Queensland

Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2013

Explanatory Notes for SL 2013 No. 25

made under the

Environmental Protection Act 1994
State Penalties Enforcement Act 1999
Sustainable Planning Act 2009

General outline

Short title

The short title of this regulation is the *Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2013*.

Authorising law

The regulation is made under the head of power contained in:

- section 580 of the *Environmental Protection Act 1994*;
- section 165 of the *State Penalties Enforcement Act 1999*; and
- section 232 of the *Sustainable Planning Act 2009*.

Policy objective of the legislation

The primary objective of the legislation is to amend subordinate legislation—the *Environmental Protection Regulation 2008*, the *State*

Penalties Enforcement Regulation 2000 and the *Sustainable Planning Regulation 2009*.

How the objective will be achieved

The policy objective will be achieved by amending the *Environmental Protection Regulation 2008*, the *State Penalties Enforcement Regulation 2000* and the *Sustainable Planning Regulation 2009* to give effect to the provisions of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* passed by Parliament on 31 July 2012.

The Amendment Regulation introduces further initiatives to reduce green tape for business by removing the requirements for an environmental licence for low risk activities such as motor vehicle workshops, cabinet makers and printers. A review of prescribed ERAs found that Queensland has a disproportionately high number of environmental licences, with approximately 13,000 licences, compared to other states: approximately 4,000 in New South Wales, 1,000 in Victoria and 1,200 in Western Australia. These initiatives were consulted on through a regulatory assessment statement. Over 88 submissions were received from industry, local governments and the community. The majority of submissions supported the deletion of low risk activities. The decision regulatory impact statement and consultation report can be found on the department's Greentape Reduction website at http://www.ehp.qld.gov.au/management/greentape/index.html

As a result the Amendment Regulation proposes to delete 20 environmentally relevant activities (ERA) thresholds. This would result in over 9,420 small business operators no longer being required to hold an approval, saving an estimated $6.18 million in annual fees. In addition, new entrants would no longer need to apply for an environmental authority, pay an application fee, pay a fee for a registration certificate or submit annual returns.

A further initiative supported through consultation is to halve annual fees for small sewage treatment plants which will benefit 214 small tourism operators with a total saving of greater than $0.34 million per annum. This will relieve financial pressure on operators such as B&Bs and caravan parks.

In total there will be a saving of $6.52 million related to fees for over 9,600 businesses in addition to time savings associated with licence administration.

In addition, many of the considerations in chapter 4 (Regulatory requirements) of the pre-amended *Environmental Protection Regulation 2008* have been reviewed and moved into a new schedule 5 of the Regulation which separates the considerations to be made for environmental authority decisions, and the considerations for making a development permit decisions. This separation supports the introduction of flexible operational approvals, as well as making the requirements for applications clearer.

In the regulatory requirements each environmental objective will have clear performance outcomes which an applicant can use to demonstrate that the proposed activity can meet the relevant environmental objective.. This will support consistent outcomes based decision making to achieve the object of the Act and provide business with greater transparency and certainty.

Amendments to the *Sustainable Planning Regulation 2009* work to reduce the number of ERAs that will trigger a referral under the *Environmental Protection Act 1994* jurisdiction by removing the need for referral for lower risk activities. This is consistent with the government's planning reform agenda. .

The Amendment Regulation also includes other consequential amendments have been made in order to ensure consistency with changes introduced by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Consistency with other legislation

This regulation is consistent with the policy objectives of other legislation. The requirement under the *Statutory Instruments Act 1992* in relation to a regulatory assessment statement has been complied with.

Consistency with authorising Act

This regulation is consistent with the *Environmental Protection Act 1994, the State Penalties Enforcement Act 1999* and the *Sustainable Planning Act 2009*.

Possible alternative approach

There is no alternative approach. These matters are all established in legislation and legislative amendments are the only option to give effect to the policy objectives.

Consistency with fundamental legislative principles

The amendments are consistent with the fundamental legislative principles.

Benefits and costs of implementation

The Amendment Regulation will commence on 31 March 2013. This aligns with the commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* which was announced in July 2012.

In addition, codes of practice will be developed for deleted ERAs post commencement in collaboration with industry and local governments.

The total savings to business from no longer being required to pay annual fees is estimated to be $6.52 million.

It is estimated there will be a reduction of 492 registration certificates and a loss of revenue for the state government of $0.91 million. The state government would also need to devote resources to preparing guidance materials and codes of practice.

It is estimated that there will be a reduction of 8,928 registration certificates administered by local governments. This equates to an estimated revenue loss of $5.27 million. During consultation a number of local governments expressed the view that the revenue loss may be overestimated as some local government fees are less than estimated.

Both state and local government will benefit from a reduction in effort in issuing and administering licences. However, the responsibility to respond to environmental issues and enforce the *Environmental Protection Act 1994* will remain.

The transfer of poultry ERAs from local governments to the Department of Agriculture, Forestry and Fisheries will further reduce local government revenue by $81,000. In turn this will offset state government revenue losses by a similar amount but the State will gain additional administrative responsibilities.

The major cost of reducing small sewage treatment plant fees falls on the state government as there would be a reduction in revenue of $340,000 per annum, with no corresponding reduction in administration and compliance for these activities.

Consultation

Community

The general community was engaged in broad consultation in September to October 2012 through consultation on two documents, the Review of Environmentally Relevant Activities—Draft Regulatory Assessment Statement, and Assigning Environmentally Relevant Activities to Assessment Tracks Report.

Submissions were invited through:

- the Courier Mail on 29 October 2012;
- the Queensland Government Gazette;
- the Queensland Government 'Get involved' website;
- the Department of Environment and Heritage Protection website;
- the Greentape Reduction e-newsletter with over 1100 subscribers; and
- 222 letters mailed to all holders of small sewage treatment plant operators.

A total of 88 submissions were received, 54 from industry stakeholders, 20 from local governments (including the Local Government Association of Queensland), eight from community stakeholders and six from government regulators.

Government

Discussions with relevant state government departments have occurred throughout the Greentape Reduction project.

In particular, due to the shared administration of agricultural ERAs, the Department of Agriculture, Forestry and Fisheries were consulted with to propose agricultural ERA thresholds suitable for deletion.

Results of consultation

Community

In general, no community submissions supported the deletion of ERA thresholds. Community concerns related to environmental standards, environmental harm from cumulative impacts, and the ability of authorities to regulate effectively.

Community submissions on the Draft Regulatory Assessment Statement did not support reducing small sewage treatment plant fees.

Community submissions showed support for the introduction of new application fees.

Industry

Industry showed general support for initiatives that reduce the regulatory burden on business. The exception was the waste industry who opposed the deletion of any waste related ERAs.

A number of industry submissions supported the development of codes of practice and offered assistance in relation to development of codes in their sectors. Industry members see codes of practice as an excellent opportunity to provide certainty regarding environmental standards in Queensland.

Industry submissions supported halving the fee unit for small sewage treatment plants introducing new application fees.

Government

In general, local government generally did not support the deletion of ERAs but were willing to accept the deletion of 10 ERA thresholds. Three local governments supported the deletion of ERAs. The main concerns from local government relate to revenue loss, environmental risk, and sufficient tools for compliance.

Local government generally supported the introduction of new application fees with the exception of Brisbane City Council.

There was general support for the transfer of the administration of poultry ERAs from local government to the Department of Agriculture, Forestry and Fisheries.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

This clause states that the short title of this legislation is the *Environmental Protection and Other Legislation Amendment Regulation (No. 1) 2013*.

Clause 2 Commencement

This clause states that the regulation commences on 31 March 2013. This is to align with commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Part 2 Amendment of Environmental Protection Regulation 2008

Clause 3 Regulation amended

This clause states that this part amends the *Environmental Protection Regulation 2008*.

Clause 4 Amendment of s 5 (Application of pt 2)

This clause amends section 5 of the *Environmental Protection Regulation 2008* to correct a cross reference.

Clause 5 Replacement of ch 3, pt 1, hdg (Chapter 4A activities)

This clause omits the old heading of "Chapter 4 activities" and replaces it with the new heading of "Environmentally relevant activities – general matters". This change is consequential to the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. Since there will now be one assessment process for

all environmentally relevant activities, these provisions do not need to be split into different sections of the regulation.

Clause 6 Amendment of s 14 (What is the aggregate environmental score for a chapter 4 activity)

This clause amends section 14 of the *Environmental Protection Regulation 2008* to correct terminology and combine references to the schedules of aggregate environmental scores. This change is consequential to the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. Since there will now be one assessment process for all environmentally relevant activities, these provisions do not need to be split into different sections of the regulation.

Clause 7 Replacement of s 16 (Meaning of year for carrying out chapter 4 activity)

This clause omits section 16 of the *Environmental Protection Regulation 2008* because this section is no longer required as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

This clause inserts a new section 16 into the *Environmental Protection Regulation 2008* to define the term "concurrence ERA". A concurrence ERA is a type of prescribed ERA which is identified by the letter C in schedule 2. The purpose of identifying the concurrence ERAs is because these are the only environmentally relevant activities (ERAs) which trigger the State's concurrence agency (or assessment manager) role for a material change of use for an ERA (see schedule 3, part 1, table 2, item 1 of the *Sustainable Planning Regulation 2009*, as amended by this Amendment Regulation).

