

QUEENSLAND

ENVIRONMENTAL PROTECTION BILL 1994

EXPLANATORY NOTES

The Environmental Protection Bill has been drafted to be consistent with current legislative drafting practice and in modern language. As a consequence particular sections, clauses and sub-clauses require little or no specific further explanation and in these Explanatory Notes those parts may be repeated or summarised in general terms only.

GENERAL OUTLINE

Objectives of the Legislation

The object of the legislation is to protect Queensland's environment while allowing for development that improves the total quality of life, now and in the future, in a way that maintains the ecological processes on which life depends.

This is to be achieved by an integrated management program that is consistent with the above stated objective and with the principles of ecologically sustainable development.

The program is cyclical and is based upon the following phases:

- (a) *Phase 1* establishing the state of the environment and defining environmental objectives.
- (b) *Phase 2* developing effective environmental strategies.
- (c) *Phase 3* implementing environmental strategies and integrating them into efficient resource management through delegation to resource management agencies and devolution to local government.
- (d) *Phase 4* ensuring accountability of environmental strategies.

Reasons for the Bill

Existing environmental legislation in Queensland is generally outdated. Despite amendments, the present legislation does not reflect modern environmental management practices, or community expectations for a clean and safe environment. This Bill supersedes the *Clean Air Act 1963*, *Clean Waters Act 1971*, *Noise Abatement Act 1978*, *Litter Act 1971*, *Fig Tree Pocket Noise Emission Act 1984* and the *State Environment Act 1988*. The Bill provides for a range of innovative regulatory mechanisms which enhance accountability, public participation and self-regulation. By providing greater certainty in enforcement and operation, both industry and the community understand their rights and obligations regarding environmental protection. Protection of the environment is ensured by requiring economic development to be ecologically sustainable.

Estimated Cost of Government Implementation

The estimated cost of implementing this legislation during the rest of the financial year is \$4.78m in 1994-95, \$10.13m in 1995-96 and \$9.13m in 1996-97. A new initiative to cover the cost in 1994-95 has been approved provided that a reasonable proportion of this amount is generated by licence fees and other charges levied on a 'user-pays' basis. Greater equity in distributing the cost of environment protection is to be examined in future years; the emphasis being on 'polluter-pays', in line with other States.

Consultation

In addition to normal inter-departmental consultation on the Bill in general, and for specific provisions of the Bill, extensive community consultation was undertaken. In September 1991, 10,000 kits containing the Public Consultation Papers were distributed to the community. Those kits included a green paper on the proposed legislation. Following this, departmental officers attended 60 meetings in 32 locations across the State. Officers also addressed specific industry and community groups. From the comments and submissions made by these groups, a draft Bill was prepared. In November 1993, approximately 4000 copies of the draft Bill and commentary were supplied to the public for final comment. By the end of January 1994, 173 submissions had been received from Government Departments, local governments, industry bodies, unions, interest groups, private individuals and business people. As a result of these submissions,

and on-going liaison with the Department's Key Stakeholder group, considerable amendments were made to the Bill.

NOTES ON PROVISIONS

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTORY PROVISIONS

Section 1 states the short title of the Act.

Section 2 provides for the commencement date of the Act

PART 2—OBJECT AND ACHIEVEMENT OF ACT

Section 3 defines the object of the Act in the terms of ecologically sustainable development (ESD). ESD is the agreed Government policy for achieving development both in Queensland and nationally in a manner that does not lead to irreversible environmental degradation.

Section 4 provides for a logical methodology for achieving the object of this Act. It demonstrates that the process of protecting Queensland's environment, consistent with ESD, is a cyclical process of establishing benchmarks and objectives, developing strategies for fulfilling the objectives, implementing the strategies and most importantly ensuring that the strategies are accountable and evaluated.

Section 5 requires all people who are given power under this Act, to use that power to protect the Queensland environment and to do so consistent with the principles of ESD.

Section 6 provides that wherever possible the administration of the Act should be undertaken after consultation with the community. This provision recognises that environmental protection is a community responsibility, and therefore the community must have an important role in ensuring that the objectives of the Act are achieved.

PART 3—INTERPRETATION

Division 1—Standard Definitions

Section 7 provides that the terms and phrases used in the Act are defined in the Dictionary which is a schedule to the Act. All definitions must only be interpreted in their context. Terms not defined there have either the meaning given to them by the *Acts Interpretation Act* or by a standard English Dictionary.

Division 2—Key Definitions

Subdivision 1—The environment and its values

Section 8 provides the definition of “environment”. This definition is the same as the definition of “environment” used in the *Local Government (Planning and Environment) Act 1990* ensuring the consistent application of the definition across government.

Section 9 provides the definition of “environmental value”.

Subdivision 2—Environmental contamination

Section 10 provides the definition of “contamination”.

Section 11 provides that the definition of “contaminant” is anything which has the potential to cause environmental harm. Whether something is a contaminant depends on the context in which the contaminant occurs. For example, fresh water may be a contaminant if emptied in large quantities into an estuary, but it would not be a contaminant if emptied into a river.

Section 12 provides the definition of “noise”.

Section 13 provides the definition of “waste”.

Subdivision 3—Environmental harm and nuisance

Section 14 provides that “environmental harm” is any activity that has an adverse or potentially adverse effect on the environment. Environmental harm only becomes unlawful when it exceeds the thresholds of the offences of serious, material or environmental nuisance.

Section 15 provides the definition of “environmental nuisance”.

Section 16 provides that “material environmental harm” is harm that is neither trivial nor negligible; or it causes actual or potential loss or damage to property of more than \$5,000; or it results in costs of more than \$5,000 but less than \$50,000 to prevent or minimise the harm, and to rehabilitate the environment. Determining whether harm is trivial or negligible requires the context of the harm to be considered, and the potential long term effects of the harm. Where the consequences of the harm are uncertain the precautionary principle should be used to help determine the level of harm.

Section 17 provides that “serious environmental harm” is harm that causes actual or potential harm to an environmental value that is irreversible, of a high impact or widespread, or causes actual or potential harm to an area of high conservation value or of special significance; or causes actual or potential loss or damage to property of more than \$50,000; or results in costs of more than \$50,000 to prevent or minimise the harm and to rehabilitate the environment. Where the consequences of the harm are uncertain, the precautionary principle should be used to help determine the level of harm.

Subdivision 4—Environmental management

Section 18 provides that “best practice environmental management” is the management of the activity to achieve an on-going minimisation of the activity’s environmental harm through cost effective measures assessed against the measures currently used nationally and internationally for the activity. Best practice environmental management is not a static measure, but rather one which changes as technology, knowledge and skills improve.

PART 4—OPERATION OF ACT

Section 19 provides for the Act to cover all persons, the State, and where possible the Commonwealth and other States. This ensures that Government must achieve the same standards and has the same obligations as the rest of the community.

Section 20 provides that with the exception of the Acts listed, this Act does not effect any other Act.

Section 21 provides that no common law actions are limited by the application of the Act and ensures that the breach of the general environmental duty does not lead to civil right or action in common law.

