Environmental Protection and Other Legislation Amendment Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the Environmental Protection and Other Legislation Amendment Bill 2022.

Policy objectives and the reasons for them

The primary policy objective of the Environmental Protection and Other Legislation Amendment Bill 2022 (the Bill) is to improve administrative efficiency and ensure the regulatory frameworks within the Environment portfolio remain contemporary, effective and responsive. Specifically, the Bill amends the:

- *Environmental Protection Act 1994* (EP Act) to support industry, streamline and clarify regulatory processes, better protect the environment and improve community input and transparency;
- *Waste Reduction and Recycling Act 2011* (WRR Act) to make minor, technical refinements related to administrative processes and interpretation; and
- *Wet Tropics World Heritage Protection and Management Act 1993* (Wet Tropics Act) and *Land Title Act 1994* in response to a review of the Wet Tropics Management Plan 1998. The changes better protect the Wet Tropics of Queensland World Heritage Area (Wet Tropics World Heritage Area), improve user understanding, align with other legislation and contemporise drafting.

Environmental Protection Act

Amendments to the EP Act will implement various efficiencies and address miscellaneous issues. This includes:

- resolving implementation issues with the estimated rehabilitation cost (ERC) and progressive rehabilitation and closure planning (PRCP) frameworks;
- refining requirements related to contaminated land, including contaminated land auditors;
- modernising and improving the efficiency of environmental authority provisions;
- enhancing the environmental impact statement (EIS) process;
- improving compliance and enforcement powers to enable the more effective protection of the environment;
- inserting measures to assist Queensland businesses and individuals to meet environmental requirements in an emergency situation; and
- inserting provisions to support the implementation of a national approach for managing the environmental risks posed by industrial chemicals under the *Industrial Chemicals Environmental Management (Register) Act 2021* (Cwlth) (ICEMR Act).

The amendments will ensure that environmental values continue to be protected through contemporary, effective and efficient environmental regulation.

Waste Reduction and Recycling Act

Amendments are proposed to the WRR Act to resolve implementation issues, provide operational certainty and deliver legislative alignment. The amendments are considered minor and administrative in nature and do not result in major legislative reform. The amendments will include a community corrections office and a corrective services facility as an exempt business or undertaking, allowing banned single-use plastic items to be supplied and used by these facilities to ensure they can continue to operate safely and effectively. The amendments include refinements to the end of waste framework and provide greater clarity and consistency for decisions relating to end of waste codes and end of waste approvals. The amendments also refine the technical interpretation of a number of matters to address issues that have been raised through the application of the WRR Act. These amendments support the object of the WRR Act and the end of waste framework to increase resource recovery and recycling rates by implementing efficiencies and providing greater clarity through legislative alignment.

Wet Tropics

In response to a public review of the Wet Tropics Management Plan 1998, consequential and other minor amendments are proposed to various pieces of legislation. The amendments will remove a mining exemption, and ensure a plan of subdivision for reconfiguring a lot in the Wet Tropics World Heritage Area is not registered under the *Land Title Act 1994* without consent being given by the Wet Tropics Management Authority. They provide greater user-clarity regarding Aboriginal Tradition, the relationship between cooperative management agreements made under the Wet Tropics Act and the Wet Tropics Management Plan 1998 and clarify the maximum consecutive years of appointment allowed for Wet Tropics Management Authority board directors. The amendments also align the Wet Tropics Act with changes made to the *Nature Conservation Act 1992*.

Achievement of policy objectives

Environmental Protection Act

In relation to the EP Act, the Bill achieves its objectives by making a number of amendments including:

- setting timeframes for when a public interest evaluation report must be given to the administering authority;
- allowing the administering authority to approve a PRCP schedule with amendment;
- allowing the administering authority to extend the information request period during an ERC decision making process;
- inserting a process for changing an application for an ERC decision;
- removing uncertainty surrounding the application of transitional provisions for PRCPs;
- clarifying provisions related to contaminated land and auditors (e.g. the duty to notify

of environmental harm, environmental investigations, grounds for including land in the environmental management register);
- streamlining the process whereby land owners ask for particulars of their land to be included in a land register;
- enhancing the auditor complaint process;
- enhancing executive officer liability provisions;
- providing that EIS assessment reports lapse after three years to ensure that, for the purposes of an environmental authority application, the assessment reports reflect contemporary environmental legislation, policies and standards;
- allowing the chief executive to refuse an EIS from proceeding if it is unlikely the project could proceed under the EP Act or another law;
- supporting short term environmental authorities for trial activities relating to prescribed environmentally relevant activities (ERAs) by relaxing specific application requirements for these authorities;
- changing the environmental authority suspension provisions to clarify that an existing suspension may be extended and to provide that there are specific provisions of the EP Act that continue to apply to suspended environmental authorities;
- requiring public notification for all major amendments to environmental authorities for resource activities;
- allowing the amendment of environmental authorities in more situations, including following the acceptance of an enforceable undertaking;
- allowing the removal of sensitive private information from the public register;
- explicitly authorising authorised persons to use body-worn cameras and to take unmanned aerial vehicles (UAVs) into places when exercising entry powers;
- changing from an application process to a submission process for transitional environmental programs;
- allowing criminal history reports to be obtained from the Police Commissioner in specific circumstances to support the safety of authorised persons;
- inserting a power to allow authorised persons to require a corporation to nominate an executive officer or employee to answer questions on behalf of the corporation;
- enabling courts to order persistent offenders to stop carrying out particular activities and making it an offence to breach such an order;
- stating that a person does not comply with the general environmental duty if the person does not comply with any relevant measures in force under the ICEMR Act; and
- allowing the administering authority to issue temporary authorities where this is deemed reasonable because of an emergency situation.

Waste Reduction and Recycling Act

In relation to the WRR Act, the Bill achieves its objectives by:
- allowing banned single-use plastic items to be supplied and used by a community corrections office and a corrective services facility in the same way they are for healthcare facilities and schools;
- providing operational certainty for the take effect date for a decision to amend an end of waste code;
- providing legislative alignment of the period for deciding certain end of waste approval applications with the period for requiring additional information;

- enhancing the end of waste approval amendment process by allowing the opportunity to seek advice from a technical advisory panel; and
- clarifying a definition related to volumetric survey requirements to provide certainty about waste that must be surveyed.

The amendments provide greater operational certainty and clearer alignment of decision periods to ensure more effective and efficient waste management and resource recovery.

Wet Tropics

In relation to the Wet Tropics amendments, the Bill achieves its objectives by:

- clarifying several matters including:
  - the operation of the legislative scheme under which cooperative management agreements are made and in particular the relationship between cooperative management agreements under the Wet Tropics Act and Wet Tropics Management Plan 1998;
  - the meaning of 'Aboriginal Tradition' as used in the Wet Tropics Act and Wet Tropics Management Plan 1998; and
  - the duration of appointment for a Wet Tropics Management Authority board director;
- making amendments arising from review of the Wet Tropics Management Plan 1998 including:
  - removing the prohibited act exemption for any permit, licence or authority issued under the *Mineral Resources Act 1989*, thereby causing mining to be a prohibited activity in the Wet Tropics World Heritage Area; and
  - ensuring that the consent of the Wet Tropics Management Authority is given to any new plan of subdivision submitted to the Registrar of Titles where that plan is prepared under the *Land Titles Act 1994* and affects land in the Wet Tropics World Heritage Area. The requirement allows the Wet Tropics Management Authority to check if the relevant permit for reconfiguring a lot has been obtained under the Wet Tropics Management Plan 1998 and that any relevant plan of subdivision is consistent with an approved plan. This outcome is achieved through a change to the *Land Title Act 1994*;
- updating provisions that remove inconsistency between a Management Plan under the Wet Tropics Act and a conservation plan, management plan, management program or management statement made under part 7 of the *Nature Conservation Act 1992*; and
- making an administrative change to the Wet Tropics Act to remove the United Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) and instead reference the document by referring to the UNESCO website.

Alternative ways of achieving policy objectives

With regards to the amendments related to the ICEMR Act and the Wet Tropics, administrative changes are unable to achieve the policy objectives, thus legislative amendments are necessary.

With regards to all other amendments, administrative changes can achieve some of the policy objectives, but without legislative amendments, gains are limited. Accordingly, to fully achieve the policy objectives, legislative amendments are required.

Estimated cost for government implementation

Environmental Protection Act

Amendments to the EP Act that allow the administering authority to issue temporary authorities for emergency situations will result in administrative costs to the Department of Environment and Science (the department). There are no fees payable for an application for a temporary authority and no annual fee like there is for other environmental authorities issued under chapter 5 of the EP Act. This is because temporary authorities granted in emergency situations can only be in effect for a maximum of four months and operators that apply for such authorities are generally under operational stress due to an emergency situation. The administrative costs will be covered by the department's existing resources.

With regards to all other EP Act amendments, there will be no significant additional costs for implementation of the amendments. Generally, the amendments are expected to clarify the application of the EP Act and improve the administrative efficiency of existing regulatory frameworks. Any costs will be covered by the department's existing resources.

Waste Reduction and Recycling Act

There will be no additional costs for implementation of the amendments. Overall, the amendments are expected to provide greater operational certainty and clarity of regulatory frameworks under the WRR Act.

Wet Tropics

Additional costs for the implementation of the amendments are not anticipated.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to the fundamental legislative principles (FLPs) as defined in s 4 of the *Legislative Standards Act 1992* and is generally consistent with these provisions. Clauses of the Bill in which FLP issues arise or are perceived, together with the justification for any departure, are outlined below.

Legislation must have sufficient regard to rights and liberties of individuals – *Legislative Standards Act 1992*, s 4(2)(a)

The Bill inserts new part 5A into chapter 9 of the EP Act to allow the chief executive to ask the Police Commissioner for a written report about the criminal history of a relevant person. This power raises a possible FLP issue about whether the legislation has sufficient regard to the rights and liberties of individuals. Any erosion of the privacy of the individual and the policy of the *Criminal Law (Rehabilitation of Offenders) Act 1986* is considered to be justified and reasonable given it supports the safety of an authorised person when entering a place or vehicle under the EP Act. The request for a criminal history report is appropriately

limited. A request can only be made where an authorised person reasonably suspects that the person may be present at a place or vehicle when they enter the place or vehicle, and their presence may create an unacceptable level of risk to the authorised person's safety. Safeguards have also been included within new s 484C(7) to ensure that disclosure is sufficiently limited to the purposes for which it is required. This subsection states that the chief executive must ensure the report, and any information in the report given to the authorised person in writing, is destroyed as soon as practicable after the report is no longer needed for the purpose for which it was requested.

Legislation must have sufficient regard to rights and liberties of individuals – *Legislative Standards Act 1992*, s 4(2)(a)

The Bill inserts new s 486A into the EP Act that allows authorised persons to use a body-worn camera to record images or sounds while exercising a power under chapter 9 of the EP Act. This power raises a possible FLP related to whether the legislation has sufficient regard to the rights and liberties of individuals, including the right to privacy and confidentiality. The use of body-worn cameras acts as a deterrent to aggressive behaviour and, as a result, these cameras are increasingly being used by government agencies. Body-worn cameras are also important in the investigation of offences as they provide an incontrovertible record of events. Further, these cameras can be used to assist in the investigation of complaints against authorised persons and therefore can assist in ensuring the professionalism and accountability of authorised persons.

The vast majority of recordings made by body-worn cameras will involve the authorised person. Under s 43(2)(a) of the *Invasion of Privacy Act 1971,* it is already lawful to record a private conversation provided the person using the listening device is a party to that conversation. Notwithstanding this, there may be circumstances where a body-worn camera inadvertently, unexpectedly, or incidentally captures images or sounds to which the authorised person is not a party to. It is considered reasonable that an authorised person be protected from liability if the body-worn camera is being used in accordance with the authority provided in new s 486A. A safeguard is provided through the insertion of a new provision in the EP Act (s 579D) which makes it an offence for an authorised person to use or disclose confidential information obtained in performing functions or exercising powers under the Act. Further, all recordings made by an authorised person while exercising a power under the EP Act will become a record under the *Public Records Act 2001*. The recordings must be retained in accordance with information privacy obligations to which public servants are subject, including the Information Privacy Principles in schedule 3 of the *Information Privacy Act 2009*.

Legislation must have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, s 4(2)(a)

The Bill inserts new s 506A into the EP Act, which makes it an offence for a person to contravene a court order made specifically to stop the person from committing further serious environmental offences under the Act. The offence is justified as a deterrent is needed to ensure a person with a history of convictions does not continue to commit other serious environmental offences. The penalty for the offence (3,000 penalty units or 2 years imprisonment) is of an appropriate level and considered necessary to discourage a person from repeat offending. The penalty is comparable to other penalties for similar environmental offences under the EP Act and other Queensland legislation.

Legislation must have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, s 4(2)(a)

The Bill inserts a new section into the EP Act which makes it an offence for authorised persons, public service employees and particular other persons to use or disclose confidential information obtained in the course of performing functions under the Act. The offence is justified as a deterrent to releasing sensitive personal information without due reason. The penalty for the offence (100 penalty units) is of an appropriate level. It is the same as the penalty for existing offences in the EP Act for release of confidential information (s 316PE and s 318U).

Legislation must have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, s 4(2)(a)

The Bill amends s 440ZA of the EP Act to ensure that boats at jetties and pontoons are subject to the default noise standard for the operation of a power boat engine. Under this amendment, a boat at a jetty or pontoon must not be operated in a way that makes an audible noise for more than a continuous period of five minutes on a business day or Saturday before 7am or after 7pm, or on any other day before 8am or after 6:30pm. This amendment raises the FLP that ordinary activities should not be unduly restricted without sufficient justification. It is common for a person to operate a power boat engine for commercial and recreational activities at jetties and pontoons outside of the allowable hours prescribed under s 440ZA. Therefore, a restriction on these activities may be considered unjustified. However, given that audible noise means noise that can be clearly heard by an individual who is an occupier of an affected building and the restriction only applies where the boat engine noise is for a continuous period of more than five minutes, s 440ZA will not have a significant impact on most persons operating a power boat engine at a jetty or pontoon. The intent is to limit the noise of power boat engines in residential areas and the restriction is considered reasonable as it does not prohibit the operation of all power boat engines outside of the allowable hours.

Legislation must have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, s 4(2)(a)

The Bill inserts provisions in the EP Act that allow the administering authority to approve temporary authorities if it is a necessary and reasonable response to an emergency situation (e.g. pandemic, flood event or a marine pollution event). A temporary authority essentially allows an activity causing environmental harm or nuisance to be carried out lawfully. While there is the potential for a temporary authority to result in environmental harm or nuisance, the amendments provide for the administering authority to include conditions on the authority. These conditions can mitigate the potential for environmental harm or nuisance. The alternative to approving the activities is likely to be a greater level of harm (e.g. a temporary authority may allow a higher volume of sewage to be treated at the facility in order to stop the overflow of raw sewage). Noting the ability to include relevant conditions on temporary authorities to minimise harm or nuisance, the need to respond to circumstances arising from an emergency situation that could cause greater environmental harm and the relatively short duration of the authorities, the potential breach of this FLP is considered justified.

Legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review – *Legislative Standards Act 1992*, s 4(3)(a)

The Bill amends s 172 of the EP Act to include the ability for the administering authority to approve a proposed PRCP schedule with amendment, to the extent the amendment is necessary to enable the approval of the proposed PRCP schedule under s 176A(2) and (3). There is no right of appeal against the decision to approve a proposed PRCP schedule with or without amendment. While it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process, an absence of a right of review is considered to be justified. The decision of the administering authority to approve a proposed PRCP schedule with or without amendment may be referred to the Land Court for a recommendation. The administering authority is then required to have regard to the Land Court's recommendation in making its final decision. In effect, the Land Court's review of the initial decision is a merits review with all relevant parties being able to put their case forward. Further, the decision may also be appealed under the *Judicial Review Act 1991*.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently subject to appropriate review - *Legislative Standards Act 1992*, s 4(3)(a)

The Bill inserts a new chapter 7, part 8, division 2, subdivision 2A (Voluntary inclusion of land in relevant register) into the EP Act. Under new s 379B, the owner of land may, by written request, ask the administering authority for particulars of land to be included in a relevant land register. When making the written request, the owner may state that they waive the application of the show cause process (subdivision 2) as they do not wish to make a submission. This amendment streamlines the process for including land in the relevant land register by providing a new process for situations where an owner provides the administering authority with a request asking for their land to be included in a relevant land register. In deciding the request, the administering authority must consider the grounds for including particulars of land in the relevant register under s 371 and s 372, the inclusion request provided by the owner and any additional information received in response to a request made by the administering authority. Once a decision has been made on the inclusion request, the administering authority must give an information notice to the land's owner about the decision. The decision to refuse the owners request has been included as an original decision, providing for the right to review. This addresses any potential breaches related to the FLP that legislation should only make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently subject to appropriate review - *Legislative Standards Act 1992*, s 4(3)(a)

The Bill amends s 574G(1) of the EP Act to allow the chief executive to amend an auditor's approval, or conditions of the approval, if a ground exists under s 574D. The pre-amended Act only allowed the administering authority to cancel or suspend an auditor's approval, which may not have always been the most reasonable or appropriate action. Inserting the option to amend an auditor's approval, or conditions of an approval, is likely to result in better outcomes for both the community and auditors. Deciding to amend an auditor's

approval raises a potential breach of a FLP, specifically that administrative decision-making power is sufficiently subject to appropriate review. Processes have been put in place in the EP Act to ensure safeguards exist with regards to this decision. If the chief executive believes a ground exists to amend an auditor's approval, the chief executive must give the auditor a written notice under s 574E outlining the proposed action and reasons for it. The auditor may make written representations to the chief executive about the proposed action, and the chief executive must consider all representations made prior to making a decision. If the chief executive still decides to amend the approval after considering the representations made, the decision is considered an original decision and is, thus, reviewable. This addresses any potential breaches related to the FLP.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently subject to appropriate review - *Legislative Standards Act 1992,* s 4(3)(a)

The Bill amends s 215(2) of the EP Act to allow the administering authority to amend an environmental authority or PRCP schedule if it considers it necessary or desirable because:

- the acceptance, withdrawal, variation, amendment or suspension of an enforceable undertaking; or
- the issue of an environmental protection order.