Clause 8 Amendment of s 17 (Activities prescribed as environmentally relevant activities-general)

This clause amends section 17 of the *Environmental Protection Regulation 2008* to correct terminology and cross-references as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction)*

and Other Legislation Amendment Act 2012. Those activities which are prescribed as environmentally relevant activities (ERAs) in schedule 2 are now defined in the *Environmental Protection Act 1994* as "prescribed ERAs". This distinguishes them from other types of ERA, such as resource activities (which includes mining activities and petroleum activities) and agricultural ERAs (in chapter 4A of the *Environmental Protection Act 1994*). Minor amendments have also been made to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Clause 9 Insertion of new s 17A

This clause inserts a new section 17A (Activities prescribed as environmentally relevant activities-Act, s 120) into the *Environmental Protection Regulation 2008*. This section is needed to prescribe 'extractive activity' for section 120(2) of the *Environmental Protection Act 1994* as inserted by the Environmental Protection (Greentape Reduction) and Other *Legislation Amendment Act 2012*. Section 120(2) complements schedule 1, item 13 of the *Sustainable Planning Act 2009* which makes this prohibited development in the North Stradbroke Island Region. Since a person cannot legally carry out an extractive activity without both a development permit and an environmental authority, section 120(2) preserved the effect of the existing prohibition.

Clause 10 Replacement of ch 3, pt 1, div 3 hdg (Prescribed activities for development applications)

This clause amends the heading "Prescribed activities for development applications" to "Environmental authority applications for wild river applications". Consequential to the amendments below, division 3 will now only contain provisions which are about environmental authority applications for wild river applications. This change is consequential to the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. Since these activities will now be assessed via the environmental authority, the terminology has been changed.

Clause 11 Omission of ch 3, pt 1, div 3, subdiv 1, hdg

This clause omits the heading "Development applications for wild river areas". Since the only section in subdivision 2 (section 20) is being omitted, this heading is no longer needed.

Clause 12 Replacement of s 18 (Exempt environmentally relevant activity—Act, s 73AA)

This clause amends section 18 of the *Environmental Protection Regulation 2008* to update terminology and cross-references as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. Minor amendments have also been made to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Clause 13 Replacement of s 19 (Other prescribed activities—Act, s 73AA)

This clause amends section 19 of the *Environmental Protection Regulation 2008* to update terminology and cross-references as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. The old section 19 is split into two sections, with the new section 19 defining prescribed sewage ERA for the purposes of section 174 of the *Environmental Protection Act 1994* (as amended) and the new section 19A defining prescribed water treatment ERA for the purposes of section 174 of the Act. The policy intent is unchanged.

Clause 14 Omission of ch 3, pt 1, div 3, sdiv 2 (Development applications that may require financial assurances)

This clause omits section 20 of the *Environmental Protection Regulation 2008* as it is no longer required as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. The relevant sections of the *Environmental Protection Act 1994* will now specify when a financial

assurance can be required, with reference to the regulatory requirements in this regulation.

Clause 15 Insertion of new ch 3, pt 1, div 3A

This clause inserts a new division 3A (Development application relating to concurrence ERAs). This division prescribes the code assessment that is specified under the *Sustainable Planning Regulation 2009* for the administering authority making a decision as either assessment manager or concurrence agency for development applications for concurrence ERAs. This division restricts the scope of these assessments as compared with the pre-amendment scope. This is because the assessment of the environmental authority and the development permit has been separated and the relevant assessment considerations will now only apply to each relevant authority type.

Section 19B (Application of div 3A) specifies where division 3A will apply, which is where the chief executive is the assessment manager or concurrence agency for a development application for a concurrence ERA.

Section 19C (Assessing application) describes the matters that must be considered by the assessment manager or concurrence agency in making a code assessment decision. This is basically the relevant assessment under schedule 5 along with the standard criteria specified in the *Environmental Protection Act 1994*. Considering both of these matters allows for a balance between achieving the relevant environmental objectives in schedule 5, and the broader principles specified in the standard criteria, such as the public interest.

Clause 16 Omission of s 22 (Codes of environmental compliance for chapter 4 activities)

This clause omits section 22 of the *Environmental Protection Regulation 2008* as it is no longer required as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. Codes of environmental compliance have been replaced by eligibility criteria and standard conditions. In the interim, the existing codes of environmental compliance are deemed to be eligibility criteria and standard conditions under section 170 as inserted by this Amendment Regulation.

Clause 17 Omission of s 22A (Prescribed circumstances for adding, changing or cancelling a development condition of particular approvals—Act, s.73C)

This clause omits section 22A of the *Environmental Protection Regulation 2008* as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. This section prescribed where a development approval could be amended by the administering authority because of a set of circumstances that existed prior to 1 January 2009 (subsection (2)) and 1 January 2011 (subsection (3)). These amendments should have now been made where needed, so this section is not required.

Clause 18 Replacement of ch 3, pt 2, hdg (Chapter 5A activities)

This clause replaces the heading "Chapter 5A activities" with the heading "Prescribed matters for particular resource activities". Some of the sections in this part are no longer required as a result of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. The remaining sections are more accurately described by the new heading.

Clause 19 Omission of s 23 (Chapter 5A activities prescribed as level 1 and 2 chapter 5A activities)

This clause omits section 23 of the *Environmental Protection Regulation 2008* as it is no longer required as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. The eligibility criteria will determine which types of resource activities (other than mining activities) are eligible to be assessed as a standard application or a variation application. The fees payable will be determined by whether the type of activity being carried out has an aggregate environmental score in schedule 2A (as referenced from section 14 as amended by this Amendment Regulation).

Clause 20 Omission of s 24 (What is the aggregate environmental score for a level 1 chapter 5A activity)

This clause omits section 24 of the *Environmental Protection Regulation 2008* as it is no longer required as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. This requirement will be covered by the replacement section 14 of this Amendment Regulation.

Clause 21 Amendment of s 24AA (Prescribed matters for environmental management plan-Act, s 310D)

This clause amends section 24AA of the *Environmental Protection Regulation 2008* to correct terminology and cross-references as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. To be consistent with both the terminology of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* and the amendment to the *Environmental Protection Regulation 2008* in late 2012, this section now requires that, for the purposes of section 125(n) of the *Environmental Protection Act 1994* (as inserted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*), a prescribed matter for an environmental authority application includes providing a document outlining:

- whether the applicant proposes to manage the coal seam gas water in way that is consistent with the coal seam gas water management policy, including the prioritisation hierarchy for managing coal seam gas water; and
- if the applicant proposes to manage coal seam gas water in a way that is inconsistent with the prioritisation hierarchy for managing coal seam gas water, the reason for managing coal seam gas water in that way; and
- whether the proposed management of the brine or salt is consistent with the coal seam gas water management policy, including the prioritisation hierarchy for managing saline waste; and

- if the applicant proposes to manage brine or sale in a way that is inconsistent with the prioritisation hierarchy for managing saline waste, the reason for managing coal seam gas water in that way.

Clause 22 Amendment of s 24AB (Prescribed circumstance for amending environmental authority (chapter 5A activities)—Act, s 312E)

This clause amends section 24AB of the *Environmental Protection Regulation 2008* to correct terminology and cross-references as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 23 Replacement of ch 3, pt 3 (Mining activities)

This clause deletes sections 24A to 32 of the *Environmental Protection Regulation 2008* and replaces them with a new section 25. The new section 25 (Eligibility criteria for mining activities, Act, s 707B) prescribes eligibility criteria for the purposes of section 707B of the *Environmental Protection Act 1994* (as inserted into the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* by the *Waste Reduction and Recycling and Other Legislation Bill 2012*). This essentially preserves the effect of the existing prescribed criteria for level 2 mining activities.

The criteria themselves (sections 30 to 32) have been moved to schedule 3A of the *Environmental Protection Regulation 2008*. This enables this section to be amended as and when standard conditions are made for different mining activities, so that the eligibility criteria in the schedule only apply to those aspects of mining which are not covered by the new documents.

For example, standard conditions (including the new eligibility criteria) could be made for mining claims (to replace the code at schedule 3, section 5) in 2013, but the existing criteria and the existing code would continue to apply for mining leases, exploration permits and mineral development licences. This section could then specify that the schedule of eligibility criteria only applies to mining activities which are associated with a mining lease, exploration permit or mineral development licence.

The definitions in sections 24A to 29 have been moved to the Dictionary of the *Environmental Protection Regulation 2008*.

This clause also omits sections 33 to 45 of the *Environmental Protection Regulation 2008* as these sections are no longer required as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. Section 33 specified the aggregate environmental score for mining activities and this will now be referenced from section 14 as amended by this Amendment Regulation. Section 34 referenced the codes of environmental compliance in schedule 3. Codes of environmental compliance have been replaced by eligibility criteria and standard conditions. In the interim, the existing codes of environmental compliance are deemed to be eligibility criteria and standard conditions under section 170 of this Amendment Regulation.

