 13, pt 23, div 3

Clause 140 inserts a new division into chapter 13, part 23 into the *Environmental Protection Act 1994* which contains the transitional provisions for this Bill.

Division 3 Transitional provisions for amendments commencing by proclamation

Subdivision 1 General amendments

Section 727 Applicant may elect for particular application to be dealt with as standard application or variation application

This section states that an applicant can elect to have an application for an environmental authority that relates to a coordinated project be treated as a standard or variation application where the application was made as a site-specific application, but would have met the requirements of a standard or variation application if it was made after commencement. The applicant must provide written notice to the administering authority of their election. This means that proponents of projects which have already commenced the application process will have the benefit of the standard or variation application process, if they choose to do so, rather than having to include these activities within a site-specific application.

Section 728 Applicant may elect for particular requirements to apply to particular application

This section states that an applicant can elect to have the general application requirements under section 125(1)(l) not apply to an application for an environmental authority that relates to a coordinated project, where the project complies with the criteria in section 125(3). This is to the extent that the application relates to conditions that have been imposed to the relevant activities, the subject of the application, by the Coordinator-General's report through the evaluation of an EIS under the *State Development and Public Works Organisation Act 1971*. The applicant must provide written notice to the administering authority of this election. This means that proponents of projects which have already commenced the application process will have the benefit of this exemption, if they choose to do so, rather than having to provide this information again for the environmental authority application.

Section 729 Applicant may elect for particular requirements to apply to site-specific applications—CSG activities

This section states that an applicant can elect to have the application information requirements under section 126 not apply to an application for an environmental authority that relates to a coordinated project if the application meets the requirements in section 126(3). This is to the extent that the application relates to conditions that have been imposed for the relevant activities, the subject of the application, by the Coordinator-General's report through the evaluation of an EIS under the *State Development and Public Works Organisation Act 1971*. The applicant must provide written notice to the administering authority of this election. This means proponents of projects which have already commenced the application process will have the

benefit of this exemption before commencement, if they choose to do so, rather than having to provide this information again for the environmental authority application.

Section 730 Conditions that must be imposed on particular applications

This section ensures that, where a site-specific application is taken to be a standard or variation application under an election under sections 729 or 730, the environmental authority must include the Coordinator-Generals' conditions. This transitional provision is a consequence sections 729 and 730 which are inserted by this Bill.

Subdivision 2 Amendment related to replacement of former chapter 7, part 8

Section 731 Definition for sdiv 2

This section defines 'former chapter 7, part 8' for the purposes of these transitional provisions. This definition is only used in this subdivision.

Section 732 Continuing effect of registration of land

This section ensures that land which was registered on the environmental management register (EMR) or the contaminated land register (CLR) prior to the commencement of this Bill continues to be registered on the relevant register. This is necessary to ensure continuity of the registers.

Section 733 Provision for land recorded under repealed Act

This section ensures that land which was registered under the *Contaminated Land Act 1991* continues to be recognised as having been registered at that point in time. This is necessary for the definition of "prescribed responsible person" in relation to owners. Since the owner's liability for land contaminated prior to ownership only comes into effect if the contaminated was recorded in the registers, it is necessary to recognise that the land may have been recorded under the repealed *Contaminated Land Act 1991*. Therefore, it is necessary to give continuity to the registers to ensure that the obligations on landholders are preserved.

Section 734 Continuing effect of notices given under former chapter 7, part 8

This section ensures that notices under chapter 7, part 8 of the pre-amendment *Environmental Protection Act 1994* continue to be dealt with and enforced under the pre-amendment *Environmental Protection Act 1994*. This includes, for example, the notices to list land on the relevant land registers, and the notices requiring the preparation of a contaminated land investigation document. This provision ensures that notices which have been given by the administering authority are not required to be re-done and given to a person again. This also ensures that, if a person fails to comply with the notice, then the offence provision continues to apply.

Section 735 Continuing effect of site management plan made under former chapter 7, part 8

This section ensures that a site management plan which approved prior to commencement of this Bill continues to apply to the land after commencement of this Bill. This ensures that that approved site management plans do not "fall over" upon commencement of this Bill. The site management plan will have effect as if it was approved after commencement. This ensures that the ongoing management of the site management plan (i.e. compliance, amendment etc) will occur under the provisions as amended by this Bill.

Section 736 Particular existing applications

This section ensures that applications which were on-foot at the time of commencement of this Bill, but relate to processes which are being deleted, will lapse on commencement of this Bill. This includes applications for waivers of notices and soil disposal permits.

Section 737 Applications for approval of draft site management plans

This section ensures that applications which were on-foot at the time of the commencement of this Bill, and relate to processes which will continue, continue to be decided under the pre-amendment *Environmental Protection Act 1994*.

Section 738 Notice to purchaser

This section ensures that, where a seller has not given notice to the purchaser prior to entering into the agreement, the seller can take advantage of the new process to limit the timeframe in which the purchaser has the right to rescind.

This Bill inserts a new section 408 that includes new subsections to limits the period during which the buyer may rescind a purchase agreement after receiving a notice under that section.

If the seller provided notice under section 421 of the pre-amendment *Environmental Protection Act 1994*, then the seller can give a new notice to the purchaser that includes the matters mentioned in section 408(5), which then limits the purchaser's rights to rescind the agreement to 21 business days after the notice was given.

This will provide natural justice for the seller in that the purchaser cannot sit on the information and chose to rescind the agreement at a commercially advantageous time, and for the purchaser in being aware that the period to rescind the agreement is limited.

Amendment of sch 2 (Original decisions)

Clause 141 amends in schedule 2 of the *Environmental Protection Act 1994* to update references to the original decision for which an appeal or internal review of the decision may be made. These amendments are a consequence of the amendments made to the *Environmental Protection Act 1994* in this Bill.

Amendment of sch 4 (Dictionary)

Clause 142 amends the Dictionary in schedule 4 of the *Environmental Protection Act 1994* to:

- Omit the definitions of 'preliminary investigation', 'remediation notice' and 'soil disposal permit' which are no longer used;
- Replace the definitions of 'relevant area', 'residual risks requirement', 'show cause notice', 'site investigation report', 'site management plan', 'submitter' and 'validation report' to correct cross-references which have changed as a result of the amendments made by this Bill;
- Insert definitions for new terms: contaminated land investigation document, prescribed responsible person, relevant land register, site suitability statement, and SMP notice;
- Amend the definition of 'registrar' to refer specifically to the Registrar of Titles; and
- Amend the definitions of 'environmental investigation' and 'investigation report' to include cross-references to the new sections inserted by this Bill.

The new definitions generally refer back to previous sections inserted in the Bill and are explained in those sections.

The definition of 'prescribed responsible person' is wholly contained in the Dictionary and ensures that only those persons who could be issued a contaminated land notice under the pre-amendment *Environmental Protection Act 1994* can be issued a contaminated land notice after commencement of these provisions of the Bill. The definition is taken from sections 376, 391 and 405 of the pre-amendment *Environmental Protection Act 1994*.

For example, the contaminated land notices would always be issued first to the person who released the hazardous contaminant, if that person is known and can be located. This means that the polluter-pays principle will apply. However, if the polluter cannot be identified or located, the relevant local government is then responsible if they issued an approval which is inconsistent with the contaminated land status of the site. It is only if neither the polluter nor the local government can be issued with a notice that the owner of land can be required to take action. Even in this case of last resort, the owner can only be issued a notice if either they purchased the land knowing that it was contaminated or potentially contaminated (i.e. because it was listed on the contaminated land register (CLR) or environmental management register (EMR)) or because it became contaminated after the owner acquired the land.

Therefore, if for example, the land became contaminated because of contamination on the neighbouring land, then the neighbour (as the person who released the hazardous contaminant) would be the person issued with a contaminated land notice.

Part 6 Amendment of Nature Conservation Act 1992

Act amended

Clause 143 specifies that this part amends the *Nature Conservation Act 1992*.

Insertion of new pt 5, div 10

Clause 144 inserts a new division 10 into part 5 of the *Nature Conservation Act 1992*.

Division 10 Statements of management intent

Section 100K Local government's statements of management intent

This section provides a head of power for the Minister to require by written notice that a local government, when dealing with protected wildlife without a wildlife authority, prepare and publish a Statement of Management Intent (SoMI) for lawful activities involving protected wildlife.

The purpose of the SoMI is to ensure that local governments are open and transparent in the exercise of any as-of-right authority under the *Nature Conservation Act 1992*. Currently, this as-of-right authority only relates to urban flying-fox roosts. In addition, the SoMI can also support local government community engagement and education programs for particular wildlife issues by articulating to the community a local government's proposed approach to certain wildlife management activities.