Changing the grounds for which the administering authority is able to amend an environmental authority or PRCP schedule raises a potential breach of a FLP, specifically that administrative decision-making power is sufficiently subject to appropriate review. However, there are existing provisions in the EP Act to provide for review of decisions to amend an environmental authority or PRCP schedule. If the administering authority decides to make an amendment under s 219, the decision is subject to review and appeal by a 'dissatisfied person' (s 520). Before making a decision to amend the environmental authority, the EP Act also requires the administering authority to follow a process which includes the opportunity for the environmental authority holder to make representations.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently subject to appropriate review – *Legislative Standards Act 1992,* s 4(3)(a)

The Bill inserts new provisions in the EP Act that allow the administering authority to approve temporary authorities where it is a necessary and reasonable response to an emergency situation. If the administering authority refuses a request from a person for a temporary authority, there is no ability for the person to appeal the decision or have the decision reviewed under the EP Act. This raises the FLP that legislation should make rights and liberties of individuals dependent on administrative power only if the power is sufficiently subject to appropriate review. The amendments clearly outline the matters that the administering authority must be satisfied of to issue a temporary authority. If the administering authority refuses the application for a temporary authority, the person may apply for an environmental authority for the activity through the existing processes in the EP Act which has its own appeal and review rights. Given the interim nature of temporary authorities, the absence of an application fee and the option for a person to apply for an environmental authority under the existing processes as an alternative, any breach of FLPs is considered justified. In addition, where the administering authority refuses to issue a

temporary authority to a person under the EP Act, the person may have the decision reviewed under the *Judicial Review Act 1991*.

Legislation should be consistent with the principles of natural justice – *Legislative Standards Act 1992,* s 4(3)(b)

The Bill inserts new provisions in the EP Act to allow the administering authority, in approving temporary authorities for emergency situations, to impose conditions on those authorities. The administering authority is required to give the applicant an opportunity to provide submissions and to consider those submissions when deciding whether to impose the conditions. However, the administering authority is not required to allow the applicant to provide submissions where this would delay the granting of the temporary authority and result in a detriment to the applicant. This ability to make a decision to not provide the applicant with an opportunity to make submissions about proposed conditions of a temporary authority raises a potential breach of the FLP that legislation should be consistent with the principles of natural justice. This potential breach is considered justified as it allows for a temporary authority to be granted and be in effect in time-critical emergency situations to avoid or mitigate serious or material environmental harm. A decision not to allow submissions is ultimately only allowed where allowing submissions would be of detriment to the applicant. In making the decision whether to allow the applicant to provide submissions about the proposed conditions, the administering authority must consider the nature and urgency of the application, and the emergency situation to which the application relates.

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification – *Legislative Standards Act 1992,* s 4(3)(d)

The Bill amends s 490 of the EP Act to expand the evidentiary provisions to capture evidence of matters stated or shown in a map, chart or plan. It is a FLP that legislation should not reverse the onus of proof without adequate justification. The amendment to s 490 of the EP Act could potentially reverse the onus of proof by placing the onus on the defendant to prove that the maps, charts and plans are proof of the evidence stated or shown in the maps, charts and plans. However, this potential breach is considered to be justified. The certificate is only to be treated as evidence and is not conclusive proof of the matters stated in the map, chart of plan. As soon as there is evidence to the contrary, the certificate will cease to be evidence of the matters stated. The certificate is an evidentiary aid that will improve administrative efficiency by avoiding the need to put evidence about basic matters before courts. The provision is limited in that it only applies to maps, charts and plans made by authorised persons and certified by the administering executive.

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification – *Legislative Standards Act 1992,* s 4(3)(d)

The Bill amends s 493 of the EP Act to expand the scope of persons this section applies to. The amendment ensures executive officers who were not in office at the time the offence was committed but were in office at the time the acts or omissions that led to the offence occurring can be held liable.

The amendment raises the FLP that legislation should not reverse the onus of proof in criminal proceedings without adequate justification. This amendment does not reverse the onus of proof. It does not fundamentally alter the manner in which the onus of proof operates

in s 493. Rather, the amendment expands the scope of persons to which s 493 can apply. There are a number of matters the prosecution must prove before an executive officer can be deemed to have committed an offence. For example, the prosecution must first prove that a corporation committed the offence. While the accused may have the evidential burden to adduce evidence of a defence under s 493(4), the prosecution still retains the legal onus.

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification – *Legislative Standards Act 1992*, s 4(3)(d)

The Bill inserts new s 316GB in the EP Act which states that, despite s 23 and any requirements stated in a prevailing Act mentioned in that provision, a person commits an offence against s 426 if they do not have an environmental authority or temporary authority for a relevant ERA. However, it is a defence against this offence if the person proves it would not be reasonable to have complied with s 426 having regard to the requirement they are subject to under the prevailing Act. This amendment raises the FLP that legislation should not reverse the onus of proof in criminal proceedings without adequate justification. However, this potential breach is considered to be justified because in these circumstances, the subject matter of the defence is likely to be within the particular knowledge of the defendant. Defendants are likely to be obligated to carry out a relevant ERA under the prevailing Act where directed and are therefore well positioned to disprove guilt in relation to a breach of s 426 in these circumstances.

Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively - *Legislative Standards Act 1992*, s 4(3)(g)

The Bill inserts new transitional provisions into chapter 13, part 31 of the EP Act to clarify the operation of chapter 13, part 27 and ensure the PRCP transitional provisions function as originally intended. The amendments raise the FLP that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. The amendments are not considered retrospective as the obligation to rehabilitate the land is an existing requirement on all environmental authorities. The PRCP transitional provisions in chapter 13, part 27 were inserted to ensure a consistent and equitable approach was applied to all existing environmental authorities issued for a site-specific application relating to a mining lease. Under chapter 13, part 27 holders of an authority for an existing mine are asked to submit a PRCP upon receiving a notice from the administering authority. Some ambiguity exists with regards to the issuing of this notice to certain environmental authority holders. The Bill seeks to address this ambiguity by clarifying the application of chapter 13, part 27 in this respect. The Bill ensures that the policy intent of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* is achieved.

A Bill should have sufficient regard to the institution of Parliament - *Legislative Standards Act 1992*, s 4(4)

The Bill inserts in the EP Act the requirement for the chief executive to refuse to allow an EIS process to proceed if the chief executive is required to refuse it to proceed under a regulatory requirement (new s 41A(3)(b), s 49(3A)(b) and s 56A(4A)(b)). This raises an FLP regarding the institution of Parliament. The inclusion of these powers to prescribe additional decision-making matters in subordinate legislation is justified as flexibility is required to add matters if circumstances warrant a change. Given the technical nature of the decisions to be made in relation to EIS projects, it is not considered possible to foresee all matters that would

warrant a decision to refuse the EIS from proceeding. Providing the ability to prescribe additional matters by regulation will facilitate the effective administration of the legislation.

Consultation

Environmental Protection Act and Waste Reduction and Recycling Act

Consultation has been undertaken with the following key industry, government, community and conservation representative groups: AgForce, Association of Mining and Exploration Companies (AMEC), Australian Contaminated Land Consultants Association (ACLCA), Australian Petroleum Production and Exploration Association (APPEA), Australian Prawn Farmers Association (APFA), Australia Pacific LNG, Bar Association of Queensland, Cement Concrete and Aggregates Australia (CCAA), Environmental Defenders Office, Environmental Earth Sciences International, Local Government Association of Queensland (LGAQ), Lock the Gate Alliance Ltd, North Queensland Land Council, Queensland Conservation Council, Queensland Farmers Federation, Queensland Law Society, Queensland Resources Council (QRC), Queensland Water Directorate (QWD), and Waste Recycling Industry Association of Queensland Inc. Some of these groups were only consulted on specific amendments and/or at specific stages of the process.

Initial consultation was undertaken through the release of a consultation paper in October 2021. The consultation paper presented options for possible amendments related to implementing efficiencies and addressing a wide array of issues. After release of the consultation paper, briefings on the proposed amendments were undertaken with representatives from key stakeholder groups to discuss any queries or concerns with the proposals. Where appropriate, modifications were made to the proposed amendments to address the feedback received.

In mid-March 2022, briefings were held with stakeholders. The purpose of the briefings was to inform stakeholders of the outcomes following feedback on the consultation paper in October 2021. Stakeholders were advised of which amendments were no longer proceeding, which were proceeding with changes, and which were proceeding unchanged. Stakeholders were also informed of the planned release of a draft Bill.

In early April 2022, key stakeholders were provided with a draft of the Bill and invited to provide comment. Some of the amendments were not ready for consultation in early April 2022, but a separate draft of these amendments was provided to key stakeholders in May 2022 for comment. Briefings were also held with key stakeholders, upon request, to discuss their submissions in greater detail.

At the end of June 2022, an updated draft of the Bill was provided to key stakeholders for three weeks for further review and feedback. As part of this round of consultation, all groups were provided the opportunity to share the draft Bill with their members. Groups that advised of taking up this opportunity were ACLCA, AMEC, APFA, APPEA, CCAA, LGAQ, QRC and QWD. All feedback received on the drafts of the Bill have been considered in the finalisation of the Bill.

There was no external consultation undertaken on the amendment to allow the sale of banned single-use plastic items to correctional facilities.

All amendments have undergone regulatory impact analysis in accordance with The Queensland Government Guide to Better Regulation. Some of the amendments were deemed to fall within agency-assessed exclusion categories. For all other amendments, exclusion requests or preliminary impact assessments were submitted to the Office of Best Practice Regulation (OBPR) for assessment. With the exception of EP Act amendments related to mandatory notification of environmental authority amendment applications for resource activities and amendments relating to the lapsing of EIS assessment reports after three years, OBPR advised that the amendments were excluded from further regulatory impact assessment. The amendments related to mandatory notification are consistent with the objectives of the EP Act, will provide greater certainty for industry and will enable greater community involvement in the environmental authority amendment process. The amendments relating to the lapsing of EIS assessment reports have been changed in response to consultation feedback. The chief executive is able to extend the three year lapse date, with no restriction on the timeframe of the extension.

Wet Tropics

In relation to amendments to the Wet Tropics Act and *Land Title Act 1994*, most changes are administrative and do not alter the policy intent of the Acts. The amendments have not been publicly consulted except through the release of a draft of the Bill. The exception is for the two matters arising from review of the Wet Tropics Management Plan 1998, the intention to remove mining from the world heritage area and the proposal to introduce a permit for reconfiguring a lot (and associated *Land Title Act 1994* considerations that are addressed in the Bill). These matters were broadly notified and generally supported during an extensive public consultation process. Changes to the Wet Tropics Act are required to complete the amendments already consulted and partially implemented in the plan. All amendments have been consulted with the relevant Commonwealth department and Minister. In early April 2022, key stakeholders were provided a draft of the Bill and invited to provide comment. All feedback received on the draft Bill has been considered in the finalisation of the Bill.

All amendments have undergone regulatory impact analysis in accordance with The Queensland Government Guide to Better Regulation. A majority of the amendments were deemed to fall within agency-assessed exclusion categories. A preliminary impact assessment was undertaken on the removal of mining, and the proposal to require the consent of the Wet Tropics Management Authority be given for registration of plans of subdivision affecting land in the Wet Tropics World Heritage Area. OBPR determined that these proposals were unlikely to result in significant adverse impacts.

Consistency with legislation of other jurisdictions

The amendments to the EP Act to support implementation of the ICEMR Act are an initial step taken by Queensland to ensure that the most significant implications of the ICEMR Act are implemented as soon as practicable. The amendments are expected to be consistent with legislation in other jurisdictions when all states and territories implement the ICEMR Act within their jurisdictions.

With regards to all other amendments being made, the Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 states that the short title is the *Environmental Protection and Other Legislation Amendment Bill 2022*.

Commencement

Clause 2 states that there are three specific provisions that commence on proclamation. These provisions are for the amendments to the *Land Title Act 1994* and some amendments to the Wet Tropics Act. All other provisions in the Bill commence on assent.

Part 2 Amendment of Environmental Protection Act 1994

Act amended

Clause 3 states that this part amends the EP Act.

Amendment of s 16 (Material environmental harm)

Clause 4 sets an increased threshold amount for material environmental harm for the financial year ending 30 June 2023. The current threshold amount has not increased since 1994. The increased threshold amount of $10,000 is based on an annual indexation of the current threshold of $5,000. The consumer price index has been used. It is considered appropriate to index the environmental harm thresholds to ensure that they align with contemporary costs.

This clause also provides for the annual indexation of the threshold amount prescribed for material environmental harm in accordance with the consumer price index. To ensure clarity regarding the annual threshold amount, the current dollar amount must be made available on the department's website.

Amendment of s 17 (Serious environmental harm)

Clause 5 sets an increased threshold amount for serious environmental harm for the financial year ending 30 June 2023. The current threshold amount has not increased since 1994. The increased threshold amount of $100,000 is based on an annual indexation of the current threshold of $50,000. The consumer price index has been used. It is considered appropriate to index the environmental harm thresholds to ensure that they align with contemporary costs.

This clause also provides for the annual indexation of the threshold amount prescribed for serious environmental harm in accordance with the consumer price index. To ensure clarity

regarding the annual threshold amount, the current dollar amount must be made available on the department's website.

Amendment of s 39 (Other definitions)

Clause 6 removes the definition of 'environmental management plan' from chapter 3. This is a consequential amendment that reflects removal of this term by other clauses in the Bill.

This clause also makes a consequential amendment to reflect the inclusion of s 41B in the EP Act which enables a draft terms of reference to be resubmitted.

Amendment of s 40 (Purposes)

Clause 7 removes s 40(d) which referred to preparing or proposing an environmental management plan. This removes what is considered to be a duplication. Section 40(a)(ii) is considered to sufficiently address the information in an environmental management plan so s 40(d) is not required.

Amendment of s 41 (Submission)

Clause 8 amends s 41(3) to insert an additional requirement for the submission of a draft terms of reference for an EIS. This amendment will require a proponent for an EIS to submit, with the draft terms of reference, a summary of the potential adverse environmental impacts of the project and proposed measures to be taken to avoid or minimise these impacts. The intent is to ensure that the chief executive has appropriate information to make an informed decision under new s 41A on whether the draft terms of reference can proceed to public notification. This decision should be informed by information about the potential impacts of the project and ways that the proponent could manage those impacts.

Insertion new ss 41A and 41B

Clause 9 inserts new s 41A and s 41B to amend the process for a draft terms of reference.

41A Decision on draft terms of reference

New s 41A enables the chief executive to decide that a draft terms of reference for an EIS cannot proceed to public notification under s 43. After submission of a draft terms of reference that meets the requirements in s 41, the chief executive must decide that either (i) the EIS may proceed to public notification under s 43, or (ii) the EIS cannot proceed to public notification under s 43. If either of the below apply, the chief executive *must* decide that the EIS cannot proceed:

- the chief executive is satisfied that the project is unlikely to be able to proceed under some law; or
- there is a regulatory requirement requiring the chief executive to refuse the EIS proceeding.

The ability to refuse the EIS proceeding is designed to ensure greater efficiencies for both the proponent and administering authority. It is inefficient to continue an EIS

assessment process where it is evident to the chief executive that it is unlikely that the project would be able to gain all necessary approvals.

As noted, the legislation requires the chief executive to refuse the project from proceeding further in the EIS assessment process where the chief executive is satisfied that it is unlikely the project could proceed because of the operation of some law. This may be because the draft terms of reference demonstrates that the project would directly contravene a law of the Commonwealth or the State (e.g. the *Strong and Sustainable Resource Communities Act 2017* or other provisions in the EP Act), give rise to an unacceptable risk of serious or material environmental harm, have an unacceptable adverse impact on a matter of State or national environmental significance, or have an unacceptable adverse impact on an area of cultural heritage significance. The list of examples in paragraphs (i)-(iv) of subsection (3)(a) is not exhaustive. It is not intended that these circumstances are the only ones that the chief executive may rely on to establish that it is unlikely that the project could proceed under the EP Act or another law. Ultimately, to refuse a project from proceeding under subsection (3)(a), the chief executive must be satisfied that, for whatever reason, the project would be unlikely to be able to legally proceed. If it is established that one of the examples in paragraphs (i)-(iv) of this subsection apply to a project (e.g. the project would have an unacceptable adverse impact on an area of cultural heritage significance) but it is not 'unlikely the project could proceed under this Act or another law', the chief executive is not required to refuse the project from proceeding. However, this is not intended to mean that the chief executive has to approve the EIS to proceed. The chief executive may decide to refuse the project proceeding for other reasons.

In deciding whether it is unlikely the project could proceed under some law because of some impacts or risks associated with the project, the chief executive would need to take into account whether the risks or impacts could be mitigated, for example, through a condition on the project.

The provision refers to the chief executive being 'satisfied' of a specific matter. The use of this term is intended to imply a standard of reasonableness without explicitly stating that the chief executive must be 'reasonably satisfied'. This is consistent with current drafting practice.

If the decision under s 41A is to not allow the EIS to proceed to notification, the decision notice is given under s 41A(4) and must state the decision and how to apply for review or appeal of the decision (noting that 'information notice' is defined in schedule 4). To ensure natural justice, this decision will be an original decision (see amendments to schedule 2 as part of the Bill). The notice must also state that the proponent can resubmit the draft terms of reference (with changes) under s 41B (unless the proponent has already resubmitted). If the decision under s 41A is to allow the EIS to proceed to notification, notice of the decision is provided under s 42(1) by providing notice that can be used for public notification of the draft terms of reference.