Section 22 provides that where the Queensland environment is harmed by actions taken by persons outside the State, they will be prosecuted for a breach of this Act. Pollution does not cease at a jurisdictional boundary and therefore it is necessary that polluters in other States that affect Queensland may be found liable for breaches of Queensland law.

CHAPTER 2—ENVIRONMENTAL PROTECTION POLICIES

General

Environmental Protection Policies (EPPs) are subordinate legislation which provide issue-specific standards and criteria for particular environmental problems. Policies may cover the whole State or an area such as an airshed or a catchment. The first EPPs will address the management of air, water, noise and waste.

EPPs will also be developed to enable other Departments to administer their environmental responsibilities.

EPPs:

- (i) control environmental problems in a consistent manner;
- (ii) provide frameworks for decision-making by listing environmental constraints;

- (iii) act as a guide to protecting the environment by preventing, controlling or reducing deterioration of the environment;
- (iv) are reviewed every seven years for effectiveness in protecting the environment; and
- (v) allow national standards to be easily incorporated into Queensland environmental protection.

Section 23 provides that only the Minister can determine whether or not to proceed with an EPP.

Section 24 provides for the content of an EPP and provides a non-exclusive list of possible areas an EPP may cover.

Section 25 provides the details on what an EPP must contain to ensure that EPPs are consistent and effective in their approach to managing environmental issues by ensuring that all EPPs contain common elements and are assessed against pre-determined performance indicators.

Section 26 provides that ample public notice is given that the Minister intends to prepare a draft EPP. It details the minimum requirements for that notification, who may make submissions, and the minimum time frame for submissions to be made.

Section 27 requires the Minister to consider all submissions that were properly made on the notice to prepare a draft EPP.

Section 28 provides that ample public notice is given that the Minister has prepared a draft EPP. It sets out the minimum requirements for that notification, who may make submissions, and the minimum time frame for submissions to be made.

Section 29 requires the Minister to consider all submissions that were properly made on the draft EPP, and provides that the Minister must give a written response on whether the submission was accepted or rejected to any person asking for a response to their submission. If the submission is rejected by the Minister, then reasons for that rejection must be provided. This ensures public accountability by providing feedback to those who request information about their submission.

Section 30 states that EPPs are subordinate legislation and require approval of the Governor in Council prior to them having effect. This section also requires that local governments and the State Government make the EPP available for inspection by the public. This provision guarantees that the public has access to laws that affect them.

Section 31 ensures that once an EPP has been approved by the Governor-in-Council, administering authorities must implement the policy. EPPs are not optional. They are an essential component of this Act and must be enforced.

Section 32 provides that substantive policy amendments to an EPP can occur after going through similar public consultation processes as were required to prepare the original policy. This assures the community that the consensus nature of an EPP continues, despite amendments being made to it over its life.

Section 33 requires the Minister to review each EPP at least once every seven years. The chief executive must prepare a report on the EPP's environmental effectiveness and economic efficiency, which the Minister must consider. This provides that the standards and values reflected in EPPs are an accurate reflection of the requirements of the community.

Section 34 implements the requirements of the *National Environment Protection Council (Queensland) Act 1994*. This provision fulfils Queensland's obligation under the Intergovernmental Agreement on the Environment and ensures that Queensland environmental standards are at least as strong as any national environmental standards.

CHAPTER 3—ENVIRONMENTAL MANAGEMENT

General

This chapter states that the entire community has an obligation to protect the environment. Ultimately this obligation can be fulfilled by integrating environmental considerations into decision-making. Once this is done, a major component of ecologically sustainable development is achieved.

PART 1—INTERPRETATION

Section 35 provides that “application date” means a date used in licences or environmental management programs for administrative purposes.

PART 2—ENVIRONMENTAL DUTIES

Section 36 requires that all members of the community abide by their general environmental duty to ensure that environmental harm is minimised. This duty, although absolute, provides that decisions regarding environmental protection should take into account:

- (i) the nature of the harm or potential harm;
- (ii) the sensitivity of the receiving environment;
- (iii) the current state of technical knowledge relating to the activity;
- (iv) the likelihood of successful mitigation of the harm; and
- (v) the financial implications of the various measures that relate to the type of activity.

No offence is associated with this provision. This provision has another important role in that it provides a defence to the offences related to causing unlawful environmental harm. If defendants can show that they fulfilled their ‘general environmental duty’, then they cannot be found guilty of causing unlawful environmental harm.

Section 37 requires that a person who becomes aware that serious or material environmental harm is being caused or threatened by an activity they are involved in, has a duty to report that harm. Employees have a duty to report the harm to their employer who then assumes the duty to notify the administering authority. Where an employer cannot be contacted, the person must notify the administering authority. People are exempt from this requirement if the harm is occurring under an environmental protection policy, an environmental management program, an environmental protection order, an authorisation or a direction from an authorised person in an emergency.

Any notice given by the person is inadmissible in evidence in proceedings for an offence against the Act.

This provision recognises that it is impossible for administering authorities to inspect and monitor all polluting activities, and that people have a responsibility to assist in protecting the environment.

PART 3—ENVIRONMENTALLY RELEVANT ACTIVITIES

General

All human activities have some impact on the environment. Some activities have a greater effect than others. This part recognises this by categorising human activities according to the harm they do. The greater the harm or risk of harm, the greater the regulation of the activity.

Section 38 provides that activities can be prescribed by regulation as environmentally relevant activities if they release, or may release contaminants, and the release of the contaminant may cause environmental harm. Environmentally relevant activities are prescribed as either a level 1 activity or a level 2 activity. Level 1 activities involve a more serious risk of environmental harm.

Section 39 provides that carrying out a level 1 environmentally relevant activity without a licence is an offence.

Section 40 provides that a regulation may be written to provide that a level 2 environmentally relevant activities must require approval before it can be carried out.

PART 4—ENVIRONMENTAL AUTHORITIES

Division 1—Applications for, and grant of, environmental authorities

General

This division recognises that, although all human activities cause harm, it is not possible with current levels of technology to make human activities benign to the environment. Therefore, an appropriate strategy to manage the more environmentally damaging activities is to licence them and then control and monitor the discharges they make into the environment.

Section 41 provides that applications for environmental authorities must be made in an approved form, be supported by adequate environmental information, and be accompanied by an application fee. Information requirements and fees are set with the aim of internalising environmental costs into the business structure of the enterprise and getting applicants to take responsibility for their discharges.

Section 42 requires that applicants for a licence publicly notifies the local community of their application. The notice must be in an approved form and invite submissions from interested parties to be provided to the administering authority. This will avoid disputes and provide investment certainty by gaining all points of view before decisions are made.

Section 43 provides a 28 day time-frame within which the administering authority must decide the application for an environmental authority. Before deciding the application the administering authority must be satisfied that proper public notice of the application had been given.

Section 44 provides a list of the criteria that must be taken into account by the administering authority prior to making a decision about the application for environmental authority. This ensures that the decision-making process is fair and transparent.

Section 45 provides that upon approval, all environmental authorities must be recorded in a public register. Those who made submissions must receive notification of the authority, stating the reasons for the decision. This ensures accountability and transparency for the decision-making process.

