



Queensland

# Strategic Cropping Land Act 2011

Act No. 47 of 2011





Queensland

# Strategic Cropping Land Act 2011

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Queensland

## **Strategic Cropping Land Act 2011**

**Act No. 47 of 2011**

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**An Act about land that is highly suitable for cropping, and to amend the Environmental Protection Act 1994 and the Sustainable Planning Regulation 2009 for particular purposes**

**[Assented to 6 December 2011]**

[s 1]

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**The Parliament of Queensland enacts—**

## **Chapter 1      Preliminary**

### **Part 1            Introduction**

#### **1            Short title**

This Act may be cited as the *Strategic Cropping Land Act 2011*.

#### **2            Commencement**

This Act commences on the day (the *commencement*) that is the later of the following days—

- (a) the date of assent;
- (b) 30 January 2012.

### **Part 2            Purposes and application of Act**

#### **3            Purposes of Act**

The purposes of this Act are to—

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

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#### **4 How the purposes are achieved**

- (1) To achieve its purposes, this Act—
  - (a) identifies areas in which land that is likely to be highly suitable for cropping may exist (called ‘potential SCL’); and
  - (b) has provisions for deciding whether or not land is highly suitable for cropping (called ‘strategic cropping land’ or ‘SCL’); and
  - (c) establishes—
    - (i) protection areas and the management area for SCL and potential SCL; and
    - (ii) principles to protect land that is SCL or potential SCL and to manage the impacts of development on it.
- (2) Management of the impacts on land that is SCL or potential SCL is achieved by—
  - (a) an assessment under this Act for development under particular other Acts; and
  - (b) imposing conditions on the development.
- (3) To the extent the land is in a protection area and the impacts are permanent, this Act—
  - (a) prevents the development, unless it is in exceptional circumstances; or
  - (b) if the development is in exceptional circumstances, requires mitigation for the land.
- (4) To the extent the land is in the management area and the impacts are permanent, this Act requires mitigation for the land.

[s 5]

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## **5 Act binds all persons**

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, the Commonwealth or a State can not be prosecuted for an offence against this Act.

## **6 Exclusions from this Act**

- (1) This Act does not apply to any of the following matters or activities relating to them—
  - (a) the construction or maintenance of a road;
  - (b) development relating to transport infrastructure or ancillary works or encroachments under the *Transport Infrastructure Act 1994 (TIA)*;
  - (c) the construction or maintenance of a transmission grid or supply network under the *Electricity Act 1994*;
  - (d) strategic port land under the TIA;
  - (e) the following entity's functions under the State Development Act, other than under part 4 of that Act—
    - (i) the Governor in Council;
    - (ii) the Minister administering that Act;
    - (iii) the Coordinator-General;
  - (f) the undertaking, under the State Development Act, of works or development—
    - (i) by or for a local body that have been authorised or directed under that Act or an agreement approved under that Act; or
    - (ii) in a State development area under an approved development scheme;

- (g) a use of land in a State development area under an approved development scheme or an approval by the Coordinator-General that has not lapsed;
  - (h) development outside of a zone.
- (2) In this section—
- approved development scheme* means an approved development scheme subsisting under the State Development Act.

## **7 Relationship with resource Acts and Environmental Protection Act**

Subject to section 6, this Act applies despite any resource Act or the Environmental Protection Act.

# **Part 3 Interpretation**

## **Division 1 Dictionary**

### **8 Dictionary**

The dictionary in schedule 2 defines particular words used in this Act.

## **Division 2                    Key definitions**

### **Subdivision 1            Definitions about cropping land**

#### **9            *Strategic cropping land, SCL and decided non-SCL***

- (1) *Strategic cropping land* is land recorded in the decision register as being SCL.
- (2) *SCL* is strategic cropping land.
- (3) *Decided non-SCL* is land recorded in the decision register as not being SCL.

#### **10           *Potential SCL***

- (1) *Potential SCL* is land in an area shown on the trigger map as being potential SCL.
- (2) However, that land ceases to be potential SCL if, because of a validation decision it becomes SCL or decided non-SCL.

#### **11           *SCL principles***

- (1) The *SCL principles* are the following principles—
  - protection
  - avoidance
  - minimisation
  - mitigation
  - productivity.
- (2) The protection principle is to protect SCL and that, except in exceptional circumstances, doing so takes precedence over all development interests.
- (3) The avoidance principle is that if it is reasonably practicable to do so, development must avoid SCL.

- (4) The minimisation principles are that development must—
  - (a) wherever possible, minimise its impacts on SCL; and
  - (b) if the impacts of development on SCL are temporary, fully restore the SCL to its pre-development condition.
- (5) The mitigation principles are that—
  - (a) for identified permanently impacted land—
    - (i) the mitigation requirement can only be relied on if the impacts of the development can not otherwise be reasonably avoided or minimised; and
    - (ii) if the mitigation requirement can be relied on, mitigation measures must have a value at least equal to the loss of the land's productive capacity as cropping land; and
  - (b) mitigation measures must have a positive and enduring effect on the future productivity of cropping in the State.
- (6) The productivity principle is that SCL must be conserved for the future productivity of cropping in the State.
- (7) The *mitigation requirement* is the requirement under section 144 to have mitigation in place before carrying out, or allowing the carrying out of, development on identified permanently impacted land.

## 12 ***Identified permanently impacted land***

***Identified permanently impacted land*** is land decided under section 99(1)(a)(ii) or the Planning Act as being land on which development will have a permanent impact on SCL or potential SCL.

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## **Subdivision 2      Definitions about development**

### **13      *Development***

- (1) ***Development*** is an activity for which a development approval or resource authority is required to lawfully carry out the activity.
- (2) In this Act, a reference to development includes a reference to the carrying out of the activity.

### **14      *When development has a permanent impact or temporary impact***

- (1) Carrying out development on SCL or potential SCL has a ***permanent impact*** on the land if—
  - (a) the carrying out impedes the land from being cropped for at least 50 years; or  
*Example—*

drilling or wells under a resource Act carried out on the land at a level or density which, or the cumulative effects of which, impede it from being cropped for at least 50 years
  - (b) because of the carrying out, the land can not be restored to its pre-development condition; or
  - (c) the activity is or involves—
    - (i) open-cut mining; or
    - (ii) storing hazardous mine wastes, including, for example, tailings dams, overburden or waste rock dumps.
- (2) For subsection (1)(a), it does not matter whether the impediment is legal or physical.

*Example of a legal impediment—*

a restrictive covenant impeding cropping

- (3) A regulation may prescribe—



- (a) for subsection (1)(a)—
    - (i) development that, if carried out on SCL or potential SCL, is taken to impede, or not impede, the land from being cropped for at least 50 years; or
    - (ii) a level or density for a temporary activity which, if carried out at a higher level or density, is taken to impede, or not impede, the land from being cropped for at least 50 years; or
  - (b) for subsection (1)(b)—development the carrying out of which is taken to cause, or not cause, the land to be unable to be restored to its pre-development condition.
- (4) Carrying out development on SCL or potential SCL has a ***temporary impact*** on the land if—
- (a) the carrying out does not have a permanent impact on the land under subsections (1) to (3); or
  - (b) it is development of a type prescribed under a regulation.

## 15 When development is in ***exceptional circumstances***

Development is in ***exceptional circumstances*** if it is—

- (a) development of a type prescribed under section 120(1); or
- (b) decided to be so under section 133(2).

## Subdivision 3 Definitions about Acts and authorities under them

### 16 ***Planning Act, IDAS and development approval***

- (1) The ***Planning Act*** is the *Sustainable Planning Act 2009*.

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- (2) **IDAS** is the system detailed in the Planning Act, chapter 6 for integrating State and local government assessment and approval processes for development.
- (3) A **development approval** is a development approval as defined under the Planning Act, schedule 3.

## 17 **Resource Act and resource activity**

- (1) A **resource Act** is any of the following—
  - (a) the *Geothermal Energy Act 2010* and the *Geothermal Exploration Act 2004* (both a **Geothermal Act**);
  - (b) the *Greenhouse Gas Storage Act 2009* (the **GHG Storage Act**);
  - (c) the *Mineral Resources Act 1989* (the **Mineral Resources Act**);
  - (d) the *Petroleum Act 1923* (the **1923 Act**);
  - (e) the *Petroleum and Gas (Production and Safety) Act 2004* (the **P&G Act**).
- (2) A **resource activity** means, for a provision about—
  - (a) a resource authority—an activity relating to the authority that its holder is entitled to carry out under the authority or the relevant resource Act; or
  - (b) a proposed resource authority—an activity relating to the proposed authority that, if it is granted, its holder will be entitled to carry out under the authority or the relevant resource Act.
- (3) In this Act, a reference to a resource activity includes a reference to the carrying out of the activity.
- (4) In this section—

**relevant resource Act** means the resource Act under which the authority is granted, or the proposed authority will, if granted, be granted.

**18      *Resource authority***

A *resource authority* is any of the following—

- (a) a permit or geothermal tenure under a Geothermal Act;
- (b) a GHG authority under the GHG Storage Act;
- (c) a mining tenement under the Mineral Resources Act;
- (d) a 1923 Act petroleum tenure under the 1923 Act;
- (e) a petroleum authority under the P&G Act.

**19      *Environmental authority***

An *environmental authority* is an environmental authority as defined under the Environmental Protection Act, schedule 4.

**20      *Source authority***

A *source authority* is—

- (a) a development approval; or
- (b) a resource authority; or
- (c) an environmental authority.

**Division 3                      References in provisions**

**21      *Functions***

In this Act—

- (a) a reference to a function includes a reference to a power;  
and
- (b) a reference to performing a function includes a reference to exercising a power.

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## **22 References for applications and applicants**

- (1) In this Act, a reference to an application for a resource authority includes a reference to—
  - (a) a tender for the authority under a resource Act; and
  - (b) an application for any of the following for an existing source authority—
    - (i) an amendment;
    - (ii) a renewal;
    - (iii) a re-grant.
- (2) In a provision of this Act about an application—
  - (a) a reference to the applicant, or to a person who may make an application, includes a reference to the following—
    - (i) the person who has made or may make the application;
    - (ii) anyone else in whom the benefit of the application vests from time to time; and
  - (b) subject to schedule 1, section 2, a reference to the land is a reference to the land the subject of the application; and
  - (c) if the application is about development—a reference to the development is a reference to the development the subject of the application.

## **23 References in decisions to the land**

In a provision of this Act about a decision, a reference to the land is a reference to the land the subject of the decision.

## **24 References to source authorities**

In a provision of this Act about a source authority—

- (a) a reference to the land is a reference to the land the subject of the source authority or to which it attaches; and
- (b) a reference to the development is a reference to—
  - (i) if the source authority is a development approval—development authorised under the approval; or
  - (ii) if the source authority is a resource authority—a resource activity for the authority.

## Chapter 2 Identifying strategic cropping land

### Part 1 Maps, zones, criteria and areas

#### Division 1 Definitions

##### 25 *Trigger map*

The *trigger map* is the electronic map called ‘Trigger Map for Strategic Cropping Land in Queensland’ held by the department, as amended from time to time under division 2.

*Note—*

For access to maps defined under this part see section 39.

##### 26 *Zone map and zone*

- (1) The *zone map* is the electronic map called ‘Strategic Cropping Land Zone Map’ held by the department, as amended from time to time under division 2.

[s 27]

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- (2) A *zone* is—
  - (a) generally—an area shown as a zone on the zone map; and
  - (b) for a provision about particular land—the zone the land is in.
- (3) In this Act, a reference to a named zone is a reference to the zone given that name in the zone map.

## **27 Zonal criteria and zonal criteria-compliant land**

- (1) The *zonal criteria* are—
  - (a) for a zone mentioned in schedule 1—the criteria the schedule states for land in the zone to be decided as SCL; or
  - (b) for a new zone prescribed under section 35(1)—the criteria prescribed under the section.
- (2) If a provision about particular land refers to the zonal criteria without identifying any particular zone, the reference is to the criteria for the zone the land is in.
- (3) Land that complies with the zonal criteria is *zonal criteria compliant*.

## **28 Protection area map and protection area**

- (1) The *protection area map* is the electronic map of that name held by the department, as amended from time to time under division 2.
- (2) A *protection area* is an area shown as a protection area on the protection area map.

## **29 Management area**

The *management area* is what is left of the combined area of all zones, after taking from the combined area all protection areas.

---

**30**     **Map generally**

A *map*, without any reference to any particular type of map, is any map defined under this division, as currently in force.

**Division 2**           **Map amendments**

**Subdivision 1**       **Preliminary**

**31**     **What is a *zonal amendment* and a *protection area amendment***

- (1) A *zonal amendment* is an amendment, other than a minor amendment, of the zone map to change a zone's area or include a new zone.
- (2) A *protection area amendment* is an amendment, other than a minor amendment, of the protection area map to change a protection area or include a new protection area.

**32**     **When a map amendment is *minor***

- (1) A map amendment is *minor* only if it does not change what is or is not potential SCL and—
  - (a) it corrects a minor error; or
  - (b) it corrects, or more accurately shows, the boundary, including, for example, because of the making of a replacement cadastral map; or
  - (c) there has been a boundary change and the amendment is—
    - (i) for any of the maps—to reflect the change; or
    - (ii) for the zone map or protection area map—to ensure no lot is partly inside and partly outside a zone or area shown on the map.

[s 33]

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- (2) An amendment under subsection (1)(c)(ii) may be made to include or exclude a lot from the zone or area.
- (3) An amendment to remove potential SCL from the trigger map is *minor* if the only effect of the amendment is to remove land to which this Act does not apply under section 6.
- (4) To remove any doubt, it is declared that a failure to remove land under subsection (3) does not limit or otherwise affect the operation of section 6.

## **Subdivision 2 Amendments by chief executive**

### **33 Minor amendments**

- (1) The chief executive may make a minor amendment of a map.
- (2) However, the amendment does not take effect until the chief executive publishes a notice of the amendment on the department's website.
- (3) The notice must state the type of amendment and the zone or area affected by it.

### **34 Trigger map amendments**

- (1) The chief executive may amend the trigger map to add or remove potential SCL.
- (2) However, before making the amendment, the chief executive must consider the required criteria.
- (3) The amendment does not take effect until it is approved under a regulation.
- (4) In this section—  
*required criteria* means—
  - (a) for an addition—the land to be added is likely to be highly suitable for cropping; or



- 
- (b) for a removal—the land to be removed is not likely to be highly suitable for cropping.

*Notes—*

- 1 An amendment to add land as potential SCL does not affect existing source authorities for the land. See section 78.
- 2 An amendment to remove land as potential SCL does not affect the mitigation requirement applying to the land if, before the removal, it was identified permanently impacted land. See section 144(4).
- 3 For the effect of the addition on resource activities, see section 91(2).

### **Subdivision 3      Zonal and protection area amendments**

#### **35      Power to amend by regulation**

- (1) Subject to the Minister complying with sections 36 and 37, a regulation may make a zonal amendment or protection area amendment.
- (2) The regulation must state each of the following—
  - (a) the type of amendment;
  - (b) any zone or area affected by the amendment;
  - (c) if the amendment adds a new zone or protection area—the name of the new zone or area;
  - (d) for a zonal amendment adding a new zone—the following for the zone—
    - (i) the minimum size for land;
    - (ii) the zonal criteria.

*Note—*

See also section 39(2) to (5).

### **36 Ministerial notice of proposed amendment**

- (1) The Minister must publish a notice about a proposed zonal amendment or protection area amendment in a newspaper circulating generally in the area of—
  - (a) for a zonal amendment—the zone to be amended or the proposed new zone; or
  - (b) for a protection area amendment—the protection area to be amended or the proposed new protection area.
- (2) The notice must state all of the following—
  - (a) for a zonal amendment—
    - (i) if no new zone is proposed—a general description of the amended zone; or
    - (ii) for a proposed new zone—
      - (A) a general description and the name of, and the proposed zonal criteria for, the zone; and
      - (B) the minimum size proposed to be prescribed under section 35(2)(d)(i);
  - (b) for a protection area amendment—a description of the amended protection area or proposed new protection area;
  - (c) that the proposed amendment is available for viewing on the department’s website;
  - (d) that anyone may make a submission to the Minister about the matters in the notice within a stated period of at least 21 days.
- (3) A general description under subsection (2)(a) may be by a map.

### **37 Ministerial decision on whether to amend**

- (1) Before the Minister may recommend to the Governor in Council the making of regulation for a zonal amendment or protection area amendment, the Minister must consider—

- 
- (a) all submissions made under section 36 within the period stated in the notice under the section; and
  - (b) the required criteria.
- (2) In this section—
- required criteria* means—
- (a) for a zonal amendment to add a new zone or include land in a zone—that land in the proposed zone or to be included in a zone is likely to be highly suitable for cropping; or
  - (b) for a zonal amendment to remove land from a zone—that the land is not likely to be highly suitable for cropping; or
  - (c) for a protection area amendment—
    - (i) that land in the amended or proposed protection area is likely to be highly suitable for cropping; and
    - (ii) the protection principle under the SCL principles.

## **Division 3                      Access to maps**

### **38                      Record-keeping obligations for maps**

- (1) The chief executive must keep digital electronic information that—
  - (a) allows the exact location of the boundaries shown on each map to be identified; and
  - (b) includes the coordinates of corners and bends in the boundaries.
- (2) The chief executive must continue to keep the information, including information about any amendment under division 2.
- (3) The information so kept is taken to form part of the maps.

### **39 Public access to maps and draft amendments**

- (1) The chief executive must—
  - (a) keep the maps published on the department’s website;  
and
  - (b) make the maps available for inspection and purchase.

*Note—*

On the commencement, the department’s website address was <[www.derm.qld.gov.au](http://www.derm.qld.gov.au)> and the regional offices were stated on the website.

- (2) Subsections (3) to (5) apply for a zonal amendment or protection area amendment or an amendment under section 34.
- (3) The chief executive must make a draft map showing the amendment.
- (4) Subsection (1) applies to the draft as if it were a map.
- (5) Subsection (4) ceases to apply if, under the *Statutory Instruments Act 1992*, section 50, the proposed regulation for the amendment is disallowed or no disallowance motion is passed.

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## Part 2                      Deciding what is strategic cropping land

### Division 1                Application stage

#### Subdivision 1        General provisions for making application

#### 40      Who may apply

- (1) An eligible person for any land in a zone may apply (a *validation application*) to the chief executive to decide (a *validation decision*) whether to record any of the land in the decision register as SCL or as decided non-SCL (either a *final decision*).
- (2) However, a validation application (the *prohibited application*) can not be made—
  - (a) if a final decision has already been made for the land; or
  - (b) if the prohibited application is for land in a protection area and there is a pending validation application for the land; or
  - (c) for a property in the management area if, under division 3, subdivision 3, a cropping history decision would be required for the prohibited application and—
    - (i) a cropping history decision has already been made for the property; or
    - (ii) there is a pending validation application and the subdivision requires a cropping history decision for the same property and that decision has not been made; or
  - (d) for a property in the management area if, under division 3, subdivision 3, a criteria decision would be required for the prohibited application and—

[s 41]

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- (i) a criteria decision has already been made for the property; or
  - (ii) there is a pending validation application for which the subdivision requires a criteria decision for the property and that decision has not been made.
- (3) In this section—

***pending***, for a validation application, means the application has not been decided, withdrawn or lapsed.

*Note—*

For when a validation application can lapse, see section 242.

#### **41 Who is an *eligible person***

An ***eligible person***, for land, means any of the following—

- (a) the owner of the land, or, if it has more than 1 owner, any of its owners;
- (b) anyone else holding a legal or equitable interest in the land;
- (c) a person who has the written consent to make the application from the owner of the land, or, if it has more than 1 owner, any of its owners;
- (d) a person who, under a resource Act, has made an application or a tender for a resource authority;
- (e) if the land is in the management area and forms part of a property—someone who, under any of paragraphs (a) to (d), is an eligible person for a part of the land.

#### **42 General application requirements**

A validation application must—

- (a) be made to the chief executive in the approved form; and
- (b) be accompanied by the fee prescribed under a regulation; and

- (c) describe all of the land and state the real property description of each lot that forms it; and
- (d) if the applicant claims that only part of the land should be recorded in the decision register as SCL or decided non-SCL—include a map showing that part; and
- (e) state what validation decision the applicant seeks; and
- (f) include any other information prescribed under a regulation.