This new section also states that a regulation may specify additional information concerning the management of protected wildlife that must be included in a SoMI.

A regulation is considered the most appropriate means of limiting the Ministerial discretion to matters related to the conservation of the species, consistent with the objects of the Act. Taking into consideration the unique methods of management practice regarding individual species, and given that all dealings with wildlife are restricted under the Act unless authorised, the prescription of specific requirements is typically articulated in associated regulations.

In addition, a local government must prepare a SoMI within the period specified on the written notice given by the Minister for Environment and Heritage Protection.

Part 7 Amendment of Waste Reduction and Recycling Act 2011

Division 1 Preliminary

Act amended

Clause 145 states that this part amends the *Waste Reduction and Recycling Act 2011.*

Division 2 Amendments commencing on assent

Amendment of s 5 (Approach to achieving Act's objects)

Clause 146 amends section 5 of the *Waste Reduction and Recycling Act 2011* to expand the ways that the objects of the Act may be met. This clause amends section 5(e) to include priority wastes. Section 5(f) is amended to provide for a priority statement rather than just a priority product or statement. These amendments ensure that the approach to achieving the objects of the Act have a stronger link to chapter 4 of the Act. Previously the objects focused on priority products and it was unclear whether wastes would be included as a priority category.

Amendment of s 15 (What may be included in State's waste management strategy)

Clause 147 amends section 15 of the *Waste Reduction and Recycling Act 2011* to clarify that the strategy, (itself a primary tool for achieving the Act's objectives), can address improved management of 'priority products or priority wastes' broadly, rather than simply 'priority products'. This is necessary as some priority areas are not easily classified as a product, for example green waste. The amendment makes it clear that a priority area for the State's waste management strategy may be a product or a waste.

Amendment of ch 4, hdg (Management of priority and other products)

Clause 148 amends the heading of chapter 4 of the *Waste Reduction and Recycling Act 2011* to clarify that the chapter addresses improved management of 'priority products or priority waste' broadly, rather than simply 'priority products'. This aligns with the amendments to chapter 4 to recognise waste as a priority.

Replacement of s 74 (Purpose of chapter)

Clause 149 replaces section 74 of the *Waste Reduction and Recycling Act 2011* to clarify that the chapter promotes shared responsibility for improved management of products and wastes broadly. For a product, the purpose of the chapter is to encourage or require, where appropriate, that people involved in the life cycle of that product share the responsibility for making sure there are effective measures in place to manage the product throughout its life cycle, including end-of-use management. This includes ensuring effective waste avoidance, reuse, recycling and treatment measures for the product.

For a waste that is not a product, the purpose of this chapter is to encourage the optimal outcome for the management of waste. The amendment strengthens the ability to look at management approaches for wastes that best fit the circumstances for that waste. There may be a number of different management approaches for the same waste, depending on the location of the waste and available infrastructure to deal with the waste.

Insertion of new s 74A

Clause 150 inserts a new section 74A into chapter 4 of the *Waste Reduction and Recycling Act 2011* to define 'producer' for the purposes of this chapter.

Section 74A Definitions for ch 4

This section defines 'producer' for the purposes of this chapter. The purpose of this definition is to identify who may be responsible for certain actions in relation to a product. For example, in relation to a specific product it allows for the identification of people that may be invited to submit a proposed product stewardship scheme under the priority statement.

Amendment of ch 4, pt 2, hdg (Priority products)

Clause 151 amends the heading for part 2 of the *Waste Reduction and Recycling Act 2011* to clarify that this part also addresses improved management of priority waste broadly, rather than simply 'priority products'. The amendments to include priority waste ensure that the approach to achieving the objects of the Act has a stronger link to chapter 4 of the Act. Previously it was unclear whether wastes would be included as a priority category.

Amendment of s 75 (Preparation and notification of draft priority product statement)

Clause 152 amends section 75 of the *Waste Reduction and Recycling Act 2011* to refer to a priority statement more broadly. This term includes product and waste and provides the ability for a statement to be about priority products, priority wastes or both.

Subsection (2) specifies that a priority statement can be prepared for one or more products or one or more categories of waste. For waste, this may be a waste stream such as construction waste or a waste type such as green waste.

Amendment of s 76 (Requirement for draft priority product statement)

Clause 153 amends section 76 of the *Waste Reduction and Recycling Act 2011* to remove the word 'product' in the term 'draft priority product statement'. The section now just refers to a 'draft priority statement'. This is consistent with other changes to this chapter to ensure wastes can be identified as a priority for the priority statement. For the same reason, sections 76(1) and (2) are further amended to replace all reference to 'product' with a reference to 'product or category of waste'.

Replacement of s 77 (What are the priority product criteria for a product)

Clause 154 replaces section 77 of the *Waste Reduction and Recycling Act 2011* with a new section 77 (Criteria for a priority product or waste). The criteria remain the same as in the pre-amendment section 77, but all references to 'product' are replaced with a reference to 'product or category of waste'. This is consistent with other changes to this chapter to ensure wastes can be identified as a priority for the priority statement.

Amendment of s 78 (Inclusion of invitation for voluntary product stewardship scheme)

Clause 155 amends section 78 of the *Waste Reduction and Recycling Act 2011* to omit the word 'product'. The section now refers to a priority statement which is consistent with the changes to this chapter to ensure wastes can be identified as a priority for the priority statement.

Amendment of s 79 (Finalisation of priority product statement)

Clause 156 amends section 79 of the *Waste Reduction and Recycling Act 2011* to omit the word 'product' from the heading and section. The section now refers to a priority statement which is consistent with the changes to this chapter to ensure wastes can be identified as a priority for the priority statement.

Amendment of s 80 (Approval of final priority product statement)

Clause 157 amends section 80 of the *Waste Reduction and Recycling Act 2011* to omit the word 'product'. The section now refers to a priority statement which is consistent with the changes to this chapter to ensure wastes can be identified as a priority for the priority statement.

Amendment of s 81 (Minor amendment of final priority product statement)

Clause 158 amends section 81 of the *Waste Reduction and Recycling Act 2011* to omit the word 'product'. The section now refers to a priority statement which is consistent with the changes to this chapter to ensure wastes can be identified as a priority for the priority statement.

Amendment of s 82 (Review of priority product statement)

Clause 159 amends section 82 of the *Waste Reduction and Recycling Act 2011* to omit the word 'product'. The section now refers to a priority statement which is consistent with the changes to this chapter to ensure wastes can be identified as a priority for the priority statement.

Amendment of s 90 (Requirements for accreditation)

Clause 160 amends section 90 of the *Waste Reduction and Recycling Act 2011* to omit the word 'product'. The section now refers to a priority statement which is consistent with the changes to this chapter to ensure wastes can be identified as a priority for the priority statement

Amendment of s 91 (Accreditation)

Clause 161 amends section 91 of the *Waste Reduction and Recycling Act 2011* to omit the word 'product'. The section now refers to a priority statement which is consistent with the

changes to this chapter to ensure wastes can be identified as a priority for the priority statement.

Amendment of s 98 (Regulation about product stewardship)

Clause 162 amends section 98 of the *Waste Reduction and Recycling Act 2011* to omit the word 'product'. The section now refers to a priority statement which is consistent with the changes to this chapter to ensure wastes can be identified as a priority for the priority statement.

Amendment of s 266 (Protection of officials from liability)

Clause 163 amends section 266 of the *Waste Reduction and Recycling Act 2011* so that this section does not apply to an official that is a State employee within the meaning of the *Public Service Act 2008*. On 31 March 2014, the *Public Service and Other Legislation (Civil Liability) Amendment Act 2014* amended the *Public Service Act 2008* to provide State employees with broad legislative immunities from civil liability, instead of transferring liability to the State. The legislative protection ensures that civil liability does not attach to State employees when they are acting in an official capacity. However, the immunity provisions in this section apply to a broader range of people than State employees. Consequently, this provision is not omitted, but is amended to remove duplication for State employees.

Amendment of schedule (Dictionary)

Clause 164 amends the Schedule (Dictionary) in the *Waste Reduction and Recycling Act 2011* to:

- replace the definition of 'priority product statement' with a definition of 'priority statement', in order to reflect amendments to chapter 4;
- insert a definition of 'priority waste', which is a new term inserted by this Bill;
- amend the definition of 'producer', which is now defined in chapter 4; and
- replace the definition of 'product', in order to clarify that the product must have reached the end of its useful life (which means that the product is no longer fit, or required, for the purpose that it was originally intended or used for, whether the product is still in working order or not).

Division 3 Amendments commencing by proclamation

Amendment of s 5 (Approach to achieving Act's objects)

Clause 165 amends section 5 of the *Waste Reduction and Recycling Act 2011* to replace the reference to granting approvals of beneficial use. This is because the new chapter 8 inserted by this Bill replaces the existing beneficial use approval framework to which this subsection refers with an end of waste framework.