Section 46 provides that the administering authority may issue a licence subject to any conditions the authority considers necessary or desirable to

meet the objects of the Act. Such conditions may be appealed by the applicant and interested parties.

Section 47 provides that an applicant may obtain a provisional licence only if the applicant undertakes to comply with all relevant EPPs. Such a provisional licence sets out the site-specific standards required for a full licence and will contain agreed performance indicators and reporting requirements to ensure the administering authority is informed of progress. A provisional licence may operate for a maximum period of five years.

Section 48 provides that the administering authority may refuse an application for a licence if it is satisfied that the applicant is unsuitable to hold a licence. Some examples of unsuitable applicants are listed.

If an application is refused, the administering authority must give the applicant and interested parties written reasons for refusal within ten days of making the decision. Such a decision can be appealed by the applicant.

Division 2—Amendment of licences

Section 49 provides for the amendment of licence conditions by the licensee. The proposed amendments must be advertised where there is an increased likelihood of environmental harm. It is considered that an increase in ten percent of a contaminant into the environment provides an increased likelihood of environmental harm. The applicant may appeal the administering authority's decision.

Section 50 provides for the amendment of licence conditions in certain circumstances by the administering authority. The licensee's view is sought and then the administering authority makes a decision which is open for review and subsequent appeal. This process ensures fairness to the licensee.

Section 51 provides that if the administering authority amends a licence, a copy of the amended licence must be given to the licensee to ensure that the licensee is aware of any new responsibilities.

Division 3—Dealing with licences

Section 52 provides for licensees to surrender a licence if they provide written notice to the administering authority.

Section 53 provides that a seller of a licensed premise is obliged to notify any prospective buyer that the activity is licenced. This ensures that the purchase price of the activity reflects the environmental management requirements of the activity. This section allows the potential purchaser to rescind a contract to purchase if the seller has not made a disclosure about licence obligations.

Section 54 provides that the licensee must give written notice to the administering authority that the activity has ceased, within 14 days of the environmentally relevant activity ceasing.

Section 55 provides that applications for transfer of licence must be in an approved form, be supported by adequate information and be accompanied by a fee to cover administrative costs.

Section 56 provides that the administering authority must make a decision about the transfer of a licence within 28 days.

Section 57 provides the administrative and time requirements for an administering authority to transfer a licence.

Section 58 provides that the administering authority may refuse an application for a transfer of a licence if it is satisfied that the applicant is unsuitable to hold a licence.

If an application is refused, the administering authority must give the applicant and interested parties written reasons for refusal within ten days of making the decision. Such a decision can be appealed by the applicant.

Division 4—Suspension and cancellation of licences

Section 59 provides that the administering authority may cancel or suspend a licence if the administering authority is satisfied that the licensee has been convicted of an offence under the Act, or the licence was issued because false or misleading information was provided to the administering authority. Any suspension or cancellation can only be done by providing written notice to the licensee. Licences will only be cancelled in extreme circumstances as the cancellation may have the effect of shutting down the business.

Section 60 provides the procedure for suspension and cancellation of a licence. It allows the licensee to make written representations to the

administering authority showing why the licence should not be suspended or cancelled. This provision ensures that licences are not cancelled without the licensee's knowledge and without giving the licensee an opportunity to argue against the cancellation.

Division 5—General

Section 61 provides that, before making a decision, the administering authority may require an applicant for an authority to provide further information to assist the administering authority in properly gauging the environmental risk. The decision to require additional information is subject to review and appeal.

Section 62 provides that the administering authority may investigate the suitability of an applicant to hold an environmental authority.

Section 63 allows the administering authority to call a conference of the applicant, interested parties and itself, to discuss issues relating to the issuing of the licence. Mediation should be used in the conference in an attempt to gain agreement and avoid court action.

Section 64 provides that the administering authority may extend the time for deciding an application where the information is inadequate or the issues are more complex than usual. Written notice of a decision to extend and reasons for the decision must be given to the applicant and interested parties.

Section 65 provides that where only a minor fault has occurred in the public notification process, the administering authority may, at its discretion, decide the application. This ensures that the approval system does not get delayed by technical argument if the administering authority is satisfied that there has been substantial compliance.

Section 66 provides that where the administering authority fails to make a decision within the time, the failure is taken to be a decision to refuse the application. This system ensures that the administering authority makes a decision within the time limit otherwise it faces the threat of an internal appeal and perhaps eventual appeal through the courts.

Section 67 provides that the licensee pays an annual fee and provides certain information on the activity. A licensee who pays late after being reminded once will pay a late fee. A licensee who does not pay after a second notification will have the licence cancelled.

Section 68 provides that after the death of a licensee, another person can hold the licence if this is approved by the administering authority.

Section 69 provides that a licensee must not breach a condition of the licence. Such breaches are particularly serious as they contravene known and previously agreed legal requirements.

PART 5—ENVIRONMENTAL EVALUATIONS

General

Ecological processes and environmental interactions are highly complex. Such complexity can make environmental decision-making difficult. Environmental evaluations provide an important way of gaining environmental information so that rational and informed decisions can be made.

Section 70 explains the meaning of environmental evaluation. There are two kinds of environmental evaluations: environmental audits and environmental investigations. An environmental audit is site specific and addresses serious or potentially serious environmental problems that cannot be evaluated by normal inspections. Environmental investigations are designed to examine serious or potentially serious environmental problems that are not necessarily site specific.

Section 71 provides the triggers that allow an administering authority to require an environmental audit and makes it an offence not to comply.

Section 72 provides the triggers that allow an administering authority to require an environmental investigation and makes it an offence not to comply.

Section 73 specifies what information the administering authority must include in a notice to a person before the person needs to undertake an environmental evaluation. The requirements of the evaluation will be tailored to the particular environmental problem to ensure a useful yet cost-effective investigation.

Section 74 provides for an accountability mechanism to ensure the environmental audit or investigation is credible. The report must be accompanied by a statutory declaration.

Section 75 provides for the administering authority to respond to the environmental report. If the evaluation is inadequate, then it may be re-done to address the terms of reference properly. If the evaluation discloses a need for remedial action, this may be taken. If the evaluation shows a need for more data, this may be required. This approach is used to enable a staged and cost-effective approach to investigating a complex problem by keeping the terms of reference as narrow as possible.

Section 76 provides that the cost of undertaking an environmental evaluation and report is borne by the person from whom it is required. This ensures that those who get a benefit from using the environment are those who pay for ensuring that it is protected. Internalising the costs of environmental protection are an important component of ensuring that ecologically sustainable development occurs.

Section 77 provides that under certain circumstances an administering authority may extend the time prescribed for making its decision on the environmental report.

Section 78 provides that if the administering authority fails to make a decision on the environmental report within the given time, this will be deemed to be a decision to refuse to accept the report. This decision may be appealed by the applicant. This provision ensures that action is taken by the administering authority to evaluate the report. If the authority takes no action, it opens itself to internal appeals and possible expensive court action.