## **Subdivision 2 Applications relating to a protection area**

### **43 Additional requirement for assessment against zonal criteria**

To the extent the land is in a protection area, a validation application must also include an assessment of whether or not the land is zonal criteria compliant.

## **Subdivision 3 Applications relating to the management area**

### **44 Additional requirements**

This subdivision applies for a proposed validation application relating to the management area.

### **45 Application must be property-based**

The application can only be made for 1 whole property or for 2 or more whole properties.

### **46 What is a *property***

- (1) A *property* is an area—

[s 47]

---

- (a) consisting of a lot or lots that are—
    - (i) owned by the same person or that have 1 or more common owners; or
    - (ii) managed as a single agricultural unit; and
  - (b) for an area mentioned in paragraph (a) that consists of more than 1 lot—are contiguous, other than for any road or watercourse between any of them.
- (2) In this section—  
*watercourse* see the *Water Act 2000*, section 5.

#### **47 References to the property in this part for application**

In this part, a reference to a property or the property is, for the application, a reference to the following—

- (a) if the application is for only 1 property—the property;
- (b) if the application is for 2 or more properties—each of the properties, separately.

*Note—*

If there is more than 1 property, a separate cropping history decision must be made for each. See division 3, subdivision 3.

#### **48 Additional application requirements**

The application must include an assessment of—

- (a) if no earlier validation application has been made for the property, one or both of the following—
  - (i) whether or not the property has the required cropping history;
  - (ii) whether or not the property is zonal criteria compliant; or
- (b) if an earlier validation decision has been made for the property—



- (i) if the earlier decision was that the property has the required cropping history—whether or not the property is zonal criteria compliant; or
- (ii) if the earlier decision was that the property is zonal criteria compliant—whether or not the property has the required cropping history.

#### 49 **When a property has the *required cropping history***

- (1) A property has the *required cropping history* only if either of the following uses applied for any of the property and an exception under section 50 did not apply to the use—
- (a) it was cropped or cultivated (other than for a perennial crop) at least 3 times from 1 January 1999 to 31 December 2010;
  - (b) for periods totalling 3 years or more from 1 January 1999 to 31 December 2010, perennial crops or timber plantations existed on the property.

*Example—*

the cultivation of an orchard on the same part of the property for a total period of 3 years

- (2) The following apply for subsection (1)—
- (a) if the uses applied for only part of the property and an exception under section 50 did not apply to the use, it does not matter to what use the rest of the property was put during the relevant period;
  - (b) the crop, cultivation, tree crops or timber plantations do not need to be for sale;
  - (c) the 3 crops or cultivations do not need to be consecutive, but can not be grown simultaneously in the same season;

*Example of crops grown simultaneously—*

2 crops grown on separate parts of the property during the same season

- (d) the 3 years do not need to be consecutive.

## **50 Things that are not crops for required cropping history**

- (1) For section 49, the exceptions are—
  - (a) use as a carbon sequestration forest; or
  - (b) any of the following uses for domestic purposes on the property—
    - (i) an orchard;
    - (ii) a tree crop;
    - (iii) vegetable garden.

- (2) In this section—

***carbon sequestration forest*** means trees or vegetation—

- (a) being grown for a process under which they absorb carbon dioxide from the atmosphere; and
- (b) that are the subject of a legally enforceable constraint not to harvest or remove.

***legally enforceable constraint*** includes a restrictive covenant.

## **Subdivision 4 Other provisions**

### **51 Methodology for criteria assessment must comply with any prescribed guidelines**

- (1) The methodology for an applicant's assessment of whether or not land is, under section 43 or 48, zonal criteria compliant must comply with any guidelines prescribed under a regulation (***criteria guidelines***).
- (2) Criteria guidelines must provide for—
  - (a) an assessment of the land, using sampling from sites on the land; and
  - (b) how the sites must be worked out; and
  - (c) how the sampling and other things that must form the assessment must be carried out.

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*Note—*

For other relevant provisions about applications, see chapter 8, part 2.

## **52 Public access to application**

Until a validation application is decided, lapses or is withdrawn, the chief executive must—

- (a) keep details of it published on the department's website; and
- (b) make it available for inspection and purchase.

## **Division 2 Notice and submission stage**

### **53 Application of div 2**

This division applies—

- (a) generally—at the end of 14 days after the making of the application; or
- (b) if, within the 14 days, the applicant is given—
  - (i) an application requisition—on the day the requisition is complied with; or
  - (ii) a notice by the chief executive stating an application requisition will not be given for the application—on the day the notice is given.

### **54 Notice to owners**

- (1) If the validation application is made for land or a property with more than 1 owner and not all of the owners are applicants, the applicant must give all of the owners a copy of the application.
- (2) If the validation application is made by someone other than an owner of the land or the property, the applicant must give all of the owners of the land or property a copy of the application.

## 55 Public notice of application

- (1) As soon as practicable after making the validation application, the applicant must publish a notice (an *application notice*) about the application in a newspaper circulating in each local government area that includes the land.
- (2) An application notice must state the following—
  - (a) that the applicant has applied for a decision about whether or not the land is SCL;
  - (b) that details of the application are kept on the department's website;
  - (c) how, under section 52, the application may be inspected;
  - (d) a sufficient description of the land;
  - (e) if the land is in a protection area, the area's name;
  - (f) each zone the land is in;
  - (g) that anyone may make a submission to the chief executive about the application;
  - (h) that submissions must address all or any of the following—
    - (i) if the land is in a protection area—the zonal criteria;
    - (ii) if the land is in the management area—the matters mentioned in section 48;
  - (i) that submissions may be made only within a stated period after publication of the notice (the *submission period*);
  - (j) any other matter prescribed under a regulation.
- (3) For subsection (2)(d), a description is sufficient only if it allows members of the public to identify the land's location without conducting a land registry search.
- (4) The submission period can not be less than 21 days after the later of the following—

- (a) the making of the publication;
  - (b) if the application is amended—the amendment of the application.
- (5) An application notice may be included in a publication under another Act about any of the following for the land so long as, to the extent the publication relates to the notice, it complies with this section—
- (a) a resource authority application;
  - (b) an environmental authority application;
  - (c) an EIS.

## **56 Acceptance of submissions**

- (1) The chief executive must accept a submission about the validation application if the submission—
- (a) is signed by or for each submitter; and
  - (b) states the name and address of each submitter; and
  - (c) is made to the chief executive; and
  - (d) complies with section 55(2)(h); and
  - (e) is received on or before the last day of the submission period.
- (2) The chief executive may, but need not, accept a submission about the validation application made after the submission period ends.

## **57 Amending application**

- (1) This section provides for when an applicant may amend a validation application.
- (2) An amendment can only be made if the application as amended complies with division 1.
- (3) The following may be made at any time before the application is decided—

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- (a) a minor amendment;
  - (b) an amendment the chief executive is satisfied would not adversely affect the public's ability to make a submission about the application.
- (4) An amendment other than one provided for under subsection (3) may be made only before an application notice is published for the application under section 55.

## **Division 3            Decision stage**

### **Subdivision 1        Preliminary**

#### **58        Application of div 3**

This division applies at the end of the submission period for a validation application that has not lapsed or been withdrawn.

### **Subdivision 2        What has to be decided for a protection area**

#### **59        Application of sdiv 2**

This subdivision applies to the extent the land is in a protection area.

#### **60        Criteria decision**

The chief executive must decide whether any of the land is zonal criteria compliant (a *criteria decision*).

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**61 Validation decision if any of the land is zonal criteria compliant**

- (1) This section applies if the criteria decision is that all or any of the land is zonal criteria compliant (the *decided land*).
- (2) The validation decision for the application must be that the decided land is to be recorded in the decision register as being SCL if—
  - (a) the decided land is at least of the minimum size; or
  - (b) the decided land is contiguous with any of the following land (*eligible land*) and the total area of the decided land and the eligible land is at least of the minimum size—
    - (i) SCL;
    - (ii) potential SCL;
    - (iii) land the chief executive reasonably believes is likely to be highly suitable for cropping.

**62 What is the *minimum size***

The *minimum size*, for land or a part of land, is the following size for the following zones—

- (a) for the Western Cropping zone—100ha and at least 80m wide;
- (b) for the Eastern Darling Downs zone—50ha and at least 50m wide;
- (c) for the Coastal Queensland zone, Granite Belt zone or Wet Tropics zone—10ha and at least 30m wide;
- (d) for a zone prescribed under section 35(1)—the size prescribed under that regulation.

**63 Validation decision otherwise**

To the extent the land does not comply with section 61(2), the validation decision for the application must be that the land is to be recorded in the decision register as decided non-SCL.

### **Subdivision 3      What has to be decided for the management area**

#### **64      Application of sdiv 3**

This subdivision applies to the extent the property is in the management area.

*Note—*

If there is more than 1 property the subject of the application, a reference to the property is a reference to each of them separately. See section 47.

#### **65      Decision if application only addresses required cropping history**

- (1) This section applies if the application only addresses whether the property has the required cropping history.
- (2) The chief executive must decide whether the property has that history (a *cropping history decision*).
- (3) If the cropping history decision is that the property does not have the required cropping history, there must be a validation decision for the property that it is to be recorded in the decision register as decided non-SCL.
- (4) If—
  - (a) subsection (3) does not apply for the property; and
  - (b) there was no earlier criteria decision for the property;the validation decision for the property must be that the cropping history decision for the property be recorded on the register.
- (5) Subsections (6) and (7) apply if—
  - (a) the cropping history decision is that the property has the required cropping history; and
  - (b) an earlier criteria decision for all or any of the property was that it is zonal criteria compliant (the *decided land*).



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- (6) The validation decision for the application must be that the decided land is to be recorded in the decision register as being SCL if—
    - (a) the decided land is at least of the minimum size; or
    - (b) the decided land is contiguous with eligible land and the total area of the decided land and the eligible land is at least of the minimum size.
  - (7) To the extent the decided land does not comply with subsection (6), the validation decision for the application must be that the property is to be recorded in the decision register as decided non-SCL.

## **66 Decision if application only addresses zonal criteria**

- (1) This section applies if the application only addresses whether all or any of the property is zonal criteria compliant.
- (2) The chief executive must make a criteria decision for the property.
- (3) However, if the applicant is only an eligible person for part of the property, a criteria decision can not be made for the rest of the property.
- (4) If a cropping history decision has not been made for the property, the validation decision for the application must be that the criteria decision for the property be recorded on the register.
- (5) If the criteria decision is that none of the property is zonal criteria compliant, the validation decision for the application must be that all of the property is to be recorded in the decision register as decided non-SCL.
- (6) Subsections (7) and (8) apply if—
  - (a) the criteria decision is that all or any of the property is zonal criteria compliant (the *decided land*); and
  - (b) an earlier cropping history decision for the property was that it has the required cropping history.

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- (7) The validation decision for the application must be that the decided land is to be recorded in the decision register as being SCL if—
  - (a) the decided land is at least of the minimum size; or
  - (b) the decided land is contiguous with eligible land and the total area of the decided land and the eligible land is at least of the minimum size.
- (8) To the extent the decided land does not comply with subsection (7), the validation decision for the application must be that the property is to be recorded in the decision register as decided non-SCL.

**67 Both matters addressed—threshold cropping history decision**

- (1) This section applies if the application addresses both of the following —
  - (a) whether or not the property has the required cropping history;
  - (b) whether or not all or any of the property is zonal criteria compliant.
- (2) The chief executive must make a cropping history decision for the property.
- (3) If the cropping history decision is that the property does not have the required cropping history, there must be a validation decision for the property that it is to be recorded in the decision register as decided non-SCL.

**68 Both matters addressed—deciding application if cropping history decided**

- (1) This section applies if, under section 67, the cropping history decision is that the property has the required cropping history.
- (2) The chief executive must make a criteria decision for the property.

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- (3) However, if the applicant is only an eligible person for part of the property, a criteria decision can not be made for the rest of the property.
  - (4) Subsections (5) and (6) apply if the criteria decision is that all or any of the property is zonal criteria compliant (the *decided land*).
  - (5) The validation decision for the application must be that the decided land is to be recorded in the decision register as being SCL if—
    - (a) the decided land is at least of the minimum size; or
    - (b) the decided land is contiguous with eligible land and the total area of the decided land and the eligible land is at least of the minimum size.
  - (6) To the extent the decided land does not comply with subsection (5), the validation decision for the application must be that the property is to be recorded in the decision register as decided non-SCL.

## **Subdivision 4 Making validation decision**

### **69 Criteria for decision**

In making a validation decision, the chief executive must consider—

- (a) any submissions for the application accepted under section 56; and
- (b) if the validation decision is, or includes, a criteria decision—the criteria guidelines.

### **70 Decision period**

The chief executive must make a validation decision within—

- (a) generally—3 months after the submission period ends (the *usual period*); or

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- (b) if, within the usual period, the applicant is given an application requisition—3 months after the requisition is complied with.

## **71 Notice and taking effect of decision**

- (1) The chief executive must give the following an information notice about the validation decision as soon as practicable after it is made—
  - (a) the applicant;
  - (b) any other eligible person for the land the chief executive ought reasonably to be aware of.

*Example of another eligible person for paragraph (b)—*

a person with an interest in the land recorded in a land registry

- (2) If the decision is to record any of the land as being SCL, the information notice must—
  - (a) include, or be accompanied by, a map or plan showing the land or part (a *relevant map*); or
  - (b) state that the chief executive has a relevant map available for inspection.
- (3) The validation decision does not take effect until the later of the following—
  - (a) the last day under section 266 on which an appeal may be made against the decision;
  - (b) if an appeal is made against the decision, the day the appeal ends.

## **72 Effect of validation decision**

- (1) Once the decision takes effect, it—
  - (a) attaches to the land; and
  - (b) binds—

- (i) all eligible persons for the land and all of their successors; and
  - (ii) any occupier of the land.
- (2) However, if the land is in the management area—
- (a) a validation decision that the land has the required cropping history does not prevent a further validation application for the land for the making of a criteria decision for the land; and
  - (b) a validation decision that any of the land is zonal criteria compliant does not prevent a further validation application for the land for the making of a cropping history decision for the land.
- (3) This section applies whether or not there is a registry record (SCL) for the decision.

## **Division 4                      Appeals against validation decisions**

### **73            Appeal to Planning and Environment Court**

A recipient of an information notice about a validation decision may appeal against the decision to the Planning and Environment Court.

*Note—*

See also chapter 8, part 7 (General provisions for appeals).

## **Part 3                      Land registry records for particular validation decisions**

### **74            Record required for SCL and decided non-SCL**

- (1) This section applies if land is recorded in the decision register as SCL or decided non-SCL.
- (2) The chief executive must, as soon as practicable, give the land registrar a notice asking the registrar to keep a record (a *registry record (SCL)*) about the decision.
- (3) The notice must state—
  - (a) a description of the land;
  - (b) a validation decision for the land has taken effect.
- (4) As soon as practicable after receiving the notice, the land registrar must keep the record so that a search of the land registry the registrar keeps will show the record.
- (5) No fee is payable for the notice or the recording.

### **75            Correcting, updating or removing registry record (SCL)**

- (1) This section applies if there is a registry record (SCL) for particular land.
- (2) The chief executive may give the land registrar a notice (an *amendment request*) asking the registrar to amend the record to—
  - (a) make a stated correction of an error; or
  - (b) to update the record because of a boundary change.
- (3) The land registrar must make the amendment as soon as practicable after receiving the amendment request.
- (4) If the chief executive considers that, because of a permanent impact, land the subject of the record should no longer be the subject of a registry record (SCL), the chief executive may

give the land registrar a notice (a *withdrawal request*) asking the registrar to remove the record.

- (5) As soon as practicable after receiving the withdrawal request, the land registrar must remove the record from the registrar's records.
- (6) No fee is payable for an amendment request or withdrawal request or for amending or removing the record.
- (7) To remove any doubt, it is declared that the record can not be amended other than under this section including, for example, because of an assessment or decision under an Act or law that conflicts with the relevant validation decision for the record.

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

### **Part 1            When development is permitted**

#### **76      Development with a permanent impact**

- (1) A person must not wilfully carry out, or allow the carrying out of, development on SCL or potential SCL that has a permanent impact on the land.

Maximum penalty—

- (a) if the land is in a protection area—4165 penalty units or 5 years imprisonment; or
- (b) if the land is in the management area—3000 penalty units or 2 years imprisonment.

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- (2) A person must not carry out, or allow the carrying out of, development on SCL or potential SCL that has a permanent impact on the land.

Maximum penalty—

- (a) if the land is in a protection area—3000 penalty units; or  
(b) if the land is in the management area—1665 penalty units.
- (3) Subsection (2) is an alternative offence for subsection (1).

*Notes—*

- 1 For the effect of subsection (2), see section 262.  
2 See also section 250 (Executive officers must ensure corporation does not commit SCL offences).

## **77 Development with a temporary impact**

- (1) A person must not wilfully carry out, or allow the carrying out of, development on SCL or potential SCL that has a temporary impact on the land.

Maximum penalty—

- (a) if the land is in a protection area—3000 penalty units; or  
(b) if the land is in the management area—1665 penalty units.
- (2) A person must not carry out, or allow the carrying out of, development on SCL or potential SCL that has a temporary impact on the land.
- Maximum penalty—
- (a) if the land is in a protection area—1665 penalty units; or  
(b) if the land is in the management area—500 penalty units.
- (3) Subsection (2) is an alternative offence for subsection (1).



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## 78 Exemptions

- (1) Sections 76 and 77 do not apply to the carrying out of development that—
- (a) is authorised under a development approval; or
  - (b) is a resource activity for a resource authority.

*Note—*

See also section 6 (Exclusions from this Act).

- (2) To remove any doubt, it is declared that subsection (1) continues to apply even though, when the development approval or resource authority took effect—
- (a) the land was neither SCL nor potential SCL, but it later becomes SCL or potential SCL; or
  - (b) the land was potential SCL and it later becomes SCL.

## 79 Emergency activity defence

It is a defence to a proceeding for an offence against this part for the defendant to prove—

- (a) the carrying out of the development (the *activity*) was because of an emergency endangering—
  - (i) the life or health of a person; or
  - (ii) the structural safety of a building or structure or the safety of infrastructure; and
- (b) the defendant gave the department notice of the activity as soon as practicable after starting it; and
- (c) the defendant took all reasonable steps—
  - (i) to ensure the impact of the activity on SCL or potential SCL is restorable; or
  - (ii) if the impact is not restorable—to limit the impact.

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## **Part 2                      State planning policy and codes**

### **Division 1                Policy and codes for IDAS**

#### **80            State planning policy for SCL**

- (1) There must be a State planning policy under the Planning Act about SCL.
- (2) The State planning policy may include applicable codes for the Planning Act about this Act's purposes and how this Act achieves them.

### **Division 2                Standard conditions code for resource activities**

#### **81            Standard conditions code**

- (1) A regulation may make a code about how resource activities may be carried out on SCL or potential SCL (the *standard conditions code*).
- (2) However, the standard conditions code can not permit a resource activity to be carried out on the following land in a protection area if the carrying out has a permanent impact on the land—
  - (a) SCL;
  - (b) potential SCL.

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## **Part 3                      Development approvals**

### **Division 1                Preliminary**

#### **82        Application of pt 3**

This part applies for development under IDAS on SCL or potential SCL.

### **Division 2                Requirements for development applications**

#### **83        Operation of div 2**

- (1) This division imposes requirements for making a development application for the development.
- (2) If any of the requirements are not complied with, for the Planning Act, the application is not a properly made application.

*Note—*

For the general requirements for development applications, see the Planning Act, sections 260 to 264.

#### **84        Requirement that land be, or elected to be treated as, SCL**

- (1) The application must state—
  - (a) that the land is SCL and include, or be accompanied by a copy of a relevant information notice about a validation decision or a registry record (SCL); or
  - (b) if the land is potential SCL—that the applicant has elected to treat this part as applying to the applicant as if the land were SCL.
- (2) The effects of the election are that—

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- (a) for this chapter and for deciding the application, the land is taken to be SCL; and
  - (b) a reference in this chapter (other than this section) to SCL includes a reference to the land.
- (3) To remove any doubt, it is declared that—
- (a) the election does not make the land SCL; and
  - (b) subsection (2) applies only for the applicant and the development; and
  - (c) the land continues to be potential SCL for anyone else and for all other purposes.