There is a 15 business day period for reviewing the draft terms of reference and any accompanying documents, deciding whether to allow the draft to proceed to public notification, and giving the proponent notice about whether the draft is allowed to

proceed to public notification. The 15 business day decision timeframe has been re-located from s 42. The Bill includes an amendment so that this decision period may be extended by the chief executive if, at any time before the decision is made, the proponent agrees in writing to the extension.

41B Proponent may resubmit draft terms of reference

New s 41B has been inserted to provide that a proponent may resubmit a draft terms of reference if the chief executive decides, under s 41A, to not allow the EIS to proceed to notification. This is similar to s 49A and s 56AA which allows a proponent to resubmit the EIS with changes where the chief executive has decided to refuse to allow the EIS to proceed. The amendment creates greater consistency in process across the different stages of the EIS process.

The proponent may submit a changed draft terms of reference within 20 business days of receiving the notice of decision (or a different period if the chief executive and proponent agree within 20 business days to a different period). The proponent will only be permitted to resubmit a draft terms of reference under s 41B once. This ensures that the proponent cannot endlessly resubmit terms of reference with slight amendments.

While this section prevents more than one resubmission, this section does not prevent a proponent preparing a new draft terms of reference for submission under s 41. This would be restarting the EIS process for the project. A new draft terms of reference needs to be accompanied by the relevant fee.

Amendment of s 42 (Preparation of TOR notice)

Clause 10 amends s 42 so that this section applies when the chief executive decides, under s 41A(1)(b), to allow the draft terms of reference to proceed to public notification. This amendment ensures that the chief executive is only required to give the proponent a notice for public notification if the chief executive has decided to allow the draft to proceed to public notification.

The 15 business day timeframe for giving the notice has been removed from s 42(1) as it now appears in s 41A.

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

Clause 11 amends s 49 for a number of purposes.

An amendment is made to set clear timeframes within which the administering authority must ask a qualified entity to carry out a public interest evaluation and give the chief executive a report about the evaluation that complies with s 316PB. The amendment inserts new subsection (5C) which states that the administering authority must make the request to the qualified entity in writing and require the report about a public interest evaluation to be given within a stated period. The stated period cannot be more than 12 months, unless extended by the administering authority by a maximum period of six months. This amendment aligns the public interest evaluation report timeframes in this section with those prescribed in s

167A(3). Providing a set period will provide certainty to industry regarding the timeframes for preparing a report about a public interest evaluation, whilst still allowing for scalability in the process (i.e. time periods can be set to suit the complexity of the application).

This clause also amends s 49 so that the chief executive is required to make a decision not to allow an EIS to proceed further if either the chief executive is satisfied that it is unlikely the project could proceed under the EP Act or another law, or if there is a regulatory requirement requiring the chief executive to refuse the EIS to proceed. While the pre-amended s 49 included the ability to make a decision not to allow an EIS to proceed, the amendments in this clause insert these two specific situations as situations where the chief executive *must* decide not to allow an EIS to proceed. These circumstances are the same as those under new s 41A inserted by the Bill. In addition to appearing in the new s 41A, they are inserted in s 49 so that if new information becomes available at the EIS submission stage, the chief executive is required to make a decision refusing the EIS from proceeding at this later stage. In making a decision on whether an EIS may proceed, the chief executive considers the submitted EIS and any accompanying information.

The ability to refuse the EIS proceeding is designed to ensure greater efficiencies for both the proponent and administering authority. It is inefficient to continue an EIS assessment process where it is evident to the chief executive that it is unlikely that the project would be able to gain all necessary approvals.

As noted, the legislation requires the chief executive to refuse the project from proceeding further in the EIS assessment process where the chief executive is satisfied that it is unlikely the project could proceed because of the operation of some law. This may be because the submitted EIS demonstrates that the project would directly contravene a law of the Commonwealth or the State (e.g. the *Strong and Sustainable Resource Communities Act 2017* or other provisions in the EP Act), give rise to an unacceptable risk of serious or material environmental harm, have an unacceptable adverse impact on a matter of State or national environmental significance, or have an unacceptable adverse impact on an area of cultural heritage significance. The list of examples in paragraphs (i)-(iv) of subsection (3A)(a) is not exhaustive. It is not intended that these circumstances are the only ones that the chief executive may rely on to establish that it is unlikely that the project could proceed under the EP Act or another law. Ultimately, to refuse a project from proceeding under subsection (3A)(a), the chief executive must be satisfied that, for whatever reason, the project would be unlikely to be able to legally proceed. If it is established that one of the examples in paragraphs (i)-(iv) of this subsection apply to a project (e.g. the project would have an unacceptable adverse impact on an area of cultural heritage significance) but it is not 'unlikely the project could proceed under this Act or another law', the chief executive is not required to refuse the project from proceeding. However, this is not intended to mean that the chief executive has to approve the EIS to proceed. The chief executive may decide to refuse the project proceeding for other reasons.

In deciding whether it is unlikely the project could proceed under some law because of some impacts or risks associated with the project, the chief executive would need to take into account whether the risks or impacts could be mitigated, for example, through a condition on the project.

The provision refers to the chief executive being 'satisfied' of a specific matter. The use of this term is intended to imply a standard of reasonableness without explicitly stating that the

chief executive must be 'reasonably satisfied'. This is consistent with current drafting practice.

Section 49 is also amended to expand the options for decision about whether a submitted EIS may proceed to public notification. In recognition that the chief executive may be satisfied that the EIS is substantially suitable to proceed to public notification, but some minor changes are required, the chief executive may decide to allow an EIS to proceed on conditions. These conditions would require the proponent to make amendments to the EIS before it could proceed. The proponent is expected to make the changes specified and resubmit the changed EIS under s 49A for another decision under s 49. If the proponent fails to resubmit an amended EIS in the timeframes provided under s 49A, or if the proponent resubmits an amended EIS that does not meet the conditions, the EIS will not be able to proceed.

If the decision under s 49 is to not allow the EIS to proceed to notification or to allow the EIS to proceed on conditions, the decision notice must state the reasons for the decision and how to apply for review or appeal of the decision (noting that 'information notice' is defined in schedule 4). The notice must also state that the proponent can resubmit the draft terms of reference (with changes) under s 49A (unless the proponent has already resubmitted the draft under that section). A decision that the EIS is not allowed to proceed or that the EIS is allowed to proceed on conditions is an original decision under schedule 2.

Section 49(2) is amended to ensure that the ability to extend the decision-making period for the decision of whether to allow the submitted EIS to proceed to public notification is only exercisable once and cannot be for a period of more than 12 months. An extension of longer than 12 months creates inefficiencies in the EIS process. Explicitly limiting the extension period in the legislation ensures greater certainty and transparency for proponents.

Consequential amendments are made to s 49(7) to reflect the omission of s 50 through the Bill.

Amendment of s 49A (Proponent may resubmit EIS)

Clause 12 amends s 49A to ensure that the proponent may resubmit a changed EIS to the chief executive if, under s 49, the chief executive decides to allow the EIS to proceed on conditions. An EIS can only resubmitted once under s 49A.

If the EIS is resubmitted under this section because the chief executive decided to allow the EIS to proceed on conditions, the process is the same as the existing process for an EIS resubmitted under s 49A because the chief executive decided to refuse the EIS from proceeding. This means that the resubmitted EIS is treated as though it was the submitted EIS for a decision under s 49 on whether the resubmitted EIS can proceed to notification. However, the chief executive must also decide if the conditions have been met and the decision notice given under s 49(6) must state the decision on this matter. If the decision is that the conditions have not been met, the chief executive must also decide that the EIS cannot proceed to notification. This means that there is a requirement for the conditions to be met in order for the EIS to proceed. A decision that the EIS cannot proceed is an original decision under schedule 2 so is subject to review and appeal.

Consequential amendments are made to s 49A(1) and s 49A(5)(c) to reflect the omission of s 50 through the Bill.

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

Clause 13 omits s 50, removing the proponent's ability to apply to the Minister to review a chief executive's decision under s 49 to refuse to allow an EIS to proceed. The chief executive's decision to refuse to allow an EIS to proceed will be an 'original decision' to provide review and appeal rights for proponents (see amendments to schedule 2 in the Bill). There are also opportunities to apply for judicial review.

Amendment of s 51 (Public notification)

Clause 14 amends s 51(1) to reflect current drafting practice. Public notification of a submitted EIS continues to apply only where the chief executive has made a decision under s 49 that the EIS can proceed. The submitted EIS cannot proceed to public notification under s 51 if the decision under s 49 was to allow the EIS to proceed on conditions. However, if the EIS was resubmitted following this decision and the decision on the resubmitted EIS was that the EIS can proceed (without conditions), the EIS can proceed to public notification after the second decision is made.

This clause also amends s 51 to contemporise public notification requirements. Instead of requiring that the proponent publish the EIS notice in a newspaper, the proponent will be required to publish the EIS notice on a website. This is considered more efficient and accessible. The period that the EIS notice must be kept on a website is the same as the period for keeping the submitted EIS on a website. This period is extended from one to two years to increase transparency and enhance public access.

Consequential amendments are made to s 51(4)(a)-(b) to reflect the omission of s 50 and s 56B through the Bill.

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

Clause 15 amends s 56A so that the chief executive must make a decision not to allow the EIS to proceed further (to the EIS assessment report) if either the chief executive is satisfied that it is unlikely the project could proceed under the EP Act or another law, or if there is a regulatory requirement requiring the chief executive to refuse the EIS to proceed. While the pre-amended s 56A included the ability to make a decision not to allow an EIS to proceed, the amendments in this clause insert these two specific situations as situations where the chief executive *must* decide not to allow an EIS to proceed. These circumstances are the same as those under new s 41A inserted by the Bill and s 49 as amended by the Bill. In addition to appearing in the new s 41A and s 49, they are inserted in s 56A so that if new information becomes available at the EIS notification stage, the chief executive is required to make a decision refusing the EIS from proceeding at this later stage. In making a decision on whether an EIS may proceed, the chief executive considers the submitted EIS, any accompanying information and the documents provided under s 56(2).

The ability to refuse the EIS proceeding is designed to ensure greater efficiencies for both the proponent and administering authority. It is inefficient to continue an EIS assessment process where it is evident to the chief executive that it is unlikely that the project would be able to gain all necessary approvals.

As noted, the legislation requires the chief executive to refuse the project from proceeding further in the EIS assessment process where the chief executive is satisfied that it is unlikely the project could proceed because of the operation of some law. This may be because the submitted EIS and other documents demonstrates that the project would directly contravene a law of the Commonwealth or the State (e.g. the *Strong and Sustainable Resource Communities Act 2017* or other provisions in the EP Act), give rise to an unacceptable risk of serious or material environmental harm, have an unacceptable adverse impact on a matter of State or national environmental significance, or have an unacceptable adverse impact on an area of cultural heritage significance. The list of examples in paragraphs (i)-(iv) of subsection (4A)(a) is not exhaustive. It is not intended that these circumstances are the only ones that the chief executive may rely on to establish that it is unlikely that the project could proceed under the EP Act or another law. Ultimately, to refuse a project from proceeding under subsection (4A)(a), the chief executive must be satisfied that, for whatever reason, the project would be unlikely to be able to legally proceed. If it is established that one of the examples in paragraphs (i)-(iv) of this subsection apply to a project (e.g. the project would have an unacceptable adverse impact on an area of cultural heritage significance) but it is not 'unlikely the project could proceed under this Act or another law', the chief executive is not required to refuse the project from proceeding. However, this is not intended to mean that the chief executive has to approve the EIS to proceed. The chief executive may decide to refuse the project proceeding for other reasons.

In deciding whether it is unlikely the project could proceed under some law because of some impacts or risks associated with the project, the chief executive would need to take into account whether the risks or impacts could be mitigated, for example, through a condition on the project.

The provision refers to the chief executive being 'satisfied' of a specific matter. The use of this term is intended to imply a standard of reasonableness without explicitly stating that the chief executive must be 'reasonably satisfied'. This is consistent with current drafting practice.

If the decision under s 56A is to not allow the EIS to proceed to the EIS assessment report and completion of the EIS process, the decision notice must state the reasons for the decision and how to apply for review or appeal of the decision (noting that 'information notice' is defined in schedule 4). To ensure natural justice, this decision is an original decision under schedule 2. The notice must also state that the proponent can resubmit the EIS (with changes) under s 56AA (unless the EIS has already been resubmitted under s 56AA).

Consequential amendments are made to s 56A(6) to reflect the omission of s 56B through the Bill.

Amendment of s 56AA (Proponent may resubmit EIS)

Clause 16 makes consequential amendments to s 56AA(1) and (5) to reflect the omission of s 50 and s 56B through the Bill. It also removes the reference to s 56A(6)(d) to reflect the re-drafting of s 56A(6).

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

Clause 17 omits s 56B, removing the proponent's ability to apply to the Minister to review the chief executive's decision under s 56A to refuse to allow the submitted EIS to proceed. The chief executive's decision to refuse to allow a submitted EIS to proceed will be an 'original decision' to provide review and appeal rights for proponents (see amendments to schedule 2 in the Bill). There are also opportunities to apply for judicial review.

Amendment of s 57 (EIS assessment report)

Clause 18 makes consequential amendments to s 57(1) and (2)(b) to reflect the omission of s 50 and s 56B through the Bill. The amendment also clarifies that s 57 applies where an EIS has been resubmitted under s 56AA and the decision is that that the resubmitted EIS can proceed.

Amendment of s 59 (Required content of report)

Clause 19 amends s 59(b) to remove a reference to 'environmental management plan' and replace it with an alternative reference. This is an administrative change that aims to remove confusion and will have no substantive impact. Environmental management plans were previously a document used under chapter 5 for a different purpose. While environmental management plans have now been removed from chapter 5, environmental management plans have continued to be used in chapter 3. There was some misunderstanding that the requirement for environmental management plans under chapter 3 was an error because they had been removed from chapter 5. This amendment simply replaces references to 'environmental management plan' with 'management, monitoring, planning or other measures for minimising adverse environmental impacts' to address this misunderstanding.

Insertion of new s 59A

59A Lapsing of EIS assessment report

Clause 20 inserts new s 59A into chapter 3, part 1, division 5 so that an EIS assessment report lapses after a defined period and is no longer valid for the project for the purposes of an application for an environmental authority for that project. An EIS assessment report for a project lapses three years after it is given to the proponent. The chief executive may extend this period at any time before the EIS assessment report lapses.

If, immediately before the end of the three year lapse period (or longer period if extended by the chief executive), the proponent has made an application for an

environmental authority and that application has not yet been decided, the EIS assessment report will lapse when the application is approved or when any review and/or appeal for a refusal is decided or otherwise withdrawn.

The intent of this new provision is to better ensure that the EIS assessment report is current and reflects contemporary environmental legislation, policies and standards. Since the environmental authority assessment is informed by the EIS assessment report, in order to better ensure that the environmental authority is contemporary, the EIS assessment report should not be significantly outdated.

Amendment of s 125 (Requirements for applications generally)

Clause 21 amends s 125 to better facilitate environmental authorities for trial, research or innovative activities. Where a new process or technology is proposed to be used when carrying out an ERA, there may be insufficient information available to accurately describe or assess the full extent of impacts on environmental values, management strategies, emissions etc. This can make it difficult for the proponent to include the information required for an environmental authority application under s 125(1)(l)(i)-(ii) and for the administering authority to appropriately assess and condition the environmental authority. The amendment provides an exclusion from needing to include information required by s 125(1)(l)(i)-(ii) if the applicant for a prescribed ERA can demonstrate that sufficient information about the matters in that provision are not available. This exclusion only applies to the extent the information is not available. The applicant must provide as much information as possible. To be excluded from providing the information, the activity being applied for must be related to a trial or research activity. Further, the exclusion will only apply where the environmental authority being applied for is for a term of three years maximum (noting s 201 states that an environmental authority will lapse at the end of the stated period). The intent is that after the environmental authority lapses, the operator will have more information about the likely impacts of the activity and measures for minimising and managing waste, and so should be able to apply for an environmental authority which is not time-limited and provide an application which meets all of the requirements in s 125.

Amendment of s 139 (Information stage does not apply if EIS process complete)

Clause 22 makes consequential amendments to s 139 for the insertion of new s 59A, which inserts a lapse period for an EIS assessment report. Under the pre-amended s 139, the information stage does not apply to an environmental authority application when an EIS process has been completed for the project and the risks of the project and way the project is to be carried have not changed. This means that the administering authority could not request an applicant provide an EIS under s 143 if an EIS process has been completed, including where an EIS assessment report has lapsed. Section 139 is amended so that the information stage applies where an EIS assessment report has lapsed.

Amendment of s 143 (EIS may be required)

Clause 23 makes consequential amendments to s 143 for the insertion of new s 59A, which inserts a lapse period for an EIS assessment report. Section 143 is amended to ensure that where an EIS assessment report has lapsed, the administering authority retains the ability to request an applicant for a variation or site-specific application for an environmental authority to provide an EIS for the application which is valid.

This section is also amended to provide that, if a voluntary EIS has been approved to be undertaken and the proponent has commenced the EIS process but not completed it, the administering authority may (by information request) request the applicant to complete the EIS process. It is important that the proponent completes the EIS before the environmental authority is decided, as information from the EIS should inform the decision. The amendments mean that a proponent for a project currently undertaking the EIS process can be requested by the administering authority to complete their EIS in the information stage. This will establish a more efficient and effective process for the administering authority.

There are also minor drafting updates to refer to an EIS process being completed, rather than an EIS being submitted. This provides clarity that if the whole EIS process has not been completed, as per s 60 of the EP Act, an EIS may be required.