Amendment of s 76 (Requirements for draft priority statement)

Clause 166 amends section 76 of the *Waste Reduction and Recycling Act 2011* to include end of waste codes and end of waste approvals as an example of the type of management options which must be stated in a draft priority statement. The inclusion of end of waste codes and end of waste approvals as an example makes it clear that these are important considerations in deciding whether to include a product in the statement. There is still a wide variety of other possible management options in addition to those identified in this paragraph.

Replacement of ch 8 (Approval of resource for beneficial use)

Clause 167 amends the *Waste Reduction and Recycling Act 2011* to replace the existing chapter 8 'Approval of resource for beneficial use' with a new chapter 8 'Provisions for end of waste'. The restructure of chapter 8 ensures that the new process for developing end of waste codes and approvals is more effectively incorporated into the *Waste Reduction and Recycling Act 2011*, and improves clarity around the provisions.

For end of waste codes, the benefit may be claimed by any registered code user. End of waste approvals, on the other hand, relate solely to the holder of the approval.

End of waste codes will be outcome-focused in that they will specify *outcomes* that need to be achieved in order for a waste to be deemed a resource. That is, it is not intended that requirements in the code will regulate the *process* by which a waste becomes a resource. It is the responsibility of the registered code user to assess the most efficient and effective way to achieve the outcomes specified, provided that they comply with any other relevant management controls. This is consistent with the department's Regulatory Strategy.

End of waste approvals, on the other hand, are primarily intended to be used when a potential market/demand does not already exist for the resource or when environmental harm parameters are unknown. Under an end of waste approval a proponent may wish to undertake a trial to demonstrate proof of concept for non-traditional wastes and resource uses such as the production of diesel from waste cooking oil, or the production of gypsum from waste plasterboard. Because approvals will apply to resource uses for which risks are unknown, or when it is not feasible to develop an end of waste code, the approvals may need to impose prescriptive conditions by which end of waste outcomes should be achieved.

Chapter 8 Provisions for end of waste

Part 1 Preliminary

Section 155 Purpose of chapter

This section describes the purpose of chapter 8. The purpose of this chapter is to enable the development of end of waste codes and end of waste approvals which will define when and under what circumstances a waste stops being a waste under section 13 of the *Environmental Protection Act 1994*, and becomes a resource.

This section also defines 'resource'. A waste becomes a resource when it meets the conditions or requirements stated in an end of waste code or end of waste approval.

Once a waste becomes a resource, it is not subject to waste management controls and can then be governed under other applicable controls, for example, products legislation, and the general environmental duty under section 319 of the *Environmental Protection Act 1994*. For example, fly ash would be a waste until it becomes a raw material (i.e. a resource) at a concrete manufacturing plant.

Section 156 Definitions for ch 8

This section provides definitions for terms used in chapter 8 as follows:

- definition of 'amend', to clarify what is considered to be an amendment of an end of waste approval;
- definitions of 'end of waste approval' and 'end of waste code,' which replace the terms 'general approval' and 'specific approval' used in the pre-amendment chapter 8 of the *Waste Reduction and Recycling Act 2011*;
- definitions of 'material environmental harm' and 'serious environmental harm', to clarify that those terms are defined by reference to the *Environmental Protection Act 1994*;
- definition of 'registered code user', which is a new term in chapter 8;
- definition of 'resource', to clarify the meaning of this term in chapter 8;
- definition of 'technical advisory panel', which is a new term in chapter 8.

Section 157 Effect of operating under end of waste code if unregistered

This section ensures that only registered code users can obtain the benefits of operating under an end of waste code. A registered code user is a person who sells, gives away or uses a waste as a resource under an end of waste code and has registered with the department. If a person complies with the code, but fails to register with the department, the waste is still considered to be a waste (not a resource) and continues to be managed by any applicable waste management controls.

Section 158 Compliance with end of waste code

This section creates an offence for failing to comply with the requirements specified in an end of waste code. The maximum penalty for non-compliance with a code is 1665 penalty units. The offence applies only to registered code users because if a person is not a registered code user and they purport to sell, give away or use a waste as a resource under a code, the resource is deemed to be a waste, and so that person will be subject to any applicable waste management offences.

End of waste codes replace general approvals. The new penalty specified for non-compliance with the requirements of an end of waste code in the new chapter 8 is the same as the penalty for non-compliance with conditions of a general approval in the pre-amendment chapter 8.

Since this section creates a new offence, it raises the fundamental legislative principle that consequences imposed by legislation should be proportionate and relevant to the action to which consequences are applied by the legislation. This offence is justified because it is consistent with section 167 of the pre-amendment *Waste Reduction and Recycling Act 2011*. That offence is omitted by this clause and replaced with this offence. This Bill replaces general beneficial use approvals with end of waste codes, and like general approvals, specifies that outcome focused requirements specified in the code must be complied with. If these requirements are not complied with then an offence is committed.

Section 159 Chief executive may make end of waste codes and grant end of waste approvals

This section enables the chief executive to make end of waste codes and end of waste approvals to enable waste to be classified as a resource. The codes and approvals will provide a definitive end point for when a waste ceases to be a waste and any risk to the environment will be minimised through a defined set of requirements and conditions. This will ensure that the codes and approvals meet the intent of the new chapter 8. For end of waste codes, the benefit may be claimed by any registered code user. End of waste approvals, on the other hand, relate solely to the holder of the approval.

One resource or a number of resources may be stated in an end of waste code or approval for a particular waste. This is because a particular waste may have any number of end uses that are fit for purpose. For example, associated water might be used for aquaculture, dust suppression or irrigation. While 'resource' is only used in its singular form in this chapter, under section 23 of the *Acts Interpretation Act 1901 (Cth)* words in the singular include the plural.

Part 2 End of waste codes

Division 1 Process for making end of waste codes

Section 160 Public notice inviting submissions about potential end of waste codes

This section prescribes how the process for making of an end of waste code is initiated. The process begins with the chief executive issuing a notice, to be published on the department's website, which invites submissions for new end of waste codes. The chief executive may do this at any time. This section prescribes a minimum submission period of 28 days, which is consistent with the timeframe for submission periods under other sections of the *Waste Reduction and Recycling Act 2011*. Submissions must be made in the approved form and contain any information required by regulation.

The intention of the process prescribed in this section is to assist the chief executive in ensuring that the department's resources are targeted towards the development of new end of waste codes for which there is a demand from industry. It allows stakeholders

an opportunity to provide advice to the chief executive if they consider that a particular waste or resource use should be the subject of an end of waste code. This ensures the process is consistent with delivering on the proposed new industry-led Waste Avoidance and Resource Productivity strategy for Queensland.

Section 161 Consideration of submissions

This section requires the chief executive to consider all submissions made under section 160 before deciding whether or not a draft end of waste code should be prepared (i.e. before deciding that a particular waste or resource use would benefit from the development of a new end of waste code). By inviting and considering public submissions, this section provides for natural justice and transparency of process so that the views of all possible stakeholders can be considered before the chief executive decides to make an end of waste code. The consideration of public submissions will also help the chief executive determine priorities for the development of new end of waste codes.

Note that, where submissions have been made, the chief executive is not required to personally consider each submission. As a matter of administrative necessity, it is recognised that the chief executive has many functions and powers in modern government and necessity dictates that a more junior officer may need to undertake the duty on the chief executive's behalf. This is consistent with the Carltona principle[3] that applies so that a departmental official can exercise the power.

Section 162 Preparation of end of waste code by technical advisory panel

This section prescribes the process to be followed if the chief executive decides that a draft end of waste code should be prepared. Unless subsection (2) applies, a technical advisory panel must be established to prepare the draft end of waste code. Establishment of a technical advisory panel enables industry expertise to be incorporated into the process of developing end of waste codes. In order to provide some certainty to industry, the government and the community, a 6 month time limit is imposed on the technical advisory panel to prepare the draft code. However, if the technical advisory panel decides an end of waste code should not be prepared, the panel may, within 2 months of receiving the request to prepare the draft end of waste code, provide the chief executive with written notice stating the panel's reasons for its decision not to prepare a code. A technical advisory panel may decide that a code is not necessary or not appropriate, for example, because of consideration of a matter in section 163.

Subsection (2) allows the chief executive to decide that it is unnecessary to establish a technical advisory panel. The chief executive then prepares the draft end of waste code instead. Preparation of the draft end of waste code by the chief executive is intended to reduce administrative burden in situations where it would be unreasonable to require a technical advisory panel (e.g. where the proposed use of the waste or use

[3] *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560

to which the code would apply was uncontentious, standards were well-established in the industry and/or it was highly unlikely the use would cause serious or material environmental harm). If the chief executive decides to prepare the draft code, rather than have a technical advisory panel prepare it, the chief executive may still establish a technical advisory panel to consider and provide advice, information or comment on the draft code.