PART 6—ENVIRONMENTAL MANAGEMENT PROGRAMS

General

Environmental management programs (EMPs) are powerful tools for managing the environmental impacts of human activities. EMPs have several uses. They allow businesses which are not complying with an environmental standard the time necessary to improve their processes to compliance level, without fear of prosecution. They allow businesses to develop their own licence conditions to ensure that the licence provides the most cost-effective environmental management. If such ‘applicant

developed' licences meet all applicable environmental standards they can be approved by the administering authority. EMPs can also provide protection to businesses that notify authorities that they have broken the law and who undertake to develop an EMP. They allow a controlled method for temporary situations where environmental harm may arise, such as for equipment maintenance. Finally, administering authorities can ask businesses to prepare an EMP to cover potential or actual environmental problems.

EMPs are accountable documents and failure to comply with one is a serious offence.

Section 79 defines an environmental management program as a site-specific program designed to minimise environmental harm or outline the transition to an environmental standard.

Section 80 provides the requirements for the content of an EMP. An EMP requires measurable performance indicators upon which the performance of the EMP holder will be held legally accountable.

Section 81 allows an administering authority to request the preparation and submission of a draft EMP as a licence condition. This ensures that where a process is inherently environmentally risky, or a licensee cannot immediately reach the required environmental standard, a legally enforceable mechanism is in place to ensure that the required standards are met and kept. Where an EMP is part of a licence condition, failure to comply with the EMP may lead to a charge for breach of EMP or breach of a licence condition.

The administering authority may also require an EMP where a public authority's or person's activity is causing, or may cause, environmental harm; or the person or authority cannot comply with an EPP immediately.

The written notice requiring the draft EMP must detail what led to the notice, the environmental problem to be addressed, and the period over which the program is to be carried out.

Section 82 provides that a draft EMP may be submitted voluntarily to the administering authority for consideration. The draft EMP may be a document not prepared for the purposes of this Act, but which complies with the requirements for an EMP. This ensures that companies that have prepared environmental management plans do not have to go through the process again to prepare an environmental management program.

Section 83 provides that a draft EMP submitted for approval to the administering authority must be accompanied by a fee.

Section 84 provides that draft EMPs that have a projected life of more than three years must go for public consultation. An EMP operating beyond three years suggests that the company has a significant compliance problem and it is appropriate that the community which has to endure the environmental problems caused by non-compliance have an opportunity to comment on the draft EMP. The provision requires that the notice to produce a draft EMP is advertised in a geographically appropriate newspaper, that the notice is placed on the premises subject to a draft EMP and the notice is provided to all adjoining premises.

The notice must be in an approved form, it must invite submissions on the draft EMP, and give interested parties at least ten days to provide their submissions to the administering authority.

Section 85 provides that where a draft EMP is submitted, the administering authority may require additional information.

Section 86 allows the administering authority to call a conference of the applicant, interested parties and itself, to discuss issues relating to the issuing of the licence. More formal methods of mediation may be used in the conference in an attempt to gain agreement and avoid court action.

Section 87 requires the administering authority to decide whether to approve or reject a draft EMP within 28 days of the application date and what criteria must be used in making its decision.

If the administering authority approves the draft EMP then the administering authority must issue the applicant with a certificate of approval for the EMP. This certificate may be issued subject to any conditions that the administering authority considers appropriate. The applicant may appeal against the conditions. If the EMP was refused then written reasons must be given. This ensures accountability of the decision-making process.

Section 88 provides the criteria for deciding the draft EMP.

Section 89 provides that where an EMP has been approved by an administering authority, a certificate of approval must be given to the EMP holder. Any conditions that the administering authority considers appropriate may be specified in the certificate.

Section 90 provides that where a draft EMP is not approved then the applicant must be given notice and the applicant may appeal the decision.

Section 91 provides that under certain circumstances the administering authority may extend the period for considering the draft EMP.

Section 92 provides that where only a minor fault has occurred in the public notification process, the administering authority may, at its discretion, decide the application. This ensures that the approval system does not get 'bogged down' by technical argument if the administering authority is satisfied that there has been substantial compliance.

Section 93 provides that if an administering authority does not make a decision on the draft EMP within 28 days, the administering authority is deemed to have decided to reject the draft EMP. This decision may be appealed by the applicant. This provision ensures that action is taken by the administering authority to evaluate the EMP. If the authority takes no action, it opens itself to internal appeals and possible expensive court action.

Section 94 provides that the holder of a certificate of approval for an EMP must produce an annual return within 30 days of the annual anniversary of the approval. This ensures accountability for the EMP process and gives the administering authority guaranteed warning of potential problems with the EMP.

Section 95 makes it an offence for an EMP holder to contravene the EMP.

Section 96 provides that an approved EMP holder cannot be prosecuted for a breach of a licence condition or an environmental protection policy, if the approved EMP specifically addresses the contravention of the specific licence condition or specific provision of the environmental protection policy. This section aims to encourage potential offenders against the Act to notify the administering authority of their potential breach and undertake to improve their environmental performance through entering into an EMP.

Section 97 provides that the seller of a business to which an EMP relates must give written notice to a prospective buyer before a sale contract is made. If notice is not given, the purchaser may rescind the contract.

The holder of an EMP must inform the administering authority of the sale of a place or the cessation of an activity to which the EMP relates. This ensures that records are maintained and the administering authority is aware of what potential threats to the environment exist within its jurisdiction.

Section 98 provides that where an activity conducted under an EMP stops, the holder of the EMP must advise the administering authority.

Section 99 states that the purpose of an EMP is to ensure that the Act is complied with by the time the environmental management program expires.

PART 7—SPECIAL PROVISIONS ABOUT VOLUNTARY SUBMISSION OF ENVIRONMENTAL MANAGEMENT PROGRAMS

General

This part provides companies which breach this Act and voluntarily inform the administering authority of that breach with a mechanism which protects them from prosecution in certain circumstances.

A company is only protected if it notifies the administering authority as soon as it commits the breach; undertakes to prepare an Environmental Management Program (EMP) covering the event causing the breach; and it complies with the EMP.

It is impossible to ensure comprehensive environmental surveillance of all relevant human activities and therefore to protect the environment it is essential that people audit their own activities and look for environmental harm. If they should find harm it generally would be inequitable for them to be punished for it if they tell the administering authority. This provision provides them with the incentive to look, the incentive to halt the harm and the incentive to repair the damage.

Section 100 requires that prior to protection being given for the breach and documents relating to the breach, certain conditions must be met.

Section 101 provides that documents submitted as evidence of a breach along with the notice of that breach are inadmissible in evidence against the person for a prosecution relating to that breach.

Section 102 requires that the administering authority provides the person with a written receipt and a date by which a draft EMP covering the breach must be submitted for approval.

Section 103 provides that on receipt of the notice of the breach by the administering authority the person cannot be prosecuted for a continuation of the original offence that occurs after the administrative authority receives the notice.

This protection from prosecution does not apply if the EMP is refused by the administering authority or the draft EMP is not submitted by the date specified previously by the administering authority. The person submitting the program notice may appeal the decision of the administering authority.

Section 104 provides that if an EMP issued under this division for protection for a particular breach is not complied with, the person may be prosecuted for the original breach and any subsequent or continuing breaches arising out of the original event.