Amendment of s 172 (Deciding site-specific application and approving PRCP schedule)

Clause 24 amends s 172(3)(a) which relates to the decisions the administering authority must make when deciding a proposed PRCP schedule. The criteria for a decision about a proposed PRCP schedule are outlined in s 176A. The amendment includes the ability for the administering authority to approve a proposed PRCP schedule with or without conditions or amendment. The administering authority may only amend a proposed PRCP schedule to the extent the amendment was necessary to enable the administering authority to approve the schedule under s 176A(2)-(3). Although the administering authority is not required to seek agreement from the applicant to amend a proposed PRCP schedule, the administering authority will generally take a collaborative approach to the amendment to facilitate a more efficient and effective approval process.

Amendment of s 183 (Applicant may request referral to Land Court)

Clause 25 amends s 183 so that if an applicant gives notice to the administering authority that it does not intend to refer its application to the Land Court, the applicant is prevented from later making a request to refer its application to the Land Court. This amendment is related to the amendment to s 196 which enables an environmental authority to be issued earlier where an applicant provides notice that it does not intend to request referral to the Land Court. Significant legislative uncertainties would be created if an environmental authority were issued then the applicant decided it would request referral to the Land Court.

Amendment of s 190 (Requirements for objections decision)

Clause 26 makes a consequential amendment to s 190(2)(a) as a result of the amendment being made to s 172 relating to decisions the administering authority can make for a proposed

PRCP schedule. This amendment is necessary to maintain consistency with other stages in the decision process relating to PRCP schedules. The amendment provides that an objection decision for a proposed PRCP must be a recommendation to the administering authority that the schedule be approved, with or without conditions or amendment, or be refused.

Amendment of s 196 (Requirements for issuing environmental authority or PRCP schedule)

Clause 27 amends s 196 so that the administering authority is required to issue the relevant environmental authority or PRCP schedule within five business days if there are no submitters and the applicant gives written notice it will not refer the application to the Land Court. This amendment is made because where there are no submitters and the applicant does not want to seek referral to the Land Court, there is no need to wait until the end of the 25 business day notice period under s 181 before issuing the environmental authority or PRCP schedule. This provides certainty to the administering authority that if the applicant has given notice that it does not intend to seek referral to the Land Court it can issue the environmental authority prior to the end of the s 181 notice period.

Amendment of s 215 (Other amendments)

Clause 28 amends 215(2)(j) to allow the administering authority to initiate the amendment of an environmental authority or PRCP schedule following the issue of an environmental protection order. This adds to the existing grounds to initiate an amendment following the amendment or withdrawal of an environmental protection order. This amendment is being made to enable the department to be more proactive in responding to compliance issues, with an additional benefit of reducing potential future non-compliances and other environmental authority interpretation issues.

This clause also inserts s 215(2)(n) so that the administering authority can amend an environmental authority or PRCP schedule in relation to a matter the subject of an enforceable undertaking if it considers the amendment necessary or desirable because of the acceptance of an enforceable undertaking. Where a person has provided a written undertaking in relation to a contravention or alleged contravention of the Act, and where the administering authority accepts that undertaking under s 507, there should be the ability for the administering authority to amend an environmental authority or PRCP schedule. The administering authority may, for example, be able to make amendments that would require better environmental management practices which could avoid future contraventions.

The administering authority will be restricted in the environmental authority amendments it can make under s 215(2)(n), as s 215(1)(a) requires the amendment to be necessary or desirable *because* of the acceptance of the enforceable undertaking. The acceptance of an enforceable undertaking would not be a reason to make whatever amendments the administering authority desires. The procedure prescribed in chapter 5, part 6, division 2 of the EP Act will need to be followed where the administering authority seeks to make an amendment following acceptance of an enforceable undertaking.

It should be noted that where the administering authority exercises its power to impose a condition under s 215(2), including under one of the new powers mentioned above, there is a requirement for the administering authority to allow the environmental authority holder to

make representations and to consider those representations before deciding to make the amendment (through the existing provisions in chapter 5, part 6, division 2).

Amendment of s 223 (Definitions for part)

Clause 29 amends the definition of 'minor amendment (threshold)' so that it includes a change to a standard condition that will not change the environmental impacts of the relevant activity. This is intended to provide a more efficient amendment process where an environmental authority holder seeks to make an administrative amendment to a standard condition. For example, an environmental authority holder may want to align conditions across its environmental authorities by amending a standard condition about monitoring on one of its environmental authorities to a model condition about monitoring. If the amendment is only administrative in nature and will not change any assessment regarding the impacts that the relevant activity will have on environmental values, it is appropriate for the amendment to be a minor amendment rather than a major amendment.

Amendment of s 225 (Amendment application can not be made in particular circumstances)

Clause 30 amends s 225 to ensure there is no misuse of the environmental authority amendment provisions for environmental authorities for trial activities. Where an environmental authority of less than three years duration is granted and the environmental authority application did not include the information required by s 125(1)(l)(i)-(ii) (see amendments to s 125 in the Bill), restrictions should be in place to prevent the environmental authority holder from extending the environmental authority duration. This is achieved by amending s 225 so that it states that an amendment application cannot be made to amend the term of the environmental authority in these circumstances. A new environmental authority may be applied for when the existing environmental authority expires.

Amendment of s 230 (Administering authority may require public notification for particular amendment applications)

Clause 31 amends s 230 so that public notification is required for all amendment applications for an environmental authority for a resource activity where the assessment level decision is that the amendment is a major amendment. The administering authority was previously required to consider particular criteria and then determine whether public notification was required for these applications. However, this discretion led to uncertainty for operators and limited the opportunities for the community to participate in the amendment application process.

Amendment of s 232 (Relevant application process applies)

Clause 32 makes amendments to resolve an inconsistency between s 232 and s 144. The amendments ensure that the provisions under s 232 apply as if a reference in s 144 and s 151 to the end of an application stage were a reference to the day that notice of an assessment level decision is given, or the day the prescribed assessment fee is paid, whichever is later. This means that the time period for giving an information request under s 144 will only commence once the notice of the assessment level decision has been given and the prescribed assessment fee has been paid. Similarly, notification under s 151 will only commence once

the notice of the assessment level decision has been given and the prescribed assessment fee has been paid. The intent is to ensure that the administering authority is not required to start its assessment of an amendment application for a major amendment prior to the payment of the assessment fee.

This clause also contains a consequential amendment. Pre-amendment s 232(2)(b) is removed because of the amendment to s 230 to require public notification for all amendment applications for an environmental authority for a resource activity where the assessment level decision is that the amendment is a major amendment.

The reference in s 232(3A) to 'division 4' is updated to ensure it reflects current drafting practice.

Amendment of s 247 (Deciding amalgamation application)

Clause 33 amends s 247 to clarify that the administering authority may make amendments to environmental authorities as part of an amalgamation. The applicant for the amalgamation must agree to the amendments before the amendments can be made. It is beneficial to both the administering authority and the environmental authority holder to streamline the amalgamated environmental authority as much as possible by removing duplicate or contradictory conditions.

This clause also amends s 247 to provide that the period of 20 business days for the administering authority to decide an amalgamation application can be extended by up to a further 10 business days if the applicant agrees. This may particularly be useful where the environmental authority holder requires more time to consider amendments to the environmental authority before an amalgamation.

Amendment of s 250C (De-amalgamation)

Clause 34 amends s 250C to clarify that the administering authority may make amendments to environmental authorities as part of a de-amalgamation. The applicant for the de-amalgamation must agree to the amendments before the amendments can be made. It is beneficial to both the administering authority and the environmental authority holder to streamline the de-amalgamated environmental authorities as much as possible by removing duplicate or contradictory conditions.

This clause also amends s 250C to provide that the period of 15 business days for the administering authority to process a de-amalgamation application can be extended by up to a further 10 business days if the applicant agrees. This may particularly be useful where the environmental authority holder requires additional time to agree to an amendment to the de-amalgamated environmental authorities.

Amendment of s 252 (Who may apply for transfer)

Clause 35 inserts a new provision in s 252 to prevent a transfer of an environmental authority which has a term of less than three years and for which the original application did not include all of the information required by s 125(1)(l)(i)-(ii) (i.e. s 125(7) was relied on). This amendment is related to the amendment of s 125 made by the Bill. As trial activities may

have greater environmental risks, where a new holder seeks to take over the operation, the new holder will need to apply for a new environmental authority and provide up-to-date information in its application.

Insertion of new s 278B

278B Effect of suspension generally

Clause 36 inserts a new section to provide that where the administering authority decides to suspend an environmental authority, there are certain provisions which continue to apply to the suspended environmental authority.

A suspended environmental authority may be amended by the administering authority under chapter 5, part 6. The holder of a suspended environmental authority may apply to the administering authority to surrender the environmental authority under chapter 5, part 10. Particular parts in chapters 7 and 8 also continue to apply which means that specific compliance and enforcement activities are able to continue in respect of suspended environmental authorities. Of particular significance, s 430 continues to apply which means all of the conditions of the environmental authority must continue to be complied with despite the suspension.

A suspended environmental authority does not authorise any ERAs to be carried out so if the holder of the suspended environmental authority continues to carry out, or allows the carrying out of, the ERAs, this would constitute a breach of s 426.

Amendment of s 279 (Application of div 2)

Clause 37 amends s 279 to clarify that the administering authority may extend the suspension of an environmental authority under the relevant division.

Amendment of s 283 (Notice of proposed action decision)

Clause 38 amends s 283(4) so it is clear that this provision applies in relation to a decision to extend a suspended environmental authority.

Amendment of s 284 (Steps for cancellation or suspension)

Clause 39 amends s 284(3)-(4) so that these provisions also apply in relation to an extension of a suspension period for a suspended environmental authority.

Amendment of s 284AA (Cancellation after suspension if annual fee not paid)

Clause 40 amends s 284AA(1) so that this section also applies where the suspension period for a suspended environmental authority is being extended.

Amendment of s 284A (Who may apply)

Clause 41 amends s 284A to provide that the holder of a suspended environmental authority may apply to extend the current suspension. The application for extension to a suspension is treated in the same way as an application to suspend a current environmental authority.

Amendment of s 284B (Requirements for suspension application)

Clause 42 amends s 284B as a consequence of the amendment to s 284A. An application to extend a suspension must nominate a period for the proposed extension which must be a period of 1, 2 or 3 years from the day the existing suspension ends.

Omission of s 284E (Restrictions on giving approval)

Clause 43 omits s 284E. With the insertion of new s 278B, conditions of an environmental authority continue to apply and be enforceable while the environmental authority is suspended. Section 284E prevented approval of environmental authority suspensions where there were conditions requiring rehabilitation or a PRCP schedule. Given that all environmental authority conditions continue to be enforceable despite a suspension, s 284E is no longer required. Section 202C states that a PRCP schedule continues in force even if the environmental authority to which it relates is suspended.

Amendment of s 284F (Steps after deciding suspension application)

Clause 44 amends s 248F to clarify that the same steps that apply after deciding an application to suspend a current environmental authority apply after deciding an application to extend a suspension.

Amendment of s 284G (Termination of suspension)

Clause 45 amends s 284G to clarify that the suspension of any suspended environmental authority may be terminated and that the notice of termination may be given during the suspension period, or if the initial suspension has been extended, during the extended suspension period.

Insertion of new ch 5, pt 14, div 1, sdiv 1, hdg

Subdivision 1 Preliminary

Clause 46 inserts a heading for chapter 5, part 14, division 1, subdivision 1 as a consequence of the insertion of the new division 4 into chapter 5 related to changing an ERC application. This amendment distinguishes the ‘Preliminary’ section (i.e. definitions) from other subdivisions in this division.

Insertion of new ch 5, pt 14, div 1, sdiv 2, hdg

Subdivision 2 Applications

Clause 47 inserts a heading for chapter 5, part 14, division 1, subdivision 2 as a consequence of the insertion of the new division 4 into chapter 5 related to changing an ERC application.

Amendment of s 299 (Administering authority may require additional information)

Clause 48 amends s 299 to allow the administering authority to extend the information request period for an ERC decision if required. The information request period is an important function of the application process as it allows the administering authority to determine whether sufficient information has been provided to decide the application. Where sufficient information has not been provided with the application, an information request can be issued to the applicant within the information request period, requesting the missing information be provided.

Given certain ERC decisions can be complex and associated with large amounts of information, the administering authority may need additional time to consider all the information prior to determining whether an information request is needed. This amendment allows the administering authority to extend the information request period by a maximum of 10 business days without the applicant's agreement. The administering authority may only extend the information request period once without the applicant's agreement. The information request period may, however, be further extended if the applicant gives written agreement to the extension. The amendments being made to s 299 are consistent with other sections of the EP Act (e.g. s 145).

Consequential amendments to s 299 are included in this clause as a result of the abovementioned change (an amendment is made to clarify which notice subsection (2) was referring to).

Insertion of new ch 5, pt 14, div 1, sdiv 3 and sdiv 4 hdg

Clause 49 inserts new subdivisions 3 and 4 into chapter 5, part 14, division 1 to establish an ERC application change process.

Subdivision 3 Changing applications

299A Meaning of *minor ERC change*

New s 299A defines the meaning of a 'minor change' for the purpose of changing an ERC application. A minor change for an application for an ERC decision is a change that corrects a mistake related to a person's name or address, a change that corrects a spelling or grammatical error or a change that the administering authority is satisfied would not adversely affect the ability of the authority to assess the change application.

299B Changing application

New s 299B specifies the requirements for making a change to an ERC application, before a decision on the application has been made. Changes cannot be made to the ERC application if the change would result in the application no longer complying with s 298. This section also limits an applicant to only being able to give one written notice of the change to the administering authority under this section to ensure an ERC decision is made in a timely manner.

299C Effect on ERC decision process

New s 299C specifies that a minor change to the ERC application, or a change that the administering authority agrees to in writing, does not affect the periods mentioned in s 299 and s 300. This section also specifies the effect on the application process if a change to the application is not a minor ERC change or a change agreed to by the administering authority. Specifically, the assessment process stops on the day the administering authority receives the change request, and s 299 and s 300 apply in relation to the request as if the changed application were a new application (e.g. the administering authority may require additional information in relation to the change request).

Subdivision 4 ERC decisions

New subdivision 4 has also been inserted into chapter 5, part 14, division 1 as a result of new subdivision 3. The insertion of the new heading helps separate the provisions related to the 'ERC decision' process and the 'ERC change' process.

Amendment of s 300 (Making ERC decision)

Clause 50 makes a consequential amendment to s 300 to clarify the applicant referenced in this section is a reference to an application for an ERC decision for a resource activity. This clause also updates cross-references.

Replacement of s 305 (Effect of re-application on ERC decision)

305 Current decision continues in force if application made but not decided before ERC period ends

Throughout the life of the environmental authority, environmental authority holders must re-apply for a new ERC decision before the current ERC period ends. Provided certain requirements are met, s 305 allows the current ERC decision to remain in effect until the administering authority makes the new ERC decision. This section was inserted to ensure that operators did not end up in non-compliance with s 297 if the administering authority processed the new ERC decision application after the current ERC decision period had ended.

Clause 51 amends s 305 to provide certain concessions to environmental authority holders if a current decision is in force for a resource activity and an application for a

new ERC decision is made under s 298 but has not been decided before the ERC period for the current decision ends.

This amendment removes the reference to s 302, s 303 and s 304 located in the pre-amended version of this section. The amendment will not impact the functioning of s 302, s 303 or s 304. Environmental authority holders who do not comply with the requirements outlined in these sections risk a maximum penalty of 100 penalty units. However, this amendment will ensure that environmental authority holders who do not comply with s 302, but have complied with s 298, do not have to halt operations if their current ERC decision ends and the administering authority has not yet made a new ERC decision. If environmental authority holders fail to comply with s 305 and continue to operate without a valid ERC decision in place, they will be in non-compliance with s 297.

Failing to have a valid ERC decision in place equates to contravening a condition of an environmental authority, which carries a significant penalty of 6,250 maximum penalty units or five years imprisonment for wilful contravention (s 430).

Amendment of s 316C (Application of division)

Clause 52 amends s 316C to add a reference to 'the State'. The amendment ensures that where another State government agency incurs costs and expenses in taking an action mentioned in s 316C for which the assurance was given, the administering authority is able to claim or realise the assurance.

Insertion of new ch 5, pt 14A

Clause 53 inserts new provisions that allow the administering authority to issue temporary authorities where it is deemed necessary and reasonable to respond to the impacts of an emergency situation. The term 'emergency situation' is defined in s 316GA.

Part 14A Temporary authorities for emergency situations

Division 1 Preliminary

316GA Definitions for part

New s 316GA defines terms used throughout chapter 5, part 14A.

316GB Exclusion of s 23 in particular circumstances

New s 316GB provides that if a person would be required under a prevailing Act mentioned in s 23(2) to carry out a relevant ERA in relation to an emergency situation, despite s 23 the person is required to hold an environmental authority or temporary authority granted under chapter 5, part 14A, division 1. If a person does not hold either an environmental authority or temporary authority for the relevant ERA, they will be committing an offence under s 426 (which states an environmental authority is required for particular ERAs). However, it is a defence against this

offence if the person proves it would not be reasonable to have complied with s 426 having regard to the requirements they are subject to under a prevailing Act.

Division 2 Temporary authorities

316GC Making application

New s 316GC allows a person to apply to the administering authority for an authority to carry out a relevant ERA on a temporary basis (i.e. a temporary authority). Under chapter 5, part 14A, a relevant ERA is an activity that was not carried out, or an activity that was not considered an ERA, before the start of the emergency situation but, because of the emergency situation, the activity is (or is likely to be) carried out, or has increased (or is likely to increase) in scale or intensity to become an ERA that would otherwise require an environmental authority under the EP Act. A relevant ERA is also an ERA for which an environmental authority is already in effect and, because of the emergency situation, the ERA has increased (or is likely to increase) in intensity or scale such that it would otherwise require an amendment of the existing authority or a new authority to be issued.