## **85 Location requirements**

- (1) The application must include, or be accompanied by, a map or information that identifies or describes the following—
- (a) the location of all SCL or potential SCL on the land;
  - (b) where the development is proposed to be carried out on SCL or potential SCL;
  - (c) all of the footprint of the development.
- (2) In this section—
- footprint*, of the development, means the proportion of the land covered by—
- (a) buildings or structures measured to their outermost projection; and
  - (b) any of the following relating to the buildings or structures or the development—
    - (i) asphalt, concrete or another hard built surface;
    - (ii) a carpark;
    - (iii) a road or access track;
    - (iv) an area used for vehicle movement or parking;
    - (v) an area used or that may be used for storage.

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**86 Development in exceptional circumstances**

If the development is in exceptional circumstances, the application must include, or be accompanied by—

- (a) evidence that it is a type of development prescribed under section 120; or
- (b) a copy of the relevant exceptional circumstances decision.

**87 Report**

The application must include, or be accompanied by, a report that—

- (a) assesses the development's impact on all SCL or potential SCL on the land; and
- (b) identifies any constraints on the configuration or operation of the development.

**88 Prescribed matters**

The application must include, or be accompanied by, any other information prescribed under a regulation.

**Division 3 Miscellaneous provisions**

**89 Development must comply with mitigation requirement**

- (1) This section applies for a development approval for the development if any of the land is identified permanently impacted land.
- (2) It is taken to be a development condition of the approval that its holder must comply with the mitigation requirement.

## **90 Power to prescribe particular concurrence agency application fees**

A regulation may prescribe the application fee for the Minister, chief executive or Coordinator-General as a concurrence agency under IDAS for a development application for the development.

*Notes—*

- 1 For the requirement to pay the fee, see the Planning Act, section 272(1)(c)(i).
- 2 For the concurrence agency roles, see the *Sustainable Planning Regulation 2009*, schedule 7, table 3, items 27 to 30.

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

## **Division 1 Preliminary**

### **91 Application and operation of pt 4**

- (1) This part—
  - (a) applies for a resource activity on SCL or potential SCL; and
  - (b) provides for the chief executive to decide (an *SCL protection decision*)—
    - (i) the impact of the resource activity on the land; and
    - (ii) whether or not to impose conditions on either or both of the environmental authority or resource authority for the resource activity.

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- (2) To remove any doubt, it is declared that this part applies for an environmental authority or resource authority application even if—
- (a) when the application was made, the land was not SCL or potential SCL; but
  - (b) the land becomes SCL or potential SCL before the authority is granted.

## **Division 2                      Restrictions on environmental    authority being issued**

### **92            Application of div 2**

This division does not apply if the carrying out of the resource activity complies with the standard conditions code.

### **93            SCL protection decision required before environmental    authority can be issued**

An environmental authority for the resource activity can not be issued until an SCL protection decision has been made for the environmental authority and the resource authority for the resource activity.

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

- (1) This section applies if the land is identified permanently impacted land in a protection area.
- (2) An environmental authority can only be issued for the resource activity if it is in exceptional circumstances.

## **Division 3                      Applying for and obtaining SCL protection decision**

### **Subdivision 1              Assessment applications**

#### **95              Who may apply**

- (1) A person who has applied, or may apply, for either of the following (the *proposed authorities*) for the resource activity may apply for an SCL protection decision for the resource activity (an *assessment application*)—
  - (a) a resource authority;
  - (b) an environmental authority.
- (2) Subsections (3) and (4) apply if—
  - (a) an SCL protection decision (the *earlier decision*) has already been made for the resource activity; and
  - (b) the earlier decision included that the carrying out of the resource activity will have a permanent impact on the land or part of the land; and
  - (c) when the earlier decision was made, the resource activity was not in exceptional circumstances; and
  - (d) since the making of the earlier decision, the resource activity became development in exceptional circumstances.
- (3) A person who can make an assessment application for the resource activity, may make an assessment application for the resource activity as if the earlier decision had not been made.
- (4) If an assessment application is made under subsection (3) and the proposed authorities have not been issued for any part of the land, the earlier decision may be remade under this part.



## 96 General requirements

An assessment application must—

- (a) be made to the chief executive in the approved form; and
- (b) describe the land and state the real property description of each lot that forms it; and
- (c) describe the resource activity; and
- (d) be accompanied by the fee prescribed under a regulation.

## 97 Additional requirements for making development application also apply

Part 3, division 2 applies for making an assessment application and an SCL protection decision as if—

- (a) the application were a development application for the land; and
- (b) the footprint of the development under section 85 includes infrastructure or proposed infrastructure relating to the resource activity, including, for example, proposed mines or dams.

## Subdivision 2 Amending application

### 98 Amending application

- (1) The applicant may amend an assessment application to do the following (a *permitted amendment*) if the amended application complies with sections 96 and 97—
  - (a) make a minor amendment;
  - (b) make an amendment the chief executive is satisfied would not adversely affect the chief executive's ability to decide the amended application.
- (2) A permitted amendment—

- (a) may be made at any time before the application is decided; and
  - (b) must be made by notice to the chief executive.
- (3) An assessment application can not be amended other than to make a permitted amendment.

### **Subdivision 3 Deciding application**

#### **99 What must be decided**

- (1) An SCL protection decision must consist of the following—
- (a) a decision—
    - (i) about the permanent impacts and the temporary impacts on the land of the carrying out of the resource activity; and
    - (ii) that identifies the extent of each of those impacts; and
  - (b) a decision about whether or not to impose conditions (*SCL protection conditions*) on either or both of the proposed authorities.
- (2) If an SCL protection decision imposes SCL protection conditions, the decision must state on which of the proposed authorities the conditions are imposed.

#### **100 SCL protection conditions generally**

- (1) An SCL protection condition may—
- (a) prohibit, limit or restrict the carrying out of the resource activity on the land or part of it; or
  - (b) require the applicant to install and operate stated plant or equipment in a stated way within a stated period; or

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- (c) require the applicant to do, or refrain from doing, anything else the chief executive considers is necessary or desirable to achieve this Act's purposes; or
  - (d) require security (*financial assurance*) in favour of the State for the applicant's compliance with the following (the *secured matters*), as a holder of either or both of the proposed authorities if they are issued—
    - (i) this Act;
    - (ii) payment of any compliance action expenses;
    - (iii) SCL protection conditions imposed.

- (2) The chief executive may decide the form and amount of the financial assurance.

*Example for deciding the amount—*

An SCL protection condition requires the land to be restored to its pre-development condition. In deciding the amount, the chief executive may consider the cost of restoring the land to that condition.

- (3) However, the amount can not be more than the amount that, in the chief executive's opinion, represents the total amount that the State may incur because of any possible noncompliance by the applicant relating to secured matters.
- (4) A condition under subsection (1)(d) is a *financial assurance condition*.
- (5) A condition under the standard conditions code may be imposed as an SCL protection condition.
- (6) In this section—  
*security* includes a bond, deposit of an amount as security, guarantee, indemnity or other surety, insurance, mortgage and undertaking.

*Note—*

For SCL protection conditions imposed under this Act, see division 4.

## **101 Criteria for decision**

- (1) In making an SCL protection decision, the chief executive must consider—
  - (a) the extent of the impact of the carrying out of the resource activity on SCL; and
  - (b) whether the carrying out of the resource activity will have a permanent impact or a temporary impact on the land; and
  - (c) whether the applicant has demonstrated that the impact has been avoided or minimised to the greatest extent practicable.
- (2) In imposing SCL protection conditions, the chief executive must consider the SCL principles.

## **102 Information notice about assessment decision**

- (1) The chief executive must give the applicant for an assessment application an information notice about the SCL protection decision as soon as practicable after making it.
- (2) If the applicant has applied for an environmental authority for the resource activity, the information notice may be included in, or accompany, a notice under the Environmental Protection Act for the environmental authority application.
- (3) The information notice must state—
  - (a) whether or not the carrying out of the resource activity will have a permanent impact on the land or part of the land; and
  - (b) if the carrying out will have a permanent impact on the land, how much of it will be the subject of the permanent impact; and
  - (c) if the decision is not to impose SCL protection conditions—that no SCL protection conditions are imposed; and
  - (d) if the decision is to impose SCL protection conditions—

- (i) the conditions; and
- (ii) on which of the proposed authorities each of the conditions are imposed.

### **103 SCL protection conditions apply to issued authority**

- (1) This section applies if SCL protection conditions are imposed on either or both of the proposed authorities (either the *imposed authority*) and an imposed authority is issued.
- (2) The SCL protection conditions are taken to be conditions of the imposed authority.
- (3) If there is any inconsistency between any of the SCL protection conditions and another condition of, or imposed on, the imposed authority, the SCL protection condition prevails to the extent of the inconsistency.

## **Division 4 SCL protection conditions imposed under Act**

### **104 Condition requiring compliance with mitigation requirement**

- (1) This section applies for a resource authority if any of the land is identified permanently impacted land.
- (2) It is taken to be a condition of the authority that its holder must comply with the mitigation requirement.

### **105 Condition empowering financial assurance changes**

- (1) This section applies if—
  - (a) the conditions of an imposed authority include a financial assurance condition; and
  - (b) financial assurance required under the condition has been given.

- (2) It is a condition of the imposed authority that its holder must change the amount of financial assurance if, after complying with subsections (3) to (5), the chief executive at any time requires the holder to do so.
- (3) The chief executive must give the holder a notice stating—
  - (a) details of the proposed requirement; and
  - (b) that the holder may, within a stated period, make submissions to the chief executive about the proposed requirement.
- (4) The stated period must end at least 28 days after the holder is given the notice.
- (5) The chief executive must consider any submissions made by the holder within the stated period.
- (6) The requirement does not take effect until—
  - (a) the holder is given an information notice about the decision; or
  - (b) if the information notice states a later day of effect—the later day.
- (7) In this section—

*change*, financial assurance, includes to decrease or increase its amount.

*financial assurance*, given, includes financial assurance changed because of a requirement previously made under subsection (2).

## **106 Condition empowering replenishment of financial assurance**

- (1) This section applies if—
  - (a) the conditions of an imposed authority include a financial assurance condition; and
  - (b) the imposed authority is issued and still in force; and

- 
- (c) all or part of the financial assurance given under the condition has been used.
  - (2) The chief executive may give the imposed authority holder a notice—
    - (a) stating how much of the financial assurance has been used; and
    - (b) directing the holder to, within 28 days after the giving of the notice, replenish the financial assurance so that its amount and form complies with the condition.
  - (3) It is a condition of the imposed authority that its holder must comply with the direction.

## **Division 5                    Other provisions about financial assurance**

### **107    General provisions**

- (1) This section applies for financial assurance given under an SCL protection condition.
- (2) The State may use the financial assurance and any interest accruing on it for the secured matters under section 100(1)(d).
- (3) The financial assurance may be kept until the chief executive is satisfied no claim is likely to be made on it.
- (4) Also, if a claim made on the financial assurance has not been assessed, the State may, until it has been assessed, keep an appropriate amount of the financial assurance to meet the claim.
- (5) The State may keep any interest accruing on the financial assurance.
- (6) The financial assurance and interest continues in force, and may be used for any of the secured matters, despite—
  - (a) a change in the holder of any relevant environmental authority or resource authority; or

- (b) an amendment of the authority.
- (7) Subsection (6) does not affect the chief executive's power under section 105 to change the amount of financial assurance.

### **108 New holder must comply with financial assurance condition**

- (1) This section applies if—
  - (a) the conditions of an imposed authority include a financial assurance condition; and
  - (b) the holder of the imposed authority changes.
- (2) The new holder of the imposed authority must not carry out, or allow the carrying out of, an activity under the authority unless the new holder has given the financial assurance.

Maximum penalty—1665 penalty units.

## **Division 6 Appeals against decisions under part**

### **109 Right of appeal to Land Court**

A recipient of an information notice about a decision under this part may, under this division, appeal against the decision to the Land Court.

*Note—*

See also chapter 8, part 7 (General provisions for appeals).

### **110 Land Court mediation**

- (1) Any party to an appeal may, at any time before the appeal is decided, ask the Land Court to conduct or provide a mediation for the appeal.



- (2) The mediation must be conducted by the court or a mediator chosen by the court.

### **111 Nature of appeal**

An appeal is by way of hearing anew.

### **112 Land Court's powers for appeal**

In deciding an appeal, the Land Court has the same powers as the chief executive.

### **113 Decision for appeal**

- (1) In deciding an appeal, the Land Court may make the orders and directions it considers appropriate.
- (2) Without limiting subsection (1), the court may—
  - (a) confirm the decision appealed against; or
  - (b) change the decision appealed against; or
  - (c) set aside the decision appealed against and—
    - (i) make a decision replacing the decision set aside; or
    - (ii) return the matter to the chief executive with directions the court considers appropriate.
- (3) In changing, setting aside or substituting the decision, the court has the same powers as the chief executive.
- (4) If the court substitutes another decision, the substituted decision is taken for this Act, other than this division, to be the chief executive's decision.

## **Part 5**                      **Resource activities complying with standard conditions code**

### **Division 1**                **Preliminary**

#### **114**     **Application of pt 5**

- (1) This part applies for a resource activity on SCL or potential SCL if the carrying out of the activity under an environmental authority or resource authority complies with the standard conditions code.
- (2) However, this part does not apply for a resource authority for which an SCL protection decision is required to be made under part 4 for the issuing of an environmental authority for the resource activity.
- (3) To remove any doubt, it is declared that this part applies for an environmental authority or resource authority application even if—
  - (a) when the application was made, the land was not SCL or potential SCL; but
  - (b) the land becomes SCL or potential SCL before the authority is granted.

#### **115**     **SCL compliance certificate required before environmental authority can be issued**

An environmental authority for the resource activity can not be issued until an SCL compliance certificate is given for the environmental authority and the resource authority for the resource activity.

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## **Division 2                      Applying for SCL compliance certificate**

### **116      Who may apply**

A person who has applied, or may apply, for an environmental authority or resource authority for the resource activity may apply for a certificate (an *SCL compliance certificate*) for the resource activity.

### **117      Requirements for application**

- (1) The application must—
  - (a) be made to the chief executive in the approved form; and
  - (b) describe the land on which the activity is to be carried out, and state the real property description of each lot that forms it; and
  - (c) describe the resource activity; and
  - (d) be accompanied by the fee prescribed under a regulation; and
  - (e) include, or be accompanied by, any other information prescribed under a regulation.
- (2) Also, sections 84 and 85 apply for making the application as if—
  - (a) the application were a development application for the land; and
  - (b) the footprint of the development under section 85 includes infrastructure or proposed infrastructure relating to the resource activity.

### **118      Giving of SCL compliance certificate**

If the chief executive is satisfied the application complies with section 117, the chief executive must give the person the SCL

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compliance certificate before, or at the same time as, the environmental authority is issued.

### **Division 3                      Application of standard conditions code**

#### **119      Standard conditions code applies to particular authority**

- (1) This section applies if a resource activity under an environmental authority or resource authority is carried out in compliance with the standard conditions code.
- (2) The conditions under the standard conditions code for carrying out the resource activity are taken to be conditions of the environmental authority or resource authority.
- (3) If there is any inconsistency between the standard conditions code and another condition of, or imposed on, the environmental authority or resource authority, the standard conditions code prevails to the extent of the inconsistency.

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## Chapter 4      Exceptional circumstances

*Note—*

The prescribing or deciding, under this chapter, that development or a type of development is in exceptional circumstances does not, of itself, authorise the development to be carried out. See chapter 3, part 1.

### Part 1                      Prescribed exceptional circumstances

#### 120      Power to prescribe a type of development

- (1) A regulation may prescribe a type of development, other than an excluded type of development, to be in exceptional circumstances.
- (2) However, the Minister may recommend to the Governor in Council the making of the regulation only if the Minister—
  - (a) has complied with section 121; and
  - (b) is satisfied—
    - (i) the carrying out of development of the type is an overwhelmingly significant opportunity of benefit to the State; and
    - (ii) the benefit outweighs the State's interest in protecting the land as SCL.
- (3) In this section—

***excluded type***, of development, means any resource activity for a resource authority other than the following—

  - (a) a permit or geothermal tenure under a Geothermal Act;
  - (b) a GHG authority under the GHG Storage Act.

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## **121 Public notice of proposal and submissions**

- (1) The Minister must publish a notice about the proposed regulation in a Statewide newspaper.
- (2) The notice must state the following—
  - (a) the type of development proposed to be prescribed to be in exceptional circumstances;
  - (b) reasons for the proposal;
  - (c) any restrictions proposed to be imposed on the type;
  - (d) that anyone may make a submission to the Minister about the proposal;
  - (e) that submissions may be made only within a stated period after publication of the notice (the *submission period*).
- (3) The submission period can not be less than 21 days after the making of the publication.
- (4) Before forming the opinion under section 120(2)(b), the Minister must consider all submissions made within the submission period.

## **Part 2 Decided exceptional circumstances**

### **Division 1 Application stage**

#### **122 Who may apply**

- (1) This section applies only if proposed development is in a protection area and carrying it out will have a permanent impact on SCL or potential SCL.

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- (2) A person who has applied, or may apply, for either of the following (the ***proposed authority***) for the development may apply for a decision that exceptional circumstances apply to the development (an ***exceptional circumstances application***)—
- (a) an environmental authority;
  - (b) a development approval or resource authority.

*Note—*

For development approvals the Minister or the Coordinator-General is a concurrence agency under IDAS. See the *Sustainable Planning Regulation 2009*, schedule 7, table 3, items 29 and 30.

- (3) The decision about whether or not exceptional circumstances apply to the development is the ***exceptional circumstances decision***.

## 123 Who must decide exceptional circumstances application

- (1) An exceptional circumstances application must be decided by the Coordinator-General if—
- (a) an undecided significant project application has been made for a project that is, or includes, the proposed authority; or
  - (b) the proposed authority is, or is included in, a significant project.
- (2) Otherwise, an exceptional circumstances application must be decided by the Minister.
- (3) The person who must decide an exceptional circumstances application is the ***required decider*** for the application.
- (4) In this section—

***significant project application*** means an application under the State Development Act, section 27AA.

***undecided***, for a significant project application, means the application has not been decided and has not been withdrawn.

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## 124 Requirements for application

An exceptional circumstances application must—

- (a) be made to the relevant person in the approved form—
  - (i) if the required decider is the Coordinator-General—the Coordinator-General; or
  - (ii) if the required decider is the Minister—the chief executive; and
- (b) describe the land and state the real property description of each lot that forms it; and
- (c) describe the development by way of a map or plan showing where it is proposed to be carried out on SCL or potential SCL; and
- (d) address both of the following (the *exceptional circumstances criteria*)—
  - (i) that there is no alternative site for the development to be carried out;
  - (ii) that there will be a significant community benefit in carrying out the development on the land; and
- (e) be accompanied by the fee prescribed under a regulation.

*Notes—*

- 1 For how the exceptional circumstances criteria must be considered, see sections 134 and 135.
- 2 For other relevant provisions about applications, see chapter 8, part 2.

## 125 What is a *significant community benefit*

A *significant community benefit*, in carrying out the development on the land, means that—

- (a) the carrying out is an overwhelmingly significant opportunity of benefit to the State; and



- 
- (b) the benefit outweighs the State's interest in protecting the land as SCL.

## **126 Public access to application**

- (1) This section applies for the following person (the *relevant person*) for an exceptional circumstances application until it is decided.
- (2) The relevant person must—
  - (a) keep details of the application published on the relevant website; and
  - (b) make the application available for inspection and purchase.

## **Division 2 Notice and submission stage**

### **127 Application of div 2**

This division applies—

- (a) generally—at the end of 14 days after the making of the application; or
- (b) if, within the 14 days, the applicant is given—
  - (i) an application requisition—on the day the requisition is complied with; or
  - (ii) a notice by the relevant person stating an application requisition will not be given for the application—on the day the notice is given.