Section 105 provides that if an administering authority considers that the breach was wilful or so serious or the actual or threatened environmental harm was so great that no protection should be granted, then the authority can apply to the court to stop the protection from prosecution arising.

Section 106 provides what criteria the court must take into account in determining whether to allow protection from prosecution to stand.

Section 107 provides that the court may make an interim order while it is deciding an application from an administering authority that the protection from prosecution does not apply.

PART 8—ENVIRONMENTAL PROTECTION ORDERS

General

This Act is designed to protect the environment using a variety of regulatory tools. Most of these aim to elicit a cooperative response from those who are damaging the environment. However, in some cases, where cooperation has failed, it is necessary to legally force people and businesses to undertake an activity or stop an activity. In such cases, Environmental Protection Orders (EPOs) can be used.

Section 108 provides for the circumstances in which an EPO will be issued.

Section 109 provides that before issuing an EPO, the administering authority must consider the standard criteria. This ensures transparency of the process and fairness in application of EPOs.

Section 110 provides for the form and content of an EPO. The recipient of an EPO may seek review and appeal the decision to issue the EPO.

Section 111 provides for penalties where an EPO is contravened. Contravening an EPO is a serious offence as it is likely that defendants will have had extensive dealings with the administering authority prior to the issuing of the EPO, and they would have a clear understanding of the environmental harm they were causing.

Section 112 provides that prospective buyers of a place or business to which an EPO relates, must be informed in writing of the existence of the EPO. This allows potential buyers to investigate any consequent financial implications before entering into the contract of sale. It also allows the buyers to rescind a contract to purchase if the sellers have failed to disclose the existence of the EPO.

Section 113 provides that where an activity covered by an EPO stops, the holder of the EPO must notify the administering authority.

PART 9—FINANCIAL ASSURANCES

General

At times where untried technologies are being used, or the risk of environmental harm is high, it is appropriate that the person undertaking the risky activity puts up a financial assurance. This financial assurance can then be called upon if environmental harm occurs and the person is no longer in a position to rehabilitate the environment.

Section 114 provides that under certain circumstances an administering authority may approve an operation that involves inherent environmental risks, subject to a form of financial assurance, such as an insurance policy, bond or other financial instrument being held over the operation. This

financial assurance may extend until a time when the administering authority is satisfied no claim is likely to be made. This is to ensure that the public does not have to pay the costs for remediation of environmental problems.

Section 115 provides that before requiring a financial assurance, the administering authority must give the applicant a written “show cause” notice. This is to give the applicant opportunity to respond and provide information as to why the assurance is not necessary or to propose alternatives to ensure that taxpayers or ratepayers are not left with a liability.

Section 116 provides a mechanism for an applicant to reclaim an assurance once obligations are met.

Section 117 provides for the circumstances where an administering authority may claim the financial assurance. The decision to claim on the financial assurance may be reviewed and appealed.

PART 10—ENVIRONMENTAL OFFENCES

Section 118 provides that any act or omission that causes serious or material environmental harm or environmental nuisance is unlawful, unless it is authorised under an environmental protection policy, an environmental management program, an environmental protection order, a licence or a direction from an authorised person during an emergency.

It is a defence to this charge if the defendant can prove that the harm happened while a lawful activity was being carried out and the defendant complied with the general environmental duty. This provision recognises that under some circumstances environmental degradation does occur and the degradation should be punishable, unless the person causing the degradation attempted to minimise the degradation to the best of their ability.

Section 119 provides the offence that a person must not wilfully and/or unlawfully cause serious environmental harm.

Section 120 provides the offence that a person must not wilfully and/or unlawfully cause material environmental harm.

Section 121 provides that where a person is found not guilty of serious environmental harm, they may be found guilty of material environmental harm. This provides the courts with greater discretion in determining the existence of environmental harm.

Section 122 provides the offence that a person must not wilfully and/or unlawfully cause an environmental nuisance.

Section 123 provides that a person must not contravene an environmental protection policy (EPP). Wilful contraventions attract greater penalties than contraventions arising from a failure to take adequate precautions.

Environmental offences under EPPs are classed from 1 to 3 to cover different scales of environmental problems. Class 1 is the most serious offence and attracts the greatest penalty. If a court is satisfied that an offence occurred, but the offence was less than that with which the defendant was charged, the defendant can be found guilty of the lesser offence. This provides the court with greater discretion.

Section 124 defines “prescribed contaminant” and makes it an offence to release a prescribed contaminant, other than under an authorised person’s direction within the emergency criteria provided by the Act.

The section provides for an offence where it is not necessary to prove environmental harm.

Section 125 provides for the offence of causing or allowing a contaminant to be placed in a position where it could cause environmental harm or nuisance. This mirrors a provision in the *Clean Waters Act* to encourage prevention rather than waiting for damage to occur.

This section provides for an offence where it is not necessary to prove environmental harm.

Section 126 provides for the offence of interfering with any monitoring equipment used by any person under this Act.

CHAPTER 3—INVESTIGATION AND ENFORCEMENT

PART 1—ADMINISTRATION GENERALLY

Section 127 provides that the chief executive of a State government department, or the local government (for devolved activities) may appoint authorised persons to investigate and enforce the Act.

Section 128 provides the terms of appointment for authorised persons and lists when an authorised person ceases to hold office.

Section 129 provides that authorised persons have powers and those powers given to local government authorised persons may only be used for the administration and enforcement of devolved activities.

Section 130 requires that authorised persons are issued with an identity card by the administering executive.

Section 131 provides that authorised persons, except uniformed police officers, must identify themselves before exercising their powers.

Section 132 provides that authorised persons are not civilly liable for their actions or omissions undertaken for the purposes of this Act if they were done honestly and without negligence. This ensures that authorised persons do not act, or fail to act out of fear for their own property. Any liability which may arise through the failure of an authorised person attaches itself to the administering authority.

Section 133 provides that the administering authority may require a person to give it information relevant to the administration or enforcement of the Act, by issuing them with a notice. This notice may be appealed against by the recipient. If the recipient objects to giving information on the grounds that it may incriminate them, the information is not admissible in evidence against the person for any offence against this Act.

Owing to the nature of environmental offences, it is often necessary to rely on evidence other than that able to be collected from the site of the offence. To do this successfully, the cooperation of the community is required. Where this is not possible, coercive powers are needed and this provision provides these powers.

PART 2—GENERAL POWERS OF AUTHORISED PERSONS FOR PLACES AND VEHICLES

General

Entry of premises is a sensitive issue that requires a balance between the needs for investigation and a person's right to privacy and intrusion. This part provides the balance required, by ensuring that the person's consent must be given prior to entry, otherwise the authorised person must gain a warrant. The warrant system provides a neutral arbiter - 'the magistrate' - who ensures that the community gets the ease of investigation they require and individuals get the protection they want. Warrants provide the balance between community needs and individual needs. Warrants to search premises or monitor premises are only issued after a magistrate believes that they are necessary.

Section 134 provides that an authorised person may enter a place under certain circumstances to find out whether the Act is being breached. It is essential that authorised persons have an ability to enter premises, for without that power, investigation and enforcement of the Act would be extremely difficult owing to the nature of environmental harm.