Section 163 Matters to be considered in preparing end of waste code

This section prescribes a list of matters that the chief executive and technical advisory panel must have regard to when making a draft end of waste code. These matters are considered critical to maintaining good environmental outcomes while allowing value to be added to waste and allowing more wastes to be managed as resources. Matters for consideration include:

(a) the objects of the *Waste Reduction and Recycling Act 2011*;
(b) the proposed use of the resource under the proposed end of waste code;
(c) whether the proposed use of a particular resource, may or is likely to cause serious or material environmental harm;
(d) the waste and resource management hierarchy; and
(e) any other matter prescribed in regulation.

In relation to criterion (a), consideration of the objects of the Act ensures the chief executive gives due regard to the overarching principles of the Act when considering whether to grant or refuse an application for an end of waste approval. The objects of the Act are to:

- promote waste avoidance and reduction, and resource recovery and efficiency actions;
- reduce the consumption of natural resources and minimise the disposal of waste by encouraging waste avoidance and the recovery, re-use and recycling of waste;
- minimise the overall impact of waste generation and disposal;
- ensure a shared responsibility between government, business and industry and the community in waste management and resource recovery; and
- support and implement national frameworks, objectives and priorities.

In relation to criterion (b), the intent is that the end of waste code will be outcome-focused, and will define requirements that will enable a waste to be categorised as a resource. This might be achieved through the inclusion of specifications, quality standards and/or guidelines that indicate when a waste is fit for another use.

Criterion (c) requires the chief executive or technical advisory panel to consider the potential risk of future serious or material environmental harm that may arise from granting an end of waste code. This criterion will help the chief executive or technical advisory panel to assess the environmental risks associated with proposed end of waste codes and decide whether certain requirements should be included in the end of waste code to protect against the risk of serious or material environmental harm. Alternatively, consideration of this criterion may alert the chief executive or technical

advisory panel to the fact that the risk of serious or material environmental harm is too great to justify preparing a new end of waste code.

'Environmental harm' is defined under section 14 of the *Environmental Protection Act 1994*. It is any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value. Environmental harm may be caused by an activity whether the harm is a direct or indirect result of the activity; or whether the harm results from the activity alone or from the combined effects of the activity and other activities or factors. 'Material environmental harm' and 'serious environmental harm' are defined in sections 16 and 17 of the *Environmental Protection Act 1994*.

In relation to criterion (d), the waste and resource management hierarchy is defined under section 9 of the *Waste Reduction and Recycling Act 2011* and lists the preferred order in which waste management options should be considered by the chief executive or technical advisory panel when preparing a draft end of waste code, from most preferred to least preferred. These include a hierarchy for waste which is to avoid, reduce, re-use, recover, treat and dispose, in that order. In preparing a draft code, the chief executive or technical advisory panel may consider that there is a higher order waste management option for the resource in its end use than the one being proposed.

In relation to criterion (e), other matters may also be prescribed in regulation. The matters listed in this section are not exhaustive and do not limit the matters the chief executive or technical advisory panel may consider in preparing a code.

This section raises a potential fundamental legislative principle because some matters can be prescribed by regulation. Sufficient heads of power are being retained in the Act, with only further detail to be prescribed in regulation. This is to ensure that that matters to be considered are flexible enough for continuous improvement, which will benefit industry applicants and administrators of the process, and is consistent with the department's regulatory strategy.

Section 164 End of waste code prepared by technical advisory panel

This section prescribes that if a technical advisory panel prepares a draft end of waste code, but the chief executive is not satisfied that the panel has had sufficient regard to certain matters or requests, the chief executive can ask the panel to amend the code, or may refuse to accept the code. This is intended to enable a draft code to be further developed by the technical advisory panel before proceeding to final publication under section 166 (Notice of making end of waste code). Alternatively, the chief executive can amend the draft code before proceeding to final publication.

Division 2 Making end of waste codes

Section 165 Publication of draft end of waste code

This section prescribes the process for public notification of a draft end of waste code. Once the chief executive is satisfied with the draft end of waste code, the chief executive is required to publish the draft code for public consultation on the department's website for the duration of the consultation period. The draft end of waste code is to undergo public consultation for a minimum period of 28 days, which is consistent with the timeframe for submission periods under other sections of the *Waste Reduction and Recycling Act 2011*.

No timeframe is imposed on the chief executive to consider the submissions or to notify the making of the code, as it is desirable for some flexibility to be incorporated into the process for making end of waste codes. The time required for the chief executive to decide on the making of a code will vary depending upon the nature of the code being made. For example, codes involving a high level of complexity will generally require a greater assessment time, thus lengthening the decision time required. Note that, where submissions have been made, the chief executive is not required to personally consider each submission. As a matter of administrative necessity, it is recognised that the chief executive has many functions and powers in modern government and necessity dictates that a more junior officer may need to undertake the duty on the chief executive's behalf. This is consistent with the Carltona principle[4] that applies so that a departmental official can exercise the power.

Public consultation on draft codes provides for natural justice and transparency so that the views of all possible stakeholders, including proposed requirements for inclusion in the draft codes, can be considered before the chief executive decides to make an end of waste code. Since an end of waste code may affect any member of the public (and not just industry stakeholders who stand to benefit from the code), this section invites submissions from any person.

Section 166 Notice of making end of waste code

This section prescribes the process for finalising an end of waste code. If, after considering the submissions and any other relevant matters, the chief executive considers it is still appropriate to approve the making of the code, the chief executive will issue a gazette notice. This is to notify the public of the commencement of a new end of waste code.

The gazette notice must state the details of the code, including where a copy of the code may be inspected. The end of waste code takes effect on the later of the following: (i) when the gazette notice is published, or (ii) the date stated in the gazette notice, or (iii) the date stated in the end of waste code. By allowing for later dates to be stated in the gazette notice or code, it is intended that industry will be given time to transition to the code where this is necessary or desirable.

Division 3 Amendment, cancellation or suspension of end of waste codes

[4] *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560

Section 167 Amendment of end of waste code

This section enables the chief executive to amend an end of waste code at any time. This section applies to all amendments, whether a minor amendment or otherwise. This is so the chief executive can ensure that end of waste codes continue to address matters stated in section 163. The chief executive may, for example, amend a code to ensure the proposed use is higher in the preferred order of the waste and resource management hierarchy and is not likely to cause serious or material environmental harm. The chief executive may also choose to amend an end of waste code if the chief executive wishes to add another resource use to the code for that particular waste.

Section 168 Application for amendment of end of waste code

This section prescribes the procedure for a person to apply to have an end of waste code amended. This process is necessary because there may be instances, for example, where possible end uses for a waste may not have been considered at the time an end of waste code was developed. A person may then apply to have a code amended to add a new resource use to the code. The application is required to be in an approved form and include any information and fee that has been prescribed in regulation.

Section 169 Refusal of application

This section specifies the post-decision steps to be undertaken when the chief executive decides to refuse a request to amend an end of waste code. For a decision to refuse the application, the chief executive is required to give the applicant an information notice which includes details about why the decision has been made. This provides applicants with the opportunity to seek a review of this decision under chapter 9 of the *Waste Reduction and Recycling Act 2011*. The chief executive must give the notice within 10 business days of the decision to refuse the application.

Section 170 Chief executive may require additional information or documents for amendment application

This section enables the chief executive to seek further information or documents from an applicant about an amendment application for an end of waste code within a reasonable period of time. The period of time can be extended upon agreement between the chief executive and the applicant. If the applicant does not provide the required information or documents within the specified timeframe, the application is taken to be withdrawn.

This section is necessary as it gives the chief executive the ability to pursue further information and documents that may be necessary to inform a decision about granting an amendment to an end of waste code.

Section 171 Cancellation or suspension of end of waste code

The chief executive may cancel or suspend the code if he or she is satisfied that:

- there is no longer a use for a resource that is covered by the code;

- the resource has caused, is causing or is likely to cause serious or material environmental harm;
- the use of a resource or waste that is covered by the code is unlawful; or
- it is otherwise necessary or desirable to cancel or suspend the end of waste code.

The reason for this provision is to enable cancellation or suspension of an end of waste code as there may be an event which occurs following the making of the code that means that the code is redundant or results in undesirable impacts.

Section 172 Procedure for amending, cancelling or suspending end of waste code

This section prescribes the process that must be followed to amend, cancel or suspend a code. The chief executive must notify each registered code user (for that code) to outline the proposed action. A notice must also be published on the department's website and in any other way the chief executive considers appropriate. The notice must include information on the proposed action, the reasons for taking the proposed action and any facts or circumstances that have formed the basis for those reasons.