Sections 35 to 45 prescribed decision timeframes for decisions about mining activities. The amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* moved these decision timeframes up into the *Environmental Protection Act 1994* so these sections are no longer required.

Clause 24 Amendment of s 48 (Meaning of environmental management decision)

This clause amends section 48 of the *Environmental Protection Regulation 2008* to change the definition of environmental management decision. This section now specifies that an environmental management decision does not include a decision about the surrender of an environmental authority, an application for a minor amendment, or an application for progressive certification. This is because the regulatory requirements which are now specified are not appropriate for these decisions.

Clause 25 Insertion of new ch 4, pt 2, div 1, hdg

This clause inserts a new heading for regulatory requirements into chapter 4 of the *Environmental Protection Regulation 2008*. This heading differentiates between the general regulatory requirements and the specific ones in later sections.

Clause 26 Replacement of s 51 (Matters to be considered for environmental management decisions)

This clause amends section 51 of the *Environmental Protection Regulation 2008*. It retains subsections (1)(a) and (1)(aa) and deletes subsections (1)(b) to (1)(h), and subsection (2). The deleted sections are removed because these requirements will now be part of the environmental objective assessment against the environmental objectives in the new schedule 5, or be specified in guidance material where appropriate.

Note that the regulatory requirements, including the environmental objective assessment in new subsections (1)(a) and (2)(a), must be considered in the context of the application as a whole. For example, for an environmental management decision about an activity relating to a variation or site specific application, the requirements mentioned in section 176(2) and (3) of the Act must also be considered.

Clause 27 Amendment of s 52 (Conditions to be considered for environmental management decision)

This clause amends section 52 of the *Environmental Protection Regulation 2008* to ensure that administering authority considers whether to impose conditions about achieving the environmental objectives. This amendment is consequential to the rewrite of most of the regulatory requirements into the environmental objective assessment in schedule 5. The definition of 'sensitive receptor' has been deleted from this section because it is moved to the Dictionary.

Clause 28 Insertion of new s 53A

This clause amends the *Environmental Protection Regulation 2008* to insert a new section 53A (Prescribed standard criteria for environmental management decisions) which prescribes that an environmental objective assessment, which is carried under section 51 and against the environmental objectives contained in the new schedule 5, must be considered along with the other standard criteria when making a decision which is an environmental management decision.

Clause 29 Omission of ss 55, 56, 57, 59, 60, 61, 62, 64, 64A, 64B and 64C

This clause omits sections 55, 56, 57, 59, 60, 61, 62, 64, 64A, 64A and 64C of the *Environmental Protection Regulation 2008* as the considerations specified in these sections will now be contained in new schedule 5 of the *Environmental Protection Regulation 2008*, and in supporting guidance material such as guidelines where appropriate. Specifically:

i) the considerations in the old sections 55, 56, 57, and 59 are now encompassed in schedule 5, part 3, table 1 (Water) and the associated performance outcomes, and in departmental guidelines.

ii) the considerations in the old section 60 are now encompassed in schedule 5, part 3, table 1 (Water), (Wetlands), (Groundwater) and (Land), and in the associated performance outcomes, and in departmental guidelines.

iii) the considerations in the old section 61 are now encompassed in schedule 5, part 3, table 1 (Water) and the associated performance outcomes, and in departmental guidelines.

iv) the considerations in the old section 62 are now encompassed in schedule 5, part 3, table 1 (Water), and the associated performance outcomes, and in departmental guidelines.

v) the considerations in the old section 64 are now encompassed in schedule 5, part 3, table 1 (Groundwater) and associated performance outcomes, and in departmental guidelines.

vi) the considerations in the old sections 64A, 64B, and 64C are now encompassed in schedule 5, part 3, table 1 (Waste) and associate performance outcomes, and in departmental guidelines.

Clause 30 Omission of s 66 (Prescribed organisations for contaminated land matters—Act, ss381, 395 and 410)

This clause omits section 66 of the *Environmental Protection Regulation 2008* because this section has been moved to the new section 115A of this Regulation.

Clause 31 Amendment of ch 5, pt 8, hdg

This clause amends the heading "Statutory condition for environmental authority (chapter 5A activities)" to change it to "Statutory condition for environmental authority for particular resource activities". This amendment is required as a result of the terminology changes made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 32 Amendment of s 81B (Prescribed maximum amount for chemicals—Act, s 312W)

This clause amends section 81B of the *Environmental Protection Regulation 2008* to correct terminology and cross-references as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 33 Amendment of s 83 (Definitions for ch 6)

This clause amends section 83 of the *Environmental Protection Regulation 2008* to correct a drafting error.

Clause 34 Amendment of s 101 (Particular chapter 4 activities)

This clause amends section 101 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* and to remove references to ERAs or ERA thresholds which have been deleted.

In addition, this section is amended to remove the devolution of poultry farming. Operations involving this prescribed ERA will now be administered by the State government, specifically the Department of Agriculture, Forestry and Fisheries.

Clause 35 Amendment of s 111 (Register of environmental reports)

This clause amends section 111 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 36 Replacement of s 112 (Register of monitoring program results)

This clause amends section 112 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. Although the section is replaced, the substance of the requirements has not been changed. The section has also been renamed "Prescribed information-Act, s 540".

Clause 37 Amendment of s 113 (Register of transitional environmental programs)

This clause amends section 113 of the *Environmental Protection Regulation 2008* to correct a drafting error and correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 38 Amendment of s 114 (Register of environmental protection orders)

This clause amends section 114 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 39 Insertion of new ch 7, pt 5

This section inserts a new part 5 (Suitably qualified persons and auditors) which contains the provisions of the *Environmental Protection Regulation 2008* which prescribe matters for chapter 12, parts 3 and 3A of the *Environmental Protection Act 1994*.

Section 115A (Prescribed organisations for suitably qualified persons) is the old section 66 of the *Environmental Protection Regulation 2008* which has been amended so that these organisations are prescribed organisations for both a suitably qualified person and an auditor for contaminated land matters. This amendment is consequential to the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* to insert a third party framework which is common across all regulatory functions in the *Environmental Protection Act 1994*.

Section 115B (Prescribed regulatory function) prescribes a regulatory function for a suitably qualified person. The regulatory function is completing a statutory declaration for a fee reduction. This preserves the effect of the current 'appropriately qualified person' function with the terminology changes from the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Section 115C (Prescribed criteria-Act, s 568) specifies the prescribed criteria for contaminated land auditors in undertaking evaluations of site investigation reports, validation reports, and draft site management plans. Assessments by auditors against the prescribed criteria will provide necessary technical support and advice to the administering authority in making decisions about contaminated land under chapter 7, part 8 of the *Environmental Protection Act 1994*. These assessments will be relied upon by the administering authority in making those decisions. The prescribed criteria were developed by considering the regulatory function which these reports and plans perform and the context in which they are used. The criteria support the object of the *National Environment Protection Council (Queensland) Act 1994* in that assessment against the prescribed criteria is consistent with the principles of the *National Environment Protection (Assessment of Site Contamination) Measure 1999* (Cth). Those principles help to ensure sound environmental management practices provide adequate protection of human health and the environment where site contamination has occurred as well as promote consistency across Australian jurisdictions for contaminated site assessment.

Note that the term "stormwater drainage", which is used in this section, is defined in section 440ZD of the *Environmental Protection Act 1994*. The term "sensitive land use" is defined in the Dictionary to this regulation.

Clause 40 Amendment of s 116 (Fees payable under Act)

This clause amends section 116 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. Subsections (3) and (4) are also deleted as the annual fee is no longer payable as part of the application fee, but must be paid within 20 business days of the environmental authority taking effect and upon each anniversary day after that.

Clause 41 Insertion of new s 116A

This clause inserts a new section 116A (Recovery of unpaid amounts) into the *Environmental Protection Regulation 2008*. Both sections of the Act and current sections of the Regulation currently provide that, where certain fees are not paid, they may be recovered as a debt. However, since this requirement is specified in different locations for different fees, there was some confusion about which fees could be recovered as a debt. This section applies to all fees under the Regulation and therefore ensures that every unpaid fee can be recovered as a debt.

Clause 42 Amendment of s 117 (Fees and discounts made by resolution or local law)

This clause amends section 117 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* and to fix an issue where the local government could not opt in to the fee discount scheme in the *Environmental Protection Regulation 2008* if they had prescribed a local fee for a devolved matter. The local government may now opt in to the fee discount scheme regardless of how they charge annual fees. Note that the existing subsection (5) has been omitted and replaced in subsection (4) but the intent of the subsection is unchanged.

Clause 43 Replacement of s 118 (Meaning of annual fee)

This clause amends section 118 of the *Environmental Protection Regulation 2008*. The old section 118 was no longer required due to the amendments to section 120 in this Amendment Regulation. However, the term "annual fee" still needed to be defined to include a reduced annual fee. The end result (i.e. the fee paid by the operator) has not been changed.