Under s 426 of the EP Act, a person must not carry out an ERA without an environmental authority for the activity. ERAs are divided into 'thresholds', meaning that the activity for which an environmental authority was approved is limited to the threshold that was applied for. In addition, many activities do not become an ERA until they reach, or exceed, a minimum threshold. An emergency situation may mean that environmental authority holders are unable to comply with the 'threshold' stated in their environmental authority. It may also mean that businesses who were operating under the minimum threshold for an ERA prior to an emergency situation may find that they have reached or exceeded this threshold.

The ability for the administering authority to issue a temporary authority under this section provides an expedited process to ensure timely responses to the impacts of emergency situations on Queensland individuals and businesses. This section bypasses the requirement to obtain an environmental authority through the usual application process prescribed in chapter 5 of the EP Act.

This section outlines the application requirements for a temporary authority. Temporary authorities can only be issued if the administering authority is satisfied that the requirements in s 316GD have been met. It is important to note that temporary authorities will complement, not replace, other approvals such as temporary emissions licences and transitional environmental programs.

316GD Deciding application

New s 316GD requires the administering authority to consider the person's application for a temporary authority and decide to either grant the temporary authority or refuse it. When making a decision about whether to grant a temporary authority, the administering authority must be satisfied that the application relates to a relevant ERA, and that granting a temporary authority is a necessary and reasonable response to the effects of an emergency situation. The matters to be considered by the

administering authority ensure that the temporary authority is the appropriate mechanism under the EP Act to respond to the effects of an emergency situation.

If the administering authority is not satisfied that the application meets the stated requirements, the person's application for a temporary authority must be refused. If the administering authority decides to refuse the application it must, as soon as practicable, give the person an information notice for the decision. This ensures the person is aware of the administering authority's decision and provides visibility with regards to why the application was rejected. Where the administering authority is not satisfied that the grounds for issuing a temporary authority have been met, the person may apply for an environmental authority or amend their environmental authority through the existing process under chapter 5 as an alternative. Given the short-term nature of temporary authorities, the absence of an application fee and the option to apply for an environmental authority for the activity, the ability for a person to request a review of, or to appeal, the decision does not exist. The decision may, however, be reviewed under the *Judicial Review Act 1991*.

316GE Administering authority may impose conditions

New s 316GE allows the administering authority to impose conditions on a temporary authority. The administering authority can only impose conditions it considers to be necessary or desirable to respond to the carrying out, or increase in intensity or scale, of the relevant ERA as a result of the emergency situation.

Prior to imposing the conditions on the temporary authority, the administering authority must notify the applicant about the proposed conditions and allow the applicant to provide submissions about the proposed conditions. Submissions by the applicant are to be made within a reasonable period. The administering authority is required to consider the applicant's submissions when deciding whether to impose the conditions on the temporary authority.

However, the administering authority is not required to allow the applicant to provide submissions about the conditions in situations where, in doing so, this would delay the granting of the temporary authority and result in a detriment to the applicant. In making this decision, the administering authority must consider the nature and urgency of the application, and the emergency situation to which the application relates.

316GF Granting authority

New s 316GF prescribes the steps the administering authority must take if it decides to grant a temporary authority. To grant the temporary authority, the administering authority must give the authority to the person. The temporary authority must state the name of the person to which the authority applies, the relevant ERA that may be carried out under the authority, the conditions imposed on the authority and the period for which the authority has effect, including the start and end of the period. The period for which the authority has effect must not be any longer than the period the administering authority considers necessary to respond to the increase in intensity or scale of the relevant ERA resulting from the emergency situation. In addition, the

period the temporary authority has effect must not end later than the day that is four months after the temporary authority is granted.

316GG Effect

New s 316GG provides that if the administering authority decides to issue a temporary authority for a relevant ERA, the temporary authority is taken to be an environmental authority, other than for chapter 5 of the EP Act, for the period it is in effect. This ensures that all provisions outside of chapter 5, particularly offence provisions, that require a person to hold an environmental authority apply as if the person holding the temporary authority held an environmental authority. This also ensures that a temporary authority is taken to be an environmental authority for the purposes of s 493A, which ensures that a person operating in compliance with a temporary authority is not causing unlawful environmental harm for the matters authorised by the authority. This section also makes it clear that where a temporary authority has been issued for an existing ERA, the conditions of the temporary authority apply in addition to the conditions of the environmental authority for the existing ERA.

The conditions of the existing environmental authority will still apply to ensure environmental harm and nuisance is prevented and minimised, and that the object of the Act is not unduly compromised. However, if any inconsistencies arise between the temporary authority and the existing environmental authority, the conditions of the temporary authority prevail. This ensures there are no conflicts between the two authorities while they operate in tandem for this short period of time. A clarifying provision has also been inserted into this section to make it clear that a temporary authority holder is not prevented from applying for a further temporary authority under this division for the same relevant ERA. This ensures that where a temporary authority was issued for a relevant ERA but has expired, the holder can apply for another temporary authority if one is still required.

Insertion of new s 319A

319A Special provision for activities involving relevant industrial chemicals

Clause 54 inserts new s 319A to support implementation of the ICEMR Act. The ICEMR Act provides for chemicals to be categorised and scheduled on the Industrial Chemicals Environmental Management Standard (ICEMS) Register based on their level of concern to the environment. A relevant industrial chemical referenced in s 319A(1) is any chemical scheduled on the ICEMS Register from time to time. For these chemicals, s 319A clarifies that compliance with any risk management measures under the ICEMS national scheme is required in order to comply with the general environmental duty provisions (s 319) in the EP Act. If a person does not comply with any risk management measures for a relevant chemical, then that person is taken to not be compliant with s 319.

Section 319A(3) clarifies that complying with risk management measures under the ICEMR Act by itself is not sufficient to demonstrate compliance with the general

environmental duty. A person must take all reasonable and practicable measures, including measures that may fall outside of the risk management measures under the ICEMR Act, in order for that person to comply with s 319. The intent is if a person does not comply with a relevant risk management measure under the ICEMR Act, they could not be taken to have complied with the general environmental duty despite any other reasonable and practicable measures which may have been undertaken.

Amendment of s 320A (Application of div 2)

Clause 55 amends s 320A(2)(b)(i) and s 320A(3)(a) to clarify when the duty to notify of environmental harm applies. The amendment clarifies that a notification is required if a local government or person mentioned in s 320A(2) becomes aware of the presence of a hazardous contaminant on the land that is causing, or is reasonably likely to cause, serious or material environmental harm. The new ground removes ambiguity that existed surrounding what constitutes an 'event'.

This clause also amends s 320A(4) to insert a reference to temporary emissions licence. This insertion ensures that a person is not required to notify of environmental harm if an event is authorised to be caused under a temporary emissions licence. A temporary emissions licence temporarily relaxes or modifies particular conditions of an environmental authority or transitional environmental program in response to an applicable event. An applicable event is an event, or series of events, that was not foreseen or had a low probability of occurring when conditions were imposed on an environmental authority or transitional environmental program (e.g. floods or a bushfire). If the release is authorised to be caused under a temporary emissions licence, the administering authority will already be aware of the circumstances regarding the potential environmental harm as they would have been responsible for issuing the temporary emissions licence to the relevant person. Listing a temporary emissions licence as an 'authorised event' minimises the potential for duplicate notification of environmental harm. Clients operating under a temporary emissions licence will still be subject to performance monitoring by the department to ensure they are operating in compliance with the Act.

Amendment of s 320DA (Duty of owner, occupier or auditor to notify administering authority)

Clause 56 makes a consequential amendment to s 320DA to reflect the amendment to s 320A made through the Bill. This amendment primarily removes references to 'event or change' and replaces it with the term 'matter' to better reflect all the grounds mentioned in s 320A.

Amendment of s 320DB (Duty of local government to notify administering authority)

Clause 57 makes a consequential amendment to s 320DB to reflect the amendment to s 320A made through the Bill. This amendment primarily removes references to 'event or change' and replaces it with the term 'matter' to better reflect all the grounds mentioned in s 320A.

Amendment of s 321 (What is an environmental evaluation)

Clause 58 omits the existing s 321(1) and replaces it with a provision that allows an environmental evaluation to be required simply to decide the source, cause or extent of environmental harm being caused or likely to be caused. This is so an environmental evaluation does not need to be for deciding the need for a transitional environmental program. While an environmental evaluation could still lead to a transitional environmental program, evaluating the need for a transitional environmental program is no longer the sole purpose for an environmental evaluation. An environmental evaluation may, for example, reveal the need for an amendment of an environmental authority (rather than a transitional environmental program).

This amendment will make environmental evaluations more useful in terms of investigating environmental harm. Environmental evaluations are a tool that can be used by the administering authority to better understand environmental risks and to make a more informed decision about how to respond to those risks and therefore expanding the purposes for an environmental evaluation is expected to lead to better environmental outcomes.

Amendment of s 326BA (When environmental investigation required – contamination of land)

Section 326BA of the EP Act specifies that an environmental investigation may be required for contaminated land. All parameters outlined in s 326BA(1) must be met prior to the administering authority being able to require a prescribed responsible person to carry out an environmental investigation and give a site investigation report for the land.

Clause 59 amends s 326BA of the EP Act to specify when an environmental investigation about contamination or potential contamination of the land may be required. Section 326BA(1)(b) is amended to remove the requirement for a hazardous contaminant to be in a "concentration" that is, or has the potential to, cause serious environmental harm or material environmental harm. Many contaminants have the potential to cause serious environmental harm or material environmental harm irrespective of their "concentration". Several types of contaminants may be hazardous simply due to their presence (e.g. asbestos or biologically infectious substances). For this reason, the amendment will allow the administering authority to require an environmental investigation to be conducted, and a site investigation report to be given, if the administering authority is satisfied, or suspects on reasonable grounds, that a hazardous contaminant is contaminating the land. This can be required irrespective of the concentration of the hazardous contaminant contaminating the land.

Amendment of s 326F (Administering authority may request further information)

Clause 60 amends s 326F to enable an extension of the information request period for an environmental report about an environmental investigation. In some circumstances, where the environmental report relates to particularly technical or complex matters, 10 business days may not be reasonable to provide sufficient time for the administering authority to properly assess the information provided and determine what further information is required. The amendments will enable the administering authority to make a request for further information either within 10 business days or a longer period of not more than 10 additional business

days. If the administering authority seeks the longer period, it must give written notice to the recipient. The amendments also enable the administering authority to further extend the information request period with the written agreement of the recipient.

This clause also makes minor drafting updates. It should be noted that, while the environmental report is not given under s 326E, s 326E requires that the environmental report submitted under s 326C(1)(c)(ii) must be accompanied by a declaration. Therefore, the information request period only commences when both the environmental report and declaration are received.

Replacement of s 331 (Content of program)

331 Requirements for applications generally

Clause 61 amends s 331 so that this provision sets out the requirements for an application for the issue of a transitional environmental program, rather than the content of a transitional environmental program. The requirements are substantially the same as the existing contents. A new section stating the content of a transitional environmental program is inserted by a later clause.

Under the pre-amended Act, a person submits a draft transitional environmental program for approval. Under the amended Act, a person will apply for a transitional environmental program. The key intent of this change is so that the administering authority is responsible for drafting the transitional environmental program. Having the administering authority draft the transitional environmental program is intended to ensure that there are greater administrative efficiencies in the transitional environmental program approval process. It is also designed to ensure that the administering authority has greater control of the content of the transitional environmental program, which should ensure better enforceability and more contemporary drafting. If the administering authority decides to approve the application, the information in the submitted application will be used by the administering authority to prepare the transitional environmental program.

Amendment and relocation of ch 7, pt 3, div 2, hdg (Submission and approval of transitional environmental programs)

Clause 62 amends the wording in the heading of chapter 7, part 3, division 2 as a result of amendments to how transitional environmental programs are treated. The wording change reflects the shift from the relevant person preparing and submitting a draft transitional environmental program for approval to the relevant person applying for a transitional environmental program that is prepared by the administering authority.

The heading is also re-located to before s 331 since the amended s 331 contains the requirements for the application.

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

Clause 63 amends s 332 so that this provision is about the administering authority requiring a person or public authority to make an application for the issue of a transitional environmental program, rather than requiring them to prepare and submit a draft transitional environmental program (see discussion above in relation to the replacement of s 331). Since the administering authority is to prepare the transitional environmental program, there will no longer be any 'draft' transitional environmental programs.

Replacement of ss 333-334A

Clause 64 amends s 333 and s 334A. It also omits pre-amendment s 334 which provides for the payment of a fee for submission of a draft transitional environmental program. The requirement to pay a fee for an application for a transitional environmental program is relocated to s 331.

333 Voluntary application for issue of transitional environmental program

Existing s 333 is amended to reflect the change from transitional environmental programs being approved through a 'submission' to them being approved through an 'application' (see discussion above in relation to the replacement of s 331). Section 333 is also amended to remove existing provisions about being able to submit a document prepared for other purposes as a draft transitional environmental program. This is because the administering authority is to prepare the transitional environmental program and draft transitional environmental programs are discontinued. A voluntary application for a transitional environmental program must be submitted in the approved form and in accordance with the other requirements in s 331.

334 Administering authority may request further information

New s 334 replaces existing s 334A with amendments to reflect the changes to the transitional environmental program provisions made by earlier clauses. This section also prescribes a timeframe (10 business days with the ability to ask for an extension of no more than an additional 10 business days) in which the applicant must respond to an information request. There was no timeframe in the pre-amendment Act. Insertion of a timeframe ensures that the applicant cannot delay the approval process. The information request must include particular details as set out in s 334(2).

334A When application lapses

Section 334A is a new provision stating that an application for the issue of a transitional environmental program lapses in certain circumstances. If, at the time the information response for a transitional environmental program is due, the applicant has not responded to the information request, or has responded but has not provided the information requested, the application will be taken to have lapsed.

Amendment of s 335 (Public notice of submission for approval of certain draft programs)

Clause 65 amends s 335 to reflect the changes to the transitional environmental program provisions made by earlier clauses.

Amendment of s 336 (Authority may call conference)

Clause 66 amends s 336 to reflect the changes to the transitional environmental program provisions made by earlier clauses.

Amendment of s 337 (Administering authority to consider draft programs)

Clause 67 amends s 337 to reflect the changes to the transitional environmental program provisions made by earlier clauses.

Amendment of s 338 (Criteria for deciding draft program)

Clause 68 amends s 338 to reflect the changes to the transitional environmental program provisions made by earlier clauses. It also inserts explicit grounds for refusing an application for a transitional environmental program. These do not limit the grounds for refusing a transitional environmental program.

If the transitional environmental program is likely to result in serious environmental harm, the administering authority may decide to refuse the application. There are likely to be situations where there are concerns that a transitional environmental program may result in such a degree of environmental harm that it is not desirable to approve the application. In these situations, the decision to refuse is at the full discretion of the administering authority, considering all of the circumstances. While the transitional environmental program itself is unlikely to cause serious environmental harm, it may allow or authorise particular actions or omissions to occur that, without the transitional environmental program, would constitute unlawful serious environmental harm.

Where the administering authority considers the transitional environmental program will not achieve full compliance with the EP Act for the matters it relates, the administering authority must refuse the application. This is because a transitional environmental program is supposed to be used to achieve compliance (see s 330) and, if the administering authority reasonably considers it will not, then another compliance tool should be used.

To reflect the insertion of these explicit grounds for refusal, s 338(1) is amended to require the administering authority to consider whether the program applied for may lead to serious environmental harm and will achieve full compliance with the EP Act for the matters to which it relates.

Replacement of s 339 (Decision about draft program)

339 Deciding application

Clause 69 amends s 339 to require that the administering authority decide whether to approve (with or without conditions) or refuse an application for a transitional environmental program. This is a change from the current provisions which stated that the administering authority decided whether to approve the draft transitional environment program as submitted or as amended at the request of the administering authority or refuse to approve the draft transitional environmental program. This amendment reflects the changes to the transitional environmental program provisions made by earlier clauses.

Amendment of s 340 (Notice of decision)

Clause 70 amends s 340 so that if the administering authority approves an application for a transitional environmental program, it must issue the program within eight business days. The pre-amended s 340 required the administering authority to issue a notice, within eight business days of making the decision, that identified the documents forming the approved transitional environmental program. With the changes to the transitional environmental program provisions made by earlier clauses, this is no longer necessary as the approved transitional environmental program is the issued transitional environmental program. A notice stating the day the program ends and the conditions of the program is also no longer necessary as the program itself is required to state this (see s 341).

If the administering authority refuses to approve the application for a transitional environmental program, an information notice must be provided to the applicant. This is consistent with the pre-amended s 340. Section 340 is amended to also require an information notice where the administering authority approves a transitional environmental program with conditions. This is because these conditions are subject to review and appeal, so it is reasonable for the administering authority to provide reasons for imposing those conditions.

This clause also makes amendments to wording to reflect the changes to the transitional environmental program provisions made by earlier clauses.

Insertion of new s 340A

340A Period of transitional environmental program

Clause 71 inserts a new s 340A to state that a transitional environmental program remains in effect from the day the program is issued until the end day stated in the program. Under the pre-amended EP Act, s 339(3) stated the period of the transitional environmental program. This provision has been relocated with some minor updates to reflect current drafting practice.

Replacement of s 341 (Content of approved program)

341 Content of transitional environmental program

Clause 72 inserts a new s 341 which requires the issued transitional environmental program to state any conditions imposed on the program and the day the program ends. The program must also identify any environmental authority conditions that the program is to transition to comply with and state the extent to which the holder of the program is not required to comply with the condition(s). This is intended to ensure greater clarity in regard to the precise environmental authority conditions, or aspects of these conditions, that continue to apply despite the transitional environmental program.

Amendment of s 343 (Failure to approve draft program taken to be refusal)

Clause 73 makes amendments to wording to reflect the changes to the transitional environmental program provisions made by earlier clauses.