As the amendment, cancellation or suspension of an end of waste code could potentially have significant implications on registered code users, resource receivers or others, this section enables any person to make a submission objecting to the amendment, suspension or cancellation of the code. This section prescribes a minimum submission period of 28 days, which is consistent with the timeframe for submission periods under other sections of the *Waste Reduction and Recycling Act 2011*. The chief executive is required to consider the submissions received. Note that, where submissions have been made, the chief executive is not required to personally consider each submission. As a matter of administrative necessity, it is recognised that the chief executive has many functions and powers in modern government and necessity dictates that a more junior officer may need to undertake the duty on the chief executive's behalf. This is consistent with the Carltona principle[5] that applies so that a departmental official can exercise the power.

Providing for a process by which the public can have input on the amendment, cancellation or suspension of a code is intended to improve the efficiency and transparency of the process, and public involvement in the end of waste framework.

If the proposed action is to amend a code, the chief executive is also required to consider whether the amendment:

- will have an impact on the proposed management of a particular waste or the use of a particular resource to which the code applies;
- will increase the likelihood of serious or material environmental harm; or
- is inconsistent with the waste and resource management hierarchy.

[5] *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560

Consideration of these matters is required because the amendment of an end of waste code could result in changes to the code that could have significant impacts, including impacts on the quality of the resource which may impact on the resource receiver. Requiring the chief executive to consider the matters stated provides an additional level of scrutiny of a proposed amendment, with the intent of preventing any amendments that could have adverse impacts.

No timeframe is imposed on the chief executive to make a decision. The time required for the chief executive to make a decision will vary depending upon the nature of the amendment being considered. For example, amendments involving a high level of complexity may lengthen the time required.

If the chief executive decides to carry out the proposed action (amendment, cancellation or suspension), the chief executive must provide each registered code user with an information notice which includes details about why the decision has been made. This provides registered code users with the opportunity to seek a review of this decision under chapter 9 of the *Waste Reduction and Recycling Act 2011*.

The decision takes effect on the later of the following: (i) when the information notice is given, or (ii) a later date fixed by the chief executive. By allowing for the chief executive to fix a later date, it is intended that, where necessary or desirable, industry will be given time to make operational changes that are needed to address the amendment, cancellation or suspension of the code.

Section 173 Publication of amended end of waste code

This section specifies that, if the chief executive amends an end of waste code under section 172, a copy of the amended code must be placed on the department's website and publicised in any other way considered appropriate. This is to publicise the amendment to anyone that could be affected by the changes.

Section 173A Minor amendment of end of waste code

This section gives the chief executive the power to make a minor amendment to an end of waste code. A minor amendment is an amendment which merely corrects a minor error in the code, or makes another small change that does not affect the overall substance of the code, and would not adversely affect a registered code user or resource receiver. To make a minor amendment, the chief executive must publish a notice on the department's website, and ensure registered users and resource receivers are informed of the change in any other way the chief executive deems appropriate.

This section enables the chief executive to make a minor amendment without complying with the process in section 172. This ensures that minor amendments to the code may be made quickly without unnecessary administrative process. The type of change that might be made would include minor administrative amendments such as a change to the name of an Act, or a change to a defined term in legislation.

Division 4 Registration of end of waste code users

Section 173B Registration of end of waste code users

This section sets out the process for registration as a registered code user for an end of waste code. The process of registration enables the department to monitor users to ensure registered code users are meeting the requirements in the code, and take enforcement action if they are not. A person wishing to operate under a particular end of waste code must register with the chief executive. If a person does not register with the department, the material is deemed to still be a waste and continues to be managed within the waste management controls stated in applicable legislation.

Section 173C Cancellation or suspension of registration

This section enables the chief executive to cancel or suspend a registered code user's registration if the chief executive reasonably believes that the registered code user has failed to comply with the requirements of an end of waste code. For example, if environmental harm is being caused by one particular registered code user, it may be more appropriate for the chief executive to cancel or suspend registration than cancel an end of waste code under section 171.

This section applies whether or not action has been taken under section 158 to impose a penalty or issue a show cause notice. If a registered code user has not complied with the requirements of a code, the chief executive may issue show cause and compliance notices under chapter 11 and/or cancel or suspend a registration under this section.

Section 173D Procedure for cancelling or suspending registration

This section prescribes the process for cancelling or suspending the registration of a registered code user. Prior to cancelling or suspending a registration the chief executive must issue a notice to the registered code user. This is to enable the registered user to make a submission to demonstrate why their registration should not be cancelled or suspended. The notice must state the period for the registered code user to make a submission. The stated period must be a minimum of 28 days after the notice has been given, which is consistent with the timeframe for submission periods under other sections of the *Waste Reduction and Recycling Act 2011*.

The chief executive must consider submissions before deciding whether to cancel or suspend a registered code user's registration. If the chief executive decides to cancel or suspend the registration, the chief executive must give an information notice to the registered code user within 5 business days of making that decision. The giving of an information notice enlivens review and appeal provisions for this decision under chapter 9 of the *Waste Reduction and Recycling Act 2011*.

Section 173E Particular circumstances when end of waste approval lapses

This section applies where the holder of an end of waste approval registers to operate under an end of waste code and the end of waste code covers the same waste and

resource as the end of waste approval. In this situation, the end of waste approval is deemed to have lapsed upon registration, as the operator has accepted the benefit of operating under a code instead.

This section raises the potential fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals. By deeming an end of waste approval to have lapsed when the approval holder becomes a registered code user, there is potential for this section to have an adverse effect on an individual if the code is more onerous or less advantageous to the person's business activities than the approval held. However, registering to operate under a code is voluntary. An operator can continue to operate under their end of waste approval if they do not register under an end of waste code for the same waste and resource use.

This section is necessary because it provides clarity and ensures that a person does not operate under both an end of waste code and an end of waste approval for the same waste and resource. Further, as operating under a code is a voluntary action it is very unlikely that an approval holder will voluntarily register to become a code user if it is less advantageous to do so.

Section 173F Register of registered code users

This section prescribes that the chief executive must maintain a register of registered end of waste code users operating under an end of waste code. The register may be kept electronically.

Division 5 Miscellaneous

Section 173G Technical advisory panels

This section defines the circumstances in which a technical advisory panel may be established. The intention is that technical advisory panels will assist in the development of codes, provide the department with expert advice and help reduce administrative costs to the department.

This section states that a panel may be established to consider matters relating to the development of a draft end of waste code. If the chief executive has referred the making of the draft code to the technical advisory panel, the technical advisory panel also prepares the draft code, unless it is decided under section 162(5) that a draft code should not be prepared.

If the chief executive decides to prepare the draft code, but the chief executive does not think it is necessary to develop a code, a technical advisory panel may still be established. In this case, the technical advisory panel is used to consider and provide advice, information or comment on the draft code. This enables industry expertise to be incorporated into the process, while still reducing the burden associated with having a technical advisory panel prepare a draft code.

A technical advisory panel may also be established to consider and provide advice, information or comment about an amendment of an end of waste code. While it is not expected that a technical advisory panel would be required for minor amendments or other amendments that would be unlikely to have any detrimental effects on when and how a waste is deemed to be a resource, more significant amendments may benefit from such expertise. The decision to establish a technical advisory panel is left to the discretion of the chief executive.

This section provides for regulation to include further details around the function of the technical advisory panel, including defined terms of reference for the panel, the appointment and composition of members on the panel, disclosure of interests of members, and the process for resignation or termination of members on the panel. The intention is that panel members will represent a range of stakeholder groups, and be suitably qualified for the purpose for which the technical advisory panel is established.

Section 173H Chief executive may seek advice, comment or information about pt 2

This section enables the chief executive to seek further technical expertise, in the form of advice, comment or information, on any aspect of part 2 (End of waste codes). This could be obtained from any other governments, other agencies, independent experts, the technical advisory panel, community organisations or any other relevant body or person. The intent of this section is to enable the chief executive to draw on all sources of expertise when acting under this part.

Part 3 End of waste approvals

Division 1 Grant of end of waste approvals

Section 173I Application

This section prescribes the process for applying for an end of waste approval. Any application must be in the approved form, and include any information and fee that is prescribed in regulation. This section requires an application for an end of waste approval to be accompanied by a written assessment of the application from a suitably qualified person. This is because applications are likely to be targeted to, for example, a specific site, process and end use for which a specific expertise is required in order to adequately assess that application. Incorporating suitably qualified persons into the application process for an end of waste approval will reduce administrative burden on the department and ensure specialist expertise is sought early in the process in the form of a written assessment. A regulation may prescribe the criteria a person must meet to be a suitably qualified person and the matters to be included in the assessment by a suitably qualified person.