### **128 Public notice of application**

- (1) As soon as practicable after making the exceptional circumstances application, the applicant must publish a notice (an *application notice*) about the application in—
  - (a) a Statewide newspaper; and

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- (b) a newspaper circulating in each local government area that includes the land.
- (2) An application notice must state the following—
- (a) that the applicant has made an exceptional circumstances application for the land;
  - (b) that details of the application are kept on the relevant website;
  - (c) how, under section 126, the application may be inspected;
  - (d) the type of development;
  - (e) a sufficient description of the land;
  - (f) the protection area the land is in;
  - (g) that anyone may make a submission about the application to the relevant person;
  - (h) that submissions—
    - (i) must address the exceptional circumstances criteria; and
    - (ii) may be made only within a stated period after publication of the notice (the *submission period*);
  - (i) any other matter prescribed under a regulation.
- (3) For subsection (2)(e), a description is sufficient only if it allows members of the public to identify the land's location without conducting a land registry search.
- (4) The submission period can not be less than 21 days after the later of the following—
- (a) the making of the publication;
  - (b) if the application is amended—the amendment of the application.
- (5) An application notice may be included in a publication under an Act about any of the following for the land so long as, to

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the extent the publication relates to the notice, it complies with this section—

- (a) a resource authority application;
- (b) an environmental authority application;
- (c) an EIS.

### **129 Acceptance of submissions**

- (1) The relevant person must accept a submission about the exceptional circumstances application if the submission—
  - (a) is signed by or for each submitter; and
  - (b) states the name and address of each submitter; and
  - (c) is made to the relevant person; and
  - (d) addresses the exceptional circumstances criteria; and
  - (e) is received on or before the last day of the submission period.
- (2) The relevant person may, but need not, accept a submission about an exceptional circumstances application made after the submission period ends.

### **130 Amending application**

- (1) This section provides for when an applicant may amend an exceptional circumstances application.
- (2) An amendment—
  - (a) can only be made if the application as amended complies with section 124; and
  - (b) must be made by notice to the relevant person.
- (3) The following may be made at any time before the application is decided—
  - (a) a minor amendment;

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- (b) an amendment the required decider is satisfied would not adversely affect the public's ability to make a submission about the application.
- (4) An amendment other than one provided for under subsection (3) may be made only before an application notice is published for the application under section 128.

## **Division 3                      Decision stage**

### **131      Application of div 3**

This division applies at the end of the submission period for an exceptional circumstances application that has not been withdrawn or decided under section 242(3).

### **132      Chief executive's report if required decider is the Minister**

If the required decider is the Minister, the chief executive must give the Minister a report about submissions accepted for the application.

### **133      Deciding application**

- (1) If the required decider is the Minister, this section applies only when the chief executive gives a report under section 132.
- (2) The required decider must make the exceptional circumstances decision.
- (3) The required decider may decide exceptional circumstances apply only if satisfied of both of the exceptional circumstances criteria.

### **134      Sole criterion for deciding no alternative site**

- (1) In deciding whether there is no alternative site for the development to be carried out, the required decider can only consider whether there is an alternative site in the State—

- 
- (a) if the proposed authority is a resource authority—from which the resource the subject of the authority (the *relevant resource*) can lawfully be obtained; or
  - (b) if the proposed authority is a development approval—at which the development can lawfully be carried out.
- (2) All of the following must be disregarded in considering any possible alternative site—
- (a) who owns the land on which the site is located;
  - (b) the existence or non-existence of a resource authority or development approval for the site;
  - (c) the profitability of carrying out the development on the site;
  - (d) the classification, grade or quality of the relevant resource;
- Example—*
- If the relevant resource is coal, it does not matter whether coal on the possible alternative site is thermal or coking.
- (e) if the proposed authority is a resource authority—its proximity to existing infrastructure relevant to carrying out the development.
- (3) If the proposed authority is a development approval, the only possible alternative sites that may be considered are those within, or a reasonable distance from, the region or locality to which the development relates.

### **135 Sole criterion for deciding significant community benefit**

- (1) In deciding whether there will be a significant community benefit in carrying out the development on the land, the required decider can only consider—
  - (a) whether the carrying out will provide a public benefit, rather than only an individual or private benefit; and
  - (b) the benefit to the State as a whole; and

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- (c) whether there would be significant adverse, economic, environmental or social impacts if the development is not carried out.
- (2) Also, a significant community benefit can not be decided solely on the profitability of the carrying out of the development or its economic benefit to the State.

*Example—*

A significant community benefit can not be decided solely on the basis of potential royalties under a resource Act or land tax under the *Land Tax Act 2010* that the State may receive if the development is carried out.

### **136 Notice and taking effect of decision**

The required decider must give the applicant an information notice about the exceptional circumstances decision as soon as practicable after it is made.

## **Division 4 Appeals against exceptional circumstances decision**

### **137 Appeal to Planning and Environment Court**

If the exceptional circumstances decision is that exceptional circumstances do not apply to the development, the applicant may appeal against the decision to the Planning and Environment Court.

*Note—*

See also chapter 8, part 7 (General provisions for appeals).

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## Chapter 5 Mitigation

### Part 1 Preliminary

#### 138 What is *mitigation*

*Mitigation*, for identified permanently impacted land, means that either of the following, or a combination of the following, has taken place for the land's mitigation value—

- (a) a payment to the mitigation fund;
- (b) the entering into of a mitigation deed.

#### 139 What is the *mitigation value* of identified permanently impacted land

- (1) The *mitigation value*, of identified permanently impacted land, is the amount worked out by multiplying each hectare of the land's area by the rate prescribed under a regulation.
- (2) For subsection (1), if the area is not divisible into a whole number of hectares, any part of a hectare left after dividing it into whole hectares must be rounded up to the nearest whole hectare.

#### 140 What are *mitigation measures*

- (1) *Mitigation measures* are the carrying out of activities to address the loss of the productive capacity of identified permanently impacted land.
- (2) Also, for a mitigation deed, mitigation measures may include a combination of activities mentioned in subsection (1) and a payment to the mitigation fund.

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### **141 What is a *mitigation deed***

A *mitigation deed* is a deed to which the chief executive and a source authority holder are parties that—

- (a) is about the mitigation value of identified permanently impacted land; and
- (b) complies with the requirements under section 145 (the *deed requirements*).

### **142 What are the *mitigation criteria***

- (1) The *mitigation criteria* are that mitigation measures (under a mitigation deed or under a payment from the mitigation fund) must—
  - (a) aim to increase the productivity of cropping in the State; and
  - (b) provide a public, rather than a private, benefit; and
  - (c) aim to provide an enduring effect; and
  - (d) be quantifiable and able to be independently valued; and
  - (e) benefit the largest possible number of cropping agribusinesses; and
  - (f) if a cropping activity or cropping system existed for identified permanently impacted land to which the measures relate—provide a benefit to that type of activity or system in the relevant local area.
- (2) In deciding what is a relevant local area for subsection (1)(f), regard must be had to catchments and local government areas.



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## **Part 2**                      **Mitigation for identified permanently impacted land**

### **Division 1**                **Mitigation requirement**

#### **143**     **Application of div 1**

This division applies for a source authority holder if any of the land is identified permanently impacted land.

#### **144**     **Prohibition on carrying out development without prior mitigation**

- (1) The source authority holder must not wilfully carry out, or allow the carrying out of, the development, unless there is in place mitigation for the identified permanently impacted land.

Maximum penalty—1665 penalty units.

- (2) The source authority holder must not carry out, or allow the carrying out of, the development, unless there is in place mitigation for the identified permanently impacted land.

Maximum penalty—500 penalty units.

- (3) Subsection (2) is an alternative offence for subsection (1).

- (4) To remove any doubt, it is declared that the mitigation requirement still applies, and continues to apply, even if, when the land became identified permanently impacted land it was potential SCL and, after the identification—

- (a) the trigger map is amended under section 34 to remove the land as potential SCL; or
- (b) the land is recorded in the decision register as decided non-SCL.

## **Division 2                      Mitigation deeds**

### **145      Deed requirements**

- (1) A mitigation deed must—
  - (a) identify—
    - (i) the source authority the subject of the deed, and the holder of the source authority; and
    - (ii) all identified permanently impacted land for the source authority; and
  - (b) be consistent with the mitigation principles and productivity principle under the SCL principles; and
  - (c) provide for mitigation measures for the mitigation value of all of the identified permanently impacted land; and
  - (d) require the holder to give the chief executive periodic reports about—
    - (i) the progress of the mitigation measures; and
    - (ii) the amounts spent on them.
- (2) The mitigation measures must—
  - (a) comply with the mitigation criteria; and
  - (b) be in addition to anything the source authority holder would, other than for the mitigation requirement, have done, incurred or spent in carrying out the development; and
  - (c) be at least equal in value to the land's mitigation value.
- (3) A mitigation deed can not provide for, or for the carrying out of, any authority-related restoration.
- (4) In considering whether the deed is consistent with the mitigation principles and productivity principles, the value of any authority-related restoration must be disregarded.
- (5) In this section—

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*authority-related restoration* means environmental management, restoration, rehabilitation or remediation required or permitted under the Environmental Protection Act, a resource Act or a source authority.

**146 Entry into mitigation deed by the chief executive**

- (1) The chief executive must, before entering into a mitigation deed, seek an advisory group's advice about whether it complies with deed requirements.
- (2) If, after obtaining the advice, the chief executive considers the deed does so comply, the chief executive must enter into it.

**147 Mitigation deed binds holder's successors**

A mitigation deed binds each of the successors of each source authority holder who is a party to it, including successors for the area of the source authority.

## **Part 3 Strategic cropping land mitigation fund**

**148 Establishment**

The strategic cropping land mitigation fund (the *mitigation fund*) is established.

**149 Purpose and administration**

- (1) The mitigation fund's purpose is to record amounts received under the mitigation requirement and to pay amounts from it under this part.

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- (2) Accounts for the mitigation fund must be kept as part of the department's departmental accounts under the *Financial Accountability Act 2009*, section 69.
- (3) However, amounts received for the mitigation fund may be deposited with other amounts of the department in its departmental financial institution account under the *Financial Accountability Act 2009*, section 83.

### **150 Payments from fund**

- (1) Amounts are payable from the mitigation fund only for—
  - (a) mitigation measures; or
  - (b) expenses incurred by the chief executive in performing functions under this chapter.
- (2) However, the chief executive may make a payment for mitigation measures only if the chief executive—
  - (a) has sought an advisory group's advice about the mitigation measures; and
  - (b) is satisfied the mitigation measures—
    - (i) comply with the mitigation criteria; and
    - (ii) are consistent with the mitigation principles and productivity principle under the SCL principles.
- (3) In this section—

*expenses* does not include remuneration.

### **151 Reporting requirement for mitigation measures**

A payment from the mitigation fund may be made only on the condition that its recipient must give the chief executive periodic reports about—

- (a) the progress of the mitigation measures funded; and
- (b) amounts spent on the measures.

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## **Part 4                      Community advisory group**

### **152      Establishment**

The chief executive must establish community advisory groups (each an *advisory group*).

### **153      Functions**

An advisory group's functions are to advise the chief executive about mitigation measures under mitigation deeds or payments from the mitigation fund.

### **154      Membership**

An advisory group is to consist of a chairperson and other members appointed by the chief executive.

## **Part 5                      Miscellaneous provisions**

### **155      Record of and access to mitigation measures**

- (1) The chief executive must—
  - (a) keep a record of all mitigation measures under a mitigation deed or funded from the mitigation fund; and
  - (b) publish information about the recorded measures on the department's website.
- (2) The record must include reports mentioned in section 145(1)(d) or 151.

## 156 Mitigation guidelines

The chief executive may make guidelines giving advice about all or any of the following—

- (a) deed requirements;
- (b) mitigation measures;
- (c) advisory group practices;
- (d) how funding from the mitigation fund may relate to other funding programs;
- (e) any other matter relating to this chapter or its administration.

# Chapter 6 Power to require compliance

## Part 1 Stop work notices

### 157 Power to give stop work notice

- (1) This section applies if an authorised person reasonably believes a person—
  - (a) has committed, or is committing, an SCL offence; or
  - (b) is involved in an activity that is likely to result in the commission of an SCL offence.
- (2) The authorised person may give the person a notice (a *stop work notice*) requiring the recipient to stop committing the suspected offence or not to commit that type of offence again.
- (3) The notice may also state any of the following—
  - (a) the steps the authorised person reasonably believes are necessary to stop the commission of the offence, any

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further commission of the offence, or the commission of the likely offence;

- (b) that the recipient must notify the authorised person when the recipient has complied with the stop work notice;
- (c) that an authorised person proposes, at a stated time or at stated intervals, to enter premises of which the recipient is the owner or occupier to check compliance with the notice.

### **158 Requirements for giving stop work notice**

- (1) A stop work notice must state the following—
  - (a) that the authorised person giving it believes the recipient—
    - (i) has committed, or is committing, an SCL offence; or
    - (ii) is involved in an activity that is likely to result in the commission of an SCL offence;
  - (b) the provision the authorised person believes is being, has been, or is likely to be, contravened;
  - (c) the reasons for the belief;
  - (d) that the recipient must stop committing the offence or avoid the likely commission of the offence.
- (2) The notice must include, or be accompanied by, an information notice about the decision to give the notice.
- (3) The notice may be given orally if—
  - (a) for any reason it is not practicable to give it in writing; and
  - (b) the authorised person giving it warns the recipient it is an offence not to comply with the notice.

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- (4) If the notice is given orally, the authorised person must confirm the notice by also giving it in writing (also a *stop work notice*) as soon as practicable after giving it orally.

## **159 Offence to contravene stop work notice**

- (1) The recipient of a stop work notice must not wilfully fail to comply with the notice, unless the recipient has a reasonable excuse.

Maximum penalty—4165 penalty units or 5 years imprisonment.

- (2) The recipient of a stop work notice must not fail to comply with the notice, unless the recipient has a reasonable excuse.

Maximum penalty—3000 penalty units.

- (3) Subsection (2) is an alternative offence for subsection (1).
- (4) If a stop work notice states steps that the recipient may take to stop committing a stated SCL offence, or avoid a likely stated SCL offence, the recipient is taken to have complied with the notice if all of those steps have been taken.
- (5) Subsection (4) does not prevent the recipient from complying with the notice in another way.

## **Part 2 Restoration notices**

### **Division 1 General provisions**

#### **160 Power to give restoration notice**

- (1) This section applies if an authorised person reasonably believes—
  - (a) a person—



- (i) has committed, or is committing, an SCL offence;  
or
  - (ii) is involved in an activity that is likely to result in an SCL offence; and
- (b) the matter is capable of being rectified.
- (2) The authorised person may give the person a notice (a *restoration notice*) requiring the recipient to rectify the matter.
- (3) The notice may also state any of the following—
  - (a) the steps the authorised person reasonably believes are necessary to rectify the matter;
  - (b) that the recipient must notify the authorised person when the recipient has complied with the restoration notice;
  - (c) that an authorised person proposes, at a stated time or at stated intervals, to enter premises of which the recipient is the owner or occupier to check compliance with the notice.
- (4) In this section—

*steps* includes any action or other measure the authorised person believes is necessary to rectify the matter.

*Examples—*

- setting objectives and time frames for restoring the relevant land
- giving a progress report about whether the steps taken within a particular period to rectify the matter have satisfied a stated objective

## **161 Requirements for giving restoration notice**

- (1) A restoration notice must state the following—
  - (a) that the authorised person giving it believes the recipient—

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- (i) has committed, or is committing, an SCL offence;  
or
  - (ii) is involved in an activity that is likely to result in the commission of an SCL offence;
  - (b) the provision the authorised person believes is being, has been, or is likely to be, contravened;
  - (c) the reasons for the belief;
  - (d) the matter the authorised person believes is reasonably capable of being rectified;
  - (e) that the recipient must take steps reasonably necessary to rectify the matter;
  - (f) the stated reasonable period in which the recipient must take the steps.
- (2) The notice must include, or be accompanied by, an information notice about the decision to give the notice and to fix the period.

### **162 Offence to contravene restoration notice**

- (1) The recipient of a restoration notice must not contravene the notice, unless the recipient has a reasonable excuse.
- Maximum penalty—3000 penalty units.
- (2) If the notice states steps that the recipient may take to rectify the matter the subject of the notice, the recipient is taken to have complied with the notice if all of those steps have been taken.
- (3) Subsection (2) does not prevent the recipient from complying with the notice in another way.

### **163 Land registry record of restoration notice**

- (1) This section applies if the recipient of a restoration notice owns or has an interest in the land the subject of the notice.

- (2) As soon as practicable after the restoration notice has been given, the chief executive must give the land registrar a notice (a **record request**) asking the registrar to keep a land registry record for the notice.
- (3) As soon as practicable after receiving the record request, the land registrar must keep the record so that a search of the land registry the registrar keeps will show the record.
- (4) As soon as practicable after the restoration notice has been complied with, withdrawn or in any other way terminated, the chief executive must give the land registrar a notice (a **withdrawal request**) of the fact to the registrar.
- (5) As soon as practicable after receiving a withdrawal request, the land registrar must remove the record from the registrar's records.
- (6) No fee is payable for a record request or withdrawal request or for recording or removing the record.

## **Division 2                      Transfers of land the subject of a restoration notice**

### **164      Application of div 2**

- (1) This division applies if—
  - (a) the recipient of a restoration notice has an interest in land the subject of the notice; and
  - (b) all or part of the interest, to the extent it is the subject of the notice, is transferred, in any way, to another person (the **transferee**).
- (2) This division applies to each of the transferee's successors of the interest in the same way that it applies to the transferee.

### **165      Transferee becomes a recipient as well**

- (1) On the transfer of the interest—

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- (a) a reference in the restoration notice to the recipient is taken to be a reference to the recipient and to the transferee, jointly and severally; and
  - (b) the restoration notice is taken to have been given to the transferee; and
  - (c) the recipient's outstanding liability for any of the following becomes a liability of the recipient and the transferee, jointly and severally—
    - (i) expenses in complying with the restoration notice;
    - (ii) compliance action expenses owing to the State by the recipient.
- (2) To remove any doubt, it is declared that the recipient is not criminally liable for any contravention of the restoration notice that happens on or after the transfer.

## **166 Chief executive may extend compliance period**

- (1) The transferee may, by notice, ask the chief executive to extend the period (the *original period*) stated in the restoration notice to take all or any of the steps required under the restoration notice.
- (2) Subsection (1) applies even if the original period has ended.
- (3) The chief executive may, by notice to the transferee (a *decision notice*), extend the original period (the *extended period*).
- (4) If the decision is not to extend or to extend for a period less than the period sought in the request, the decision notice must be an information notice.
- (5) The extension has the effect of amending the restoration notice from the original period to the extended period.

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## Division 3                      Miscellaneous provision

### 167      Chief executive's power to amend restoration notice

- (1) The chief executive may, if the chief executive considers it necessary or desirable, amend a restoration notice, including, for example because of a change in technology relating to the steps stated in the notice.
- (2) However, the amendment may be made only if—
  - (a) the recipient of the restoration notice has agreed in writing to the amendment; or
  - (b) the chief executive has complied with subsections (3) and (4).
- (3) The chief executive must give the recipient a notice (a *proposed amendment notice*) stating—
  - (a) the proposed amendment and the reasons for it; and
  - (b) that the recipient may, within a stated period, make submissions to the chief executive about the proposed amendment.
- (4) The stated period must end at least 28 days after the holder is given the proposed amendment notice.
- (5) The chief executive must consider any submissions made by the recipient within the stated period.
- (6) The chief executive must give the recipient an information notice about the decision to amend the restoration notice.

## **Part 3**

# **General provisions about compliance notices**

### **168 Meaning of *compliance notice***

A *compliance notice* is a stop work notice or restoration notice.

### **169 Declaratory provisions**

- (1) This section applies for the powers under this chapter to give a compliance notice for a matter.
- (2) To remove any doubt, it is declared that—
  - (a) the powers may be exercised—
    - (i) whether or not a proceeding for an offence has been started for the matter; and
    - (ii) even if the recipient has been convicted of an offence for the matter; and
  - (b) the giving of a stop work notice for the matter does not prevent the giving of a restoration notice for the same matter; and
  - (c) the exercise of the powers do not limit or otherwise affect any other action under this Act, the Planning Act or a resource Act relating to the matter.

### **170 Other persons bound by compliance notice**

- (1) A compliance notice binds its recipient's successors.
- (2) If a recipient of a compliance notice is the holder of a source authority, the notice binds anyone who holds that authority from time to time.
- (3) If, under this section, a person is bound by a compliance notice—

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- (a) the notice is taken to have been given to the person when they became a successor or holder as mentioned in subsection (1) or (2); and
  - (b) a reference in the notice to the recipient is taken to be a reference to the recipient and to the person, jointly and severally; and
  - (c) any of the recipient's liability for the following become owing by the recipient and the person, jointly and severally—
    - (i) expenses in complying with the restoration notice;
    - (ii) compliance action expenses owing to the State by the recipient.