Section 135 provides that an authorised person may enter a land under certain circumstances if the officer suspects on reasonable grounds that there is evidence of an offence against this Act.

Section 136 provides that an authorised person may apply to a magistrate for a warrant to enter a place. This provision details the application processes that need to be followed.

Section 137 provides that authorised persons do not need to apply for a warrant in person, where they are not in a position to do so.

Section 138 provides that under certain circumstances an authorised person may enter or board a vehicle if s/he suspects that the vehicle is being, or has been used in an offence against the Act. This power is essential for the control and enforcement of illegal toxic waste dumping and other illegal waste transporting activities.

Section 139 provides the general powers that an authorised person has on entering a place or vehicle.

Section 140 provides that under certain circumstances authorised persons can seize evidence.

Section 141 provides that those who have had their property seized have certain rights and that seized evidence must be returned to the owners within certain time limits.

Section 142 provides that if a person is convicted under this Act, items seized may become the property of the administering authority or may be destroyed.

PART 3—OTHER ENFORCEMENT POWERS OF AUTHORISED PERSONS

Section 143 provides that in certain circumstances the authorised person may require a person to give their name and address. Police officers who are authorised to exercise powers under the special environmental protection provisions for noise may arrest the person if the person was not complying with the officer's request to give their name and address.

Section 144 provides that under certain circumstances the authorised person may require a person to answer questions.

Section 145 provides that under certain circumstances the authorised person may require a person to produce a document required to be held or kept by the person under this Act, for inspection.

PART 4—SPECIAL ENVIRONMENTAL PROTECTION PROVISIONS FOR CERTAIN NOISE

General

This part recognises that noise is a special environmental problem and that the police are in a better position to handle complaints than are authorised persons. This is particularly true when noise complaints relate to domestic residences, such as noisy parties.

Section 146 provides definitions specific to this part.

Section 147 provides when the part applies.

Section 148 provides that a person may complain to a police officer about any noise which they believe is excessive. Unless the complaint is frivolous or vexatious, the police officer must investigate the complaint.

Section 149 provides the powers of police officers, when upon investigating a noise complaint they find that the noise is excessive.

Section 150 provides that where the occupants of a place do not heed a noise abatement notice given by the police, the police may physically act to stop the noise.

Section 151 provides that the owner of a thing damaged by the police whilst stopping the noise is advised of the damage.

Section 152 provides that seized property must be returned.

Section 153 provides for the recovery of reasonable costs incurred by a police officer during an investigation of excessive noise. This protects the taxpayer from having to pay costs where an offence has occurred.

Section 154 provides a police officer investigating a complaint about excessive noise with powers.

PART 5—EMERGENCY POWERS OF AUTHORISED PERSONS

General

Where an emergency arises authorised persons need to have different powers to that which they would exercise in their day-to-day work. For example, if a toxic waste storage tank ruptures then they will be required to act quickly to mitigate the damage. They would not be in a position to obtain warrants to enter a premise, rather it is imperative that to minimise environmental harm they have the powers to act immediately. This part provides them with these powers.

Section 155 provides the powers that an authorised person has in an emergency.

Section 156 provides that in certain circumstances an authorised person can order the release of contaminants.

PART 6—OFFENCES

Section 157 provides that it is an offence for authorised persons who cease to be authorised not to return their identity card.

Section 158 provides that it is an offence when asked to provide information for a person not to give it without a reasonable excuse.

Section 159 provides that it is an offence not to obey a signal under the entry or boarding of vehicles provision, unless the person has a reasonable excuse for not doing so.

Section 160 provides that it is an offence not to give an authorised person reasonable help to enter or board a vehicle or bring the vehicle to a place when requested, unless the person has a reasonable excuse for not helping.

Section 161 provides that it is an offence not to assist an authorised person in an emergency unless the person has a reasonable excuse for not assisting.

Section 162 provides that it is an offence not to assist an authorised person when requested to do so unless the person has a reasonable excuse for not assisting.

Section 163 provides that it is an offence in certain circumstances for a person not to provide their correct name and address when requested to do so.

Section 164 provides that it is an offence not to answer a question from an authorised person in an emergency unless the person has a reasonable excuse for not answering.

Section 165 provides that it is an offence for a person not to produce a document when requested to do so, unless the person has a reasonable excuse for not complying.

Section 166 provides that it is an offence for a person not to comply with a noise abatement direction.

Section 167 provides that it is an offence for a person to unlock, unseal or use property which was, locked, sealed or restrained by an authorised person within 24 hours of the noise abatement direction being given.

Section 168 provides that it is an offence for a person to whom a notice was given under the emergency powers provision not to comply with the notice.

Section 169 provides that it is an offence for a person, to whom a direction is given to release a contaminant, not to comply with the direction, unless the person has a reasonable reason for not complying with it. When complying the person must attempt to minimise harm.

Section 170 provides that it is an offence for a person to give to an authorised person a document that the person knows is false or misleading.

This section does not apply if the person informs the authorised person of the extent and nature of the misleading or false information and gives the officer the correct information.

Section 171 provides that it is an offence for a person to give to an authorised person information that the person knows is false or misleading.

Section 172 provides that it is an offence to obstruct an authorised person without reasonable excuse. This section also provides that a person must not abuse or intimidate an authorised person.

Section 173 provides that it is an offence to impersonate an authorised person.

Section 174 provides that a person who attempts to commit an offence against this Act does commit an offence.

PART 7—GENERAL

Section 175 provides that before seeking entry to a place the authorised person must inform occupiers of their right to refuse entry. If consent is given, the authorised person may ask the occupiers to sign an acknowledgment of their consent to entry.

Section 176 provides for the accountability of an authorised person where equipment is seized or damaged. Written notice of the particulars of the seizure or damage must be given immediately.

Section 177 provides that a person who incurs loss or expense because an authorised person has exercised a power may seek compensation. Compensation may be ordered by a court only if it is just in the circumstances of the particular case. Compensation may be claimed from the local government (if applicable) or the State.

Section 178 provides that a person who has been required to carry out the direction of an authorised person in an emergency may claim for the reasonable costs and expenses incurred. The section does not include the person who caused or allowed the situation or emergency to occur. The claim for compensation is to be made to the administering authority.

CHAPTER 4—LEGAL PROCEEDINGS

PART 1—EVIDENCE

Section 179 limits the debate on technicalities such as the authorisation of persons, the records of administering authorities, the procedures adopted in handling samples and instrumentation specifications. The defence may still challenge the facts of a case including the accuracy of evidence.

Section 180 provides that an authorised person may present evidence of environmental nuisance based on their senses.

This is consistent with legislation in other States and relates to the transient or non-residual nature of problems such as odour or noise and the question of whether such nuisance is “unreasonable interference”. Such evidence is not conclusive but merely admissible.

Section 181 allows for the establishment of the “will or intent” of a corporation where many people are involved and it is impossible to determine the collective state of mind. For example, to determine a breach by a company, it is necessary only to prove that an officer of the company breached the act whilst doing their normal duties. This section also allows for the will of a person to be inferred from the activities of their representatives.

An individual who is convicted of an offence against this Act is not liable to punishment by imprisonment if they would not have been guilty but for this section.