This section raises the potential fundamental legislative principle, namely, that legislative power should be appropriately delegated. However, the details to be prescribed by regulation are technical details around the role and requirements the suitably qualified person must meet. Prescribing this information by regulation will

ensure that the process for granting an end of waste approval is flexible enough for continuous improvement, which will benefit industry applicants, experts retained to produce written assessments, and administrators of the process. This approach is consistent with the department's regulatory strategy.

Section 173J Chief executive may require additional information or documents

This section prescribes the process for the chief executive to request additional information from an applicant. If the chief executive decides that additional information is required for deciding an application, then within 20 business days of receiving an application, the chief executive can request additional information from the applicant. The request should be in writing and should state the due date for the additional information.

If the applicant does not provide the information within the required timeframe, the application is taken to have been withdrawn. A later date can be agreed upon between the chief executive and the applicant if additional time is required.

Section 173K Deciding application

This section prescribes the process for deciding an application for an end of waste approval. The chief executive must make the decision within 20 business days of receiving an application, or if additional information has been requested, within 20 business days of receiving the additional information.

The chief executive may extend the decision timeframe by providing a notice of extension to the applicant. The chief executive can only provide one notice to an applicant for a later date and the extension cannot be longer than 20 business days. Having the ability to extend the decision timeframes ensures the chief executive can obtain all of the necessary information to make an informed decision, including, for example, expert advice under section 173ZC. If there was no ability to extend the timeframe, the chief executive could be required to refuse the application simply for a lack of information.

If a decision has not been made by the chief executive under this section it is deemed that the chief executive has refused the application.

Section 173L Criteria for deciding application

This section prescribes the criteria the chief executive is required to consider when deciding whether to grant or refuse an application. The criteria will help the chief executive consider the potential environmental outcomes while enabling more wastes to be managed as resources. Criteria for the chief executive's consideration include:

(a) the objects of the *Waste Reduction and Recycling Act 2011*;
(b) the waste and resource management hierarchy;
(c) whether the proposed management of a waste or use of a resource, may or is likely to cause serious or material environmental harm;

(d) whether it is reasonably practicable for an end of waste code to be made for a particular waste or resource the subject of the application; and
(e) other criteria to be prescribed in regulation.

In relation to criterion (a), consideration of the objects of the Act ensures the chief executive gives due regard to the overarching principles of the Act when considering whether to grant or refuse an application for an end of waste approval. The objects of the Act are to:

- promote waste avoidance and reduction, and resource recovery and efficiency actions;
- reduce the consumption of natural resources and minimise the disposal of waste by encouraging waste avoidance and the recovery, re-use and recycling of waste;
- minimise the overall impact of waste generation and disposal;
- ensure a shared responsibility between government, business and industry and the community in waste management and resource recovery; and
- support and implement national frameworks, objectives and priorities.

In relation to criterion (b), the waste and resource management hierarchy is defined under section 9 of the *Waste Reduction and Recycling Act 2011* and lists the preferred order in which waste management options should be considered by the chief executive when deciding whether to grant or refuse an end of waste approval, from most preferred to least preferred. These include a hierarchy for waste, which is to avoid, reduce, re-use, recover, treat and dispose, in that order. The chief executive may consider that there is a higher order waste management option for the resource in its end use than the one being proposed by the applicant.

In relation to criterion (c), the chief executive must consider the potential for future serious or material environmental harm that may arise from granting an end of waste approval. This criterion will help the chief executive to assess the environmental risks associated with the application for the end of waste approval and decide whether certain conditions should be included in the end of waste approval to protect against the risk of serious or material environmental harm. Alternatively, consideration of this criterion may alert the chief executive to the fact that the risk of serious or material environmental harm is too great to justify granting the approval.

'Environmental harm' is defined under section 14 of the *Environmental Protection Act 1994*. It is any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value. Environmental harm may be caused by an activity whether the harm is a direct or indirect result of the activity; or whether the harm results from the activity alone or from the combined effects of the activity and other activities or factors. 'Material environmental harm' and 'serious environmental harm' are defined in sections 16 and 17 of the *Environmental Protection Act 1994*.

In relation to criterion (d), under the previous specific beneficial use approval process, the department received multiple applications for the same waste and end use but from different proponents. This placed a high demand on departmental resources to

condition multiple applications to the same effect. Where parameters are well known, rather than granting separate approvals to different proponents, it is considered preferable for the chief executive to develop an end of waste code so that any person who registers can have the benefit of that code.

In relation to criterion (e), the matters listed in this section are not exhaustive and do not limit the matters the chief executive may consider in deciding whether to grant or approve an end of waste approval.

This section raises the potential fundamental legislative principle because some criteria can be prescribed by regulation. Sufficient heads of power are being retained in the Act, with only further detail to be prescribed in regulation. This is to ensure that the criteria prescribed for granting an end of waste approval is flexible enough for continuous improvement, which will benefit industry applicants, and administrators of the process, and also reflects the department's regulatory strategy for setting standards.

Section 173M Grant of application

This section prescribes how an application is granted. Within 5 business days of making the decision, the applicant must be given a notice of the decision. If conditions are placed on an end of waste approval, the notice is to be accompanied by an information notice that details why those conditions are being imposed. Providing an information notice to the applicant enlivens their rights to seek a review or appeal under chapter 9 of the *Waste Reduction and Recycling Act 2011*.

Section 173N Conditions of end of waste approval

This section enables the chief executive to impose conditions on an end of waste approval. The chief executive can impose any condition on an end of waste approval that they deem to be necessary or desirable, and the types of conditions that may be imposed may be prescribed in regulation.

End of waste approvals are intended to be used when a potential market/demand does not already exist for the proposed resource, or where the risks of environmental harm are unknown. Therefore, conditions may need to be placed on the input source, treatment process, and subsequent use of the resource to enable resource recovery while also managing the risks of environmental harm.

Proponents that are granted an end of waste approval may have existing conditions under an environmental authority to treat waste but not under the circumstances prescribed in the end of waste approval. To avoid duplication the department will consider existing conditions under an environmental authority when conditioning an end of waste approvals. However, if there is benefit to the end of waste approval holder the approval holder may voluntarily decide to update existing conditions to their environmental authority through the amendment processes in the *Environmental Protection Act 1994*.

Section 173O Refusal of application

This section states that if the chief executive decides to refuse an application, an information notice must be given to the applicant within 10 business days after the decision to refuse has been made. Providing an information notice to the applicant enlivens their rights to seek a review or appeal under chapter 9 of the *Waste Reduction and Recycling Act 2011*.

Section 173P Compliance with condition of end of waste approval

This section states that if the holder of an end of waste approval, or person acting under an end of waste approval, fails to comply with a condition of an end of waste approval, they may be subject to a penalty.

Since this section creates a new offence, it raises a potential fundamental legislative principle, namely, that consequences imposed by legislation should be proportionate and relevant to the action to which consequences are applied by the legislation. This offence is justified however because it is consistent with section 167 of the pre-amendment *Waste Reduction and Recycling Act 2011*. That offence is omitted by this clause and replaced with this offence. This Bill replaces specific beneficial use approvals with end of waste approvals, and like specific beneficial use approvals, specifies conditions to be met. The new penalty for non-compliance with the conditions of an end of waste approval is the same as the penalty specified for non-compliance with conditions of a specific approval in the pre-amendment *Waste Reduction and Recycling Act 2011*.

Section 173Q Holder of end of waste approval responsible for ensuring conditions complied with

This section requires the holder of an end of waste approval to ensure that everyone acting under the approval complies with the conditions of the approval. The responsibility extends to persons acting under the approval, such as employees and subcontractors.

Under section 173P, if a person acting under an end of waste approval is proven to have contravened a condition of the approval, that person is guilty of an offence. However, if, for example, the person acting under the approval was contracted by the holder and was directed to take the action which contravenes the approval, it is appropriate that the holder also be held responsible for the contravention. Therefore, section 173Q provides that the holder of the end of waste approval would also be guilty of an offence in this situation, unless it can be shown that the holder took all reasonable steps to ensure compliance with the conditions, were not aware of the contravention and could not by the exercise of reasonable diligence have prevented the contravention.

Specific beneficial use approvals are being replaced with end of waste approvals. Under the pre-amendment chapter 8 provisions, the chief executive gives notice stating the person who has the benefit of the approval. Similarly, this section provides

clarification that the holder of an end of waste approval is responsible for ensuring conditions are met by any other person acting under the approval but also provides new defence provisions for the holder of the approval should another person fail to comply with the conditions of approval. Approval holders may choose to discharge obligations for conditions being met through private contractual arrangements.