Clause 44 Replacement of s 119 (Annual fee to accompany particular applications)

This clause replaces section 119 of the *Environmental Protection Regulation 2008*. As a result of the initiatives implemented by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, the annual fee will no longer be payable when the application is made. Rather, the first annual fee must be paid within 20 business days of the environmental authority taking effect. As with the current process, the annual fee is then payable on each anniversary day after that.

Clause 45 Replacement of s 120 (Annual fee for particular development applications, registration certificates and environmental authorities)

This clause amends section 120 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* and to make the calculation of the fee clearer. In addition, these amendments ensure that that the annual fee for an amalgamated corporate authority is still based on the fee being payable for each project site. The method of calculating the fee is essentially still the same, but has been described differently so that the formula (F = S x M) applies to each ERA being carried out on the project site (as defined in the Dictionary to the Regulation) and the fee paid is then the highest ERA fee for the project (i.e. for the project site). The end result (i.e. the fee paid by the operator) has not been changed.

Note that the fee exemption provisions in part 6 of division 3 will still apply. However, section 120(5) has not been replicated in the replacement

section 120 due to changes in drafting practices. The policy intent is unchanged.

Clause 46 Amendment of s 121 (Purpose of div 2)

This clause amends section 121 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 47 Amendment of s 122 (Definitions for div 2)

This clause amends section 122 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* and amends the definition of "prescribed environmental management system" to include the National Feedlot Accreditation Scheme, which is currently referenced in schedule 11 of the regulation.

Clause 48 Amendment of s 123 (What is an approved EMS)

This clause amends section 123 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 49 Amendment of s 124 (Who is an approved partner)

This clause amends section 124 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 50 Amendment of s 125 (What is a lower emissions score)

This clause amends section 125 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* and corrects a drafting error.

Clause 51 Amendment of s 126 (Eligibility for payment of a reduced annual fee)

This clause amends section 126 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

This clause also amends section 126 so that the holder of an approved EMS that is a prescribed approved EMS (i.e. the National Feedlot Accreditation Scheme) is eligible for the fee discount if the holder (rather than a suitably qualified person) certifies that they are operating in accordance with the scheme and the conditions of the environmental authority.

Division 2, Part 3, Chapter 8 of the *Environmental Protection Regulation 2008* provides for reduced annual fees in particular circumstances. Section 126 sets out when a person is eligible for payment of a reduced annual fee. One of these relates to holding an approved EMS.

An approved EMS is defined in section 123 as operating the relevant activity in accordance with a prescribed environmental management system (EMS). A prescribed EMS is either one certified as conforming to ISO 14001:2004 or the National Feedlot Accreditation Scheme.

The process in place for recommending a scheme to be prescribed as an approved EMS includes assessment of the scheme against a set of criteria. These criteria include the audit system under the scheme and the governance arrangements to remove an operator from the scheme in the event of serious non-compliance.

The existing section 126 requires that for a person who is the holder of an approved EMS to be eligible for a fee discount that the person must give the chief executive a statutory declaration (that is completed by an appropriately qualified person) that the activity is being carried out in accordance with the prescribed EMS and the holder is complying with the conditions of the authority.

Given that the process for assessing schemes as being suitable to be a prescribed approved EMS includes consideration of the audit and governance arrangements in the scheme, it is considered unnecessary to also require a statutory declaration from an appropriately qualified person. The cost associated with retaining an appropriately qualified person to provide the declaration is considered to represent an unreasonable additional burden on an operator who has elected to be a part of the approved scheme.

This clause also amends section 126 to make it clear that the reduced fee provisions only apply to the holder of an amalgamated corporate authority if each project site (as defined in the Dictionary to this Regulation) is eligible for the reduced fee.

Clause 52 Amendment of s 127 (What is the reduced annual fee)

This clause amends section 127 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 53 Amendment of s 128 (Application of sdiv 3)

This clause amends section 128 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 54 Amendment of s 130 (Requirement to keep records for reduced annual fee)

This clause amends section 130 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 55 Amendment of s 134 (When supplementary annual fee payable)

This clause amends section 134 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. In addition, when the supplementary annual fee is payable has been changed to align with when annual fees are payable generally - i.e. 20 business days after the amendment application is approved (whether on the same conditions, or on different conditions), rather than being payable with the amendment application. The supplementary annual fee is also only for the period until the next anniversary day. If the annual fee has not changed as a result of the amendment, then this fee will be zero, so there is no requirement to pay a supplementary annual fee.

Clause 56 Omission of ch 8, pt 3, div 4 (Credits and refunds)

This clause omits sections 135 to 137A of the *Environmental Protection Regulation 2008* as these sections are no longer required with the amendments made by this Amendment Regulation and the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

For section 135, the supplementary annual fee is no longer payable with the application, but only after an amendment application and is only payable for the increase in annual fees. Consequently, there is no need to refund extra annual fees paid.

For section 136, the annual fee is no longer payable with the application, but only after the environmental authority takes effect. Consequently, there is no need to refund the fee if the application is refused.

Section 137 is no longer required because an operator no longer applies to replace an environmental authority, but rather makes an amendment application. Consequently, this scenario is now covered by section 134 of the *Environmental Protection Regulation 2008*.

Section 137A is omitted because this section has been moved to section 168 as a transitional provision. This section expires on the same date that this Amendment Regulation commences (i.e. 31 March 2013), so it is more

appropriate for it to sit in the transitional provisions than in the body of the *Environmental Protection Regulation 2008*.

Clause 57 Replacement of s 138 (Fee for anniversary changeover application)

This clause amends section 138 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* and to ensure that that the annual fee for a corporate authority is still based on the fee being payable for each site. The method of calculating the fee has not been changed, but the formula looks different as a result of the changes to section 120 in this Amendment Regulation.

Clause 58 Amendment of s 139 (Fee for late payment of annual fee)

This clause amends section 139 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 59 Insertion of new s 140A

This clause inserts a new section 140A (Fee for termination of suspension of environmental authority) which specifies the fee for termination of suspension. There is no administration fee for this activity, rather the fee simply requires payment of the pro rata annual fees owing to the department because the suspension was terminated early.

Clause 60 Omission of ch 8, pt 5 (Special provision for registration certificate fees)

This clause omits section 141 of the *Environmental Protection Regulation 2008* as it is no longer required with the amendments made by this Amendment Regulation and the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. Registration certificates will no longer be required, so it is not necessary to have special

provisions for payment of application fees. The issues that this section corrected in relation to the payment of annual fees have been resolved by making the first annual fee payable within 20 business days of the environmental authority taking effect, rather that upon application.

Clause 61 Amendment of s 142 (Administering authority exempt from fees for self-administered activities)

This clause amends section 142 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 62 Amendment of s 143 (Prescribed local government exempt from fees)

This clause amends section 143 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 63 Amendment of s 144 (Prescribed charitable institution exempt from fees)

This clause amends section 144 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 64 Omission of s 144A (Exemption from payment of annual fee if relevant mining tenement not granted)

This clause omits section 144A of the *Environmental Protection Regulation 2008* as this provision has been moved to section 169 as a transitional provision. The issue that this section is designed to correct will not occur upon commencement of this Amendment Regulation and the *Environmental Protection (Greentape Reduction) and Other Legislation*

Amendment Act 2012 since annual fees are not payable until after the environmental authority takes effect and the environmental authority will not take effect until after the tenure has been granted. However, this provision is still needed as a transitional provision since environmental authorities granted before commencement will still have taken effect under the existing provisions.

Clause 65 Amendment of s 144B (Holders of particular environmental authorities exempt from annual fee)

This clause amends section 144B of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 66 Amendment of s 144C (Refund of application fee for particular environmental authority if application for relevant mining tenement refused)

This clause amends section 144C of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 67 Insertion of new ch 9, pt 7

This clause inserts new sections 168 and 169. These sections have been relocated into the transitional provisions from the body of the regulation.

Section 168 (Refund of annual fee if environmental authorities amalgamated) is the section which was previously at section 137A of the *Environmental Protection Regulation 2008*. This section expires on the same date that this Amendment Regulation commences (i.e. 31 March 2013), so it is more appropriate for it to sit in the transitional provisions than in the body of the *Environmental Protection Regulation 2008*.

Section 169 (Exemption from payment of annual fee if relevant mining tenement not granted) is the section which was previously at section 144A of the *Environmental Protection Regulation 2008*. The issue that this

section is designed to correct will not occur upon commencement of this Amendment Regulation and the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* since annual fees are not payable until after the environmental authority takes effect and the environmental authority will not take effect until after the tenure has been granted. However, this provision is still needed as a transitional provision since environmental authorities granted before commencement will still have taken effect under the existing provisions. Note that subsection (1)(c) has been reworded due to changes in drafting practices, but the policy intent for when this section applies is unchanged.

This clause also inserts new transitional provisions (sections 170 to 173) for the purposes of this Amendment Regulation.