Amendment of s 343A (Notation of approval of transitional environmental program on particular environmental authorities)

Clause 74 makes amendments to wording to reflect changes to the transitional environmental program provisions made by other clauses of the Bill.

Amendment of s 344 (Application)

Clause 75 makes amendments to wording to reflect the changes to the transitional environmental program provisions made by earlier clauses. A minor drafting update is also made to the heading of s 344.

Amendment of s 344E (Cancelling approval)

Clause 76 makes amendments to wording to reflect the changes to the transitional environmental program provisions made by earlier clauses.

Amendment of s 345 (Annual return)

Clause 77 makes amendments to wording to reflect the changes to the transitional environmental program provisions made by earlier clauses. The amendments also reflect a minor amendment to the definition of a holder of a transitional environmental program in schedule 4.

Amendment of s 352 (Authority to act on notice)

Clause 78 makes amendments to wording to reflect the changes to the transitional environmental program provisions made by earlier clauses. An amendment is also made to

refer to s 333 to clarify that the application for the transitional environmental program is made under that section.

Amendment of s 353 (Effect of program notice)

Clause 79 makes amendments to wording to reflect the changes to the transitional environmental program provisions made by earlier clauses.

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

Clause 80 makes amendments to wording to reflect the changes to the transitional environmental program provisions made by earlier clauses.

Amendment of s 363AA (Definitions for division)

Clause 81 amends s 363AA to amend the definition of 'relevant activity'. The amendment will mean that environmental protection orders under chapter 7, part 5, division 2 can be issued in relation to not only ERAs, but also to any other activity if the activity has caused, is causing or is likely to cause serious or material environmental harm.

Given that it may not be appropriate for any environmental harm caused by any activity to be the subject of a 'related person' environmental protection order, this amendment requires that the activity (if not authorised by an environmental authority) must have caused, or be causing or be likely to cause, serious or material environmental harm. Enabling these environmental protection orders to be issued in more situations where there is no ERA will provide the administering authority with the ability to take enforcement action against related persons in more cases. This will be beneficial in achieving positive environmental outcomes and ensuring that those most responsible for environmental harm are required to clean it up.

Amendment of s 363B (Authorised person may issue a direction notice)

Clause 82 amends s 363B to ensure references to remedying a contravention of a prescribed provision also include cleaning up, fixing or rectifying any environmental harm done by the person by contravening the prescribed provision. This amendment is made because, in the strict meaning of the phrase, only requiring the contravention to be remedied is too restrictive, and in many situations, cleaning up of environmental harm or pollution may not be considered to remedy the contravention. For clarification and consistency with subsection (1), subsections (2) and (3) are amended to refer to remedying the matter relating to the contravention rather than remedying the contravention. It is not the contravention itself that needs to be remedied.

Amendment of s 363D (Requirements of direction notices)

Clause 83 amends s 363D to clarify that remedying a contravention of a prescribed provision may include cleaning up, fixing or rectifying any environmental harm caused by contravening the prescribed provision. This amendment is related to the amendment of s 363B. Also, for consistency with s 363B, amendments are made to s 363D(1) and s 363D(2)

to refer to remedying the matter relating to the contravention rather than remedying the contravention.

Insertion of new s 370A

370A References to owner

Clause 84 inserts new s 370A to clarify that, for the purposes of chapter 7, part 8, a reference to an 'owner' includes a reference to certain government agencies responsible for managing state land (e.g. a State-controlled road). Under the pre-amended Act, the definition of 'owner' in schedule 4 (Dictionary) was relied upon in the absence of any other definition for this part. The Schedule 4 definition of 'owner' does not include certain owners of land relevant to this division (e.g. land managed by the State). Under s 375, the administering authority may only issue a show cause notice to the land's owner about the proposal to include particulars of the land in a relevant land register. This section is to be read in conjunction with the schedule 4 definition of owner and clarifies who the 'owner' of land is for this division. This will ensure that all relevant owners are identified for this part so that the administering authority may issue a show cause notice prior to any land being listed on the relevant register. It will also allow the State to use the new voluntary inclusion of land process inserted by the Bill.

Amendment of s 371 (Grounds for including land in environmental management register)

Clause 85 amends s 371 of the EP Act to provide the administering authority with the power to record particulars of land in the environmental management register at any time if it is satisfied or suspects, on reasonable grounds, that the land is contaminated land. The environmental management register is a public register kept by the administering authority under s 540A(1)(c)(i) of the EP Act. Land is listed on the environmental management register if a notifiable activity has been or is being carried out on the land, or where the administering authority is satisfied or suspects, on reasonable grounds, that the land is contaminated land. The amendment to s 371 ensures that the administering authority is afforded some discretion in listing land on the environmental management register if, for example, an audit of a contaminated land investigation document determines that land was removed from the environmental management register based on incomplete or inaccurate information.

Amendment of ch 7, pt 8, div 2, sdiv 2, hdg (Process for including land in relevant land register)

Clause 86 makes a consequential amendment to the chapter 7, part 8, division 2, subdivision 2 heading in response to the new 'voluntary inclusion of land in relevant register' process inserted by the Bill. This amendment makes it clear that the process in this subdivision relates to the show cause process for including land on the relevant register.

Amendment of s 373 (Application of sdiv 2)

Clause 87 makes a consequential amendment to s 373 in response to the new 'voluntary inclusion of land in relevant register' process inserted by the Bill. This amendment makes it clear that this subdivision relates to the show cause process for including land on the relevant register, not the voluntary inclusion process being added by the Bill.

Amendment of s 375 (Show cause notice to be given to owner of land)

Clause 88 makes a consequential amendment to s 375 in response to amendments being made to s 371. The amendment to s 375(2)(a) will require the show cause notice to state that the administering authority believes, or suspects on reasonable grounds, that grounds exist for including particulars of the land in a relevant land register.

Insertion of new ch 7, pt 8, div 2, sdiv 2A

Clause 89 inserts new chapter 7, part 8, division 2, subdivision 2A into the EP Act to allow an owner of land to ask for particulars of land to be included in a relevant land register without needing to comply with the show cause process outlined in division 2. Under s 375(1), the administering authority must give the land's owner written notice (a 'show cause notice') about the proposal to include particulars of the land in the relevant land register. Section 377 requires the administering authority to wait until the show cause period ends and consider any submissions received prior to making a decision about the land. This also means that the land's owner must wait for the 'show cause' period to end prior to their land being recorded on the relevant land register. This amendment streamlines the process for including land in the relevant land register where an owner provides the administering authority with a notification stating that their land should be included in the relevant register.

Subdivision 2A Voluntary inclusion of land in relevant register

379A Purpose of subdivision

New s 379A states the purpose of new subdivision 2A, which is to allow particulars of land to be included in a relevant land register without needing to go through a show cause process where the owner of that land has asked for the particulars to be included.

379B Voluntary inclusion of land in relevant land register

New s 379B states the requirements that must be followed by the owner of the land if they wish to make a request (i.e. an inclusion request) to the administering authority to include particulars of the land in a relevant land register. The owner of the land must make the request in writing and ensure the request states the grounds on which the land could be included in the relevant land register and the circumstances and facts relied on to support the grounds. The owner must also state that they waive the application of subdivision 2 (show cause process) for the inclusion of particulars of

the land in a relevant land register. If there are multiple owners of the land, the request must be made by all land owners.

379C Administering authority may request further Information

New s 379C states that the administering authority may, by written request, ask the owner to give further information if it is needed to help with the assessment of the inclusion request. The administering authority must provide the information request to the owner within three business days of receiving the inclusion request. The information request must provide the owner at least three business days to provide the additional information.

379D Deciding inclusion request

New s 379D states that the administering authority must decide to approve or refuse to approve the inclusion request provided by the owner. If the administering authority requests further information under new s 379C, the administering authority must make the decision within five business days after receiving the further information provided to the authority. If an information request was not provided to the owner, the administering authority must make the decision within five business days after receiving the inclusion request. The decision to refuse to approve an inclusion request is an original decision under the EP Act.

379E Criteria for decision

New s 379E outlines the criteria the administering authority must consider when making a decision on whether to approve or refuse to approve an inclusion request. In making a decision, the administering authority must consider the grounds stated in the inclusion request, the facts and circumstances relied on to support the grounds in the inclusion request, any further information provided under new s 379C and the grounds for including particulars of land in the relevant land register (i.e. under s 371 and s 372). This section also makes it clear that the administering authority may only accept an inclusion request if it is satisfied that grounds exist for its inclusion under s 371 or s 372.

379F Steps after making decision

New s 379F states the steps the administering authority must take after deciding the inclusion request. If the decision was to approve the inclusion request, the administering authority must, within five business days of making the decision, give written notice to the land owner, the relevant local government and any registered mortgagee of the land. If the decision was to refuse to approve the inclusion request, the administering authority must give the land owner an information notice about the decision within five business days of making the decision.

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

New s 379G requires the administering authority to give notice to the registrar of titles if the particulars of land have been included in the contaminated land register.

Replacement of s 389 (Content of contaminated land investigation document)

Clause 90 amends s 389 of the EP Act to separate out the content requirements for contaminated land investigation documents into the following:

1. reports (site investigation reports and validation reports); and
2. draft site management plans.

Under the pre-amended Act, the content requirements for all contaminated land investigation documents had been grouped into s 389. This is despite each of the documents serving different purposes. The purpose of the amendment is to clarify the exact requirements for each contaminated land investigation document to ensure this section functions as intended. Generally, validation reports and site investigation reports provide significantly more information than a draft site management plan to assist the administering authority in determining the status of the land. As such, the amendment will require draft site management plans to be accompanied by either a site investigation report or validation report to support the proposed conditions and other practical information contained within it for the relevant land. The amendments also make it clear that all contaminated land investigation documents are to be accompanied by a site suitability statement and the auditor's certification for added reliability.

This clause also amends s 389 of the EP Act to require an auditor to provide their written certification about a contaminated land investigation document in an approved form, which must accompany a contaminated land investigation document. An auditor's certification must verify and certify that, in the auditor's independent opinion, the contaminated land investigation document complies with s 389(1) and (2). An amendment is also being made to this section to require a contaminated land investigation document to be made in an approved form. Requiring a contaminated land investigation document and an auditor's certification to be made in an approved form ensures that the documents received by the administering authority are uniform, consistent and contain all information required. In addition, requiring the use of an approved form allows the documents to remain dynamic and account for emerging information and technologies.

Finally, amendments are also being made to s 389(2)(b)(iv) to remove the requirement for a contaminated land investigation document to include a statement about the extent to which the assessment of the land is in accordance with the National Environment Protection (Assessment of Site Contamination) Measure (NEPM). Given the technical nature of the NEPM, the NEPM-related requirements will be moved to the approved form and be supported by a guideline.

Amendment of s 405 (Registrar of titles to maintain records about contaminated land)

Clause 91 amends s 405 to insert a reference to new s 379G of the EP Act to ensure land registered on the contaminated land register through a voluntary inclusion process is noted on the title. Listing sites that are on the contaminated land register on the title gives notice to prospective purchasers and other people who search the title that the land is listed on this register.

Amendment of s 432 (Contravention of requirement of program)

432 Offence not to comply with program

Clause 92 amends s 432 so that this section now covers the contravention of any aspect of a transitional environmental program, including conditions or requirements of the program. This is a more reasonable approach than having two separate sections for the contravention of a condition and contravention of a requirement.

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

Clause 93 omits s 432A to reflect the changes to s 432. Contravention of a condition of a transitional environmental program is now covered by s 432.

Amendment of s 440O (Local law may prescribe noise standard)

Clause 94 amends s 440O to clarify that a provision of a local law made by any local government may prescribe an alternative noise standard to the default noise standards prescribed under chapter 8, part 3B, division 3. This amendment is made because the pre-amendment s 440O referred to local laws made under the *Local Government Act 2009* and did not expressly recognise that Brisbane City Council makes local laws under the *City of Brisbane Act 2010*. Section 440O is intended to apply to a provision of a local law made by any local government.

Amendment of s 440R (Building work)

Clause 95 amends s 440R to clarify what is meant by the reference in subsection (2)(b) to a ‘premises used by the person only for residential purposes’. The intent is that this phrase only apply to premises that are the person’s principal place of residence. It is not intended to also include a home that the person owns and is used for residential purposes by another person, for example where a person leases out their house to another person to live. A person providing a premises as a residence to others is subject to the default noise standards under s 440R if they carry out building work on those premises.

Amendment of s 440S (Regulated devices)

Clause 96 amends s 440S to clarify what is meant by the reference in subsection (1)(b) to a ‘premises used by the person only for residential purposes’. The intent is that this phrase only apply to premises that are the person’s principal place of residence. It is not intended to also

include a home that the person owns and is used for residential purposes by another person, for example where a person leases out their house to another person to live. This amendment is made to ensure that s 440S does not apply to persons carrying out building work on a premises that is not their principal place of residence. Section 440R applies to these persons. Section 440S only applies to a person carrying out an activity that is not building work or to a person who is carrying out building work at their principal place of residence not under an owner-builder permit.

Amendment of s 440ZA (Operating power boat engine at premises)

Clause 97 amends s 440ZA to clarify that this section also applies to the operation of a power boat engine at jetties and pontoons. In acknowledgement that it is common for a power boat engine to be operated at a jetty or pontoon during a restricted period, the provisions require that a person must not operate a power boat engine while at a jetty or pontoon (tethered or otherwise sitting directly adjacent to) during a restricted period if it makes an audible noise for a continuous period of more than 5 minutes. This balances the continuation of ordinary activities while reducing the likelihood of noise impacts.

This amendment is made because operation of a power boat engine at jetties and pontoons for continuous periods can become a noise nuisance issue, particularly when the pontoons or jetties are located in residential areas such as canal estates and waterfront properties or in close proximity to other sensitive receptors.

Amendment of s 460 (General powers for places and vehicles)

Clause 98 amends s 460 to insert an example of equipment that an authorised person may reasonably require for exercising powers in relation to a place. The intent is to make it clear that an authorised person may take UAVs (e.g. drones) and other similar equipment into places or onto vehicles. When authorised to enter a place or board a vehicle under another provision in chapter 9, an authorised person may take into or onto that place or vehicle a UAV (or similar) for the purposes of capturing data or evidence. While there may be other means of collecting the same or similar information or evidence that can be collected by a UAV, UAVs make it easier and safer for authorised persons to collect evidence and the evidence gained from a UAV can be of higher evidentiary value than what can be gained by other means. For these reasons, it is considered that the use of UAVs would generally be 'reasonably required' when entering places for exercising investigation functions under the EP Act. The amendment is intended to better support authorised persons in carrying out their role by facilitating the use of new technologies and compliance approaches.

Amendment of s 465 (Power to require answers to questions)

Clause 99 inserts a new provision in s 465 to provide the administering authority with the explicit power to require a corporation to nominate an executive officer or employee to answer questions on behalf of the corporation. This compliments the existing power of authorised persons under s 465(2) to require a person to answer questions about a suspected offence or to require a representative or person to attend a specific place to answer questions.

It is beneficial in some circumstances for an authorised person to require a corporation to nominate an executive officer or employee, such as where there are many officers in the

corporation and the relevant authorised person is unsure who is best positioned to respond to questions. The requirement to nominate an executive officer or employee would not be used in all cases where the suspected offender is a corporation, as in many cases the authorised person will be able to identify the appropriate individuals to issue a notice under s 465(2) without also issuing a written request to nominate. If issued with a written request to nominate, the corporation should nominate a person who is in the best position to answer questions about matters relating to the suspected offence.

This provision does not specify who in the corporation is required to nominate an executive officer or employee. The provision just refers to the corporation and so relies on each corporation's governance to handle the decision as who should answer queries on behalf of the corporation. This is similar to s 203(2) of the *Protection of the Environment Operations Act 1997* (NSW).

After a corporation nominates an employee or executive officer to answer questions, an authorised person may issue a written notice to that employee or executive officer to answer questions and any answers given by that employee or executive officer bind the corporation. Warnings need to be provided to the corporation, as well as the employee or executive officer nominated by the corporation.

Amendment of s 476 (Failure to attend or answer questions)

Clause 100 expands the existing offence in s 476 so that it is also an offence to fail to comply with a request to nominate an individual to answer questions. This amendment is made as a result of the amendment to s 465.

Insertion of new ch 9, pt 5A

Clause 101 inserts a new part 5A into chapter 9 to enable the chief executive to request a written criminal history report about a person from the Police Commissioner. These new provisions will support the safety of authorised persons by enabling criminal history information to be obtained prior to entering premises where there is likely to be a personal safety risk to authorised persons.

Part 5A Obtaining criminal history reports

484A Purpose of part

New s 484B outlines the purpose of new part 5A.

484B Definitions for part

New s 484B provides a definition for 'criminal history check' and 'spent conviction', which are relevant to new part 5A.

484C Chief executive may obtain criminal history report

New s 484C makes it clear that the chief executive may only make a request if an authorised person reasonably suspects a person may be present at the place or vehicle when the authorised person enters the place or vehicle and the person may create an unacceptable risk to the authorised person's safety. The chief executive is required to destroy the report and any information given to an authorised person in writing about the report as soon as practicable after the report is no longer needed for the purpose for which it was requested.

Insertion of new s 486A

486A Use of body-worn cameras

Clause 101 inserts new provisions to explicitly empower an authorised person to use a body-worn camera while exercising powers under the EP Act. Body-worn cameras have a number of benefits for compliance functions, and it is important that there is a clear power to use them so that authorised persons are better able to perform their functions and so that the safety of authorised persons can be enhanced.

Amendment of s 490 (Evidentiary provisions)

Clause 103 amends s 490 to provide that maps, charts or plans made by an authorised person may be taken as evidence of the matters to which they relate to. This amendment has a different application than s 65(2) of the *Evidence Act 1977*, which applies to maps, charts or plans issued or published by an officer. Maps used in proceedings under the EP Act are often created specifically for those proceedings and so may not be regarded as issued or published. Therefore, s 65(2) of the *Evidence Act 1977* may not apply.