This section raises a potential fundamental legislative principle because subsection (3) relieves the prosecution from the obligation of proving elements of the offence. The approval holder may be liable simply for the commission of an offence by another person. However, the original offence in section 173P is a strict liability offence, so it appropriate that the responsible holder should be equally liable. The provisions are appropriate in these circumstances as it would be considered inappropriate to have a situation where a person operating under an approval (other than the approval holder) is asked to undertake an action by the approval holder that would bring about an offence, but the approval holder is not found to be guilty of the same offence.

A further potential fundamental legislative principle is also raised by subsection (4) which reverses the legal onus for proving a defence by expressly placing the onus on the defendant. This provision can be justified as the matters to be proved will be within the defendant's knowledge and would be extremely difficult, or very expensive, for the State to prove.

Division 2 Transfer or amendment of end of waste approvals on application

Section 173R Definitions for div 2

This section inserts two new definitions for amendment application and transfer application.

Section 173S Application for transfer or amendment of end of waste approval

This section defines the process for how an applicant can amend or transfer an end of waste approval. To transfer an approval, the holder applies to the chief executive in the approved form, with the signed consent of the proposed transferee, and any fee that may be prescribed in regulation. Similarly, to amend an approval, the holder applies to the chief executive in the approved form, with any information that is required by regulation, a written report prepared by a suitably qualified person about the application, and any fee that may be prescribed in regulation. Details relating to the preparation of the amendment report are to be prescribed in regulation. A report by a suitably qualified person is required to accompany an amendment application because an amendment may be significant in nature and require the same level of technical expertise as that for an original application for an end of waste approval. As such the process prescribed is the same.

Provisions enabling the transfer of an approval are necessary as there may, for example, be instances when a business with an existing end of waste approval is sold and the holder of the approval wishes to transfer the approval to another person.

This section raises the potential fundamental legislative principle that legislation should allow for the delegation of legislative power only in appropriate cases. However, as with the original application for an end of waste approval, the details to be prescribed by regulation are technical details. Therefore, prescribing this information by regulation will ensure that the process for granting an amendment of an end of waste approval is flexible enough for continuous improvement, which will benefit industry applicants and administrators of the process, and also reflects the department's regulatory strategy.

Section 173T Chief executive may require additional information or documents for amendment application

This section prescribes the process for additional information that the chief executive may require from the applicant. The chief executive can ask the applicant for further information if it is reasonable to do so, within a period stated in a notice. This period can be extended if both parties agree more time is required. If the applicant does not provide the chief executive with the additional information the application is taken to be withdrawn.

Having the ability to extend the decision timeframes ensures that the chief executive can obtain all of the necessary information to make an informed decision. If there was no ability to extend the timeframe, the chief executive could be required to refuse the amendment application simply for a lack of information.

Section 173U Decision on amendment application

This section describes the process for making a decision about an amendment application. In deciding whether to grant an amendment application, the chief executive must consider:

a) the effect of the amendment on the management of a particular waste or use of a particular resource;
b) whether the effect of the amendment on the on the management of a particular waste or use of a particular resource, may or is likely to cause serious or material environmental harm;
c) the waste and resource management hierarchy; and
d) any other matter prescribed in regulation.

Consideration of these matters is required because the amendment of an end of waste approval could result in changes to the approval that could have significant impacts, including impacts on the quality of the resource which may impact on the resource receiver. Requiring the chief executive to consider the matters stated provides an additional level of scrutiny of a proposed amendment, with the intent of preventing any amendments that could have adverse impacts.

The chief executive must grant or refuse an amendment application within 10 business days of receiving the application, or within 10 business days of the receipt of the additional information requested. However, the chief executive may extend this decision-making timeframe by not more than 20 business days. If the chief executive decides to grant the application, within 5 business days, the applicant must be given a notice stating that the approval has been granted and when the approval commences. If the chief executive decides to refuse the application, the applicant must be given an information notice within 10 business days advising of the reasons for the refusal. Providing an information notice to the applicant enlivens their rights to seek a review or appeal under chapter 9 of the *Waste Reduction and Recycling Act 2011*. If a decision is not made by the chief executive, it is taken to be a refusal of the amendment application.

Section 173V Decision on transfer application

This section relates to the transfer of an end of waste approval to another holder. The chief executive must decide whether to approve or refuse the transfer application. A decision must be made by the chief executive for a transfer application within 10 business days after the application has been received. However, the chief executive may extend this decision-making timeframe by not more than 20 business days. If the chief executive refuses to grant an application the chief executive must give the applicant an information notice advising of the reasons for the refusal. Providing an information notice to the applicant enlivens their rights to seek a review or appeal under chapter 9 of the *Waste Reduction and Recycling Act 2011*.

Division 3 Amendment, cancellation or suspension of end of waste approval

Section 173W Amendment of end of waste approval

This section enables the chief executive to amend an end of waste approval at any time. This section applies to all amendments, whether a minor amendment or otherwise. This is so the chief executive can ensure that end of waste approvals continue to meet criteria stated in section 173L inserted by this Bill. The chief executive may, for example, amend a code to ensure the proposed use is higher in the preferred order of the waste and resource management hierarchy and is not likely to cause serious or material environmental harm.

Section 173X Cancellation or suspension of an end of waste approval

This section states the events which may justify the cancellation or suspension of an end of waste approval. It is necessary to have a provision enabling cancellation or suspension of an end of waste approval because, following the making of the approval, the approval may become redundant or adverse. For example, monitoring may reveal that the use of the resources has resulted in undesirable impacts, or an end of waste code may have been prepared that covers the same waste and resource covered by the approval.

Provided the chief executive complies with the process in section 173Y inserted by this Bill, the chief executive may cancel or suspend the approval if they are satisfied that:

(a) there is no longer a use for a resource that is covered by the approval;
(b) the management of the waste or use of the resource has caused, is causing or is likely to cause serious or material environmental harm;
(c) the use of a resource or waste that is covered by the approval is unlawful;
(d) the approval was granted due to the submission of materially false or misleading information or declaration;
(e) circumstances have substantially changed since granting the approval and material or serious environmental harm may result if the end of waste approval continues to operate;
(f) there has been non-compliance with a condition of the end of waste approval; or
(g) a request for information about the approval under section 173ZB inserted by this Bill has not been provided to the chief executive.

The inclusion of grounds (a) to (c) enable cancellation or suspension of an end of waste approval if there is an event which occurs following the making of the approval that means that the approval is redundant or results in undesirable impacts.

In relation to (d), the approval may have been granted based upon false information against which the chief executive will have made the decision to grant an end of waste approval. If the information is false or misleading, the chief executive will not have been able to properly evaluate the application against the criteria for decision under section 173L or apply the required conditions to the approval.

In relation to (e), the change in circumstances may result in material or serious environmental harm. Consequently, the reasons for this ground are similar to the reasons for the ground in (b).

In relation to (f), a non-compliance with a condition of the approval may give the chief executive reason to cancel or suspend an end of waste approval as the non-compliance no longer meets the criteria for decision under section 173L.

In relation to (g), a request for information has not been forthcoming from the applicant and the chief executive may not be able to properly evaluate the application against the criteria for decision.

An approval may also be cancelled if an appropriate end of waste code is in effect and it would be reasonable for the holder of the approval to operate under that code. This is to ensure a level playing field is provided for all under this framework. However, there may be specific circumstances when an end of waste approval may be granted on an ongoing basis. This might be when a code cannot be reasonably be developed owing to the specialised nature of a particular waste and resource.

For this section, the chief executive must comply with the procedure for cancelling or suspending an end of waste approval in section 173Y.

Section 173Y Procedure for amending, cancelling or suspending end of waste approval

This section prescribes the process for amending, cancelling or suspending an end of waste approval where the proposed amendment, cancellation or suspension has been initiated by the chief executive. The chief executive is required to give the approval holder a notice and give the holder at least 28 days to make a submission as to why their approval should not be amended, cancelled or suspended. This timeframe is consistent with the timeframe for submission periods under other sections of the *Waste Reduction and Recycling Act 2011*. This process enables the approval holder to have an input into the proposal.

In deciding whether to take the proposed action, the chief executive is required to consider any submissions made by the holder of the end of waste approval and any matters prescribed in regulation.

If the proposed action is to amend an approval, the chief executive is also required to consider whether the amendment:

- will have an adverse impact on the management of a particular waste or use of a particular resource that the approval applies to;
- will increase the likelihood of the management of a particular waste or use of a particular resource causing serious or material environmental harm; and
- is inconsistent with the waste and resource management hierarchy.