#### **171 Power to remedy compliance notice contravention**

- (1) This section applies if a recipient of a compliance notice contravenes the notice, whether or not a proceeding relating to the contravention has been started.
- (2) An authorised person may use reasonable force and take any other reasonable action to stop the contravention (*compliance action*).
- (3) Any reasonable expenses (*compliance action expenses*) incurred by the authorised person in taking the compliance action may be recovered by the State against the recipient as a debt in a court with jurisdiction for the recovery of the debt.
- (4) In this section—  
*expenses*, incurred by the authorised person, includes the cost of services that the State provides for itself.

#### **172 Effect on compliance notice of subsequent acquittal in relevant proceeding**

- (1) This section applies to the recipient of a compliance notice if, in a relevant proceeding, the recipient is acquitted.

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- (2) If the notice is a stop work notice, it ceases to have effect from the time of the acquittal.
- (3) If the notice is a restoration notice, it is taken never to have had any effect.
- (4) However, this section does not invalidate or otherwise affect any compliance action taken relating to the compliance notice.
- (5) In this section—  
*relevant proceeding*, for the notice, means a proceeding against the recipient for the SCL offence—
  - (a) that the authorised person who gave the notice believed the recipient had committed, or was committing; or
  - (b) if the authorised person believed the recipient was involved in an activity that was likely to result in a commission of the SCL offence—of which the carrying out of the activity was an element.

## **Part 4**                                      **Appeals against decision to give compliance notice**

### **173**      **Appeal to Planning and Environment Court**

The recipient of an information notice about a decision under this chapter may appeal against the decision to the Planning and Environment Court.

*Note—*

See also chapter 8, part 7 (General provisions for appeals).



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## **Chapter 7            Investigation and                                  Enforcement**

### **Part 1                    General provisions about                                  authorised persons**

#### **Division 1            Appointment**

##### **174    Authorised persons**

- (1) This chapter includes provisions for the appointment of authorised persons, and gives authorised persons particular powers.
- (2) The purpose of these provisions is to ensure the chief executive has available suitably qualified persons who can help the chief executive process applications under this Act and deal with issues about compliance under this chapter.

##### **175    Functions of authorised persons**

An authorised person has the following functions—

- (a) to help process applications under this Act;
- (b) to investigate, monitor and enforce compliance with this Act;
- (c) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- (d) to facilitate the exercise of powers under this Act;
- (e) to give compliance notices, and take compliance action if they are not complied with.

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## **176 Appointment and qualifications**

- (1) The chief executive may, by instrument in writing, appoint an officer of the department as an authorised person.
- (2) However, the chief executive may appoint a person as an authorised person only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

## **177 Appointment conditions and limit on powers**

- (1) An authorised person holds office on any conditions stated in—
  - (a) the authorised person’s instrument of appointment; or
  - (b) a signed notice given to the authorised person; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the authorised person or a regulation may limit the authorised person’s powers.
- (3) In this section—  
*signed notice* means a notice signed by the chief executive.

## **178 When office ends**

- (1) The office of a person as an authorised person ends if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the authorised person’s resignation under section 179 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an authorised person ends.
- (3) In this section—

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*condition of office* means a condition under which the authorised person holds office.

## **179 Resignation**

An authorised person may resign by signed notice given to the chief executive.

## **Division 2 Identity cards**

### **180 Issue of identity card**

- (1) The chief executive must issue an identity card to each authorised person.
- (2) The identity card must—
  - (a) contain a recent photo of the authorised person; and
  - (b) contain a copy of the authorised person's signature; and
  - (c) identify the person as an authorised person under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **181 Production or display of identity card**

- (1) In exercising a power in relation to a person in the person's presence, an authorised person must—
  - (a) produce the authorised person's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

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- (2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised person does not exercise a power in relation to a person only because the authorised person has entered a place as mentioned in section 185(1)(h).

### **182 Return of identity card**

If the office of a person as an authorised person ends, the person must return the person's identity card to the chief executive within 21 days after the office ends, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

## **Division 3 Miscellaneous provisions**

### **183 References to exercise of powers**

If—

- (a) a provision of this chapter refers to the exercise of a power by an authorised person; and
- (b) there is no reference to a specific power;

the reference is to the exercise of all or any authorised persons' powers under this Act or a warrant, to the extent the powers are relevant.

### **184 Reference to document includes reference to reproductions from electronic document**

A reference in this chapter to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or

- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

## **Part 2                      Entry of places by authorised persons**

### **Division 1                Power to enter**

#### **185      General power to enter places**

- (1) An authorised person may enter a place if any of the following apply—
  - (a) an occupier at the place consents under division 2 to the entry and section 189 has been complied with for the occupier;
  - (b) the entry is to land at the place for the deciding of an application under this Act relating to the land and—
    - (i) the applicant owns and occupies the land; or
    - (ii) the authorised person has given an entry notice about the proposed entry to the owner and occupier of the land at least 14 days before the entry;
  - (c) the place is SCL or potential SCL and the subject of—
    - (i) a source authority; or
    - (ii) a compliance notice given to the occupier of the land; or
    - (iii) an enforcement notice under the Planning Act given to the occupier of the land;
  - (d) the entry is to give an occupier of the place a stop work notice requiring the occupier to immediately stop

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- committing an SCL offence (the *stop work notice service power*);
- (e) the entry is to take compliance action for land the subject of a compliance notice at any reasonable time;
  - (f) in all of the following circumstances—
    - (i) the place is land (*access land*) that it is reasonably necessary for the authorised person to cross to enter other land under any of paragraphs (b) to (e);
    - (ii) the authorised person has given the owner and occupier of the access land an entry notice about the proposed entry at least 7 days before the entry;
    - (iii) the entry is made in accordance with the entry notice;
  - (g) the entry is made under section 192;
  - (h) it is a public place and the entry is made when the place is open to the public;
  - (i) the entry is authorised under a warrant and, if there is an occupier of the place, section 198 has been complied with for the occupier.
- (2) Subsection (1)(b) to (g) does not apply to a part of the place at which a person resides.
- (3) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (4) The powers to enter by consent or under a warrant are subject to the terms of the consent or warrant.
- (5) In this section—
- entry notice* means a notice stating the following—
- (a) a description of the place;

- (b) that the authorised person intends to enter the place and may do so under this section without anyone's consent or a warrant;
- (c) the purpose of the intended entry, including the action to be taken to achieve the purpose;
- (d) the date of the intended entry;
- (e) the period for which it is intended the authorised person will be on the land to achieve the purpose.

*Note—*

See also section 270 (References to right to enter).

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

- (1) This section applies if—
  - (a) an authorised person is intending to enter a place under section 185(1)(b)(i), (c), (d) or (e); and
  - (b) the occupier of the place is present at the place.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—
  - (a) comply with section 181 for the occupier;
  - (b) tell the occupier the purpose of the entry;
  - (c) tell the occupier the authorised person is permitted under this Act to enter the place without the occupier's consent or a warrant.

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

### **Subdivision 1            Preliminary**

#### **187    Application of div 2**

This division applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 185(1)(a).

### **Subdivision 2            Provisions for entry by consent**

#### **188    Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an authorised person may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

#### **189    Matters authorised person must tell occupier**

Before asking for the consent, the authorised person must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and



- 
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

## **190 Consent acknowledgement**

- (1) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and
  - (b) the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) that the occupier is not required to consent;
    - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (c) the occupier gives the authorised person or another authorised person consent to enter the place and exercise the powers; and
  - (d) the time and day the consent was given; and
  - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.
- (4) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (2) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

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**191 Entry only by warrant or other authorisation if consent refused**

If the occupier refuses consent to enter, the authorised person must not enter the place unless the entry is under a warrant or is otherwise authorised under section 185.

**Subdivision 3 Entry after reasonable attempts to locate an occupier**

**192 Entry power and requirement**

- (1) If the authorised person is unable to locate an occupier after making a reasonable attempt to do so, the authorised person may enter the place other than a part of the place where a person resides or apparently resides.
- (2) If the authorised person enters a place under subsection (1), the authorised person must leave a notice in a conspicuous position and in a reasonably secure way stating the date, time and purpose of the entry.

**Division 3 Entry under warrant**

**Subdivision 1 Obtaining warrant**

**193 Application for warrant**

- (1) An authorised person may apply to a magistrate for a warrant for a place.
- (2) The authorised person must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the

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magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the written application to be given by statutory declaration.

## **194 Issue of warrant**

- (1) The magistrate may issue a warrant for the place only if the magistrate is satisfied—
  - (a) there are reasonable grounds for suspecting there is, or will be, at the place within the next 7 days, a particular thing or activity that may provide evidence of an SCL offence; or
  - (b) the place is a place mentioned in section 185(1)(b) to (f) and it is reasonably necessary for an authorised person to have access to the place to perform the function of investigating, monitoring and enforcing compliance with this Act.

*Example—*

The magistrate may be satisfied entry to perform the function is reasonably necessary if an authorised person has made a reasonable attempt to perform the function at the place without a warrant, but because of obstruction, has been unsuccessful.

- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised person or any authorised person may with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the authorised person's powers; and
  - (c) particulars of the offence that the magistrate considers appropriate; and

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- (d) if the warrant is issued under subsection (1)(a), the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) the evidence that may be seized under the warrant; and
- (f) the hours of the day or night when the place may be entered; and
- (g) the magistrate's name; and
- (h) the day and time of the warrant's issue; and
- (i) the day, within 14 days after the warrant's issue, the warrant ends.

## **195 Electronic application**

- (1) An application under section 193 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised person's remote location.
- (2) The application—
  - (a) may not be made before the authorised person prepares the written application under section 193(2); but
  - (b) may be made before the written application is sworn.

## **196 Additional procedure if electronic application**

- (1) For an application made under section 195, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 195; and

- 
- (b) the way the application was made under section 195 was appropriate.
- (2) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised person the information mentioned in section 194(2); and
    - (ii) the authorised person must complete a form of warrant, including by writing on it the information mentioned in section 194(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The authorised person must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 193(2) and (3); and
  - (b) if the authorised person completed a form of warrant under subsection (2)(b)—the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—

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- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence;  
the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 193.
- (8) In this section—  
*relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

## 197 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in—
- (a) the warrant; or
  - (b) compliance with this subdivision;
- unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—  
*warrant* includes a duplicate warrant mentioned in section 196(3).

## Subdivision 2 Entry procedure

### 198 Entry procedure

- (1) This section applies if an authorised person is intending to enter a place under a warrant issued under this division.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—

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- (a) identify himself or herself to a person who is an occupier of the place and is present by producing the authorised person's identity card or another document evidencing the authorised person's appointment;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the authorised person is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—  
*warrant* includes a duplicate warrant mentioned in section 196(3).

## **Part 3                      Other authorised persons' powers and related matters**

### **Division 1                General powers of authorised persons after entering places**

#### **199      Application of div 1**

- (1) The powers under this division may be exercised if an authorised person enters a place under section 185, other than for access land under the section, a public place or if the entry was only under the stop work notice service power.

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

## 200 General powers

- (1) The authorised person may do any of the following (each a *general power*)—
- (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) take for examination a thing, or a sample of or from a thing, at the place (the *sample power*);
  - (d) place an identifying mark in or on anything at the place;
  - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
  - (g) take to, into or onto the place and use any person, equipment and materials the authorised person reasonably requires for exercising the authorised person's powers under this division;
  - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The authorised person may take a necessary step to allow the exercise of a general power.
- (3) If the authorised person exercises the sample power, division 3, subdivision 3 applies—
- (a) as if the thing or sample taken had been seized under that division; and



- (b) as if the decision to exercise the sample power were a decision to seize the thing or sample.
- (4) If the authorised person takes a document from the place to copy it, the authorised person must copy and return the document to the place as soon as practicable.
- (5) If the authorised person takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised person must produce the document and return the article or device to the place as soon as practicable.
- (6) In this section—
- examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.
- film* includes photograph, videotape and record an image in another way.
- inspect*, a thing, includes open the thing and examine its contents.

## **201 Power to require reasonable help**

- (1) The authorised person may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the authorised person reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the authorised person must give the person an offence warning for the requirement.

## **202 Offence to contravene help requirement**

- (1) A person of whom a help requirement has been made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

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- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the individual under this Act.

*Note—*

See, however, section 232 (Evidential immunity for individuals complying with particular requirements).

## **Division 2                      Powers after entry under stop work notice service power**

### **203      Powers**

If an authorised person enters a place under section 185 and the entry was only under the stop work notice service power, the authorised person may only—

- (a) give the occupier the stop work notice; and
- (b) take into or onto the place any person the authorised person reasonably requires for giving the notice.

## **Division 3                      Seizure by authorised persons and forfeiture**

### **Subdivision 1              Power to seize**

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

An authorised person who enters a place the person may enter under this Act without the consent of an occupier of the place and without a warrant may seize a thing at the place if the

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person reasonably believes the thing is evidence of an offence against this Act.

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

- (1) This section applies if—
  - (a) an authorised person is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the authorised person enters the place after obtaining the consent or under a warrant.
- (2) If the authorised person enters the place with the occupier's consent, the authorised person may seize a thing at the place only if—
  - (a) the authorised person reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the authorised person enters the place under a warrant, the authorised person may seize the evidence for which the warrant was issued.
- (4) The authorised person may also seize anything else at the place if the authorised person reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.
- (5) The authorised person may also seize a thing at the place if the authorised person reasonably believes it has just been used in committing an offence against this Act.

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## **206 Seizing thing or sample taken for examination**

An authorised person who has taken a thing or sample for examination under section 200(1)(c) may, after examining it, seize it if—

- (a) the authorised person reasonably believes it is evidence of an offence against this Act; and
- (b) had the authorised person had the reasonable belief when it was taken, the authorised person could, under section 205, have seized the thing or, for a sample, the thing from which the sample was taken.

## **207 Seizure of property subject to security**

- (1) An authorised person may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised person or a person acting for the authorised person.

## **Subdivision 2 Powers to support seizure**

### **208 Power to secure seized thing**

- (1) Having seized a thing under this division, an authorised person may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the authorised person may, for example—

- (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
- (b) for equipment—make it inoperable; or  
*Example—*  
make it inoperable by dismantling it or removing a component without which the equipment can not be used
- (c) require a person the authorised person reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an authorised person could do under subsection (1)(a).

## **209 Offence to contravene other seizure requirement**

A person must comply with a requirement made of the person under section 208(2)(c), unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **210 Offence to interfere**

- (1) If access to a seized thing is restricted under section 208, a person must not tamper with the thing or with anything used to restrict access to the thing without—
  - (a) an authorised person's approval; or
  - (b) a reasonable excuse.Maximum penalty—100 penalty units.
- (2) If access to a place is restricted under section 208, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—
  - (a) an authorised person's approval; or

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(b) a reasonable excuse.

Maximum penalty—100 penalty units.

### **Subdivision 3      Safeguards for seized things**

#### **211      Receipt and information notice for seized thing**

- (1) This section applies if an authorised person seizes anything under this division unless—
  - (a) the authorised person reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
  - (b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised person to comply with this section; or

*Example—*

a soil sample of no inherent value

  - (c) the thing was seized under section 206 and this section has, under section 200(3), already been complied with for the thing.
- (2) The authorised person must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
  - (a) a receipt for the thing that generally describes the thing and its condition; and
  - (b) an information notice about the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—

- (a) be given in the same document; and
  - (b) relate to more than 1 seized thing.
- (5) The authorised person may delay giving the receipt and information notice if the authorised person reasonably suspects giving them may frustrate or otherwise hinder an investigation by the authorised person under this Act.
- (6) However, the delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

## **212 Access to seized thing**

- (1) Until a seized thing is forfeited or returned, the authorised person who seized the thing must allow an owner of the thing—
- (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

## **213 Return of seized thing**

- (1) This section applies if a seized thing has some intrinsic value and is not—
- (a) forfeited or transferred under subdivision 4 or 5; or
  - (b) subject to a disposal order under division 4.
- (2) The authorised person must return the seized thing to an owner—
- (a) generally—at the end of 6 months after the seizure; or

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- (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.
- (3) Despite subsection (2), if the thing was seized as evidence, the authorised person must return the thing seized to an owner as soon as practicable after the authorised person is satisfied—
  - (a) its continued retention as evidence is no longer necessary; and
  - (b) it is lawful for the owner to possess it.
- (4) Nothing in this section affects a lien or other security over the seized thing.

## **Subdivision 4      Forfeiture**

### **214      Forfeiture by chief executive decision**

- (1) The chief executive may decide a seized thing is forfeited to the State if an authorised person—
  - (a) after making reasonable inquiries, can not find an owner; or
  - (b) after making reasonable efforts, can not return it to an owner.
- (2) However, the authorised person is not required to—
  - (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

*Example for paragraph (b)—*

the owner of the thing has migrated to another country

- (3) Regard must be had to the thing's condition, nature and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and



- (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

## **215 Information notice about forfeiture decision**

- (1) If the chief executive decides under section 214(1) to forfeit a thing, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she appeals against the decision.
- (4) However, subsections (1) to (3) do not apply if the place where the thing was seized is—
  - (a) a public place; or
  - (b) a place where the notice is unlikely to be read by the former owner.

## **Subdivision 5 Dealing with property forfeited or transferred to State**

### **216 When thing becomes property of the State**

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 214(1);  
or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

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## **217 How property may be dealt with**

- (1) This section applies if, under section 216, a thing becomes the property of the State.
- (2) The chief executive may deal with the thing as the chief executive considers appropriate, including, for example, by destroying it or giving it away.
- (3) The chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this Act.
- (4) If the chief executive sells the thing, the chief executive may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.
- (5) This section is subject to any disposal order made for the thing.

## **Division 4 Disposal orders**

### **218 Disposal order**

- (1) This section applies if a person is convicted of an offence against this Act.
- (2) A court may make an order (a *disposal order*), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person—
  - (a) anything that was the subject of, or used to commit, the offence;
  - (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.
- (3) The court may make a disposal order for a thing—
  - (a) whether or not it has been seized under this Act; and
  - (b) if the thing has been seized—whether or not it has been returned to the former owner.

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- (4) In deciding whether to make a disposal order for a thing, the court—
    - (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and
    - (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.
  - (5) The court may make any order to enforce the disposal order that it considers appropriate.
  - (6) This section does not limit the court's powers under another law.
  - (7) In this section—

*court* means—

    - (a) a Magistrates Court; or
    - (b) any other court before which the defendant is convicted.

## **Division 5                      Other information-obtaining powers of authorised persons**

### **219      Power to require name and address**

- (1) This section applies if an authorised person—
  - (a) finds a person committing an offence against this Act; or
  - (b) finds a person in circumstances that lead the authorised person to reasonably suspect the person has just committed an offence against this Act; or
  - (c) has information that leads the authorised person to reasonably suspect a person has just committed an offence against this Act.
- (2) The authorised person may require the person to state the person's name, residential address, business address or an address in the State (for someone temporarily in the State).

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- (3) The authorised person may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
  - (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the authorised person must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.

## **220 Offence to contravene personal details requirement**

- (1) A person of whom a personal details requirement has been made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

## **221 Power to require production of documents**

- (1) An authorised person may require a person to make available for inspection by an authorised person, or to produce to the authorised person for inspection, at a reasonable time and place nominated by the authorised person—
  - (a) a document required to be kept by the person for inspection under the Environmental Protection Act, a resource Act or a source authority; or
  - (b) if a document or information required to be kept by the person for inspection under this Act is stored or recorded by means of a device—a document that is a

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clear written reproduction of the stored or recorded document or information.

- (2) A requirement under subsection (1) is a *document production requirement*.
- (3) For an electronic document, compliance with the document production requirement requires the making available or production of a clear written reproduction of the electronic document.
- (4) The authorised person may keep the document to copy it.
- (5) If the authorised person copies the document, or an entry in the document, the authorised person may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (6) A requirement under subsection (5) is a *document certification requirement*.
- (7) The authorised person must return the document to the person as soon as practicable after copying it.
- (8) However, if a document certification requirement is made of a person, the authorised person may keep the document until the person complies with the requirement.