Section 170 (Eligibility criteria and standard conditions for particular environmentally relevant activities) preserves the list of codes of environmental compliance in schedule 3. Section 707A(2)(a) of the *Environmental Protection Act 1994* (as inserted into the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* by the *Waste Reduction and Recycling and Other Legislation Bill 2012*) ensures that the existing codes of environmental compliance will transition to standard conditions, or standard conditions plus eligibility criteria, until these codes can be reviewed and updated under the new regime. When the codes are replaced by the new document, they will be replaced by both eligibility criteria and standard conditions, which will be prepared, approved and commenced at the same time. Schedule 3 will then be updated to remove any transitioned codes of environmental compliance which have been replaced. This will ensure that operators are aware of whether they are subject to a transitioned code, or the new eligibility criteria and standard conditions.

Section 171 (Non-transitional ERAs-Act, s 676A) ensures that the prescribed ERAs which have been deleted in schedule 2 (e.g. motor vehicle workshop operation) are identified as "non-transitional ERAs". This ensures that the development permits and registration certificates for these activities do not transition to environmental authorities under the transitional arrangements for the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. Since these activities are no longer environmentally relevant activities, they will retain their development permits and continue to be administered by the either the relevant local government (for devolved matters) or the State government (for non-devolved matters) under the *Sustainable Planning Act 2009*.

Under the *Acts Interpretation Act 1954* will apply to these ERAs so that unfinished applications can be decided under the unamended Act and regulation.

Section 172 (Prescribed day-Act, s 676C) prescribes 31 March 2013 as the day for when the deletion of the deleted ERAs takes effect. .

Section 173 (Temporary devolution of power for application relating to prescribed ERA that is poultry farming) specifies that development applications lodged with local governments prior to commencement will continue to be processed by local governments until a decision is made. If the application is approved, this will then be deemed to be an environmental authority (under the Act transitional provisions) and will be administered by the State government (specifically the Department of Agriculture, Fisheries and Forestry).

Clause 68Amendment of sch 2 (Chapter 4 activities and aggregate environmental scores)

This clause amends schedule 2 of the *Environmental Protection Regulation 2008* to correct terminology from "Chapter 4 activities and aggregate environmental scores" to "Prescribed ERAs and aggregate environmental scores" as a consequence of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

In addition, schedule 2 is amended to remove the requirements for an environmental licence for low risk activities such as motor vehicle workshops, cabinet makers and printers. A review of prescribed ERAs found that Queensland has a disproportionately high number of environmental licences, with approximately 13,000 licences, compared to other states: approximately 4,000 in New South Wales, 1,000 in Victoria and 1,200 in Western Australia. These initiatives were consulted on through a regulatory assessment statement (RAS). Over 88 submissions were received from industry, local governments and the community. The majority of submissions supported the deletion of low risk activities. The decision regulatory impact statement and consultation report can be found on the department's Greentape Reduction website at http://www.ehp.qld.gov.au/management/greentape/index.html

As a result, schedule 2 is amended to delete 20 environmentally relevant activities (ERA) thresholds. This would result in over 9,420 small business operators no longer be required to hold an approval, saving an estimated $6.18 million in annual fees. In addition, new entrants would no longer

need to apply for an environmental authority, pay an application fee, pay a fee for a registration certificate or submit annual returns.

Schedule 2 is also amended to identify those prescribed ERAs which will trigger the State's concurrence role for a material change of use under the *Sustainable Planning Act 2009*. As part of the consultation on the regulatory assessment statement, the *Assigning Environmentally Relevant Activities to Assessment Tracks* report was published for consultation. Those prescribed ERAs which were identified as presenting environmental risks that warrant a site-specific, detailed assessment, should also trigger the State's concurrence role for a material change of use under the *Sustainable Planning Act 2009*. These prescribed ERAs have been identified as "concurrence ERAs" under this Amendment Regulation and are identified in schedule 2 by a letter "C" in column 3 of the table for each prescribed ERA.

Subsection (1) of this clause amends the schedule heading to refer to "Prescribed ERAs".

Subsection (2) of this clause amends ERA 1 (Aquaculture) to identify this ERA as a concurrence ERA. Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Subsections (3) to (5) of this clause amends ERA 2 (Intensive animal feedlotting) to delete thresholds (1)(a) and (2)(a) and identify thresholds (1)(c), (1)(d) and (2)(c) as concurrence ERAs. There are also consequential amendments as a result of these changes. Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Subsections (6) and (7) of this clause amend ERA 3 (Pig keeping) to delete threshold (1) and identify thresholds (3) and (4) as concurrence ERAs. There is also a consequential amendment as a result of these changes. Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Subsection (8) of this clause amends ERA 4 (Poultry farming) to identify threshold (2) as a concurrence ERA. Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Subsection (9) of this clause amends ERA 5 (Alcohol production) to identify this ERA as a concurrence ERA.

Subsection (10) of this clause amends ERA 6 (Asphalt manufacturing) to delete threshold (a) and identify the remaining ERA as a concurrence ERA. While the ERA has been omitted and replaced, this is merely due to drafting conventions and the nature of the activity prescribed has not changed, other than to delete threshold (a).

Subsection (11) of this clause amends ERA 7 (Chemical manufacturing) to identify the following thresholds as a concurrence ERA - all of (2), (4), (5) and (6); and parts (b) to (d) of threshold (3). Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Subsection (12) to (15) of this clause amend ERA 8 (Chemical storage) to delete threshold (3)(a) and identify this ERA (after deletion) as a concurrence ERA. There are also consequential amendments as a result of these changes. Carrying out the relevant activity does not include carrying out the activity as a part of ERAs 7, 55, 56, 57 or 58 - so if an operator has an approval for one of those ERAs, they do not need an approval for ERA 8. ERAs 55, 56 and 58 are also concurrence ERAs. ERA 57 is not a concurrence ERA, however ERA 57 is regulated waste transport, so it will never require a land use approval. The aspects of ERA 7 which are not a concurrence ERA are manufacturing water based paint or soap, surfactants or cleaning or toiletry products. Consequently, the chemicals stored for carrying out these activities do not require a land use approval.

Subsection (16) of this clause also amends ERA 8 to insert the word "holding" into the definition of "in-transit storage". This amendment corrects the definition of in-transit storage to be consistent with its original intention, which is to exclude chemicals in unopened containers which are stored at a place for no more than 5 days.

Subsections (17) and (18) of this clause amend ERA 9 (Hydrocarbon gas refining) to change terminology to be consistent with the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* and this Amendment Regulation and to identify this ERA as a concurrence ERA.

Subsection (19) of this clause amends ERA 10 (Gas producing) to identify this ERA as a concurrence ERA. ERA 10 does not include collecting gas from sewage treatment works (ERA 63) or from decomposition of organic waste in landfills associated with carrying out a relevant waste

management activity (ERAs 55, 56, 58 or 60). ERAs 55, 56, and 58 are also concurrence ERAs. Only parts of ERAs 60 and 63 are concurrence ERAs. However, the parts of ERA 60 which are not a concurrence ERA do not authorise disposing of regulated waste and is for smaller amounts, so a land use approval for any associated gas producing is not required. Also, the parts of ERA 63 which are not concurrence ERAs are only for sewage treatment where treated effluent is discharged from the works to an infiltration trench or through an irrigation scheme, so a land use approval for any associated gas producing is not required.

Subsection (20) of this clause amends ERA 11 (Oil refining or processing) to identify this ERA as a concurrence ERA.

Subsection (21) of this clause amends ERA 12 (Plastic product manufacturing) to identify this ERA as a concurrence ERA.

Subsection (22) of this clause amends ERA 13 (Tyre manufacturing or retreading) to identify this ERA as a concurrence ERA.

Subsection (23) of this clause amends ERA 14 (Electricity generation) to identify this ERA as a concurrence ERA. ERA 14 does not include co-generation of electricity in association with carrying out another ERA. Some of these ERAs would not be a concurrence ERA. However, any instances of co-generation which is approved under a non-concurrence ERA would be small enough to not require a land use approval.

Subsection (24) of this clause amends ERA 15 (Fuel burning) to identify this ERA as a concurrence ERA. ERA 15 does not include burning fuel for carrying out another ERA. Some of these ERAs would not be a concurrence ERA. However, the instances of fuel burning which is approved under a non-concurrence ERA would be small enough to not require a land use approval.

Subsections (25) to (34) of this clause amend ERA 16 (Extractive and screening activities) to delete thresholds (2)(a) and (2A) and identify thresholds (1)(a) to (d), and (2)(c) and (d) as concurrence ERAs. There are also consequential amendments as a result of these changes. Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Subsection (35) of this clause deletes ERA 17 (Abrasive blasting).

Subsection (36) of this clause deletes ERA 18 (Boilermaking or engineering).

Subsections (37) to (39) of this clause amend ERA 19 (Metal forming) to limit regulation of metal forming to those using hot processes only, and to identify the remaining aspects of this ERA as a concurrence ERA.

Subsection (40) of this clause amends ERA 20 (Metal recovery) to identify this ERA as a concurrence ERA.

Subsection (41) of this clause deletes ERA 21 (Motor vehicle workshop operation).