PART 2—EXECUTIVE OFFICER LIABILITY

Section 182 requires that executive officers of a corporation must ensure that their corporation complies with this Act. If they fail to ensure this then they are deemed to have committed the offence of failing to ensure the corporation complies with this Act.

It is a defence for an executive officer to prove that: if in a position to do so, all reasonable steps were taken to ensure the corporation complied with the Act; or, that the officer was not in a position to influence the conduct of the corporation in relation to the offence.

This provision ensures that those individuals who were actually responsible for an offence, can be punished for the offence. It is no longer acceptable that executive officers can hide behind the ‘corporate veil.’

PART 3—LEGAL PROCEEDINGS

Section 183 provides that in this Act, an indictable offence is one that has a maximum penalty of 2 years imprisonment or more. Any other offence is a summary offence.

Section 184 states how proceedings for offences against this Act will be undertaken.

Section 185 provides that proceedings for the summary conviction of an indictable offence and the examination of witnesses for an indictable offence, must be before a Magistrate.

Where proceedings for an indictable offence are brought before a justice other than a Magistrate, action is limited by the *Justices of the Peace and Commissioners for Declarations Act 1991*.

Section 186 provides that summary proceedings for an offence against this Act must be commenced within one year of the offence.

However, where an offence is not immediately apparent, proceedings may be commenced within one year of the offence coming to the complainant's knowledge, provided the offence did not occur more than two years previously.

Section 187 provides that a person can use the defence of complying with the general duty only where the prosecutor has been given notice. This is done to ensure that court cases are not delayed whilst information is collected to rebut the defence.

Section 188 provides that for the purposes of the operation of s76 of the *Justices Act 1886* unlawful acts or omissions under this Act done under environmental authorities are exemptions.

Section 189 provides that, where powers under this Act have been devolved to a local government, any fines are to be paid to the local government.

However, if some party other than the local government prosecutes the offence, a court may order that any part of the fine be paid to that party.

Section 190 provides that costs incurred by an administering authority in repairing or remediating damage caused by an offence against this Act can be recovered from the offender.

Whether a court will order a particular offender to pay will depend on what is just and equitable in the circumstances.

Section 191 provides that, where a person has caused environmental harm, the court may order that the offender pay compensation to any person who has incurred loss or damage as a result of the offence.

A court may further order an offender to carry out rehabilitation or restoration of the environment.

Section 192 provides that the reasonable costs of investigation are recoverable by the administering authority from an offender convicted of an offence under this Act.

Whether a court will order a particular offender to pay compensation will depend on what is considered just and equitable in the circumstances.

PART 4—RESTRAINT ORDERS

General

This part allows the Minister, an administering authority, some one whose interests are affected by a person offending against this Act, or under certain circumstances, any other person, to go to court and get an order from the court to restrain a person from doing something which may be an offence under this Act.

Section 193 provides that an order may be sought from the Court to stop an offence or an anticipated offence against this Act and ensure that appropriate remedies be applied. This section provides that any person may go to Court to restrain or remedy an offence against the Act, regardless of whether they have been directly affected. To ensure that the Court's time is not wasted and the alleged offender is justly treated, the Court must consider whether the application meets certain criteria. The criteria are:

- the evidence has been presented to the responsible authority and that authority has failed to act within a reasonable time;
- that environmental harm has occurred or is threatened and the application is likely to succeed;
- that the application has been adequately prepared and is in the public interest;
- the case would not be an abuse of process, such as a series of applications on the same matter, aimed at delaying a project; and
- any other matter that the Court considers relevant for maintaining justice and equity.

When uncertainty exists in whether the case should be heard or not, preference should be given to hearing the case, as this ensures that justice is 'seen to be done'.

To ensure that Court actions are genuine the Court may order costs if the case was brought for obstruction and delay.

Section 194 empowers the Court to prevent environmental harm pending the outcome of a proceeding.

CHAPTER 5—ADMINISTRATION

PART 1—DEVOLUTIONS

General

This part enables local government to control activities of local significance while the State retains control of activities of regional or State significance. The powers are limited to a schedule of environmentally relevant activities. Devolution provides the vital link between environmental planning and local government planning.

Section 195 provides that the State Government may give local governments power to administer or enforce the Act for all parts of the Act other than the development of Environmental Protection Policies.

The local government must perform its devolved functions and in doing so may charge fees and make by-laws to administer and enforce its devolved responsibilities.

If the local government does not carry out its devolved responsibilities, the State Government may do so and charge any costs and expenses to the local government.

PART 2—DELEGATIONS

Section 196 provides that the Minister may delegate powers to public servants.

Section 197 provides that the Chief Executive may delegate powers to authorised persons or any officer of the public service.

Section 198 lists to whom the administering authority may delegate its powers.

PART 3—REVIEW OF DECISIONS AND APPEALS

Division 1—Interpretation

Section 199 provides that a “dissatisfied person” is a person who may appeal against a specified decision made under this Act. Appeals go through an internal appeals process within the administering authority making the decision. If the person is still dissatisfied with the decision, the person can take the appeal to the Planning and Environment Court.

Section 200 provides that those decisions listed in Schedule 1 are original decisions and are appealable.

Division 2—Internal review of decisions

Section 201 provides that a dissatisfied person may apply for the review of an original decision. However, if the decision was made by the most senior officer the only recourse is to the Court as there is nobody within the administering authority who is in a position to review the decision.

The intent of this provision is that, whilst matters of policy may not be resolved by the review of a decision, technical mistakes or misunderstandings may be resolved without reference to the Court.

A notice must be provided to the applicant within fourteen days of the review decision, and must include reasons for the decision and any rights of appeal.

Section 202 provides then an applicant in an appeal may request that the Court delays the commencement of the original decision, while the appeal is being heard.

Division 3—Appeals

Section 203 provides that a person dissatisfied with a review decision or an original decision to which internal appeal does not apply may appeal against the decision to the Court. The Chief Executive may appeal against the decision of another administering authority.

Section 204 provides for the timing and content of an appeal to the Planning and Environment Court.

Section 205 provides that parties who were interested in the original decision, are notified of the appeal and are given an opportunity to participate in the appeal.

Section 206 provides that a person may become a respondent in the appeal if the person properly files an interest with the Court.

Section 207 provides that a stay of the decision appealed against may be granted on such conditions as the court deems appropriate. However, the original or review decision remains in place until the appeal is determined or a stay granted.

Section 208 provides for the appeal to be heard in accordance with the applicable rules of the court. The appeal is heard afresh and the Court has complete discretion to make a decision in place of the administering authority.

Section 209 provides that, if in the Judge's opinion the appeal involves a question of special knowledge, the Judge may appoint assessors to help in deciding the appeal.

Section 210 provides that, upon application of a party to either of the following appeals:

- the decision of an administering authority to refuse to grant a licence or to impose conditions on a license; or
- the decision of a local authority under the *Local Government Planning & Environment Act 1990* which relates to the premises which are the subject of the licence application or licence;

the court may order that both appeals be heard together or consecutively, or one stayed until the other is decided. This may occur even if the parties to the appeals are not the same. This ensures that needless delays are minimised.