## **222 Offence to contravene document production requirement**

- (1) A person of whom a document production requirement has been made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a document production requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

See, however, section 232 (Evidential immunity for individuals complying with particular requirements).

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- (3) The authorised person must inform the person, in a way that is reasonable in the circumstances—
  - (a) that the person must comply with the document production requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
  - (b) that, under section 232, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- (4) If the person fails to comply with the document production requirement when the authorised person has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).
- (5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

### **223 Offence to contravene document certification requirement**

- (1) A person of whom a document certification requirement has been made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a document certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

*Note—*

See, however, section 232 (Evidential immunity for individuals complying with particular requirements).

- (3) The authorised person must inform the person, in a way that is reasonable in the circumstances—

- (a) that the person must comply with the document certification requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
  - (b) that, under section 232, there is a limited immunity against the future use of the information or document given in compliance with the requirement.
- (4) If the person fails to comply with the document certification requirement when the authorised person has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).

## **224 Power to require information**

- (1) This section applies if an authorised person reasonably believes—
- (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The authorised person may, by notice given to the person, require the person to give the authorised person information related to the offence at a stated reasonable time and place.
- (3) A requirement under subsection (2) is an *information requirement*.
- (4) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—  
*information* includes a document.

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## **225 Offence to contravene information requirement**

- (1) A person of whom an information requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.
- (3) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the information requirement.

# **Part 4 Other provisions relating to authorised persons**

## **Division 1 Damage**

### **226 Duty to avoid inconvenience and minimise damage**

In exercising a power, an authorised person must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 228.

### **227 Notice of damage**

- (1) This section applies if—



- (a) an authorised person damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an authorised person damages something.
- (2) However, this section does not apply to damage the authorised person reasonably considers is trivial or if the authorised person reasonably believes—
- (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The authorised person must give notice of the damage to the person who appears to the authorised person to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the authorised person must—
- (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
- (5) The authorised person may delay complying with subsection (3) or (4) if the authorised person reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the authorised person's functions.
- (6) The delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised person or the assistant, the authorised person may state the belief in the notice.
- (8) The notice must state—
- (a) particulars of the damage; and

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- (b) that the person who suffered the damage may claim compensation under section 228.

## Division 2                      Compensation

### 228      Compensation

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised person including a loss arising from compliance with a requirement made of the person under this Act.
- (2) However, subsection (1) does not include loss arising from a lawful seizure or a lawful forfeiture.
- (3) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.
- (6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (7) Section 226 does not provide for a statutory right of compensation other than is provided by this section.
- (8) In this section—  
*loss* includes costs and damage.

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## Division 3                      Other offences relating to authorised persons

### 229      Giving authorised person false or misleading information

- (1) A person must not, in relation to the administration of this Act, give an authorised person information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—1665 penalty units.

- (2) Subsection (1) applies to information or a document given in relation to the administration of this Act whether or not the information or document was given in response to a specific power under this Act.

### 230      Obstructing authorised person

- (1) A person must not obstruct an authorised person, or someone helping an authorised person, exercising a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an authorised person, or someone helping an authorised person, and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—

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

- (3) In this section—

***obstruct*** includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

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### **231 Impersonating authorised person**

A person must not impersonate an authorised person.

Maximum penalty—100 penalty units.

## **Division 4 Miscellaneous provision**

### **232 Evidential immunity for individuals complying with particular requirements**

- (1) This section applies if an individual gives or produces information or a document to an authorised person under section 201, 221 or 224, other than information or a document mentioned in section 221(1)(a).
- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) Subsection (2) does not apply for a proceeding—
  - (a) about the false or misleading nature of the information or anything in the document; or
  - (b) in which the false or misleading nature of the information or document is relevant evidence.

## **Part 5 Appeals against decisions under chapter**

### **233 Appeal to Magistrates Court**

- (1) The recipient of an information notice about a decision under this chapter may appeal against the decision to a Magistrates Court.

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- (2) Chapter 3, part 4, division 6 applies for the appeal—
- (a) as if the decision were an SCL protection decision; and
  - (b) as if a reference to the Land Court were a reference to the Magistrates Court; and
  - (c) if the decision was not made by the chief executive—a reference to the chief executive were a reference to the person who made it.

## Chapter 8 Miscellaneous provisions

### Part 1 Science and Technical Implementation Committee

#### 234 Establishment

The Minister may establish a Science and Technical Implementation Committee (the *committee*).

#### 235 Membership

- (1) The committee is to consist of a chairperson and at least 3 other members (each a *committee member*).
- (2) Committee members are to be appointed by the Minister.
- (3) However, the Minister may appoint a person as a committee member only if satisfied the person has expertise or experience in soil attributes and processes or another area of knowledge prescribed under a regulation.
- (4) A committee member—
  - (a) holds office for the term stated in the person's appointment; and

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- (b) is entitled to be paid the fees and allowances decided by the Minister.
- (5) A committee member is eligible for reappointment.

### **236 Functions**

The committee's functions are to give the Minister—

- (a) independent scientific and technical advice about—
  - (i) the administration of this Act relating to soil and land resources; and
  - (i) other matters decided by the Minister; and
- (b) if the Minister asks, a report about the administration of this Act relating to soil and land resources.

### **237 Committee's business and operation**

The Minister may make terms of reference providing for how the committee is to conduct its business or perform its functions.

### **238 Confidentiality relating to committee's functions**

- (1) This section applies to a person who—
  - (a) is, or has been, a committee member; and
  - (b) in that capacity acquired protected information or has or had access to, or custody of, a document containing protected information.
- (2) The person must not—
  - (a) make a record of protected information; or
  - (b) whether directly or indirectly, divulge or communicate protected information; or
  - (c) use protected information to benefit any person.

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Maximum penalty—200 penalty units or 1 year's imprisonment.

- (3) However, subsection (2) does not apply if the record is made, or the information is divulged, communicated or used—
- (a) to the extent necessary to perform the person's functions as a committee member; or
  - (b) with the consent of—
    - (i) if the information relates to an entity other than the Minister—that entity; or
    - (ii) otherwise—the Minister; or
  - (c) as required or permitted by law.
- (4) In this section—

*protected information* means information not publicly available and obtained for the performance of any of the committee's functions.

## Part 2                      **General provisions about applications**

### 239      **Application of pt 2**

This part applies for any application under this Act.

### 240      **Requirements for making application**

- (1) The decision-maker must refuse to receive or process a purported application not made under the requirements under this Act for making the application.
- (2) However, the decision-maker may decide to allow the purported application to proceed and be decided as if it did comply with the requirements if the decision-maker is

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satisfied the application substantially complies with the requirements.

## **241 Requisition to applicant**

- (1) The decision-maker may, by notice, require (an *application requisition*) the applicant to do all or any of the following within a stated reasonable period—
  - (a) complete or correct the application if it appears to the decision-maker to be incorrect, incomplete or defective;
  - (b) give the decision-maker additional information about, or relevant to, the application;
  - (c) give the decision-maker an independent report by an appropriately qualified person, or a statutory declaration, verifying all or any of the following—
    - (i) any information included in the application;
    - (ii) any additional information required under paragraph (b).
- (2) For subsection (1)(c), the application requisition may require the statutory declaration—
  - (a) to be made by an appropriately qualified independent person or by the applicant; and
  - (b) if the applicant is a corporation—to be made for the applicant by an executive officer of the applicant.
- (3) The applicant must bear any costs incurred in complying with the application requisition.
- (4) The decision-maker may extend the period for complying with the application requisition.
- (5) Without limiting section 240(1) or 242, the decision-maker may refuse to decide the application until the application requisition is complied with.
- (6) In this section—

*information* includes a document.



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**242 Consequence of failure to comply with application requisition**

- (1) This section applies if—
  - (a) an application requisition has been given for an application; and
  - (b) the period stated in the notice for complying with the application requisition has ended; and
  - (c) the application requisition has not been complied with to the decision-maker's satisfaction.
- (2) If the application is a validation application or assessment application, the decision-maker may—
  - (a) if the decision-maker considers there is enough information about the relevant matters for the application—decide the application on the basis of that information; or
  - (b) otherwise—decide that the application is lapsed.
- (3) For an exceptional circumstances application, the decision-maker may decide to refuse the application.
- (4) In this section—

*relevant matters*, for the application, means the matters mentioned in—

  - (a) if the application relates to a protection area—section 43; or
  - (b) if the application relates to the management area—section 44.

**243 Particular criteria generally not exhaustive**

- (1) This section applies if another provision of this Act permits or requires the decision-maker to consider particular criteria in deciding the application.

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- (2) To remove any doubt, it is declared that the decision-maker may, in making the decision, consider any other criteria the decision-maker considers relevant (*other relevant criteria*).
- (3) However, subsection (2) does not apply if the provision otherwise provides.
- (4) The decision-maker may ask a submitter or anyone else for information relating to the particular criteria or other relevant criteria.
- (5) In this section—  
*criteria* includes issues and matters.

#### **244 Particular grounds for refusal generally not exhaustive**

- (1) This section applies if another provision of this Act provides for particular grounds on which the decision-maker may decide the application.

*Example of another provision of this Act—*

section 242(2) or (3)

- (2) To remove any doubt, unless the other provision otherwise provides, the decision-maker may decide the application on another reasonable and relevant ground, including, for example, because of the precautionary principle.
- (3) In this section—

*precautionary principle* means the principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of SCL or potential SCL.

*decide*, an application, includes to refuse the thing the subject of the application.

#### **245 General power to impose conditions**

A power to decide an application includes a power to—

- 
- (a) grant the application subject to conditions that must be complied with before the application is granted; or
  - (b) approve or grant the thing the subject of the application subject to conditions that must be complied with before the thing is approved or granted.

#### **246 Withdrawal of application**

- (1) The applicant may give the decision-maker a notice withdrawing the application at any time before it is decided.
- (2) The withdrawal takes effect when the notice is given.

#### **247 Power to refund application fee**

The decision-maker may, but need not, refund all or part of any fee paid for the application if it is withdrawn or in other circumstances the decision-maker considers appropriate.

## **Part 3 The decision register**

#### **248 Register**

- (1) The chief executive must keep a register showing the outcome of each—
  - (a) validation decision; and
  - (b) SCL protection decision; and
  - (c) exceptional circumstances decision.
- (2) The chief executive may keep in the register any other information the chief executive considers appropriate including, for example, the records the chief executive must keep under section 155.
- (3) In this section—

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*register* includes any document of a public nature, whatever called.

#### **249 Access to register**

The chief executive—

- (a) may keep the decision register published on the department's website; and
- (b) must make the register available for inspection and purchase.

## **Part 4 Executive officers**

#### **250 Executive officers must ensure corporation does not commit SCL offences**

- (1) The executive officers of a corporation must ensure the corporation complies with each provision of this Act under which an SCL offence is created (an *SCL offence provision*).
- (2) If a corporation commits an offence against an SCL offence provision, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence the corporation has been convicted of an offence against an SCL offence provision is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the SCL offence—the

officer exercised reasonable diligence to ensure the corporation complied with the SCL offence provision;  
or

- (b) the officer was not in a position to influence the conduct of the corporation in relation to the SCL offence.

## **Part 5 Evidentiary provisions**

### **251 Application of pt 5**

This part applies for a proceeding under or in relation to this Act.

### **252 Authority**

The power of the Minister, Coordinator-General, chief executive or an authorised person to do anything under this Act must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it.

### **253 Signatures**

A signature purporting to be the signature of the Minister, Coordinator-General or chief executive is evidence of the signature it purports to be.

### **254 Evidentiary certificates**

- (1) A certificate signed, or purporting to be signed, by the chief executive stating any of the following matters is evidence of the matter—
- (a) that on a stated day or during a stated period stated land was or was not any of the following—
- (i) SCL;

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- (ii) potential SCL;
  - (iii) in a protection area;
  - (iv) in the management area;
  - (v) in a zone;
- (b) that a stated document of any of the following types is a document given, issued, kept or made under this Act—
- (i) a map;
  - (ii) guidelines or a code;
  - (iii) a decision;
  - (iv) the decision register;
  - (v) another document kept under this Act;
- (c) that a stated document is a copy of, or an extract from or part of, a document mentioned in paragraph (a) or (b);
- (d) that a copy of a stated document signed by an owner of land was given to the chief executive;
- (e) that on a stated day a stated person was given a stated notice under this Act.
- (2) Also, to the extent a matter mentioned in subsection (1) relates to the Coordinator-General's functions under this Act, a certificate signed, or purporting to be signed, by the Coordinator-General stating any of the things mentioned in subsection (1) about the matter is evidence of the matter.

## **255 Devices used by authorised person**

- (1) This section applies if—
- (a) a device is used by an authorised person to perform the authorised person's functions under this Act; and
  - (b) the use is for a purpose for which the device was made.

(2) In the absence of evidence to the contrary, it is to be taken that the device was working properly and the authorised person is appropriately qualified.

(3) In this section—

*appropriately qualified* means appropriately qualified at all material times.

*device* includes an instrument, equipment and an installation.

*working properly*, for the device, includes that its operation was accurate and precise at all material times.

## 256 Remotely sensed image reports

(1) A statement of any of the following matters in a report about a remotely sensed image is evidence of the matter—

(a) the person who made the report (the *report-maker*);

(b) the report-maker's qualifications;

(c) a stated document is, or is a copy of, a remotely sensed image of a stated area;

(d) the day on which a stated remotely sensed image was produced;

(e) the report-maker's stated conclusions drawn from a stated remotely sensed image;

(f) the location of a stated area;

(g) whether cropping has taken place in a stated area at a stated time or during a stated period.

(2) A signature in the report purporting to be that of an appropriately qualified person to give a report of that type is evidence that the report-maker was so qualified.

(3) In this section—

*report* includes certificate.

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

- (1) This section applies if a party to the proceeding intends to challenge—
  - (a) a matter mentioned in section 255; or
  - (b) a statement mentioned in section 256.
- (2) The party must give each other party to the proceeding notice of the party's intention to adduce relevant evidence at least 28 days before the evidence is adduced.
- (3) The notice must state the grounds on which the party intends to rely to prove that the matter or statement was not correct.

## **Part 6 Offence proceedings**

**258 Division of offences against Act**

- (1) An offence against this Act for which the maximum penalty is 2 years imprisonment or more is an indictable offence, and a crime.
- (2) Any other offence against this Act is a summary offence.

**259 Proceedings for indictable offences**

- (1) A proceeding for an indictable offence against this Act may, at the prosecution's election, be taken summarily or on indictment.
- (2) A magistrate must not hear an indictable offence summarily if—
  - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
  - (b) the magistrate considers that the charge should be prosecuted on indictment.



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- (3) If subsection (2) applies—
- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
  - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
  - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
  - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).
- (4) The maximum penalty of imprisonment that may be summarily imposed for an indictable offence is 1 year's imprisonment.

## **260 Limitation on who may summarily hear indictable offence proceedings**

- (1) A proceeding must be before a magistrate if it is a proceeding—
- (a) for the summary conviction of a person on a charge for an indictable offence; or
  - (b) for an examination of witnesses for a charge for an indictable offence.
- (2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

## **261 Proceeding for summary offences**

- (1) A proceeding for a summary offence against this Act must start within the later of the following periods to end—

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- (a) 1 year after the commission of the offence;
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 5 years after the offence is committed.
- (2) For subsection (1), an SCL offence does not come to the complainant's knowledge merely because the complainant receives a remotely sensed image that may provide evidence of the offence.

## 262 Alternative offences

- (1) This section applies if—
- (a) a section of this Act provides that an offence against a subsection of the section (the *smaller offence*) is an alternative offence for an offence against another subsection of the section (the *larger offence*); and
  - (b) in a proceeding for an offence against the larger offence, the trier of fact—
    - (i) is not satisfied the defendant is guilty of the larger offence; but
    - (ii) is satisfied the defendant is guilty of the smaller offence.
- (2) The trier of fact may find the defendant guilty of the smaller offence.
- (3) If the defendant is found guilty of the smaller offence, the defendant is liable to be punished for the smaller offence.
- (4) To remove any doubt, it is declared that—
- (a) this section applies regardless of whether—
    - (i) the proceeding for the larger offence is summary or on indictment; or
    - (ii) the trier of fact is a judge or a jury; and
  - (b) this section applies even if an indictment for the larger offence does not include the smaller offence.

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## 263 Statement of complainant's knowledge

In a complaint starting a proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

## 264 Conduct of representatives

- (1) This section applies for a proceeding for an offence against this Act if it is relevant to prove a person's state of mind about particular conduct.
- (2) It is enough to show—
  - (a) the conduct was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) Conduct engaged in for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been engaged in also by the person unless the person proves—
  - (a) if the person was in a position to influence the representative in relation to the conduct—the person took reasonable steps to prevent the conduct; or
  - (b) the person was not in a position to influence the representative in relation to the conduct.

- (4) In this section—

*engaging*, in conduct, includes failing to engage in conduct.

*representative* means—

- (a) for a corporation—an agent, employee or executive officer of the corporation; or
- (b) for an individual—an agent or employee of the individual.

*state of mind*, of a person, includes the person's—

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- (a) belief, intention, knowledge, opinion or purpose; and
- (b) reasons for the belief, intention, opinion or purpose.

## **Part 7                      General provisions for appeals**

### **265      Application of pt 7**

This part applies for an appeal against a decision under this Act.

### **266      Appeal period**

- (1) The appeal must be started within 28 days after the appellant receives notice of the decision.
- (2) However, the court to which the appeal may be made may at any time extend the time for starting the appeal.

### **267      Appeal does not generally affect decision**

The appeal does not affect the operation of the decision or prevent the implementation of the decision unless the decision is stayed under section 268.

### **268      Stays**

- (1) The court to which the appeal is made may, on the appellant's application, make an order staying the operation of the decision (a *stay*).
- (2) However, subsection (1) does not apply for a decision to give a stop work notice.
- (3) A stay may be granted only if the court thinks it is desirable after considering—

- 
- (a) the interests of any person whose interests may be affected by the order being made or not being made; and
  - (b) written or oral submissions made to it by the decision-maker for the decision; and
  - (c) the public interest.
- (4) In granting a stay, the court may require an undertaking, including an undertaking as to costs or damages, it considers appropriate.
- (5) The court may assess the costs or damages.
- (6) In this section—  
*costs or damages* includes compliance action expenses.

## Part 8 Other provisions

### 269 When documents are served by post

- (1) Despite the *Acts Interpretation Act 1954*, section 39A(1), if this Act requires or permits a document to be served by post, service—
- (a) may be effected by properly addressing, prepaying and posting the document as a letter; and
  - (b) is taken to have been effected at the time at which the letter is posted.
- (2) Subsection (1) applies whether the expression ‘deliver’, ‘give’, ‘notify’, ‘send’ or ‘serve’ or another expression is used.

### 270 References to right to enter

A right under this Act to enter a place includes the right to—

- (a) leave and re-enter the place from time to time; and

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- (b) remain on the place for the time necessary to achieve the purpose of the entry; and
- (c) take on the place equipment, materials, vehicles or other things reasonably necessary to exercise a power under this Act.

### **271 Guidelines**

- (1) The chief executive may make guidelines giving advice about applications under this Act.
- (2) The chief executive must do the following for the criteria guidelines and for any guidelines made under subsection (1) or section 156—
  - (a) publish them on the department’s website;
  - (b) make them available for inspection and purchase.

### **272 Appropriate fee for purchasing copies**

If a provision of this Act requires a document to be available for inspection and purchase, the appropriate fee for giving a copy of a document is the reasonable, but no more than the actual, cost of making and giving the copy.

### **273 No compensation because of Act**

- (1) No compensation is payable by the State or an official—
  - (a) for, or in connection with, the enactment, making or operation of this Act or any statutory instrument under it; or
  - (b) because of an amendment of a map under this Act; or
  - (c) because the carrying out of an activity is made unlawful, or is conditioned or restricted, under this Act.
- (2) In this section—

*compensation* means any amount, whether by way of compensation, reimbursement or otherwise.

**274 Delegation by Minister, Coordinator-General and chief executive**

- (1) The Minister, Coordinator-General or chief executive may delegate their functions under this Act to an appropriately qualified public service officer or employee.
- (2) However, the Minister or Coordinator-General can not delegate the function of deciding exceptional circumstances applications.