ERAs 22 (Beverage production) and 23 (Bottling and canning) are not changed. ERA 22 will not be a concurrence ERA, however, where it is included as part of ERA 5 (Alcohol production), it would require a land use approval. ERA 23 is also not a concurrence ERA, however, where it is included as part of another ERA, it may require a land use approval.

Subsection (42) of this clause amends ERA 24 (Edible oil manufacturing or processing) to identify this ERA as a concurrence ERA.

Subsection (43) of this clause amends ERA 25 (Meat processing) to identify thresholds (1)(b), (1)(c), (2)(b), (2)(c), (3)(a) and (3)(b) as concurrence ERAs. Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

ERAs 26 (Milk processing) and 27 (Seafood processing) are not changed and are not concurrence ERAs.

Subsection (44) of this clause amends ERA 28 (Sugar milling or refining) to identify this ERA as a concurrence ERA.

Subsection (45) of this clause amends ERA 29 (Metal foundry operation) to identify all thresholds, except thresholds (2) and (3)(a), as a concurrence ERA. Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Subsection (46) of this clause amends ERA 30 (Metal smelting and refining) to identify this ERA as a concurrence ERA. Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Subsection (47) of this clause amends ERA 31 (Mineral processing) to identify this ERA as a concurrence ERA.

Subsection (48) of this clause amends ERA 32 (Battery manufacturing) to identify this ERA as a concurrence ERA.

Subsection (49) of this clause amends ERA 33 (Crushing, milling, grinding or screening) to identify this ERA as a concurrence ERA. ERA 33 does not include ERAs 16, 55 or 61. ERAs 55 and 61 are also concurrence ERAs. The relevant part of ERA 16 is screening and while it is not a concurrence ERA, there is no overlap between ERA 16 and ERA 33 and therefore no conflict arises.

Subsection (50) of this clause deletes ERA 34 (Mushroom growing substrate manufacture).

Subsection (51) of this clause amends ERA 35 (Plaster manufacturing) to identify this ERA as a concurrence ERA.

Subsection (52) of this clause amends ERA 36 (Pulp or paper manufacturing) to identify this ERA as a concurrence ERA.

Subsection (53) of this clause deletes ERA 37 (Printing).

Subsections (54) to (56) of this clause amend ERA 38 (Surface coating) to delete threshold (2)(a) and identify threshold (1) as a concurrence ERA. There are also consequential amendments as a result of these changes. Currently, the definition of ERA 38 excludes activities that are captured under other ERAs. As ERAs 17, 21 and 54 are being deleted, consequential amendments to section 38(2)(c) needs to occur to remove these. These activities no longer need to be excluded from ERA 38 since, if doing the deleted ERA results in using more than 100t a year of materials to coat surfaces, it still needs to be regulated. ERA 49 (Boat maintenance and repair) is being redefined to only include operations adjacent to waters. However, those operations not adjacent to waters using more than 100 tonnes of surface coating materials in a year must be kept under this ERA. ERAs 48 and 49 are also concurrence ERAs. Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Subsection (57) of this clause amends ERA 39 (Tanning) to identify this ERA as a concurrence ERA.

Subsection (58) of this clause amends ERA 40 (Textile manufacturing) to identify this ERA as a concurrence ERA.

Subsection (59) of this clause amends ERA 41 (Cement manufacturing) to identify this ERA as a concurrence ERA.

Subsection (60) of this clause amends ERA 42 (Clay or ceramic products manufacturing) to identify this ERA as a concurrence ERA.

Subsection (61) of this clause deletes ERA 43 (Concrete batching).

Subsection (62) of this clause amends ERA 44 (Glass or glass fibre manufacturing) to identify this ERA as a concurrence ERA.

Subsection (63) of this clause amends ERA 45 (Mineral wool or ceramic fibre manufacturing) to identify this ERA as a concurrence ERA.

Subsection (64) of this clause amends ERA 46 (Chemically treating timber) to identify this ERA as a concurrence ERA.

Subsection (65) of this clause amends ERA 47 (Timber milling and woodchipping) to identify this ERA as a concurrence ERA. ERA 47 does not include ERA 48, but ERA 48 is also a concurrence ERA, so a land use approval would be required in any event. Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Subsections (66) to (70) of this clause amend ERA 48 (Wooden and laminated product manufacturing) to delete threshold (1) and identify the remaining ERA as a concurrence ERA. There are also consequential amendments as a result of these changes, including changing the section heading to "Timber and laminated product fabrication" to reflect the nature of the remaining ERA after deletion of threshold (1). The entire subsection (2) is deleted. Subsection (2)(a) is deleted because carrying out ERA 48 (after the deletions) does not involve ERA 46 (Chemically treating timber). Subsection (2)(b) is deleted because the end product of carrying out ERA 48 (after the deletions) is not timber or logs. Subsection (2)(c) is deleted because manufacturing has been deleted from subsection (1) and the thresholds.

Subsections (71) and (72) of this clause amend ERA 49 (Boat repair and maintenance) to restrict the ERA to only where the activity is being carried out at a place which is within 50 metres of naturally occurring surface waters (as defined in ERA 16), and to identify the remaining ERA as a concurrence ERA. The aspects of this ERA which are retained relate to operations occurring near waterways as there is greater potential for contamination of waters in these locations. In addition, subsection (3)(a) is deleted because ERA 21 is being deleted by this Amendment Regulation and the activity does not need to be excluded as operating a motor vehicle workshop will simply form part of this ERA where it is carried out in conjunction with boat repairs and maintenance.

Subsections (73) and (74) of this clause amend ERA 50 (Bulk material handling) to correct terminology as a result of the changes in the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* and to identify this ERA as a concurrence ERA.

Subsections (75) to (77) of this clause amend ERA 51 (Road tunnel ventilation stack operation) to exclude the Clem 7 tunnel and the Airport Link tunnel from the ERA, and to identify the remaining ERA as a concurrence ERA. The excluded tunnels are for projects which already existed prior to this becoming an ERA, and had been conditioned under the *State Development and Public Works Organisation Act 1971* in anticipation of the new ERA 51. Consequently, the *Environmental Protection and Other Legislation Amendment Act (No. 2) 2008* inserted a transitional provision (section 6.9.1) into the I*ntegrated Planning Act 1997* which excluded these projects from the definition of material change of use, and exempted them from having to obtain a development approval. When the *Integrated Planning Act 1997* was superseded by the *Sustainable Planning Act 2009*, this transitional provision was retained in section 868. This section has since been updated due to a concern about the lack of clarity in describing these projects. With the changes in the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, prescribed ERAs (like ERA 51) will now need to obtain an environmental authority instead of a development approval. However, the intention is the same - i.e. that these projects will not require a further approval as they have already been approved and conditioned by the Coordinator-General. It is more clear and transparent to keep this exemption with the ERA description, which is consistent with the descriptions of other ERAs where certain types of activities are not included.

Subsection (78) of this clause amends ERA 52 (Battery recycling) to identify this ERA as a concurrence ERA.

Subsection (79) of this clause amends ERA 53 (Composting and soil conditioner manufacturing) to identify this ERA as a concurrence ERA.

Subsection (80) of this clause deletes ERA 54 (Drum and container reconditioning).

Subsections (81) to (84) of this clause amend ERA 55 (Regulated waste recycling or reprocessing) to identify this ERA as a concurrence ERA, and make consequential amendments as a result of the deletion of ERA 34. ERA 34 is being deleted by this Amendment Regulation, so all references

to it need to be deleted. However, ERA 55 should still not include manufacturing mushroom growing substrate, so it has been specifically excluded. ERA 55 continues to not include carrying out ERAs 25, 53 or 52. ERAs 52 and 53 are also concurrence ERAs, so a land use approval would be required in any event. Only part of ERA 25 is a concurrence ERA. However, the part of ERA 25 which is not a concurrence ERA either excludes rendering, or is of such a small quantity that the regulated waste aspect would not require a land use approval.

Subsections (85) to (88) of this clause amend ERA 56 (Regulated waste storage) to delete threshold (1) and to identify the remaining aspects of this ERA as a concurrence ERA. There are also consequential amendments as a result of these changes. ERA 56 does not include carrying out ERAs 20, 25, 27, 53, 59, 60, 61, 62, 55, or 58. ERAs 20, 53, 61, 62, 55 and 58 are also concurrence ERAs, so a land use approval would be required in any event. The ERA 59 exemption is deleted since it only related to the tyre storage aspect, which has been deleted. Only part of ERA 60 is a concurrence ERA, but if there is regulated waste, it is also a concurrence ERA, so a land use approval would be required in any event. Only part of ERA 25 is a concurrence ERA. However, the part of ERA 25 which is not a concurrence ERA either excludes rendering, or is of such a small quantity that the regulated waste aspect would not require a land use approval. ERA 27 is not a concurrence ERA but carrying out the activity generally doesn't include rendering, so a land use approval is not required.

ERA 57 (Regulated waste transport) is not changed as this ERA is not a concurrence ERA.