Section 211 lists the powers of the court in deciding an appeal.

PART 4—GENERAL

Section 212 lists those matters which must be set out in a public register. This provides for public accountability of environmental information and decisions.

Section 213 provides that the register must be open for public access at the administration authority's head office and other appropriate regional offices. Extracts are available on payment of a fee.

Section 214 provides that forms may be approved by the administering executive for use in administering this Act.

Section 215 provides that the Minister may set up advisory committees to help administer the legislation. Members may be paid sitting fees.

Section 216 provides that a report on the administration of this Act shall be presented by local government to the Chief Executive Officer each year. The Chief Executive Officer must provide a report to the Parliament each year on the administration of the Act. This ensures that administration of the Act is publicly accountable.

Should the Minister reject a request to prepare an EPP, a brief statement of reasons must be provided in the Annual Report. This ensures that consistency is maintained and yet provides accountability by ensuring that people who propose EPPs receive information about why the Minister made a decision about their proposal.

Section 217 provides that at least every four years the chief executive must prepare and publish a report on the state of Queensland's environment which will establish environmental priorities and measure the success of previous strategies.

CHAPTER 6—MISCELLANEOUS

Section 218 provides that the Minister may approve codes of practice to ensure an activity complies with the general environmental duty. A code of practice will be subordinate legislation and will be open for public inspection.

Section 219 lists those matters for which the Governor in Council may make regulations. A regulation may prescribe fees.

Section 220 lists what regulations and guidelines a local government may make if it has powers delegated to it by the administering authority.

CHAPTER 7—REPEALS, AMENDMENTS, SAVINGS AND TRANSITIONAL

PART 1—REPEALS AND CONSEQUENTIAL AMENDMENTS

Section 221 provides that those Acts specified in Schedule 2 are repealed.

Section 222 provides that those Acts specified in Schedule 3 are amended.

PART 2—SAVINGS AND TRANSITIONAL

Division 1—Preliminary

Section 223 provides the definitions used in this Part.

Section 224 provides that this Division expires two years after proclamation.

Division 2—Savings and transitional provisions (Clean Air Act 1963 and Clean Waters Act 1971)

Section 225 provides that licences issued before proclamation of this Act under the *Clean Air Act 1963* or the *Clean Waters Act 1971* continue in force until cancelled by the administering authority.

The purpose of this section is to keep current licences and ensure their validity under this Act. Current licences will be reviewed over a period of time to establish whether they are still appropriate given the new standards of the environmental protection policies (EPP) and the requirement that licences are issued subject to the standard criteria.

Section 226 provides that applications for licences made under the *Clean Air Act 1963* or the *Clean Waters Act 1971* are deemed to be licence applications under this Act.

Section 227 provides that this Division expires one year after proclamation. This provides a time limit for the administering authority to ensure that all licences have been reviewed.

Division 3—Transitional provisions (State Environment Act 1988)

Section 228 provides that, in keeping with current Treasury policy, all money from licences and fines that stand to the credit of the State Environment Trust under the *State Environment Act 1988* are to be paid to the Consolidated Fund.

Section 229 provides that this Division expires at the end of the commencing day.

Division 4—Transitional provisions (Noise Abatement Act 1978)

Section 230 provides that an unhealthy, dangerous or offensive condition caused by noise is not an environmental nuisance. This is to exclude noise from the jurisdiction of this Act until the *Noise Abatement Act 1978* is repealed and replaced by a Environmental Protection Policy about noise.

Section 231 provides that this Division expires one year after commencement or on the repeal of the *Noise Abatement Act 1978*, whichever is the earlier.

Division 5—Savings and transitional provisions (Health Act 1937)

Section 232 provides that agreements made under the *Health Act* regarding the discharge of waste water into a watercourse remains in force until cancelled by the administering authority.

Section 233 provides that this Division expires one year after proclamation of this Act.

Division 6—Miscellaneous transitional provisions

Section 234 provides the definitions used in this Division.

Section 235 provides the time within which people carrying on environmentally relevant activities must apply for a licence.

Section 236 allows for the prior preparation of Environmental Protection Policies and enables the department to prepare air, noise, water and waste policies before the legislation is proclaimed. The purpose of this provision is to enable a smooth transition to the new Act.

Section 237 provides a special transitional provision for the agricultural industry. Persons will comply with the general environmental duty if they carry out an activity in accordance with current and appropriate industry practice.

The Department of Primary Industries (DPI), in consultation with rural producers, will develop an Environmental Protection Policy (EPP) on agriculture. Until then, this provision is designed to protect persons who carry out normal and accepted practices.

Section 238 provides that existing mining activities are considered to be environmental approvals under this Act. This ensures that current mining operations are not jeopardised by having to go through a retrospective approval regime for activities already underway. All new mining instruments will be environmental approvals only if the standard criteria in this Act have been considered.

Section 239 permits interim regulations if they are necessary in the transitional period.

Section 240 provides that this Division, other than provisions relating to ERAs, EPPs and transitional regulations shall expire 6 months after the commencing day.

DICTIONARY

The dictionary provides the terms and phrases used in the Act. All definitions must only be interpreted in their context. Terms not defined there have either the meaning given to them by the *Acts Interpretation Act* or by a standard English Dictionary. Some of the more complex definitions are further explained below.

“environmentally relevant activity” is an activity where a contaminant may be released into the environment and that release may cause environmental harm. An environmentally relevant activity is prescribed by regulation to be environmentally relevant and is classified as a level 1 or level 2 activity. Level 1 activities involve a more serious risk of environmental harm. Because of the risk, these activities require specific permission for some aspects of their operation.

“environmental management program” (EMP) is an approved and accountable program that complies with this Act by minimising environmental harm or by providing for the transition to a new environmental standard. It establishes indicators of performance, the time-frame in which they are to be achieved, and a mechanism for monitoring compliance. An EMP provides the means by which a business can make a voluntary, yet legally binding, commitment to attaining accepted performance. EMPs are prepared by the business, not by the administering authority and this ensures that the EMP is suitable for the specific business. In return for producing an EMP, the company is given certainty of operations while it improves its performance. EMPs are publicly available and provide a transparent way of ensuring a transition to normal environmental management.

“environmental protection order” is an order by the administering authority requiring a person to do, or refrain from doing, some activity where: an environmental evaluation shows that environmental harm has been caused or is likely to be caused by that activity; a request to conduct or prepare an environmental evaluation or environmental management program has not been complied with; or to ensure compliance with the general environmental duty, an environmental protection policy or a condition of a license.

“environmental protection policy” (EPP) is subordinate legislation produced by the Minister which relates to the environment or anything that affects or may affect the environment. EPPs provide the specific

objectives and standards that must be met for particular types of environmental problems. Four EPPs are proposed during the first year of this Act's life covering air, water, noise and waste. EPPs are flexible tools and can cover any environmental issue, such as specific industries, or geographic areas.

“monitoring warrant” is a warrant which allows an authorised person to gain access to premises (other than those premises used exclusively for residential purposes) to gather evidence to determine whether the Act is being complied with. A monitoring warrant will only be granted where there is a risk of environmental harm, actual or threatened.