**275 Protection of officials from liability**

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

**276 Review of Act**

- (1) The Minister must review this Act's operation after 30 January 2014, but before 30 January 2016.
- (2) The review must include a review of provisions about the committee.

**277 Approved forms**

- (1) The chief executive may approve forms for use under this Act.
- (2) A form approved for use under this Act may be combined with, or used together with, an approved form under another Act.

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## **278 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may provide—
  - (a) for fees payable under this Act and the matters for which they are payable; and
  - (b) for a maximum penalty of 20 penalty units for contravention of the regulation.

# **Chapter 9 Transitional provisions**

## **Part 1 Preliminary**

### **279 Definitions for ch 9**

In this chapter—

*certificate of application* means a certificate of application for a mining lease endorsed under the Mineral Resources Act, section 252(2).

*EIS* means an environmental impact statement.

*EP* means an exploration permit under the Mineral Resources Act.

*EPC* means an EP for coal.

*finalised EIS TOR* means—

- (a) final terms of reference for an EIS under the Environmental Protection Act, section 39; or
- (b) finalised terms of reference for an EIS under the State Development Act, section 30.



*mining lease* means a mining lease under the Mineral Resources Act.

*permanent impact restriction* means section 94.

*petroleum lease* means a petroleum lease under the P&G Act or a lease under the 1923 Act, section 40.

*proposed tenure*, for a provision about a related mining lease application or petroleum lease application, means—

- (a) the proposed mining lease the subject of the related mining lease application; or
- (b) the proposed petroleum lease the subject of the related petroleum lease application.

*related mining lease application*, for a provision about an environmental authority application, means a mining lease application under the Mineral Resources Act for authorised activities the subject of the environmental authority application.

*related petroleum lease application*, for a provision about an environmental authority application, means a petroleum lease application under the 1923 Act or the P&G Act for authorised activities the subject of the environmental authority application.

*related resource application*, for a provision about an environmental authority application, means any application under a resource Act for authorised activities the subject of the environmental authority application.

## Part 2 Existing source authorities

### 280 Existing source authorities not affected

To remove any doubt, it is declared that this Act does not affect—

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- (a) a source authority in force before the commencement;  
or
- (b) the operation of the Environmental Protection Act, Planning Act or a resource Act for the authority.

## **Part 3                      Environmental and resource    authority applications**

### **Division 1                      General provision**

#### **281      Act generally applies for all applications whenever made**

- (1) This Act applies for an environmental authority application or resource authority application made, but not decided, before the commencement.
- (2) However, subsection (1) is subject to divisions 2 and 3.

*Notes about the effect of this section for deciding the applications—*

- 1 If the land is not SCL or potential SCL, this Act will not affect the environmental authority application or resource authority application (each a *source application*). See sections 78 and 91.
- 2 If the land is SCL, an assessment application and an SCL protection decision must be made before any source application can be granted. See chapter 3, part 4, the Geothermal Act, sections 39 and 81, the GHG Storage Act, sections 40, 118, 130 and 235, the Mineral Resources Act, section 391, the 1923 Act, section 75WC and the P&G Act, sections 41, 84, 121, 132, 164, 178, 192, 396, 410 and 446.
- 3 If the land is potential SCL, a validation application may be made for the land. If the outcome of the validation application is that the land is not SCL, this Act will not affect the source application. Otherwise, if the outcome of the validation application is that the land is SCL, note 2 applies.

- 4 If a validation application is not made, the applicant for a source application must, for the assessment application, elect to treat the land as being SCL. See section 84, as applied under section 97.
- 5 If, under an SCL protection decision, the land is identified permanently impacted land, the mitigation requirement will apply.

## **Division 2                    Exclusion of all of Act for particular applications**

### **282    Exclusion**

An environmental authority application and its related mining lease application or related petroleum lease application must be dealt with and decided as if this Act had not commenced if they are excluded under this division.

### **283    EIS stage completed on or before 31 May 2011**

- (1) An environmental authority application and its related mining lease application or related petroleum lease application made at any time is excluded if the EIS stage for the proposed tenure was completed on or before 31 May 2011.
- (2) For subsection (1), the EIS stage is completed only if one of the following applied for an EIS for, or that included, the proposed tenure—
  - (a) the EIS process had been completed under the Environmental Protection Act, section 60;
  - (b) the giving, under the State Development Act, of the Coordinator-General's report for the EIS.

### **284    Draft environmental authority on or before 31 May 2011**

- (1) An environmental authority application and its related mining lease application or related petroleum lease application are excluded if a draft environmental authority was given on or before 31 May 2011.

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(2) In this section—

*draft environmental authority* means a draft environmental authority for the environmental authority application under the Environmental Protection Act.

### **Division 3                      Exclusion of permanent impact restriction for particular applications**

#### **285      Exclusion**

- (1) The permanent impact restriction does not apply for an environmental authority application and its related resource application if they are excluded under this division.
- (2) To remove any doubt, it is declared that if subsection (1) applies, all of this Act apart from the permanent impact restriction applies for the applications, regardless of when they were made or will be made.

*Note—*

For the effects of this section, see notes 2 to 4 for section 281.

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

An environmental authority application and its related mining lease application or related petroleum lease application are excluded if, on or before 31 May 2011—

- (a) there was a finalised EIS TOR for the proposed tenure; and
- (b) either—
  - (i) for the mining lease application—a certificate of application had been issued for the application; or

- (ii) for the petroleum lease application—it complied with the relevant requirements under the 1923 Act or the P&G Act.

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

- (1) This section applies for an environmental authority application for which the related resource application is for a petroleum lease.
- (2) The applications are excluded if—
  - (a) on or before 31 May 2011 there was a finalised EIS TOR for an area that included the area of an ATP; and
  - (b) the area subject to the petroleum lease application includes the ATP's area.
- (3) In this section—

*ATP* means an authority to prospect under the P&G Act or the 1923 Act.

**288 Existing mining lease and EP or MDL forming a contiguous area**

- (1) This section applies if—
  - (a) the area of a mining lease and an EP or MDL formed a contiguous area on 23 August 2010; and
  - (b) on or before 23 August 2012—
    - (i) a mining lease application is or was made for any of the area of the EP or MDL; and
    - (ii) a certificate of application is or was issued for the mining lease application; and
  - (c) on 23 August 2010, the applicant was—
    - (i) the holder of the mining lease and also—
      - (A) the holder of the EP or MDL; or

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- (B) a party to a joint venture or partnership agreement with the holder of the EP or MDL about resource activities for the proposed mining lease the subject of the application; or
  - (C) a subsidiary of the holder of the EP or MDL, as defined under the Corporations Act, section 46; or
- (ii) the holder of the EP or MDL and also—
- (A) a party to a joint venture or partnership agreement with the holder of the mining lease; or
  - (B) a subsidiary of the holder of the mining lease.
- (2) The mining lease application and any environmental authority application to which it relates are excluded.
- (3) In this section—
- MDL*** means a mineral development licence under the Mineral Resources Act.

## **289 Future mining lease relating to EPC 891**

- (1) Any environmental authority application and any related resource application for a mining lease relating to EPC 891 is excluded.
- (2) However, the exclusion only applies for resource activities under an EIS resulting from the finalised EIS TOR relating to EPC 891, published on 2 June 2011.

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

### **290      SCL protection conditions imposed**

- (1) This section applies for any environmental authority or mining lease granted because of an application mentioned in section 289(1).
- (2) It is a condition of the lease that no open cut mining can be carried out under the lease.
- (3) It is a condition of the environmental authority that its holder must use all reasonable endeavours to rehabilitate all impacts on the land from underground coal mining carried out under the lease.

*Example—*

if the mining causes subsidence, contouring and laser levelling

- (4) The conditions are SCL protection conditions.
- (5) This section does not limit or otherwise affect the power, under chapter 3, part 4, to impose other SCL protection conditions for the authorities that are not inconsistent with the conditions.

## **Part 4                                      Miscellaneous provisions**

### **291      Effect of regulation amendment**

The amendment of the *Sustainable Planning Regulation 2009* under this Act does not affect the Governor in Council's power to further amend the regulation or to repeal it.

[s 292]

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

(1) Section 120(2)(a) and section 121 do not apply for the making of a regulation under section 120(1) to prescribe major renewable energy projects.

(2) In this section—

*major renewable energy projects* means developments for projects under which it is proposed to generate more than 30MW of electricity from a renewable energy source.

*renewable energy source* means wind, solar energy or biomass.

*Examples of biomass—*

energy crops, wood waste, agricultural waste, waste from processing agricultural products, food waste, food processing waste

*Examples of things that are not a renewable energy source—*

fossil fuels and materials and waste products derived from them

## **Chapter 10 Amendment of legislation**

### **Part 1 Amendment of Environmental Protection Act 1994**

**293 Act amended**

This part amends the *Environmental Protection Act 1994*.

**294 Amendment of s 146 (Purpose of ch 5)**

Section 146, after subsection (2)—

*insert—*



*Note—*

The *Strategic Cropping Land Act 2011*, chapter 3, part 4, division 2 imposes restrictions on the issuing of environmental authorities for SCL and potential SCL under that Act.’.

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

Section 309A, after subsection (3)—

*insert—*

*Note—*

The *Strategic Cropping Land Act 2011*, chapter 3, part 4, division 2 imposes restrictions on the issuing of environmental authorities for SCL and potential SCL under that Act.’.

**Part 2 Amendment of Sustainable  
Planning Regulation 2009**

**296 Regulation amended**

This part amends the *Sustainable Planning Regulation 2009*.

**297 Amendment of sch 7 (Referral agencies and their jurisdictions)**

Schedule 7, table 3—

[s 297]

*insert—*

‘Particular development on SCL or potential SCL		
27	Material change of use, other than a use or in an area mentioned in schedule 13A, of a lot of 5ha or larger if the footprint for the change of use is—  (a) wholly or partly on SCL or potential SCL; and  (b) more than 750m <sup>2</sup>	The SCL chief executive—as a concurrence agency     1 The SCL principles.  2 The SCL Act’s purposes.
28	Reconfiguring a lot, other than in an area mentioned in schedule 13A, if, under the reconfiguration, any lot with SCL or potential SCL in it is less than 15ha	The SCL chief executive—as a concurrence agency     1 The SCL principles.  2 The SCL Act’s purposes.
29	A material change of use (not relating to a significant project) in a protection area—  (a) for which the SCL chief executive is a concurrence agency under item 27; and  (b) the carrying out of which will have a permanent impact on SCL or potential SCL; and  (c) the footprint of which is more than 3000m <sup>2</sup>	The Minister administering the SCL Act—as a concurrence agency           The SCL Act, chapter 4
30	A material change of use relating to a significant project in a protection area—  (a) for which the SCL chief executive is a concurrence agency under item 27; and  (b) the carrying out of which will have a permanent impact on SCL or potential SCL; and  (c) the footprint of which is more than 3000m <sup>2</sup>	The Coordinator-General under the <i>State Development and Public Works Organisation Act 1971</i> —as a concurrence agency           The SCL Act, chapter 4’.

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**298 Insertion of new sch 13A**

After schedule 13—

*insert—*

**‘Schedule 13A Excluded matters for SCL or potential SCL concurrence agency jurisdiction**

schedule 7, table 3, items 27 and 28

- 1 Any of the following as defined under the standard planning scheme provisions—
  - animal husbandry
  - animal keeping
  - cropping
  - a home based business
  - intensive animal industries, but only to the extent the industries are feedlotting
  - intensive horticulture
  - landing
  - outdoor lighting
  - roadside stalls
  - a winery
- 2 A domestic housing activity
- 3 A building, structure or activity supporting cropping on SCL or potential SCL
- 4 An urban area
- 5 An area zoned under a planning scheme for rural residential or future rural residential purposes

[s 299]

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- 6 An area described as urban footprint under a regional plan or State planning regulatory provision
- 7 A key resource area’.

## 299 Amendment of sch 26 (Dictionary)

Schedule 26—

*insert—*

**‘footprint**, for a provision about development, means the portion of the relevant lot covered by—

- (a) buildings or structures measured to their outermost projection; and
- (b) any of the following relating to the buildings or structures or the development—
  - (i) asphalt, concrete or another hard built surface;
  - (ii) a carpark;
  - (iii) a road or access track;
  - (iv) an area used for vehicle movement or parking;
  - (v) an area used or that may be used for storage.

**permanent impact**, on SCL or potential SCL, see the SCL Act, section 14(1).

**potential SCL** see the SCL Act, section 10.

**protection area** see the SCL Act, section 28(2).

**SCL** see the SCL Act, section 9(2).

**SCL Act** means the *Strategic Cropping Land Act 2011*.

**SCL chief executive** means the chief executive of the department in which the SCL Act is administered.

**SCL principles** see the SCL Act, section 11.

**significant project** see the *State Development and Public Works Organisation Act 1971*, schedule 2.’.

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## Schedule 1      Zonal criteria for original zones

section 27(1)(a)

### Part 1              Preliminary

#### Division 1          Application

##### 1              What sch 1 is about

- (1) This schedule provides for the zonal criteria for land in zones, other than for those created under a zonal amendment under a regulation.
- (2) To make a validation application for land, sections 43, 48 and 51 require an assessment of whether or not the land is zonal criteria compliant, in the way provided for under any criteria guidelines.

##### 2              References to land or soil are to sites

In this schedule, a reference to land or to soil is not a reference to all of the land the subject of the application, but a reference to the land or soil at each site being assessed against the zonal criteria.

#### Division 2          Publication definitions

##### 3              Application of div 2

- (1) This division defines, with an abbreviated title, the publications (a *defined publication*) referred to in this schedule.
- (2) However, if a regulation prescribes a later edition or revision of a defined publication, the definition is changed to the later edition or revision.

- (3) A later edition or revision may be prescribed even though there has been a change to the author, publisher or title of the defined publication.

#### **4 Defined publications**

- (1) The *field handbook* is National Committee on Soil and Terrain (2009) 'Australian Soil and Land Survey Field Handbook', 3rd ed, CSIRO Publishing, Collingwood, Victoria.
- (2) The *soil chemical methods* is Rayment GE and Lyons DJ (2011) 'Soil Chemical Methods—Australasia', CSIRO Publishing, Collingwood, Victoria.
- (3) The *standard soil colour chart* is—
- (a) Fujihara Industry Company (2001) 'Revised Standard Soil Color Charts', Fujihara Industry Co, Tokyo; or
  - (b) Munsell Color Company (2000) 'Munsell Soil Color Charts', Munsell Color Co, Baltimore, MD.

### **Division 3 Drainage**

#### **5 Favourable drainage**

Particular soil in land has *favourable drainage* if its profile has no waterlogged layer within 1000mm of the surface.

#### **6 Satisfactory drainage**

Particular soil in land has *satisfactory drainage* if its profile has no waterlogged layer within 300mm of the surface.

#### **7 Waterlogged layer**

- (1) A *waterlogged layer*, for land, is a layer in its profile with any of the following—
- (a) a dominant soil colour that is gleyed;

- (b) a dominant soil colour that—
    - (i) is grey; and
    - (ii) has at least 10% distinct or prominent mottles of an orange or rusty colour;
  - (c) any other dominant soil colour that has at least 10% distinct or prominent mottles of a gleyed colour;
  - (d) a conspicuous bleach at least 100mm thick not directly overlying bedrock or weathered rock.
- (2) For this section, a soil's colour must be worked out by visually comparing it with a standard soil colour chart.
- (3) In this section—

***conspicuous bleach*** means a white or almost white colour—

- (a) that is the dominant colour of the layer; and
- (b) that contains 10% or less mottles; and
- (c) for which its closest match (when dry) is to a colour chip with a value of 7 or 8 and a chroma of 4 or less on a standard soil colour chart's 5YR, 7.5YR or 10YR chart.

***gleyed***, for a soil colour, means—

- (a) it is bluish-grey to greenish-grey; and
- (b) its closest match (when moist) is to the colour chips of a standard soil colour chart of any colour chip—
  - (i) on a gley chart; or
  - (ii) with a value of 7 or 8 and a chroma of 3 or less on a standard soil colour chart's 2.5Y or 5Y chart.

***grey***, for a soil colour, means—

- (a) it is not gleyed; and
- (b) its closest match (when moist) is to a colour chip with a value of 4 or more and a chroma of 2 or less on any chart of a standard soil colour chart.

***mottles*** means clear patches or streaks of sub-dominant colour (when moist) within a differently coloured soil matrix.

**orange**, for a soil colour, means its closest match (when moist) is to a colour chip with a value 6 or 7 and a chroma of 6 or more on a standard soil colour chart's 5YR or 7.5YR chart.

**rusty**, for a soil colour, means its closest match (when moist) is to a colour chip with a value 3 or more and a chroma of 3 or more on a standard soil colour chart's 2.5YR, 5R, 7.5R or 10R chart.

## **Division 4                      Rockiness**

### **8                      *Rockiness***

(1) ***Rockiness*** is the average density of—

- (a) unattached rock fragments larger than 60mm average maximum dimension on the surface of the land; and

*Note—*

Rock fragments refers to cobbles, stones and boulders as defined under the field handbook.

- (b) consolidated outcrops of underlying bedrock protruding above the surface.

(2) The average density must be worked out using the visual estimation charts in the field handbook.

### **9                      *Bedrock***

***Bedrock*** is a continuous mass of consolidated rock that has been little-weathered.

*Notes about bedrock—*

- 1 It may underlie a profile or protrude above the surface.
- 2 It is usually too hard to dig with hand tools, even if moist.
- 3 It is not underlain by unconsolidated soil material and is distinguished from hardpans that are underlain by unconsolidated soil material. However, bedrock may be underlain by other layers of softer rock.
- 4 Under the field handbook it is defined as an 'R' horizon.



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**10 Weathered rock**

- (1) *Weathered rock* is loosely consolidated material—
- (a) in which there has been minimal biological activity; and
  - (b) that is more like fresh, unweathered rock than the soil material above.
- (2) For subsection (1), the material may be any of the following as defined under the field handbook—
- (a) partially weathered rock;
  - (b) saprolite;
  - (c) decomposed rock.

*Note—*

Features distinguishing weathered rock from soil are—

- (a) a markedly increased occurrence of rock fragments compared with soil layers above; or
- (b) a presence of a ‘ghost rock’ structure in which the material has the outline of rock layers or fragments but is as soft as the overlying soil layers; or
- (c) a predominance of ‘mealy’ material with a characteristic gritty appearance similar to fine ‘crusher dust’ or ‘deco’.

**Division 5 Other definitions****11 Chloride content**

*Chloride content* is a measurement of soil chloride using a 1:5 soil to water suspension, under method 5A1, 5A2, 5A3 or 5A4 under soil chemical methods.

**12 Electrical conductivity**

*Electrical conductivity* is a measurement of soil salinity using a 1:5 soil to water suspension carried out in the field or by laboratory measurement following the method 3A1 in soil chemical methods.

**13 Gilgai microrelief**

*Gilgai microrelief* is gilgai microrelief as defined under the field handbook.

**14 Soil pH**

*Soil pH* is a measurement of soil acidity or alkalinity carried out in the field, or by laboratory measurement using a 1:5 soil to water suspension under method 4A1 in soil chemical methods.

**15 *Rigid soils and non-rigid soils***

- (1) *Rigid soils* are soils with minimal capacity to shrink and swell with changing water content.
- (2) For subsection (1), minimal capacity to shrink and swell exists only if, when dry, the soil does not have—
  - (a) open cracks that—
    - (i) are 5mm wide or more; and
    - (ii) extend from at least 300mm below the surface vertically upwards to—
      - (A) the surface; or
      - (B) immediately below a plough layer; or
      - (C) immediately below a thin, natural surface layer; or
  - (b) gilgai microrelief.
- (3) *Non-rigid soils* are soils other than rigid soils.

**16 *Slope***

The *slope* of particular land is the upward or downward surface incline, measured over an interval of at least 20m.

**17 Soil depth**

- (1) **Soil depth**, for soil, is the depth of the soil to any of the following—
- (a) bedrock;
  - (b) a hard pan;
  - (c) weathered rock;
  - (d) a continuous gravel layer.

- (2) In this section—

**continuous gravel layer** means a continuous layer that—

- (a) extends beneath most of the surface; and
- (b) contains very abundant (90% or more) unconsolidated rock fragments of 2mm or more.

*Note—*

A continuous gravel layer retards penetration by plant roots.