Subsections (89) and (90) of this clause amend ERA 58 (Regulated waste treatment) to identify this ERA as a concurrence ERA and to make consequential changes as a result of the deletion of ERA 54. ERA 54 is being deleted by this Amendment Regulation, so no longer needs to be referred to in this ERA. ERA 54 never applied if it contained regulated waste, so there is no impact from the deletion and it does not need to continue to be excluded. ERA 58 does not include carrying out ERAs 25, 27, 53, 59, 61, 52, 54 or 55. ERAs 53, 61, 52 and 55 are also concurrence ERAs, so a land use approval would be required in any event. Only part of ERA 25 is a concurrence ERA. However, the part of ERA 25 which is not a concurrence ERA either excludes rendering, or is of such a small quantity that the regulated waste aspect would not require a land use approval. ERA 27 is not a concurrence ERA but carrying out the activity generally doesn't include rendering, so a land use approval is not required. ERA 59 is not a

concurrence ERA, but the amount of regulated waste treatment involved as part of tyre recycling would not require a land use approval.

ERA 59 (Tyre recycling) is not changed as this ERA is not a concurrence ERA.

Subsection (91) of this clause amends ERA 60 (Waste disposal) to identify thresholds (1) and (2)(d) to (f) as concurrence ERAs. Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Subsections (92) and (93) of this clause amend ERA 61 (Waste incineration and thermal treatment) to identify this ERA as a concurrence ERA, and to replace the reference to another ERA in this schedule with reference to another concurrence ERA. Currently, thermal treatment of waste carried out as part of another activity mentioned in schedule 2 is excluded from ERA 61. However, there are always siting issues with thermal treatment of waste, so this exclusion should only apply where the other ERA also requires a land use approval (i.e. another concurrence ERA).

Subsection (94) of this clause amends ERA 62 (Waste transfer station operation) to identify this ERA as a concurrence ERA. ERA 62 does not include an ERA 60 site. Only part of ERA 60 is a concurrence ERA, however, the parts which are not a concurrence ERA are small and do not include regulated waste, so a land use approval is not required.

Subsections (95) and (96) of this clause amend ERA 63 (Sewage treatment) to delete threshold (1) and identify thresholds (2)(a)(ii), (2)(b)(ii) and (2)(c) to (g) as concurrence ERAs. A consequential amendment is also made to subsection (2) to ensure that no-release works will be excluded from ERA 63. Minor amendments have also been made to the table to reflect changes in drafting standards, however, these changes do not change the intent of the section.

Subsection (97) of this clause amends ERA 64 (Water treatment) to identify thresholds (2), (3) and (4) as concurrence ERAs.

Clause 69 Insertion of new sch 2A

This clause combines the old schedules 5 and 6 of the *Environmental Protection Regulation 2008* into one schedule 2A (Aggregate environmental scores for particular resource activities). Previously, schedule 5 specified the aggregate environmental scores for chapter 5A activities (i.e. petroleum, greenhouse gas and geothermal activities) and

schedule 6 specified the aggregate environmental scores for mining activities. This was necessary because of the way the *Environmental Protection Act 1994* was structured with different chapters for the assessment processes for these different types of activities. This is no longer necessary with the commencement of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* since there will be one chapter containing the assessment process for all types of environmentally relevant activities. The aggregate environmental scores for the activities have not been changed.

Clause 70 Replacement of sch 3 (Codes of environmental compliance)

This clause amends schedule 3 of the *Environmental Protection Regulation 2008* to reflect the transitional provision in section 707A of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* as amended by the *Waste Reduction and Recycling and Other Legislation Amendment Bill 2012*. Codes of environmental compliance will no longer be made after commencement of the legislation, but the existing list of codes needs to be maintained in order to identify which codes are relevant for the purposes of this transitional provision. The code of environmental compliance for certain aspects of mobile and temporary abrasive blasting has not been carried through since this activity has been deleted from schedule 2 and is no longer an environmentally relevant activity.

Clause 71 Insertion of new sch 3A

This clause inserts a new schedule 3A (Prescribed eligibility criteria for mining activities) into the *Environmental Protection Regulation 2008*. This schedule contains the criteria which were at sections 30 to 32 of the Regulation. These criteria have not been changed, except to update terminology to be consistent with the terminology of the *Environmental Protection Act 1994* after commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 72 Replacement of schs 5 and 6

This clause deletes the old schedules 5 and 6 of the *Environmental Protection Regulation 2008* as they have been combined into one schedule 2A.

This clause also inserts new schedule 5 (Environmental objective assessment) which specifies how an environmental objective assessment is carried out, and the environmental objectives and performance outcomes for both the operational assessment (table 1) and the land use assessment (table 2).

The pre-amendment regulatory requirements in sections 55, 56, 57, 59, 60, 61, 62, 64, 64A, 64B, 64C of the *Environmental Protection Regulation 2008* have been recast in schedule 5 as environmental objectives which aim to protect specific values of the environment (e.g. air, water, noise etc). This supports the legislative requirement for the decision maker to make decisions that achieve the object of the *Environmental Protection Act 1994* (section 5). Each environmental objective in the schedule has an associated performance outcome that provides information on how the environmental objective can be achieved.

In addition to recasting the pre-amendment regulatory requirement considerations into environmental objectives and performance outcomes, there has also been a separation of the pre-amendment regulatory requirement considerations which were specified in sections 55, 56, 57, 59, 60, 61, 62, 64, 64A, 64B, and 64C. This is required due to the separation of the environmental authority under the *Environmental Protection Act 1994* (the operational assessment), and the development approval under the *Sustainable Planning Act 2009* (the land use assessment) for prescribed ERAs. The separation of assessment considerations will allow assessment of environmental aspects relevant to each authority type to be made under the relevant process.

Schedule 5 is divided into 3 parts. Part 1 defines terms which are used in the schedule. Part 2 provides information on how to use the assessment tables specified in Part 3. Part 3 is divided into 2 assessment tables.

Table 1 – Operational assessment

The environmental objectives and performance outcomes specified in table 1 apply to all environmental management decision assessments under the regulatory requirements

Table 2 – Land use assessment

The environmental objectives and performance outcomes specified in table 2 apply to environmental management decision assessments, other than those about a prescribed ERA.

Where a decision is being made by the assessment manager or concurrence agency about a prescribed ERA, these are the state interest considerations for assessing the development application for a material change of use under the *Sustainable Planning Act 2009*.

Note that, where a decision is being made about a resource activity or a transitional environmental program, there is no separation between the land use approval and the ongoing operational approval, so both table 1 and table 2 will apply.

Clause 73 Amendment of sch 8 (Prescribed organisations)

This clause amends schedule 8 of the *Environmental Protection Regulation 2008* to correct the section references to which this schedule relates.

Clause 74 Amendment of sch 10 (Fees)

This clause amends schedule 10 of the *Environmental Protection Regulation 2008* to correct terminology as a consequence of the changes in this Amendment Regulation and the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Schedule 10 specifies the fees for various applications or actions under the *Environmental Protection Act 1994*.

Part 2 contained the fees for development approvals and registration certificates. Some of these fees with respect to development approvals have been retained (e.g. section 5 re wetlands applications), but the registration certificate fees will be covered in combined parts 3 and 4 of the schedule (i.e. as environmental authority fees). Consequently, this part will now contain only fees relating to development approvals.

The existing section 4 refers to an application for assessment of a development application. This will now be covered by the fee for the environmental authority, and can be combined with the fees in the existing sections 10 and 15. However, where a development application is taken to be an environmental authority application under section 115 of the *Environmental Protection (Greentape Reduction) and Other Legislation*

Amendment Act 2012, then section 261 of the *Sustainable Planning Act 2009* (as inserted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*) requires that the development application complies with section 125 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* (including payment of the fee).

The existing section 9 refers to the annual fee for a development approval or registration certificate. After commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, the annual fee attaches to the environmental authority, and this fee is specified in section 120 of the Regulation.

The existing section 14 refers to the annual fee for a level 2 chapter 5A activity. After commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, there will only be one type of approval: the environmental authority. In addition, fees will not be calculated on the basis of level 1 and level 2 separations, but rather on whether the activity has, or does not have, an AES (i.e. like the existing section 9), so this section has been deleted and incorporated into section 120 of the Regulation.

The existing section 19 refers to the annual fee for a level 2 mining project, other than an environmental authority (prospecting) or an environmental authority (mining claim). Like section 14, different types of environmental authority will no longer apply, and fees will not be calculated on the basis of level 1 and level 2 separations, but rather whether the activity has, or does not have, an AES (i.e. like the existing section 9). Mining activities relating to prospecting permits will no longer require an environmental authority so do not pay an annual fee anyway; however some mining activities relating to mining claims will still require an environmental authority. Therefore the fee exemption for mining claims has been maintained in section 120 of the Regulation.

The *Review of Environmentally Relevant Activities—Draft Regulatory Assessment Statement* identified that new fees were the preferred option for new types of applications and the aim of the fee and rationale for selecting the fee unit was:

Changing an application

This fee applies to all environmental authorities. The changes to the original application can be minor or major as defined in the Greentape Reduction Act. If a change is major, the fee should be equal to current

fee for an amendment application which is currently $276.00. It is not proposed to introduce a fee for a minor change as defined in the Act.