The maps, charts or plans are not to be treated as conclusive proof, with the defendant able to provide evidence to the contrary. To be taken as evidence under s 490, the map, chart or plan must have been made by an authorised person and must be certified by the administering executive.

Amendment of s 491 (Special evidentiary provision—particular emissions)

Clause 104 amends s 491 to extend its application to proceedings for contraventions of a condition of an environmental authority related to environmental nuisance. This is intended to ensure the enforcement of s 430 remains practical. Offences against s 430 may include the contravention of an environmental authority condition that relates to an emission which causes environmental nuisance, such as conditions about smoke, noise, or odour. This amendment provides that an authorised person may give evidence without any need to call further opinion evidence, that based on their own opinion, the level, nature, or extent of the emission was a contravention of the level, nature or extent of emissions allowed under the condition of an environmental authority. However, this amendment only applies in relation to conditions that do not specify a quantifiable measure for the level of emissions allowed. If a condition refers to a specific measurable limit (e.g. noise above 10 decibels), it is reasonable

to expect that an instrument will be used to establish that the condition has been breached as a person's senses are not a reliable measure in these circumstances.

Evidence received under s 491 is not conclusive and the defendant may still rebut the evidence.

Amendment of s 493 (Executive officers must ensure corporation complies with Act)

Section 493 requires executive officers of a corporation to ensure that the corporation complies with the EP Act. If the corporation fails to comply with the Act, each of the executive officers of the corporation are also deemed to have committed the offence of failing to ensure the corporation complies with this Act.

Clause 105 amends s 493 to make it clear that executive officers can be held liable if they were in office at the time an act or omission happened that eventually results in the commission of an offence. Section 493 is not intended to be limited to executive officers in office at the time the offence occurs. For example, an act is done by a corporation in January 2022, however, it is not until January 2023 that the act results in an offence being committed. By the time the offence is committed in January 2023, the relevant executive officers in office in January 2022 have resigned. As the act occurred while the executive officers were in office, they can be held liable under this section for the offence committed. This ensures that those individuals who are actually responsible for the offence can be held liable and cannot leave office to avoid liability.

The amendments to s 493 are intended to expand the existing operation of the provision. It is not the intent to narrow any aspect of the existing provision. The defences in s 493(4) will apply to former executive officers, in addition to executive officers in office at the time of the commission of the offence. The intent of s 493(4) is to provide a defence if a former executive officer was not in a position to influence the acts or omissions that led to the commission of the offence, or where the officer was in a position to influence but took all reasonable steps to ensure the corporation complied with the relevant provision of the EP Act. Section 493(4) is intended to be interpreted broadly, meaning that it includes the acts or omissions that cause an offence to be committed.

The amendments are considered consistent with the Council of Australian Governments' Principles on Director Liability. If amendments are not made to capture former executive officers, there is a risk of serious damage to the environment. This is considered to be a compelling public policy reason for justifying this amendment.

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

Clause 106 amends s 493A, inserting a note to clarify the application of s 493A with regards to s 319A. Contravention of the general environmental duty is not an offence, however, complying with the duty provides a defence to a charge of unlawfully causing environmental harm, environmental nuisance, contravening a noise standard or depositing contaminants in waters (see s 493A(3)). Due to the operation of new s 319A, if the defendant does not comply with a risk management measure under the ICEMR Act, the defendant could not be taken to

have complied with the general environmental duty and therefore the defendant cannot establish a defence under s 493A(3).

Amendment of s 502 (Court may make particular orders)

Clause 107 amends s 502 to enable a court to impose any other requirements on an order that the court considers necessary or desirable for enforcement of a court order made under subsection (2). While this section enables a variety of court orders to be made, this amendment clarifies that the court may impose other requirements for enforcement of the order.

This clause also amends s 502 to address a minor drafting issue, making clear that an order listed in subsection (4) is available whether or not the court makes an order under subsection (2).

A further amendment is made so it is clear that a public benefit order may require the person to pay an amount of money to a specified person or organisation for the carrying out of a stated project to restore or enhance the environment. The offender may be required to carry out the project or pay an amount for the carrying out of the project. The amendment is intended as a clarification and will ensure greater flexibility regarding the nature of a public benefit order.

Insertion of new s 506A

506A Orders against persistent offenders

*Clause 108 i*nserts a new provision enabling a court to issue an order to prohibit a persistent offender from carrying out an activity if the court considers it necessary to stop that offender from committing further offences. This order may be made in relation to persons convicted of the same, or a different, offence in the EP Act with a maximum penalty of at least 1,500 penalty units if convicted at least two other times in the previous five years. This will provide courts with stronger powers to be able to prevent recidivist offenders from continuing to carry out particular activities. There can be a high risk of repeat offending and preventing offenders with a history of convictions from engaging in a specific activity (such as an ERA) may be necessary to stop the person committing further offences under the EP Act.

Amendment of s 540A (Registers to be kept by chief executive)

Clause 109 amends s 540A(1)(a) to expand the matters required to be kept in a register by the chief executive. The amendment increases the types of EIS information available on the public register with the intent of improving the transparency of the EIS process. Specifically, the amendment requires the chief executive to keep a register of:

- proponents' response to comments given to the chief executive under s 45(b) about draft terms of reference;
- summaries of submissions about submitted EISs given to the chief executive under s 56(2)(a);
- proponents' response to submissions about submitted EISs given to the chief executive under s 56(2)(b); and

- EIS amendment notices given to the chief executive under s 66.

Amendment of s 542 (Inspection of register)

Clause 110 amends s 542(1)(a) so that the administering authority and chief executive are not required to keep a register open at an office if the register is available on a website. The pre-amended s 542(1)(a) required the public registers to be kept open at an office. It is now widely accepted that providing access to documents online is a valid means of providing public access. Removing the strict requirement to maintain register access at a physical office location will provide efficiencies for the administering authority and chief executive.

Insertion of new s 542A

542A Personal information on register

Clause 111 inserts new s 542A to provide that the administering authority and the chief executive, once satisfied that someone's personal safety would be at risk, must ensure personal information is not included in a part of the register that is available to the public and is not included in an extract or copy of information from the register. The information or documentation kept on a register under s 540 and s 540A may include an individual's personal information, such as an address or contact number. If there are concerns for personal safety, it is not justifiable to have such personal information available in these public registers. This amendment is made to ensure sensitive personal information can be removed from the register, reducing the risks to persons whose position or occupation requires a high level of security, or persons who have a genuine risk of violence or harm (e.g. victims of domestic violence, police informants, judges, or senior police officers).

If the relevant entity becomes aware that there is already some specific information on the register that raises a legitimate personal safety risk, the relevant entity will have to remove it. If, before putting information on the register, the relevant entity becomes aware that making the information public would raise a legitimate personal safety risk, the relevant entity must not put it on the register. These obligations only relate to the specific information that causes a personal safety risk, which means that generally the relevant entity would need to redact the information from a document rather than not putting a whole document on the register.

The new provision only applies once the relevant entity has decided it is satisfied there is a risk, whether that decision comes about because of information received directly from the person concerned or the department's own procedures or enquiries. This provision does not impose any requirement for the department to conduct enquiries into someone's personal safety risk.

Amendment of s 554 (Electronic notices about applications and submissions)

Clause 112 removes definitions because of the changes to the transitional environmental program provisions made by earlier clauses. The definitions were specific to the submission

of transitional environmental programs. There is now an application rather than a submission process.

Amendment of s 564 (Definitions for pt 3)

Clause 113 amends s 564 to clarify that a 'regulatory function' for the purposes of chapter 12, part 3 also includes preparing a site investigation report. This amendment will make it clear that a suitably qualified person is responsible for both conducting a site investigation and preparing the site investigation report.

If a suitably qualified person prepares a document about a regulatory function (e.g. a report about a site investigation), s 566 requires that the document be accompanied by a 'declaration'. The purpose of the declaration is to make sure certain criteria and requirements are met to ensure the dependability and consistency of tasks undertaken by suitably qualified persons. For this reason, this amendment has the consequential effect of clarifying that the preparation of declarations that comply with s 566(2) are a regulatory function that may only be performed by a suitably qualified person.

Replacement of s 574C (Report and declaration to accompany document)

574C Declaration to accompany particular documents

Clause 114 replaces s 574C of the EP Act to remove any confusion around what 'documents' the declaration requirements mentioned in this section apply to. This amendment aligns the documents in s 574C with the documents mentioned in s 568 (Auditor's functions). All of these documents must be accompanied by a declaration under s 574C.

The purpose of s 574C is to provide an added protection in terms of reliability of documents prepared by an auditor. The auditor's declaration is an important component of the auditor framework as the administering authority often relies on documents prepared by an auditor when making a decision about land under the EP Act. Therefore, it is important that it is clear that there is a requirement for all documents prepared by an auditor to be accompanied by a declaration complying with s 574C.

An offence provision exists in s 574M that applies where an auditor makes a report, declaration or certification that the auditor knows, or ought reasonable to know, is false or misleading in a material particular.

Amendment of ch 12, pt 3A, div 4, hdg (Suspension or cancellation of approval)

Clause 115 makes a consequential amendment to the chapter 12, part 3A, division 4 heading in response to amendments made by the Bill relating to an auditor's approval. Specifically, this amendment makes it clear that in addition to being able to suspend or cancel an auditor's approval, the chief executive may amend an auditor's approval if a ground exists under s 574D. Under the pre-amended Act, the chief executive only had the power to suspend or

cancel an auditor's approval. The amendment of an auditor's approval (including conditions of the approval) may, in certain circumstances, be a better outcome for the department and/or auditor than a suspension or cancellation.

Amendment of s 574D (Grounds for suspension or cancellation)

Clause 116 makes a consequential amendment to s 574D in response to amendments made by the Bill relating to an auditor's approval. In some circumstances, it may be necessary for the chief executive to amend, suspend or cancel an auditor's approval. This amendment makes clear that the existing grounds for suspension or cancellation also apply for amending an auditor's approval. The chief executive must believe that at least one of these grounds exist before taking action to amend an auditor's approval. These grounds include the auditor contravening a condition of the approval, not complying with the auditor's code of conduct or if the auditor has been convicted of an offence under the EP Act. Section 574B states that an auditor must comply with the conditions of any approval given unless the auditor has a reasonable excuse.

Amendment of s 574E (Show cause notice)

Clause 117 makes a consequential amendment to s 574E in response to amendments made by the Bill relating to an auditor's approval. Specifically, this amendment makes it clear that the show cause process must be followed where the chief executive believes a ground under s 574D exists to amend an auditor's approval. The show cause process provides procedural fairness in that it allows the auditor to make written representations prior to a decision being made about the auditor's approval. Written representations must be considered by the administering authority prior to a final decision being made under s 574G.

Amendment of s 574G (Suspension or cancellation)

Clause 118 amends s 574G to allow the chief executive to amend an auditor's approval where the chief executive has followed the show cause requirements in s 574E and considered any representations from the auditor. Amendment of the auditor's approval may include amending a condition of the approval or adding another condition to the approval. If the auditor fails to comply with the conditions of the approval after amendment, the chief executive could then consider suspending or cancelling the auditor's approval.

Replacement of s 574H (Who may make a complaint)

574H Making a complaint against an auditor

Clause 119 replaces s 574H to provide more clarity and consistency around the requirements for making a complaint against an auditor. To ensure the integrity of the auditor framework, it is crucial to allow a person to make a complaint to the chief executive about an auditor if a ground exists under s 574D to suspend, amend or cancel an auditor's approval.

New s 574H requires complaints to be made in writing, include certain details about the complainant and contain particulars of the allegation on which the complaint is founded. The written complaint must also be verified by a declaration that the

information provided is true and accurate. The need for an investigation and potential enforcement action against an auditor is typically instigated by a complaint. In order for the chief executive to conduct a thorough, just and fair investigation, it is helpful if particular information is provided. Requiring a declaration to accompany the complaint will assist with ensuring the complaint given to the chief executive is not false or misleading, noting that an offence provision exists for such conduct (s 480).

The chief executive will also be able to require the complainant to give further particulars about the complaint within a stated period, to help with the inquiry. Failure to provide the requested information may result in the dismissal of the complaint. The chief executive may also dismiss a complaint where the chief executive is satisfied the complaint is frivolous or vexatious or lacks substance or credibility.

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

Clause 120 amends s 574M to clarify that it is an offence for an auditor to make a report, provide a certification or make a declaration that the auditor knows, or ought reasonably to know, is false or misleading in a material particular. The addition of the words 'ought reasonably to know' aligns this offence provision with other similar false or misleading offence provisions in the EP Act (e.g. s 480). Amendments are also made to this section to remove ambiguity around whether declarations made under s 574C of the EP Act are captured.

Insertion of new ch 12, pt 4C

Part 4C Confidentiality of information

579D Confidentiality of information—generally

Clause 121 inserts a new s 579D which makes it an offence for particular persons to use or disclose confidential information obtained in the course of performing functions under the EP Act. This is intended to safeguard a person's confidential information.

A person is not limited in using or disclosing confidential information where there are other laws that enable the release of the confidential information, such as provisions about keeping information or documents on the public register under the EP Act.

This section also states that it does not apply to the extent s 316PE or s 318U applies to a person. This is intended to avoid a potential overlap as s 316PE and s 318U also contain offences for the use or disclosure of confidential information.

Insertion of new ch 13, pt 31

Clause 122 inserts transitional provisions. Some of these provisions are intended to remove ambiguity in relation to the application of chapter 13, part 27 and ensure the policy intent of

the *Mineral and Energy Resources (Financial Provisioning) Act 2018* is achieved. Other provisions relate to amendments made by the Bill.

Part 31 Transitional provisions for Environmental Protection and Other Legislation Amendment Act 2022

Division 1 Preliminary

792 Definitions for part

This provision contains definitions for new part 31.

Division 2 Transitional environmental programs

793 Existing submission of draft transitional environmental program

This new section applies to any draft transitional environmental programs submitted but not decided prior to commencement. The pre-amended provisions in chapter 7, part 3 continue to apply to these draft programs so the administering authority will need to make the decision of whether to approve the program under those pre-amended provisions. Once the transitional environmental program is approved, the amended provisions apply to the program.

794 Existing transitional environmental program

This new section applies to transitional environmental programs in force at the time of commencement. These programs will continue to be in effect and are deemed to be programs issued under the post-amendment provisions of the Act. Any requirements and conditions of the existing programs are to be treated as if they were part of a program issued under the post-amendment provisions. It should be noted that this means that the revised offence provision for transitional environmental programs under s 432 can apply to existing programs.

795 Proceeding for offence against former s 432A

Section 432A, which is omitted by the Bill, will continue to apply to transitional environmental programs in force at the time of commencement. This is intended to ensure that proceedings for an offence against s 432A can be instigated or continued after commencement despite the repeal of this provision.

Division 3 PRC plans

Subdivision 1 Application of pt 27 generally

796 Meaning of terms for division

This section clarifies that if a term is used in this division and defined in s 750, the term has the same meaning as it has under s 750. Section 750 includes definitions for the transitional provisions in chapter 13, part 27 of the EP Act.

797 Application of pt 27 to holders of environmental authorities that have not taken effect

This section clarifies how chapter 13, part 27 applies in relation to the holder of an environmental authority that has been issued under s 195 but that has not yet taken effect under s 200. This section clarifies that a reference to an environmental authority in part 27 includes, and has always included, a reference to an environmental authority granted under s 195, regardless of when the authority takes effect under s 200. It also clarifies that s 751- s 756 apply in relation to the holder, even if the environmental authority has not yet taken effect under s 200. This removes any ambiguity relating to whether the administering authority can give these holders a notice under s 754, thus ensuring the original intent of chapter 13, part 27 is achieved.

Subdivision 2 Application of pt 27 to particular amalgamated or de-amalgamated environmental authorities

798 Definitions for subdivision

This section defines the terms ‘applied provisions’, ‘new EA’ and ‘original EA’ to assist with interpretation of this subdivision.

799 Application of subdivision

This section states when subdivision 2 applies. This subdivision is inserted to remove ambiguity regarding the application of chapter 13, part 27 to environmental authorities held by a ‘mining EA holder’ that were either amalgamated or de-amalgamated on or after the PRCP start date. These amalgamated and de-amalgamated environmental authorities have been termed ‘new’ environmental authorities. If a PRCP schedule was not approved for the ‘original’ environmental authority (the term used to refer to the environmental authorities in effect before amalgamation or de-amalgamation), in accordance with the intent of chapter 13, part 27, there needs to be provision to be able to require a PRCP schedule from the holder of the ‘new’ environmental authority. This new section states that subdivision 2 applies to ‘new’ environmental authorities if the authority is for a mining activity authorised under a mining lease and if a relevant activity for the authority is an ineligible ERA.

800 Application of applied provisions

This section clarifies that, despite the period mentioned in s 754(2)(b) of the EP Act, the administering authority may issue a notice under s 754 to the holder of a 'new' environmental authority. The notice must be given to the holder of the 'new' environmental authority within six months of the amalgamated authority being issued or within six months of the de-amalgamated authority taking effect.

This section makes it clear that s 754 - s 756 and s 765B(3)-(5) apply to the holder of the 'new' environmental authority as if they had been a 'mining EA holder' for the 'new' environmental authority on commencement of chapter 13, part 27. The proposed PRCP schedule from the holder of a 'new' environmental authority is to be assessed in accordance with those provisions.

This section also describes the relationship between land outcome documents made under a condition of the 'original' environmental authority and their application to 'new' environmental authorities. It states that a reference to a land outcome document is taken to be a reference to a land outcome document for the 'original' environmental authority, to the extent the document relates to the land the subject of the 'new' environmental authority. This ensures 'new' environmental authority holders are provided with the same concessions they would have been provided prior to amalgamating or de-amalgamating their 'original' environmental authority (to the extent relevant). This section also applies the concessions provided in s 765B (3)-(5) in relation to the holder of the 'new' environmental authority. However, nothing in this section limits the application of s 431A to the holder of an environmental authority.