**hard pan** means a hardened layer of soil—

- (a) formed by natural processes; and
- (b) that is a strongly cemented or very strongly cemented pan as defined under the field handbook.

**18 Soil physico-chemical limitation**

- (1) A **soil physico-chemical limitation** for soil means it has—
- (a) for any soil in the Western Cropping zone or Eastern Darling Downs zone—a chloride content of more than 800mg/kg; and
  - (b) for any soil in the Coastal Queensland zone, Granite Belt zone or Wet Tropics zone—an electrical conductivity of more than 0.56 dS/m; and
  - (c) for any soil in any zone—a soil pH of 5.0 or less; and
  - (d) for rigid soils in any zone—
    - (i) a soil pH of more than 8.9; or

- (ii) an exchangeable sodium percentage of more than 15; or
  - (iii) a calcium to magnesium ratio of 0.1 or less.
- (2) The ***exchangeable sodium percentage*** is the percentage of the total cation exchange capacity (***CEC***) due to exchangeable sodium, measured using—
  - (a) generally—the most appropriate method described in Table 15.2 of soil chemical methods; or
  - (b) for strongly acid soils—method 15J1 in soil chemical methods (known as ‘effective CEC’ or ‘ECEC’).
- (3) However, the exchangeable sodium percentage must not be used if—
  - (a) the CEC or ECEC is less than  $3\text{cmol}_c/\text{kg}$ ; or
  - (b) the soil texture is sandy loam or lighter, as defined under the field handbook.
- (4) The ***calcium to magnesium ratio*** is the ratio of exchangeable calcium to exchangeable magnesium, worked out using a relevant method under soil chemical methods.

## **19 Soil water storage**

- (1) ***Soil water storage*** is the amount of total water stored in a soil profile that is available for plant use, expressed as millimetres of water from the surface to the effective rooting depth of the soil.
- (2) For subsection (1)—
  - (a) the amount may be worked out by—
    - (i) the soil texture look-up table; or
    - (ii) a combination of laboratory measurement and direct field measurement, using the methodology under subsection (4); and
  - (b) the effective rooting depth of the soil is the shallowest of the following for the soil—
    - (i) its soil depth;

- (ii) the depth of any soil physico-chemical limitation for the soil;
  - (iii) a depth of 1000mm.
- (3) However, the soil texture look-up table can not be used if the value worked out by using the table is within 15% of the amount stated in part 2, criterion 8 for the zone.
- (4) For subsection (2)(a)(ii), the methodology is—
- (a) a drained lower limit must be measured at a soil water potential of negative 1500kPa; and
  - (b) the drained upper limit for the soil must be worked out using direct field measurement; and
  - (c) the soil water storage is the difference between the value of the 2 limits.
- (5) In this section—

***soil texture look-up table*** means the following table, using the soil texture classes under the field handbook—

<b>Soil texture</b>	<b>Estimated soil water storage per 100mm of soil depth (in mm)</b>
sand; clayey sand; loamy sand	4
sandy loam	5
loam; silty loam; sandy clay loam	6
clay loam; clay loam, sandy; silty clay loam	8
light clay; light medium clay	10
medium clay; medium heavy clay; heavy clay	12

*Note—*

Individual values for each increment or soil layer are summed to the effective rooting depth to give the soil water storage.

## **20      *Surface***

*Surface*, for a provision about land or soil, is the ground surface of the land or soil.

## **Part 2                      Criteria**

### **Division 1                      Western Cropping zone**

#### **Criterion 1**

Slope is 3% or less.

#### **Criterion 2**

Rockiness is 20% or less.

#### **Criterion 3**

The average density of gilgai microrelief with depressions of more than 500mm is less than 50% of the land surface.

#### **Criterion 4**

Soil depth is 600 mm or more.

#### **Criterion 5**

The land has favourable drainage.

#### **Criterion 6**

Soil pH at 300mm depth and 600mm depth is as follows—

- (a) for rigid soils—5.1 or more to 8.9;
- (b) for non-rigid soils—more than 5.0.

**Criterion 7**

Soil at 600mm depth or shallower has a chloride content of less than 800mg/kg.

**Criterion 8**

The land's soil water storage is 100mm or more.

**Division 2                      Eastern Darling Downs zone****Criterion 1**

Slope is 5% or less.

**Criterion 2**

Rockiness is 20% or less.

**Criterion 3**

The average density of gilgai microrelief with depressions of more than 500mm is less than 50% of the land surface.

**Criterion 4**

Soil depth is 600mm or more.

**Criterion 5**

The land has favourable drainage.

**Criterion 6**

Soil pH at 300mm depth and 600mm depth is as follows—

- (a) for rigid soils—5.1 or more to 8.9;
- (b) for non-rigid soils—more than 5.0.

### **Criterion 7**

Soil at 600mm depth or shallower has a chloride content of less than 800mg/kg.

### **Criterion 8**

The land's soil water storage is 100mm or more.

## **Division 3                      Coastal Queensland zone**

### **Criterion 1**

Slope is 5% or less.

### **Criterion 2**

Rockiness is 20% or less.

### **Criterion 3**

The average density of gilgai microrelief with depressions of more than 500mm is less than 50% of the land surface.

### **Criterion 4**

Soil depth is 600mm or more.

### **Criterion 5**

The land has favourable drainage.

### **Criterion 6**

Soil pH at 300mm depth and 600mm depth is as follows—

- (a) for rigid soils—5.1 or more to 8.9;
- (b) for non-rigid soils—more than 5.0.



**Criterion 7**

Soil at 600mm depth or shallower has an electrical conductivity of less than 0.56 dS/m.

**Criterion 8**

The land's soil water storage is 75mm or more.

**Division 4                      Wet Tropics zone**

**Criterion 1**

Slope is 5% or less.

**Criterion 2**

Rockiness is 20% or less.

**Criterion 3**

The average density of gilgai microrelief with depressions of more than 500mm is less than 50% of the land surface.

**Criterion 4**

Soil depth is 600mm or more.

**Criterion 5**

The land has favourable drainage.

**Criterion 6**

Soil pH at 300mm depth and 600mm depth is as follows—

- (a) for rigid soils—5.1 or more to 8.9;
- (b) for non-rigid soils—more than 5.0.

**Criterion 7**

Soil at 600mm depth or shallower has an electrical conductivity of less than 0.56 dS/m.

**Criterion 8**

The land's soil water storage is 50mm or more.

**Division 5                      Granite Belt zone**

**Criterion 1**

Slope is 5% or less.

**Criterion 2**

Rockiness is 20% or less.

**Criterion 3**

The average density of gilgai microrelief with depressions of more than 500mm is less than 50% of the land surface.

**Criterion 4**

Soil depth is 600mm or more.

**Criterion 5**

The land has satisfactory drainage.

**Criterion 6**

Soil pH at 300mm depth and 600mm depth is as follows—

- (a) for rigid soils—5.1 or more to 8.9;
- (b) for non-rigid soils—more than 5.0.

**Criterion 7**

Soil at 600mm depth or shallower has an electrical conductivity of less than 0.56 dS/m.

**Criterion 8**

The land's soil water storage is 25mm or more.

## Schedule 2 Dictionary

### section 8

**1923 Act** see section 17(1).

**advisory group** see section 152.

**alternative offence** has the meaning affected by section 262.

**application requisition** see section 241(1).

**appropriately qualified**, for the performance of a function, includes having the qualifications, experience and competence to perform the function.

**approval** includes a certificate of classification or other certificate, or a consent, notice, permission, permit or other authorisation, whatever called.

**approved form** means the form approved under section 277.

**assessment application** see section 95(1).

**authorised person** means a person who holds office under chapter 7, part 1 as an authorised person.

**available for inspection and purchase**, for a provision about a document of or held by the department or the State Development department, means that the entity's chief executive must do the following—

- (a) make the document available for inspection during office hours on business days, free of charge, by members of the public at the entity's head office and any of its regional offices decided by the chief executive;
- (b) permit anyone to take extracts from the document at the head office and the decided offices;
- (c) if anyone asks for a copy of the document or part of it and pays an appropriate fee, give the person the copy.

**bedrock**, for schedule 1, see schedule 1, section 9.

**boundary change** means—

- 
- (a) a change to a boundary because of the closure, realignment or widening of a road; or
  - (b) a reconfiguration of a lot under the Planning Act; or
  - (c) a change to a local government boundary.

***certificate of application*** see section 279.

***chloride content***, for schedule 1, see schedule 1, section 11.

***commencement*** see section 2.

***committee*** see section 234.

***committee member*** see section 235(1).

***compliance action*** see section 171(2).

***compliance action expenses*** see section 171(3).

***compliance notice*** see section 168.

***contiguous*** means abutting, with at least 1 side in common.

***Coordinator-General*** see the State Development Act, schedule 2.

***criteria decision*** see section 60.

***criteria guidelines*** see section 51(1).

***cropping*** includes the following—

- (a) the yield of any form of cultivated crop for any purpose, including, for example, for food, as fibre, for fodder or medicinal purposes;
- (b) the growing of trees to produce, or as a component for, food, fibre or a medicinal product;
- (c) harvesting a timber plantation.

***cropping history decision*** see section 65(2).

***decided non-SCL*** see section 9(3).

***decision-maker***—

- (a) for a provision about an application under this Act—means the person who is deciding, or is or will be required to decide, the application; or

(b) for a decision—means the person who made the decision.

**decision register** means the register the chief executive keeps under section 248.

**deed requirements** see section 141(b).

**development** see section 13(1), as affected by section 13(2).

**development approval** see section 16(3).

**disposal order** see section 218(2).

**document certification requirement** see section 221(6).

**document production requirement** see section 221(2).

**EIS** see section 279.

**electrical conductivity**, for schedule 1, see schedule 1, section 12.

**electronic document** means a document of a type under the *Acts Interpretation Act 1954*, section 36, definition *document*, paragraph (c).

**eligible land** see section 61(2)(b).

**eligible person**, for land, see section 41.

**environmental authority** see the *Environmental Protection Act*, schedule 4.

**Environmental Protection Act** means the *Environmental Protection Act 1994*.

**EP** see section 279.

**EPC** see section 279.

**exceptional circumstances**, for development, see section 15.

**exceptional circumstances application** see section 122(2).

**exceptional circumstances criteria** see section 124(d).

**exceptional circumstances decision** see section 122(3).

**executive officer**, of a corporation, means a person who is concerned with or takes part in its management, whether or

not the person is a director or the person's position is given the name of executive officer.

*favourable drainage*, for schedule 1, see schedule 1, section 5.

*field handbook*, for schedule 1, see schedule 1, section 4(1).

*finalised EIS TOR* see section 279.

*financial assurance* see section 100(1)(d).

*financial assurance condition* see section 100(4).

*former owner* see section 215(1).

*general power*, for a provision about an authorised person, see section 200(1).

*Geothermal Act* see section 17(1).

*GHG Storage Act* see section 17(1).

*gilgai microrelief*, for schedule 1, see schedule 1, section 13.

*help requirement* see section 201(1).

*highly suitable for cropping*, for land, means the land is highly suitable for cropping because of its soil, climatic and landscape features.

*holder*—

- 1 The *holder* of an environmental authority or resource authority is each person who, from time to time under the Act under which the authority was granted, is the holder of the authority.
- 2 The *holder* of a development approval is the owner of the land the subject of the approval and anyone else in whom the benefit of the approval vests.

*IDAS* see section 16(2).

*identified permanently impacted land* see section 12.

*identity card*, for a provision about an authorised person, means an identity card issued under section 180(1).

*imposed authority* see section 103(1).

**information notice**, for a decision, means a notice stating the following—

- (a) the decision and the reasons for it;
- (b) the rights of appeal under this Act against the decision;
- (c) the period in which any appeal under this Act must be started;
- (d) how rights of appeal under this Act are to be exercised;
- (e) that, other than for a decision to give a stop work notice, a stay of a decision the subject of an appeal under this Act may be applied for under this Act.

**information requirement** see section 224(3).

**Land Act** means the *Land Act 1994*.

**land registrar**, for a provision about land, means the registrar responsible for keeping the land registry in which the land is recorded.

**land registry** means the land registry under the Land Act, section 275 or the freehold land register.

**lot** means—

- (a) a lot under the *Land Title Act 1994*; or
- (b) a separate, distinct parcel of land for which an interest is recorded in a register under the Land Act.

**management area** see section 29.

**map**, without any reference to any particular type of map, see section 30.

**Mineral Resources Act** see section 17(1).

**minimum size**, for land or a part of land, see section 62.

**mining lease** see section 279.

**minor**, for a map amendment, see section 32.

**minor amendment**, for a provision about an application, means any of the following changes to the application—



- 
- (a) a change that merely corrects a mistake about the applicant's name or address;
  - (b) a change of applicant;
  - (c) a change that merely corrects a spelling or grammatical error.

**mitigation** see section 138.

**mitigation criteria** see section 142.

**mitigation deed** see section 141.

**mitigation fund** see section 148.

**mitigation measure** see section 140.

**mitigation requirement** see section 11(7).

**mitigation value**, of identified permanently impacted land, see section 139(1).

**non-rigid soils**, for schedule 1, see schedule 1, section 15(3).

**notice** means a notice in writing.

**occupier**, of a place, includes a person who exercises or may exercise lawful authority or control in relation to the place, and includes a person apparently in charge of the place.

**of**, a place, includes at or on the place.

**offence warning**, for a direction or requirement by an authorised person, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction or requirement is made not to comply with.

**official** means a following person—

- (a) the Minister;
- (b) the Coordinator-General;
- (c) the chief executive;
- (d) an authorised person;
- (e) a person acting under the direction of a person mentioned in any of paragraphs (a) to (d);

- (f) anyone else performing functions under or relating to this Act for whose performance of the functions the State may be held vicariously liable.

**owner—**

- 1 An *owner*, of land, means each of the following persons for the land—
- (a) for freehold land—a registered owner;
  - (b) for land for which a person is, or will be on performing conditions, entitled to a deed of grant in fee simple—the person;
  - (c) if an estate in fee simple of land is being purchased from the State—the purchaser;
  - (d) for DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*—a trustee for the land;
  - (e) for land held under a lease under the *Aurukun and Mornington Shire Leases Act 1978*, section 3—a local government in whose area the land is situated;
  - (f) for Torres Strait Islander land under the *Torres Strait Islander Land Act 1991* that is taken to be a reserve because of section 151 of that Act—each trustee of the land;
  - (g) for land under the Land Act for which there are trustees—a trustee;
  - (h) for land that, under a resource Act, is in the area of a resource authority under that Act—the holder of the resource authority;
  - (i) for land held from the State under an Act under an interest that is less than fee simple (other than occupation rights under a permit under the Land Act)—the person who holds the interest.
- 2 Also, a mortgagee of land is the *owner* of land if—

- (a) the mortgagee is acting as mortgagee in possession of the land and has the exclusive management and control of the land; or
  - (b) the mortgagee or a person appointed by the mortgagee is in possession of the land and has the exclusive management and control of the land.
- 3 An *owner*, of a thing that has been seized under chapter 7, includes a person who would be entitled to possession of the thing had it not been seized.

***P&G Act*** see section 17(1).

***permanent impact*** see section 14(1).

***permanent impact restriction*** see section 279.

***personal details requirement*** see section 219(5).

***person in control***, of a thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

***petroleum lease*** see section 279.

***place*** includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place held under more than 1 title or by more than 1 owner;
- (d) the land or water where a building or structure, or a group of buildings or structures, is situated.

***Planning Act*** see section 16(1).

***Planning and Environment Court*** means the Planning and Environment Court under the Planning Act.

***potential SCL*** see section 10.

***pre-development condition***, for a provision about the carrying out of development on land, means that the land is restored to—

- (a) its condition before the development started; or

- (b) if the condition can not be worked out—a condition consistent with contiguous SCL for the land.

***premises*** includes—

- (a) a building or other structure; and  
(b) a part of a building or other structure; and  
(c) a caravan or a vehicle as defined under the *Transport Operations (Road Use Management) Act 1995*; and  
(d) premises held under more than 1 title or by more than 1 owner.

***property***, for chapter 2, part 2, see section 46.

***proposed authorities***, for chapter 3, part 4, division 3, see section 95(1).

***proposed authority***, for chapter 4, part 2, see section 122(2).

***proposed tenure*** see section 279.

***protection area*** see section 28(2).

***protection area amendment*** see section 31(2).

***protection area map*** see section 28(1).

***public place*** means—

- (a) a place, or part of the place—  
(i) the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

*Example of a place that may be a public place under subparagraph (i)—*

a road

- (ii) the occupier of which allows, whether or not on payment of money, members of the public to enter;  
or

- (b) a place that is a public place under another Act.

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***reasonably suspects*** means suspects on grounds that are reasonable in the circumstances.

***recipient***—

- (a) for a provision about a notice, means the person to whom it is given; and
- (b) for an information notice, includes a person who was entitled under this Act to be given the notice, but has not been given it.

***registry record (SCL)*** see section 74(2).

***related mining lease application*** see section 279.

***related petroleum lease application*** see section 279.

***related resource application*** see section 279.

***relevant person***, for a provision about an exceptional circumstances application, see section 124(a).

***relevant website***, for a provision about an exceptional circumstances application, means—

- (a) if the relevant person is the Coordinator-General—the State Development department’s website; or
- (b) otherwise—the department’s website.

***remotely sensed image***, means information acquired about an object or phenomenon without making physical contact with it.

***Example***—

an image obtained by using aerial sensor technology to detect or classify the object or phenomenon by way of electromagnetic radiation emitted from aircraft or satellites or other propagated signals

***required cropping history*** see section 49.

***required decider***, for an exceptional circumstances application, see section 123(3).

***resource Act*** see section 17(1).

***resource activity*** see section 17(2), as affected by section 17(3).

***resource authority*** see section 18.

**restoration notice** see section 160(2).

**rigid soils**, for schedule 1, see schedule 1, section 15(1).

**road** see the Land Act, section 93.

**rockiness**, for schedule 1, see schedule 1, section 8.

**satisfactory drainage**, for schedule 1, see schedule 1, section 6.

**SCL** see section 9(2).

**SCL compliance certificate** see section 116.

**SCL offence** means an offence against chapter 3, part 1 or section 144.

**SCL principles** see section 11.

**SCL protection conditions** see section 99(1)(b).

**SCL protection decision** see section 91(1)(b).

**significant community benefit** see section 125.

**significant project** see the State Development Act, schedule 2.

**slope**, for schedule 1, see schedule 1, section 16.

**soil chemical methods**, for schedule 1, see schedule 1, section 4(2).

**soil depth**, for schedule 1, see schedule 1, section 17.

**Soil pH**, for schedule 1, see schedule 1, section 14.

**soil physico-chemical limitation**, for schedule 1, see schedule 1, section 18(1).

**soil water storage**, for schedule 1, see schedule 1, section 19.

**source authority** see section 20.

**standard conditions code** see section 81(1).

**standard soil colour chart**, for schedule 1, see schedule 1, section 4(3).

**State Development Act** means the *State Development and Public Works Organisation Act 1971*.

**State Development department** means the department in which the State Development Act is administered.

**Statewide newspaper** means a newspaper circulating generally in the State.

**stop work notice** see sections 157(2) and 158(4).

**stop work notice service power** see section 185(1)(d).

**strategic cropping land** see section 9(1).

**submissions** means written submissions.

**submission period**—

- (a) for a provision about a validation application, see section 55(2)(i); or
- (b) for a provision about an exceptional circumstances application, see section 128(2)(h)(ii).

**submitter**, for a provision about a submission about an application, means the person making the submission.

**successor** means successor in law, including, for example, a personal representative, successor in title and assign.

**surface**, for schedule 1, see schedule 1, section 20.

**temporary impact** see section 14(4).

**transferee** see section 164(1)(b).

**trigger map** see section 25.

**validation application** see section 40(1).

**validation decision** see section 40(1).

**waterlogged layer**, for schedule 1, see schedule 1, section 7.

**weathered rock**, for schedule 1, see schedule 1, section 10.

**wilfully** means—

- (a) intentionally; or
- (b) recklessly; or
- (c) with gross negligence.

**zonal amendment** see section 31(1).

*zonal criteria* see section 27(1).

*zonal criteria compliant*, for land, see section 27(3).

*zone* see section 26(2).

*zone map* see section 26(1).

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