Changing an amendment application

The current amendment application fee is $276.00. Given that a change to an amendment application may require the same level of assessment as the amendment application, the fees should be equivalent.

Amalgamation application

The Greentape Reduction Act introduces the concept of corporate licences and project amalgamations. This will allow companies that hold one or more ERA approvals on different sites to obtain a single corporate licence. It has the advantage of allowing businesses to make a single annual return in relation to multiple sites, have common conditions across all sites and potentially reduce the overall number of licences they need to hold. As this is similar in nature to an amendment application for an environmental authority and would require a similar level of assessment, the fee should be equivalent at $276.00.

Transfer application

A transfer application will only be required for prescribed ERAs. This is similar to the current provision for the application for registration of one or more continuing prescribed ERAs which attracts a fee of $110.40. Given the equivalence, the fee should be set at $110.40.

Conversion application

Holders of existing environmental authorities can apply to have their authority converted to a standard approval. This is likely to apply to low risk activities of eligible ERAs. In this case, the fee should be set at the same rate as an amendment application with a fee of $276.00.

Auditor application

Individuals may apply to the chief executive officer to become an auditor. The appropriate application and process will need to be followed along with a prescribed fee. As there are currently no similar requirements, a new fee will need to be set based on cost recovery. The current administrative system requires third party reviewers (similar to auditors) to submit an application, undertake a case study and be interviewed by a three person panel. It is estimated that this

would take a minimum of 20 hours. At an average wage cost of $50 per hour, a cost recovery approach would suggest the fee should be set at $1102. This would keep the fee in line with other fee units.

For changing an application, section 132 of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* provides the process for changing an application, including the requirement for the applicant to pay the fee prescribed under a regulation (section 132(1)(b)). Section 133 specifies the process for minor changes and agreed changes. Section 134 specifies the process for "other changes" (i.e. major changes). The *Review of Environmentally Relevant Activities—Draft Regulatory Assessment Statement* was silent about a fee for agreed changes, so no fee will be introduced with this Amendment Regulation.

Note that the transfer fee only applies to prescribed ERAs because, after commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*, environmental authorities for resource activities will attach to the tenure, so they will not be required to be transferred.

Clause 75 Omission of s 11 (Prescribed environmenta management systems)

This clause omits schedule 11 of the *Environmental Protection Regulation 2008* because the approved environmental management system prescribed by this schedule is now contained in the definition of "prescribed environmental management system" in section 122 of the Regulation.

Clause 76 Amendment of sch 12 (Dictionary)

This clause amends the Dictionary to the *Environmental Protection Regulation 2008* to delete definitions which are no longer required and to insert a new definition of 'project site' which is necessary for the calculation of fees . Note that section 32C of the *Acts Interpretation Act 1954* applies to the definition of "project site" and that a project site may be over multiple locations due to the definition of "single integrated operation" in section 113 of the *Environmental Protection Act 1994*.

Other definitions are amended to correct cross-references or terminology as a consequence of the amendments made by this Amendment Regulation and the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

This clause also amends the Dictionary to the *Environmental Protection Regulation 2008* to insert definitions of:

- category A environmentally sensitive area
- category B environmentally sensitive area
- significantly disturbed land
- alluvial mining
- clay pit mining
- hard rock mining
- opal mining
- shallow pit mining

These definitions have been moved to the Dictionary from sections 24A to 29 of the Regulation. These definitions have not been changed, except to update terminology to be consistent with the terminology of the *Environmental Protection Act 1994* after commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Part 3 Amendment of State Penalties Enforcement Regulation 2000

Clause 77 Regulation amended

This clause states that this part amends the *State Penalties Enforcement Regulation 2000*.

Clause 78 Amendment of sch 2 (Environmental legislation)

This clause amends schedule 2 of the *State Penalties Enforcement Regulation 2000* which contains the penalties for the penalty infringement notices for offences under the *Environmental Protection Act 1994*. This amendment corrects cross-references to refer to the correct section numbers after commencement of the amendments made by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Part 4 Amendment of Sustainable Planning Regulation 2009

Clause 79 Regulation amended

This clause states that this part amends the *Sustainable Regulation 2009*.

Clause 80 Amendment of sch 3 (Assessable development, self-assessable development and type of assessment)

This clause amends schedule 3 of the *Sustainable Planning Regulation 2009* to identify the types of ERAs that are assessable and the type of assessment required.

To meet the policy requirements of the Greentape Reduction project, the current definition in schedule 3, part 1, table 2, item 1, column 2 is amended so that only an ERA which is prescribed by the *Environmental Protection Regulation 2008* as being a concurrence ERA will trigger the assessable development requirements of the *Sustainable Planning Act 2009*. In addition, the activity must not fall within the following additional exemptions to require assessment:

1. there is an existing ERA on site

2. the proposed ERA is associated with the existing ERA, and

3. the proposed ERA has a lower AES than the existing ERA.

Since the ERA trigger will only apply to ERAs which are prescribed by the *Environmental Protection Regulation 2008* as being concurrence ERAs, the previous exemptions to exclude mining, petroleum and agricultural ERAs are not needed as they are excluded by the definition of concurrence ERA.

In addition, the type of assessment in column 3 is amended because the assessment manager will no longer be the "administering authority" as defined in the *Environmental Protection Act 1994*. The assessment manager will still be either the local government (for a devolved matter) or the chief executive of the *Environmental Protection Act 1994* (for a non-devolved matter), but this is now spelt out in column 3.

This clause also amends schedule 3 to omit the references to mobile and temporary activities (schedule 3, part 1, table 5, item 4). Mobile and temporary activities will no longer require a land use approval under the

Sustainable Planning Act 2009 because, by their nature, they do not attach to a single parcel of land. These activities will still be required to obtain an environmental authority under the *Environmental Protection Act 1994*.

This clause also amends schedule 3 to omit references to activities which complied with a code of environmental compliance (schedule 3, part 1, table 5, item 5; schedule 3, part 2, table 5, item 1). The *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* removes references to codes of environmental compliance, and activities which will be assessed under the new standard application process will not require a land use approval because any potential planning issues will be resolved through the eligibility criteria. These activities will still require an environmental authority under the *Environmental Protection Act 1994*.

Clause 81 Amendment of sch 4 (Development that can not be declared to be development of a particular type-Act, section 232(2))

This clause amends schedule 4, table 5, item 2 of the *Sustainable Planning Regulation 2009* to correct terminology as a result of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*. Item 2 specifies that all aspects of development for a mining activity under the *Environmental Protection Act 1994* cannot be made assessable development under the *Sustainable Planning Act 2009*. This is because these activities are assessed and conditioned under the *Environmental Protection Act 1994*. The *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Bill 2012* removes the different types of environmental authority such as an environmental authority (mining activities), so the correct terminology is now just 'environmental authority'.

Clause 82 Amendment of sch 5 (Applicable codes, laws and policies for particular development)

This clause amends schedule 5 of the *Sustainable Planning Regulation 2009* to identify the codes, laws and policies that may apply for assessing aspects of the development.

To meet the aims of the Greentape Reduction project, the provisions of chapter 3, part 1, division 3A of the *Environmental Protection Regulation 2008* will become the 'codes, laws, and policies that may apply for assessment', instead of 'the relevant provisions of the Environmental Protection Act'. Division 3A of the *Environmental Protection Regulation 2008* requires an environmental objective assessment against the land use objectives in schedule 5, and consideration of the standard criteria (as defined in the *Environmental Protection Act 1994*).

In addition to specifying schedule 5 as the 'codes, laws, and policies that may apply for assessment', this clause also deletes the reference to section 73AA of the *Environmental Protection Act 1994* in schedule 5 of the *Sustainable Planning Regulation 2009* as this section has been deleted by the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.

Clause 83 Amendment of sch 6 (Assessment manager for development applications)

This clause amends schedule 6 of the *Sustainable Planning Regulation 2009* to describe who the assessment manager is for assessment of concurrence ERAs. The assessment manager will no longer be the "administering authority" as defined in the *Environmental Protection Act 1994*. The assessment manager will still be either the local government (for a devolved matter) or the chief executive of the *Environmental Protection Act 1994* (for a non-devolved matter), but this is now spelt out in column 3.

Clause 84 Amendment of sch 7 (Referral agencies and their jurisdictions)

This clause amends schedule 7 of the *Sustainable Planning Regulation 2009* to also amend the referral jurisdiction as a consequence of the amendment in clause 82 above. Since making a material change of use for an environmentally relevant activity is code assessable, the jurisdiction of the referral agency in this schedule needs to be consistent with the code being applied in schedule 5 of the *Sustainable Planning Regulation 2009*. However, the jurisdiction is generally the purposes of the *Environmental Protection Act 1994* but constrained to only those environmental objectives in schedule 5, part 3, table 2 of the *Environmental Protection Regulation 2008* (the land use objectives).

ENDNOTES

1 Laid before the Legislative Assembly on . . .

2 The administering agency is the Department of Environment and Heritage Protection.