801 Notice for original EA taken to have been withdrawn in particular circumstances

This section clarifies that, if a s 754 notice was given before the amalgamation or de-amalgamation of the 'original' environmental authority and a PRCP schedule had not been approved for the 'original' environmental authority, the notice is taken to be withdrawn. This removes any confusion regarding how the notice issued for the 'original' environmental authority applies to the 'new' environmental authority.

An example of how new s 800 and s 801 are intended to operate is as follows: the holder of an 'original' environmental authority is issued a notice under s 754 on 2 October 2022. The 'original' environmental authority is then de-amalgamated, taking effect on 2 December 2022, at which time a PRCP schedule had not been approved for the 'original' authority. As a result, s 801 states that the notice for the 'original' authority is taken to have been withdrawn on 2 December 2022. Section 800 provides the administering authority with six months from 2 December 2022 to issue new notices under s 754 to the holders of the 'new' environmental authorities.

Subdivision 3 Provision for approval of particular PRC plans

802 Particular holders may apply for PRC plan approval for pt 27

This section has been inserted to allow certain environmental authority holders to ask the administering authority to assess a proposed PRCP for the relevant activity. This section is expected to be used by environmental authority holders who do not have an approved PRCP for a relevant activity and have no pathway under the EP Act for receiving approval (e.g. the holder has failed to comply with a notice under s 754 of the EP Act, or the holder has not received a notice required to be given to the holder under s 754).

This section outlines the requirements environmental authority holders must meet to be able to use this process. It also outlines the relevant sections of the EP Act the administering authority must comply with when assessing a proposed PRCP given under this section.

If an application is made under this section within five years of its commencement, s 754(3)-(9), s 755 and s 756 apply in relation to the proposed PRCP as if it had been given to the administering authority in compliance with a notice given to the holder under s 754. This essentially affords environmental authority holders the concessions provided in chapter 13, part 27 (e.g. concessions related to land outcome documents). In contrast, if an application is made under this section more than five years after it commences, the administering authority must assess the proposed PRCP under chapter 5, parts 2 to 6, as if the PRCP accompanied an application for an environmental authority for a relevant activity made under s 125(1)(n). In essence, this means that the transitional provisions in chapter 13, part 27 are not applicable when assessing applications made five years after the commencement of this section.

This section also makes it clear that nothing in this section limits the application of s 431A to the holder of an environmental authority.

Division 4 Miscellaneous

803 Existing EIS process—application of ch 3

This new section clarifies the application of amended provisions related to EIS processes that have started but have not been completed upon commencement. These EIS processes are to continue under the pre-amended EIS provisions. The amended EIS provisions will only apply to an EIS process for a project where the draft terms of reference for the project was submitted after commencement.

804 Existing site-specific application—application of new s 172

This section makes it clear that s 172, as amended by the Bill, applies in relation to a site-specific application made before the commencement if, on the commencement, the application has not been decided.

805 Existing amendment application—application of s 230

If an amendment application for an environmental authority was received before commencement, and on commencement there has not been an assessment level decision for the application, the amended s 230 will apply to the application. If an assessment level decision has been made for an amendment application received before commencement, the pre-amended s 230 applies.

806 Suspension—application of s 278B

This section states that new s 278B inserted by the Bill only applies to environmental authorities which are suspended after commencement.

807 Application of new s 493

This section makes it clear that new s 493(6) does not apply to an offence committed, or an act or omission that causes the offence to be committed, before the commencement (i.e. the section clarifies that the amendments made to s 493 do not apply retrospectively).

808 Orders under new s 506A

An order under new s 506A may only be made in relation to a court convicting a person of a serious environmental offence committed after commencement. However, for the purposes of applying s 506A(1)(b), a court may consider serious environmental offences committed before the commencement.

Amendment of sch 1 (Exclusions relating to environmental nuisance or environmental harm)

Clause 123 amends the entry for schedule 1, part 1 which relates to noise from ships. Under the pre-amended entry, environmental nuisance caused by any noise from operating a ship is excluded from an offence of causing environmental nuisance (s 440) and an offence of contravening a noise standard (s 440Q). This is inconsistent with the original intent and caused issues with inconsistency with the default noise standards for power boats in a waterway (s 440Z) and operating power boat engines at premises (s 440ZA).

Amendments are made so that the relevant exclusion only applies to noise from the operation of a ship in a port and noise necessary for the safe operation of a ship. This better reflects the original intent of the exclusion. Safety signal noise (such as bells, whistles and horns) are necessary for the safety of shipping and shipping noise in ports should be excluded because it is best managed by land use planning and the appropriate location of ports.

Amendment of schedule 2 (Original decisions)

Clause 124 amends schedule 2 to correct cross-referencing errors and make other changes which are related to other amendments in the Bill.

Decisions made under s 41A(1)(b), s 49(1) and s 56A(2)(b) are listed as original decisions. This ensures that decisions to refuse to allow a draft terms of reference or EIS to proceed are subject to appropriate review. Decisions under s 49 and s 56A to refuse an EIS proceeding were subject to Ministerial review, but with the omission of s 50 and s 56B, it is important that an alternative review mechanism is provided.

Consequential amendments are made to the entries for s 332, s 337, s 339 and s 353 to reflect changes to the transitional environmental program provisions.

A decision relating to the refusal of an inclusion request under s 379D is inserted as an original decision. This ensures decisions to refuse a request from a landowner for their land to be included in a relevant land register is subject to appropriate review.

A decision relating to the chief executive taking an action to amend an auditor's approval under s 574G is also inserted as an original decision. This amendment relates to the new action the chief executive can take for an auditor approval and ensures the decision can be subject to the appropriate review.

Amendment of sch 4 (Dictionary)

Clause 125 amends the Dictionary in schedule 4 of the EP Act. These amendments are generally minor or consequential in nature. Specific amendments include:

- inserting definitions for 'area of cultural heritage significance', 'matter of national environmental significance' and 'matter of State environmental significance' as these are new terms inserted for amendments to the EIS provisions;
- amending the definition of 'regulatory requirement' to reflect amendments to s 41A, s 49 and s 56A and ensure that the chief executive has the power to decide not to allow a draft terms of reference or submitted EIS to proceed if there is a provision in regulation or an environmental protection policy requiring that;
- inserting a definition for 'inclusion request', and amending the definition of 'site suitability statement', in response to changes relating to the contaminated land provisions;
- inserting a definition for 'minor ERC change' as a result of the new ERC change process inserted through the Bill;
- amending the definition of 'prescribed responsible person' to clarify that only reasonable efforts need to be made to identify the person under paragraph (1)(a). This ensures no unreasonable burden is imposed on the administering authority; and
- amending the definition of 'standard conditions' to reflect current drafting practice and remove the circular nature of the existing definition.

Part 3 Amendment of Land Title Act 1994

Act amended

Clause 126 states that this part amends the *Land Title Act 1994.*

Amendment of s 50 (Requirements for registration of plan of subdivision)

Clause 127 amends s 50(1) by requiring the consent of the Executive Director of the Wet Tropics Management Authority for registration of a plan of subdivision for reconfiguring a lot within the Wet Tropics World Heritage Area for any plan of subdivision lodged for registration under the *Land Title Act 1994*. The amendment aims to ensure that the Wet Tropics Management Authority has opportunity to check that any new or changed lot has the necessary authorisation under the Wet Tropics Management Plan 1998, either under a permit under s 33(1)(q) or as approved under a cooperative management agreement. This amendment primarily aims to improve the implementation of the new permit for reconfiguring a lot that commenced in the Wet Tropics Management Plan 1998 on 11 September 2020.

Part 4 Amendment of Waste Reduction and Recycling Act 2011

Act amended

Clause 128 states that this part amends the WRR Act.

Amendment of s 99GD (Restriction on sale of banned single-use plastic items)

Clause 129 amends s 99GD(3) to include a community corrections office and a corrective services facility under the *Corrective Services Act 2006* as an exempt business or undertaking. The inclusion of a community corrections office and corrective services facility as an exempt business or undertaking will allow for the sale of banned single-use plastic items to these facilities to ensure that custodial operations at these facilities can continue to operate safely and effectively.

Amendment of s 172 (Procedure for amending, cancelling or suspending end of waste code)

Clause 130 inserts new subsection (6A) into s 172. It also makes an amendment to an existing provision that provides clarity for the take effect date for each registered resource producer for a decision by the chief executive to amend, cancel, or suspend an end of waste code. The new provision aligns the take effect date for a decision by the chief executive to amend an end of waste code with the date of the publication and notification of the amended end of waste code mentioned in s 173(4). The amendment to the existing provision provides that the take effect date mentioned in s 172(7) applies for a decision that is cancellation or suspension of an end of waste code.

Amendment of s 173M (Applying to amend end of waste approval)

Clause 131 is an amendment designed to solve a particular problem relating to the inconsistency of the decision period for deciding an application for a minor amendment to an end of waste approval, and the period that the chief executive may request additional information to decide the application. This clause amends the decision period for deciding an application for a minor amendment to an end of waste approval to 20 business days to align with the period that the chief executive may request additional information to decide the application.

This clause also amends the decision period that the chief executive may extend for deciding an application to amend an end of waste approval that is not a minor amendment. The clause proposes to allow the chief executive to extend the decision period on one occasion from 10 business days to 20 business days. The proposed amendment aligns the period for extension of the decision period for an application to amend an end of waste approval that is not a minor amendment with an application for an end of waste approval, as it is considered that these types of applications may require the same level of assessment.

Amendment of s 173N (Deciding amendment application)

Clause 132 provides legislative clarity by further describing the intent of the provision through an amendment to the heading to include a reference to the actual application being decided. The clause also removes lead-in wording within the provision to ensure legislative clarity that s 173N(2) applies for the chief executive in deciding whether or not to amend an end of waste approval under both s 173M and s 173ZB.

In addition, the clause amends the wording in s 173N(2)(c) to include a reference to s 173(Q) that provides for the chief executive to seek advice, comment or information from a technical advisory panel. The existing provision was not clear that the chief executive may seek advice, comment or information from a technical advisory panel when deciding an amendment to an end of waste approval.

Amendment of s 173O (Applying to transfer end of waste approval)

Clause 133 is designed to solve a particular problem relating to the inconsistency of the decision period for deciding an application to transfer an end of waste approval, and the period that the chief executive may request additional information to decide the application. This clause amends the decision period for deciding an application to transfer an end of waste approval to 20 business days to align with the period that the chief executive may request additional information to decide the application.

Insertion of new ch 16, pt 4

Clause 134 inserts a new part 4 to introduce transitional provisions for the new and amended provisions.

Part 4 Transitional provisions for Environmental Protection and Other Legislation Amendment Act 2022

326 Definitions for part

New s 326 inserts definitions for this part to help with interpretation.

327 Day that decision to amend end of waste code takes effect

These transitional provisions provide for the situation where the chief executive had decided to amend an end of waste code under s 172(5) before the commencement of these provisions, but the decision to amend had not yet taken effect for a registered resource producer under s 172(7). In this circumstance the decision will take effect on the later of either the day the decision would have taken effect under the unamended s 172(7) (as if the Act had not been amended), or the day the amended end of waste code takes effect under s 173(4).

328 Decision-making and extension period for existing amendment applications

The amendment introduces transitional provisions for an application to amend an end of waste approval under s 173M(1) that is made before commencement and still within the time period specified in the unamended s 173M(a) or (b), providing that the application is to be dealt with as though the amendment had not occurred.

329 Decision-making period for existing transfer application

The amendment introduces transitional provisions for an application to transfer an end of waste approval under s 173O(1) that is made before commencement and still within the time period specified in the unamended s 173O(3), providing that the application is to be dealt with as though the amendment had not occurred.

Amendment and numbering of schedule (Dictionary)

Clause 135 provides clarity for the definition of stockpile by including, in relation to waste, liquid in a container or a dam, pond or other depression. This addition provides certainty around liquid wastes that might not ordinarily be associated with a stockpile of waste. The clause also introduces schedule numbering as it is current drafting practice to number unnumbered schedules.

Part 5 Amendment of Wet Tropics World Heritage Protection and Management Act 1993

Act amended

Clause 136 states that this part amends the Wet Tropics Act.

Amendment of s 10 (Authority's functions)

Clause 137 amends s 10(5) by inserting a note that helps a user to understand the term 'Aboriginal Tradition', which is a core term used in the Wet Tropics Act and the Wet Tropics Management Plan 1998 but is defined in schedule 1 of the *Acts Interpretation Act 1954*.

Amendment of s 17 (Duration of appointment etc.)

Clause 138 amends s 17(2) to clarify that a Wet Tropics Management Authority board director may not serve a term in excess of six consecutive years. Consistent with the *Management scheme intergovernmental agreement for the Wet Tropics of Queensland World Heritage Area* (2012) this provision does not bar a director from being re-appointed subsequently after an intervening term of non-service.

Amendment of s 41 (Preparation of plans by authority)

Clause 139 amends s 41 to confirm that provisions about cooperative management agreements can be included in the Wet Tropics Management Plan 1998, as they have since its inception. These provisions confirm that the Wet Tropics Management Authority may:

- enter into an agreement for the purposes of the Wet Tropics Management Plan 1998;
- impose requirements about the content of a cooperative management agreement; and
- make a cooperative management agreement that is inconsistent with a provision of the Wet Tropics Management Plan 1998, and that to the extent of inconsistency the cooperative management agreement may prevail.

Regardless of the above, it also confirms that the Wet Tropics Management Authority is not confined to entering into a cooperative management agreement for the purposes of the Wet Tropics Management Plan 1998 and may continue to enter into an agreement for the purposes mentioned in s 10(1)(f) and s 10(3) of the Wet Tropics Act.

Amendment of s 51 (Inconsistency between plans)

Clause 140 amends s 51 to manage any inconsistency that may arise between the Wet Tropics Management Plan 1998 and all the instruments mentioned in part 7 of the *Nature Conservation Act 1992*, instead of only an inconsistency between the Wet Tropics Management Plan 1998 and a conservation plan under the *Nature Conservation Act 1992*. The *Nature Conservation Act 1992*, part 7 instruments now referenced include a conservation plan (as before), a management plan, a management program, and a management statement. A new term 'nature conservation instrument' has been introduced in the Wet Tropics Act to reference this full set of instruments.

Amendment of s 56 (Prohibited acts)

Clause 141 removes s 56(1)(b) to prohibit mining and mining exploration in the Wet Tropics World Heritage Area. Section 56(1)(b), which will be removed, is an exemption to the prohibited acts within the Wet Tropics World Heritage Area. It allows a prohibited act, including 'destroying a forest product', if it is done under a licence, permit or authority under the *Mineral Resources Act 1989*. The contemporary practice for issuing licences etc under the *Mineral Resources Act 1989* excludes mining and exploration in the Wet Tropics World Heritage Area through conditioning. The small number of existing licences impacting on the Wet Tropics World Heritage Area do not allow mining in the area by virtue of this conditioning. It is understood that no existing licence holders will be impacted and for this reason transitional provisions are not included. A consequential amendment will need to be made to the Wet Tropics Management Plan 1998 to remove the same mining activities from s 27 – Allowed activities.

Insertion of new pt 9

Clause 142 creates a new part 9 to insert validation and declaratory provisions.

Part 9 Validation and declaratory provisions for Environmental Protection and Other Legislation Amendment Act 2022

86 Validation of management plan provisions about cooperative management agreements

Section 86 confirms the Wet Tropics Management Plan 1998 always had the right to make provisions about cooperative management agreements despite the clarification about this matter added to s 41 of the Wet Tropics Act by the Bill.

87 Particular cooperative management agreements not invalid

Section 87 confirms that cooperative management agreements already made, and despite how they are written, will not be invalidated by the provisions of the Bill about cooperative management agreements in s 41 of the Wet Tropics Act.

Omission of sch 2 (World heritage convention)

Clause 143 removes schedule 2 which contains a copy of the UNESCO World Heritage Convention. Consistent with contemporary drafting practices, the copy is removed and instead the schedule 3 dictionary definition of World Heritage Convention is changed to include a note which directs users to the location of the document on the UNESCO website.

Amendment of sch 3 (Dictionary)

Clause 144 amends the schedule 3 (Dictionary) to include a definition of 'cooperative management agreement'. The new definition makes clear that the meaning of cooperative

management agreement is the meaning set forward in the Authority's functions, s 10(1)(f) of the Wet Tropics Act.

This clause also replaces the schedule 3 definition of World Heritage Convention to correct a minor error in the name of the convention. The new definition also responds to the removal of a copy of the convention from schedule 2 of the Wet Tropics Act and adds a note directing users to the location of the document on the UNESCO website.

Part 6 Legislation amended

Legislation amended

Clause 145 states that schedule 1 amends the legislation it mentions.

Schedule 1 Legislation amended

Schedule 1 contains a number of minor and consequential amendments.

The majority of these changes are consequential amendments to the EP Act or Environmental Protection Regulation 2019 to reflect changes to the transitional environmental program provisions in the EP Act. Other changes include:

- amending s 194A of the EP Act to reflect amendments to s 172;
- amending the heading of chapter 5, part 11 of the EP Act to clarify that provisions in this part are not limited to cancellation or suspension of environmental authorities by the administering authority. There are some provisions in this part that also apply to cancellation or suspension of environmental authorities by application;
- amending provisions in the EP Act to reflect amendments in the Bill clarifying that the administering authority may extend the suspension of a suspended environmental authority;
- clarifying that the same criteria for deciding an application to suspend a current environmental authority apply for an application to extend a suspension. This is related to the amendment of s 284A of the EP Act;
- updating cross-references;
- correcting minor drafting errors in the EP Act; and
- updating drafting to reflect contemporary drafting practice.