Consideration of these matters is necessary because the amendment of an approval could result in changes to the approval that could have serious environmental, or other, impacts. By requiring the chief executive to consider the matters stated, this provides an additional level of scrutiny of a proposed amendment, with the intent of preventing any amendments that could have adverse impacts.

The chief executive has 20 business days from the end of the submission period to make his or her decision. However, the chief executive may extend this decision-making timeframe by not more than 20 business days. These time limits are imposed in order to provide industry with some certainty regarding the process.

If the chief executive decides to carry out the proposed action to amend, cancel, or suspend an approval, the chief executive must, within 10 business days, provide the approval holder with an information notice which includes details about why the decision has been made. Providing an information notice to the applicant enlivens their rights to seek a review or appeal under chapter 9 of the *Waste Reduction and Recycling Act 2011*. The decision takes effect on the later of the following: (i) when the information notice is given, or (ii) a later date fixed by the chief executive. By allowing for the chief executive to fix a later date, it is intended that where necessary or desirable, industry will be given time to make operational changes that are needed to address the amendment, cancellation or suspension of the approval.

Section 173Z Minor amendment of end of waste approval

This section prescribes the process for making a minor amendment to an end of waste approval. The chief executive may amend an approval to correct a minor error, which does not change the substance of the approval or adversely affect the approval holder, or a receiver or potential receiver of a resource to which the approval relates. To make a minor amendment, the chief executive gives notice of the amendment to the holder of the approval. The chief executive is not required to follow the procedure for amendments set out in section 173Y (inserted by this Bill). This is to ensure minor amendments to the approval may be made quickly without unnecessary administrative process.

Division 4 Surrender of end of waste approval

Section 173ZA Surrendering an end of waste approval

This section prescribes the process for surrendering an end of waste approval. The holder of the approval may surrender the approval in writing to the chief executive at any time.

Division 5 Miscellaneous

Section 173ZB Chief executive may request relevant information about end of waste approval

This section prescribes the process for the chief executive to require information about an end of waste approval from the holder of the approval. The notice must be in the approved form and state the other information required in subsection (2), including the reasons for the information request. The notice must also state the timeframe for the chief executive to receive the information from the approval holder.

The intention of this section is to enable the chief executive to seek information about a particular waste and end use that has received the benefit of an approval. This information could be used by the chief executive for any suitable purpose. For example, it could be used to inform the development of a new end of waste code or to monitor activities carried out under an approval. However, this section does not preclude the conditions of the approval also requiring the holder to report, for example on any monitoring or impacts of the end of waste approval (see section 173N (Conditions of end of waste approval)).

Section 173ZC Chief executive may seek advice, comment or information about pt 3

This section enables the chief executive to seek further technical expertise, in the form of advice, comment or information, on any aspect of part 3 (End of waste approvals). This could be obtained from any other governments, other agencies, independent experts, the technical advisory panel, community organisations or any other relevant

body or person. The intent of this section is to enable the chief executive to draw on all sources of expertise when acting under this part to ensure criteria under section 173L is met.

Amendment of s 245 (Definitions for ch 11)

Clause 168 amends section 245 of the *Waste Reduction and Recycling Act 2011* to correct cross-references and include sections 158 and 173P as a prescribed provision for the purposes of compliance and enforcement. This is a consequential amendment required as a result of the renumbering of the offence provisions in chapter 8 made by this Bill. Sections 158 and 173P should be prescribed provisions as this enables the chief executive to issue show cause and compliance notices it if is reasonably believed that a registered code user has contravened a requirement of a code, or that the holder of an approval has contravened a condition of an approval.

Amendment of s 268 (Executive officer may be taken to have committed offence)

Clause 169 amends section 268 of the *Waste Reduction and Recycling Act 2011* to include section 158 and 173P as a deemed executive liability provision. This is a consequential amendment required as a result of the renumbering of the offence provisions in chapter 8 by this Bill. Section 158 and 173P should be deemed executive liability provisions as this enables executive officers to be convicted of the offence where their corporation commits the offence.

Replacement of ch 16 (Repeal and amendment of other legislation)

Clause 170 inserts a new chapter 16 into the *Waste Reduction and Recycling Act 2011* with the transitional provisions for this part of the Bill. The old chapter 16 (Repeal and amendment of other legislation) is omitted because its provisions are spent.

Chapter 16 Transitional provisions for Environmental Protection and Other Legislation Amendment Act 2014

Section 302 Definitions for ch 16

This section inserts new definitions for terms used in chapter 16. These terms only have this meaning for this chapter.

Section 303 Existing general approvals

This section defines the transitional provisions for existing general approvals. If a general approval is approved prior to the new provisions taking effect, the general approval remains in effect for the term provided for in the approval. Chapter 8, part 5 (conditions of approvals), chapter 8, part 6, division 2 (cancellation or suspension of

approvals) and chapters 9, 10, 11 and 14 of the pre-amendment *Waste Reduction and Recycling Act 2011* still apply to the general approval.

However, if an end of waste code is made covering the same waste and resource as the general approval, the general approval for that waste and resource ends. This is because the end of waste code will replace the general approval. This provision enables for the smooth transition to the new framework in the amended chapter 8, which is intended to redefine the process for how wastes are approved as resources. The general approval expires either when the code takes effect or on a later date fixed by the chief executive. The chief executive is provided with this power to fix a later date because if the commencement of a code is before the expiry of a general approval, this may create problems for industry that has planned its operations on the basis that the general approval would be in place until its expiry. This is especially relevant where industry is unable to comply with the code.

Section 304 Existing specific approvals

This section provides the transitional provisions for existing specific approvals. All specific approvals transition across under the new framework in the new chapter 8 and are deemed to be end of waste approvals. This ensures that the new framework does not adversely affect the rights of holders of specific approvals.

Section 305 Existing applications

This section relates to applications that have not been decided before the commencement of the new provisions. It applies to applications to transfer or amend a specific approval or general approval in addition to applications for the grant of a specific approval or general approval. If a decision has not been made before the commencement of the new provisions, the application is deemed to have lapsed. This is to ensure a timely transition to the new framework.

Section 306 Existing show cause procedure

This section relates to show cause notices under the Act. It is intended to clarify the provisions that apply for show cause notices given under the former Act. If the chief executive has given a general or specific approval holder a show cause notice, but has not yet decided whether to give the holder a compliance notice, then the pre-amendment *Waste Reduction and Recycling Act 2011* will apply.

Amendment of schedule (Dictionary)

Clause 171 amends the schedule (Dictionary) in the *Waste Reduction and Recycling Act 2011* to:

- omit definitions of ‘approval’, ‘best practice environmental management’, ‘disqualifying event’, ‘environmental nuisance’, and ‘holder’, which are terms that are no longer used in the Act or which are no longer relevant to the interpretation of the Act;

- insert definitions of 'amendment application', 'registered code user', 'resource', 'technical advisory panel' and 'transfer application', which are new terms in the replacement chapter 8 of this Bill;
- insert definitions of 'business days' and 'resource', in order to clarify the meaning of these terms;
- replace definitions of 'general approval' and 'specific approval' with definitions of 'end of waste code' and 'end of waste approval', in order to reflect the replacement of chapter 8;
- amend the definitions of 'material environmental harm' and 'serious environmental harm', in order to correct cross-references; and
- amend the definition of 'amend', in order to replace the reference in the definition to 'an approval' with 'an end of waste approval'.

Part 8 Amendment of Wet Tropics World Heritage Protection and Management Act 1993

Act amended

Clause 172 states that this part amends the *Wet Tropics World Heritage Protection and Management Act 1993.*

Amendment of s 34 (Protection from liability)

Clause 173 amends section 34 of the *Wet Tropics World Heritage Protection and Management Act 1993* so that this section does not apply to an official who is a State employee within the meaning of the *Public Service Act 2008*. On 31 March 2014, the *Public Service and Other Legislation (Civil Liability) Amendment Act 2014* amended the *Public Service Act 2008* to provide State employees with broad legislative immunities from civil liability, instead transferring liability to the State. The legislative protection ensures that civil liability does not attach to State employees when they are acting in an official capacity. However, the immunity provisions in this section apply to a broader range of people than State employees. Consequently, this provision is not omitted, but is amended to remove duplication for State employees.

Part 9 Consequential and minor amendments

Acts amended in sch 1

Clause 174 states that schedule 1 amends the Acts it mentions. These are minor, consequential amendments to the *Biological Control Act 1987*, the *Environmental Protection Act 1994*, and the *Vegetation Management Act 1999* as a result of the amendments to the *Biological Control Act 1987* which are outlined in part 2 of this Bill, the amendments to the *Environmental Protection Act 1994* which are outlined in part 4 of this Bill, and the amendments to the *Waste Reduction and Recycling Act 2011* which are outlined in part 6 of this Bill.